

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

Date of Decision: September 24, 2015
Letters Patent Appeal No. 33 of 2015

General Manager Telecom, Bharat Sanchar Nigam Limited, Bathinda
---Appellant

Versus

Suresh Kumar and another
---Respondents

Letters Patent Appeal No. 62 of 2015

General Manager Telecom, Bharat Sanchar Nigam Limited, Bathinda
---Appellant

Versus

Rani and another
---Respondents

Letters Patent Appeal No. 63 of 2015

General Manager Telecom, Bharat Sanchar Nigam Limited, Bathinda
---Appellant

Versus

Krishna Devi and another
---Respondents

Letters Patent Appeal No. 64 of 2015

General Manager Telecom, Bharat Sanchar Nigam Limited, Bathinda
---Appellant

Versus

Rajesh Kumar and another
---Respondents

Letters Patent Appeal No. 65 of 2015

General Manager Telecom, Bharat Sanchar Nigam Limited, Bathinda
---Appellant

Versus

Anju Bala and another
---Respondents

Letters Patent Appeal No. 72 of 2015

General Manager Telecom, Bharat Sanchar Nigam Limited, Bathinda
---Appellant

Versus

Karam Chand and another ---Respondents

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

Present: Shri Anil Rathee, Advocate, for the appellant.
Shri Manish Kumar Singla, Advocate, for the respondents.

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*

Mahavir S. Chauhan, J.

In this batch of intra court appeals under Clause X of the Letters Patent, Bharat Sanchar Nigam Limited (BSNL for short), assails correctness of order dated 29 October, 2014 passed by the learned Single Judge dismissing Civil Writ Petitions brought by BSNL to challenge award dated 12 October, 2010, whereby Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh (for short 'CGIT') has answered the industrial reference in favour of the workmen, who are the respondents in these cases, and findings have been returned that the workmen were part time contractual employees of BSNL and had put in more than 10 years of service before termination of their services by the erstwhile employer-the Department of Telecommunications, Government of India and, as such, were entitled to be reinstated in service with back wages.

02. Though engaged by the Department of Telecommunications, Government of India, but by deeming fiction the workmen came over from

the Department of Telecommunications, Government of India to the newly incorporated BSNL when rights to sue and causes of action subsisted in the new organization. However, their services were terminated, without notice or payment of one month wages in lieu of notice period and without payment of retrenchment compensation, by the parent department on its winding up accommodating the creation of a new juristic identity-BSNL, and transfer of assets and liabilities from one to the other. The case propounded by BSNL, the successor-in-interest of the Department of Telecommunications, was that the workmen having been employed through contractors, there was no direct relationship of master and servant between the parties and no person junior to the workmen was retained or appointed by BSNL. In fact, there was no legal necessity for maintaining seniority list of the workmen by BSNL on its incorporation. In fact, the Department of Telecommunications had imposed a partial ban on 30 March, 1985 on engagement of casual labour for any type of work and a complete ban was imposed on 26 June, 1988 and it was decided that there should be no recruitment for casual labour even for a specific job.

03. Particulars of the workmen necessary for disposal of the instant appeals can be tabulated as under:

S.No.	Name	Date of joining	Date of termination	Place of work
01.	Suresh Kumar	01 August, 1990	01 March, 1999	Phul Mandi
02.	Rani	01 February, 1986	01 March, 1999	Phul Mandi
03.	Krishna Devi	01 January, 1980	01 March, 1999	Phul Mandi
04.	Rajesh Kumar	01 November, 1988	01 March, 1999	Phul Mandi
05.	Anju Bala	01 May, 1991	07 May, 1999	Phul Mandi
06.	Karam Chand	10 October, 1984	01 March, 1999	Phul Mandi

04. Disputes having arisen between the parties as a consequence of retrenchment of the workmen, the appropriate Government made six references to the learned CGIT. The references, as afore-stated, were answered in favour of the workmen and against BSNL. Challenge to the award of learned CGIT by BSNL failed as the writ petitions brought by it have been dismissed by the learned Single Judge vide order dated 29 October, 2014.

05. We have heard learned counsel for the parties and have also gone through the documents available on record.

06. While it has not been disputed on behalf of the appellant that on inception of the BSNL, the workmen, who were engaged by the Department of Telecommunications, Government of India, became its employees and before or immediately after termination of their service no compensation was paid to them, it is submitted by the learned counsel for the appellant that work of cleanliness of the telephone exchanges and offices of BSNL has since been outsourced and there is no work available for the workmen. Reference on behalf of the appellant has also been made to a judgment rendered by a Division Bench of this Court in the case of **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** wherein under similar circumstances award of compensation instead of reinstatement was preferred.

07. Learned counsel representing the workmen, however, has defended the impugned order and has argued that termination of their services being illegal, the workmen are entitled to reinstatement in service

with full back wages.

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

09. From the rival contentions it emerges that the workmen were part time contractual employees and termination of their services, though illegal, cannot be termed as mala fide because it was resorted to in view of inception of the BSNL, a limited company to take over the telecommunication services from the Department of Telecommunications, Government of India and as of now there is no work available with the BSNL to accommodate them. In such a situation reinstatement of the workmen, in our well thought view, would be an exercise in futility because in such a situation it shall be open to the appellant to terminate their services after paying them retrenchment compensation in terms of Section 25F of the Act. 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:

“33. 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.

34. 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.*

35. 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.”

09. Following **BSNL versus Bhurumal**(supra), this Court in **Bharat Sanchar Nigam Limited versus Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh and another** (supra), instead of reinstatement in service, awarded compensation to the workman.

10. Nothing to the contrary could be shown during the course of hearing.

11. It is needless to say that the workmen served the BSNL for

eight to nineteen years and have been fighting the instant litigation for more than a decade. Therefore, we modify the impugned order, as also award of the learned CGIT, and direct that instead of reinstatement in service, the workmen shall be paid compensation amounting to Rs. three Lacs (Rs. 3,00,000.00) each with interest @ 9% per annum from the date of termination of their services till the date of payment/realization thereof.

12. The appeals are disposed in the terms afore-stated. However, in the peculiar facts and circumstances of the case parties are left to bear their own costs.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIRS. CHAUHAN]
JUDGE

September 24, 2015
adhikari