

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF  
PUNJAB AND HARYANA, AT CHANDIGARH**

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**Date of Decision: October 21, 2015**

**Letters Patent Appeal No. 2151 of 2014**

MASTAN SINGH ---Appellant  
Versus

SENIOR EXECUTIVE ENGINEER & ORS. ---Respondents

**Letters Patent Appeal No. 2160 of 2014**

HAKAM SINGH ---Appellant  
Versus

SENIOR EXECUTIVE ENGINEER & ORS. ---Respondents

**Letters Patent Appeal No. 2161 of 2014**

AJAIB SINGH ---Appellant  
Versus

SENIOR EXECUTIVE ENGINEER & ORS. ---Respondents

**Letters Patent Appeal No. 41 of 2015**

AJAIB SINGH ---Appellant  
Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL & ORS.  
---Respondents

**Letters Patent Appeal No. 107 of 2015**

KARAN BAHADUR SINGH ---Appellant  
Versus

SENIOR EXECUTIVE ENGINEER & ORS. ---Respondents

**Letters Patent Appeal No. 209 of 2015**

HAKAM SINGH ---Appellant

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL & ORS.

---Respondents

**Letters Patent Appeal No. 241 of 2015**

MASTAN SINGH ---Appellant

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL & ORS.

---Respondents

**Letters Patent Appeal No. 242 of 2015**

KARAN BAHADUR SINGH ---Appellant

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL & ORS.

---Respondents

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CORAM: **Hon'ble Mr. Justice Satish Kumar Mittal**

**Hon'ble Mr. Justice Mahavir S. Chauhan**

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Present: Shri Ravi Malhotra & Ms. Surinder Kaur, Advocates, for the appellants-Workmen.

Shri Manish Jain, Advocate, for respondents-Management.

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1. *Whether Reporters of local papers may be allowed to see the judgment? Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

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**Mahavir S. Chauhan, J.**

Challenge in these instant intra-court appeals (LPA Nos. 2151,

2160, 2161 of 2014, and 41, 107, 209, 241 & 242 of 2015) is to order dated

May 09, 2015 whereby the learned Single Judge has disposed of Civil Writ Petition Nos. 2035, 2431, 3141 & 4744 of 2012, brought by the Management challenging the reinstatement of the Workmen and Civil Writ Petition Nos. 19163, 19164, 19165 & 19883 of 2012 preferred by the Workmen challenging denial of back wages to them vide award dated November 25, 2011 (Annexure P1), passed by learned Presiding Officer, Industrial Tribunal, Patiala (for short, 'the Tribunal'), vide which the learned Tribunal has directed reinstatement of the Workmen with continuity in service without back wages. As these appeals have arisen from a common order and involve common questions of fact and law, are proposed to be disposed of by this common judgment being recorded in Letters Patent Appeal No. 2151 of 2014, Mastan Singh versus Senior Executive Engineers and others.

A brief overview of history of the case reveals that the Workmen, who had been working as work-charge T-Mates at a salary of Rs. 700/- per month with the Anandpur Sahib Hydel Project ('ASHP', for short) since the year 1978, were retrenched with effect from July 14, 1985 because on completion of ASHP, they, alongwith more than four thousand other workers, were rendered surplus. In the civil suits brought by the Workmen, learned trial court directed that the Workmen be taken back in service and if, in view of overall seniority, it was found that they could not be retained in the employment of ASHP, as they be absorbed in other projects. After dismissal of first and second appeals the matter reached the Hon'ble Supreme Court of India and was disposed of in the following terms:

*"19. Once the original decree itself has been held to be without jurisdiction and hit by the doctrine of coram non judice, there would be no question of*

*upholding the same merely on the ground that the objection to the jurisdiction was not taken at the initial, First Appellate or the Second Appellate stage. It must, therefore, be held that the civil court in this case had no jurisdiction to deal with the suit and resultantly the judgments of the Trial Court, First Appellate Court and the Second Appellate Court are liable to be set aside for that reason alone and the appeal is liable to be allowed. In view of this verdict of ours, we have deliberately not chosen to go into the other contentions raised on merits. We, however, make it clear that we have not, in any manner, commented upon the rights of the plaintiffs-respondents, if any, arising out of the Labour Jurisprudence.”*

Consequent upon verdict of the Hon'ble Supreme Court, the Workmen sought references to the learned Tribunal and after appraising the evidence and pleadings of the parties, learned Tribunal, vide Award dated November 25, 2011 (Annexure P1), answered the references directing reinstatement of the Workmen with continuity of service but without back wages and, as aforesaid, the learned Single Judge, while setting aside the Award of the learned Tribunal, has directed payment of compensation amounting to Rs.1,50,000/- to each of the Workmen in substitution of reinstatement in service.

We have heard learned counsel for the parties besides examining the documents available on record.

On behalf of the Workmen while it has been argued that termination of services of the Workmen having been held to be illegal, they are entitled to reinstatement in service with all consequential benefits including continuity of service and full back wages, on behalf of the Management order of the learned Single Judge is defended saying that the ASHP having been concluded/closed there is no work available to accommodate the Workmen and by award of compensation in lieu of

reinstatement to the workmen, they have been duly compensated.

No other or further point has been urged on either side.

Once the termination of service of an employee is held to be illegal, the relief of reinstatement is ordinarily available to the workman. But the relief of reinstatement with full back-wages need not be granted automatically in every case where the Labour Court/Industrial Tribunal records the finding that the termination of services of a workman was in violation of the provisions of the Act. For this purpose, several factors, like the manner and method of selection; nature of appointment--ad hoc, daily-wage, temporary or permanent etc., period for which the workman had worked and the delay in raising industrial dispute, and most importantly whether or not work to accommodate the Workman is available, are required to be taken into consideration.

On this aspect, in **General Manager, Haryana Roadways v. Rudhan Singh, 2005(3) SCT 559 : (2005)5 SCC 591**, a three-Judge Bench of the Hon'ble Supreme Court has observed thus :

*"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e., whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another*

*employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i.e., from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."*

A similar situation arose in **BSNL versus Bhurumal, (2014) 7 SCC 177** and the Hon'ble Supreme Court, after referring to a number of judgments on the subject, ruled as under:

*"23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.*

*24. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See: **State of Karnataka v. Uma Devi, (2006) 4 SCC 1**), Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a*

*workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.*

*25. We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.”*

Following **BSNL versus Bhurumal** (supra), this Court in **Deputy General Manager (Telecom) Bharat Sanchar Nigam Limited versus Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh and another, LPA No. 1334 of 2009, decided on 30 January, 2014**, instead of reinstatement in service, awarded compensation to the workman.

It is not in dispute that retrenchment of about 4500 workmen, including the appellants, was necessitated by closure of ASHP on its completion and that being so, no work is available to accommodate them. Keeping in view the above-stated undisputed fact as also the long fight the Workmen have fought to in the matter, the learned Single Judge has disposed of the matter in the following manner:

*“10. After hearing counsel for the parties, this Court is of the opinion that the award of the Labour Court is not justified, in the present facts and circumstances of the*

*case. There is no denying the fact that on the completion of the project, the workman was rendered surplus and accordingly, his services were dispensed with on certain conditions. As noticed above, the Department had a valid reason not to comply with the provisions of Section 25-F of the Act, in view of the Full Bench decision of this Court in **Om Parkash** case (supra) in which, it had been held that the Irrigation Department would not come within the ambit of industry and was essentially performing a Government function. The fact remains that 4500 workers had been retrenched as it has come in the statement of Gurdeep Singh and merely because some persons were directed to be reinstated at that point of time, would not entitle petitioners to claim the same, as this Court cannot close its eyes to the facts that almost 30 years have expired since the relationship of employer-employee ceased inter se the parties. The persons who had gone to the Labour Court initially and did not file civil suit and got the award implemented, cannot be placed on the same pedestal as the workmen in the present case who, by their luck, chose a wrong forum and resultantly, could not get any relief and the decrees in their favour were set aside by the Apex Court on 24.01.2008.*

*11. Recently, the Apex Court in **Assistant Engineer, Rajasthan Development Corporation & another Vs. Gitam Singh 2013 (5) SCC 136** has held that the mode, manner and nature of appointment, the length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute are necessary aspects, which are to be considered by the Court, while directing payment of compensation. The principles have been laid down as under:*

*“29. In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This Court found in those cases that judicial discretion exercised by the Labour Court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this Court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors, including the mode and manner of*

*appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute before grant of relief in an industrial dispute.”*

*Keeping in view the above said principle, the amount of compensation has to be assessed.*

*12. In **Madhya Pradesh Administration Vs. Tribhuban (2007) 9 SCC 748**, a sum of Rs.75,000/- was directed to be paid as compensation to the workman who had worked from 31.12.1991 to 31.03.1994 and similarly, in **State of M.P. & others Vs. Lalit Kumar Verma (2007) 1 SCC 575**, a sum of Rs.1,50,000/- was ordered to be paid where irregular appointment had been made and the workman had only worked for 6 months. In **Telecom District Manager Vs. Keshab DebDevi (2008) 8 SCC 402**, a sum of Rs.1,50,000/- was awarded as compensation by setting aside the order of the Administrative Tribunal which had set aside the order of termination. The said order of the Tribunal had been upheld by the Guwahati High Court. A Division Bench of this Court in **State of Haryana through Executive Engineer (PWD), Public Health Division No.2, Sonipat Vs. Ishwar Singh & another 2008 (3) S.C.T. 788** held that compensation of Rs. 20,000/- for each completed year of service by the workman was justified in cases of daily wage employees. The Apex Court in **Jagbir Singh Vs. Haryana State Agriculture Marketing Board (2009) 15 SCC 327**, denied the relief of reinstatement to the workers who had worked on daily wages in the year 1995-96 and held that monetary compensation would subserve the ends of justice. In the present case also, as noticed above, the workmen were only working as work charge employees in a particular project and therefore, the applicability of the said judgment would apply on all four squares.*

*13. Thereafter, in **In-charge, Officer Vs. Shankar Shetty (2010) 9 SCC 126**, the workman had been reinstated by the High Court and it was noticed that he had worked for about 7 years, intermittently, from 1978 to 1985, about 25 years back and a sum of `1 lac was awarded as compensation by the Apex Court. Thus, the facts of the said case are very similar to the present case as herein, the workmen have also worked from 1978 to 1985, except that they litigated upto the Apex Court and the second leg of litigation is now going on. Therefore, the compensation of Rs.1 lac, as granted in **Shankar Shetty's** case(supra), might not be adequate.*

*14. Accordingly, keeping in view the abovesaid principles in mind, this Court is of the opinion that the*

*workmen are entitled for a sum of Rs. 20,000/- for each completed year of service, which comes to 7 years and thus, they are entitled for a sum of Rs.1,40,000/-, on this account. However, keeping in view the fact that they were successful in the earlier round of litigation and were forced to litigate for their rights with the petitioner-Department, who took them to the Apex Court successfully and that they have been kept out of job for the last 30 years, and also the fact that they were drawing only Rs. 700 per month, it would be appropriate that a consolidated sum of Rs.1,50,000/- is granted to them as just and adequate compensation. The award dated 25.11.2011 (Annexure P1) is, accordingly, modified and the workmen are held entitled for the said amount which shall be paid within 2 months from the date of receipt of a certified copy of this order, failing which, it shall carry interest @ 9% per annum.”*

Learned counsel for the appellants - Workmen has not been able to persuade us to take a different view. Consequently, we regret our disinclination to interfere with the well reasoned order passed by the learned Single Judge.

Resultantly, the appeals fail and are dismissed leaving the parties to bear their own costs.

**[SATISH KUMAR MITTAL]**  
**JUDGE**

**[MAHAVIRS. CHAUHAN]**  
**JUDGE**

**October 21, 2015**  
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