

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23639 of 2013

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Vinay Prakash 1 S/o Dhruva Narayan Singh resident of Mohalla-Belbanwa Shivpuri, P.S- Motihari Town, District- East Champaran at Motihari.

.... Petitioner/s

Versus

1. The Bank of India through the Zonal Manager, Bank of India, Zonal Office, Pankaj Market Saraiyaganj, Muzaffarpur, P.S- Muzaffarpur, P.S- Muzaffarpur Town, District- Muzaffarpur.
 2. The Zonal Manager, Bank of India Zonal Office, Pankaj Market Saraiyaganj, Muzaffarpur, P.S- Muzaffarpur, P.S- Muzaffarpur Town, District- Muzaffarpur.
 3. The Branch Manager, B.O.I. Motihari Branch, P.S- Motihari, District- East Champaran.
 4. The Presiding Officer, Industrial Tribunal, Patna. Respondent/s
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Appearance :

For the Petitioner/s : M/s Rajan and V.R.P. Singh, Advs.

For the Respondent/s : Mr. Braj Nandan Kumar Tiwary, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 30-03-2016

Heard learned counsel for the petitioner and learned counsel for the State.

In this case, the petitioner is challenging the Award dated 7th December 2012 passed by the Presiding Officer, Industrial Tribunal, Patna in Reference Case No. 03(C)/2009 whereby instead of reinstating the petitioner in service, he has awarded the compensation amount of Rs.1,25,000/-(one lakh twenty five thousand).

As per the case of the petitioner, he was given the employment in Bank of India, Motihari Branch in the year 1988 as daily rated Peon, Grade-IV staff, at the rate of Rs. 15/- per day.



Subsequently, his wages was enhanced as Rs. 20/-, Rs. 45/-, Rs. 60/- and lastly Rs.70/- per day and ultimately he was terminated from service on 02.01.2008, During the service period, he discharged the work to supply water and tea to the staff of the Bank and carry the documents, ledgers, cheques, pay-in-slip, vouchers and other documents from one desk to another and also keep them at proper place. He worked under the direct control and supervision of the official of the Bank. At the later stage, the Bank official changed the mode of payment, started paying the petitioner through voucher. He has further claimed that in his place, one Pawan Hazara has been appointed as Peon whereas he was senior to Pawan Hazara. Further plea has been taken that at the time of his engagement, he was assured by the Branch Manager that his service will be made permanent. Similar assurance was given by the successor and so much so that recognised union of the workmen raised the issue of regularisation of the petitioner with Management on number of occasions, but the Management did not care. On 02.01.2008, the service of the petitioner was terminated orally without stating any reasons and without making any payment in terms of Section 25-F of the Industrial Disputes Act though he had worked for 240 days preceding 12 calendar months from the date of his termination. Dispute was raised by the Union of Bank of India and dispute could not be

resolved, the Central Government referred the industrial dispute to Industrial Tribunal-cum-Labour Court, Patna in the following term:-

“(i) Whether the action of the management of Bank of India, Zonal office, Muzaffarpur Zone in terminating of the services of the casual worker, Sri Vinay Prakash without complying Section 25 (F) of the I.D. Act is legal and justified?

(ii) Whether the management is justified in not regularizing the service of Sri Vinay Prakash, casual worker and what relief the workman is entitled to?

The workman has filed the written statement on the line as stated above.

The Bank has filed its written statement claiming that the petitioner was not a workman, but he was engaged as a “coolie”, whenever he was required, he was paid the wages and was never paid wages on monthly basis. Further plea has been taken that in the Branch, there is no need of any Peon and his service was not required for permanent basis and nature of job which the petitioner had discharged, was not of permanent nature so question of regularisation of casual worker in bank service, does not arise. If at all there is any vacancy, the Bank being a Government undertaking is bound to advertise the vacancies for equal opportunity for all eligible

candidates inasmuch as, the Bank was required to follow certain set of procedure for recruitment/selection/appointment.

The Tribunal had considered the matter and found that the present petitioner had discharged duty for 240 days within twelve calendar months preceding the date of his termination. He also found that before termination, the Bank has not followed/complied with the provisions of Section 25-F of the I.D. Act and held that in such circumstances, the order of termination has been held to be illegal and unjustified but the Tribunal has refused to grant the relief of reinstatement in services and regularisation instead has granted relief of compensation of an amount of Rs. 1,25,000/-.

The counsel for the petitioner has placed reliance on the judgment reported in (2015) 4 SCC 458 (Jasmer Singh v. State of Haryana) where the Hon'ble Supreme Court has passed the order for reinstatement as well as for back wages in case of illegal termination of service of workman whereas the counsel for the Bank submits that looking to the nature of the employment and also there is no vacancy for his engagement as a permanent employee, he cannot be reinstated and rightly the Tribunal has not granted the relief of reinstatement. If this Court will pass the order for reinstatement, it will be unnecessary burden on the Bank and it will be nothing but over staffing at the branch of the Bank.



Further the petitioner submits that if this Court is of the view that the reinstatement will not be proper relief then in that circumstance, the petitioner should be granted sufficient amount of compensation, so that he could carry the load of his family to discharge the social/obligation, as he has crossed the age of employment and at present he is on road.

Having considered the rival contentions of the parties, earlier the policy of the Hon'ble Supreme Court was that in case of non-compliance of the provisions of Section 25-F of the I.D. Act, the Court used to hold that termination illegal, normally directed for reinstatement with back wages, but after the lapse of time that policy has been changed by the Hon'ble Supreme Court and the Hon'ble Supreme Court has held that if the order of termination is declared to be illegal, it would not follow automatic order of reinstatement and back wages , but the Court will have to take pragmatic approach with regard to granting the relief and while granting the relief it has to be seen the nature of employment, period of employment and also whether he can be properly compensated by awarding the amount of the money as it will unnecessary imposition of undesirable persons to the Management. There are two judgments reported in (2009) 15 SCC 327 (Jagbir Singh vs. Haryana State Agriculture Marketing Board) and Lucknow University vs. Akhilesh Kumar Khare (2016) 1 SCC



521 where the Hon'ble Supreme Court has taken a view while granting the relief, the Court would consider the different facets of the case, today inflation has gone very high, the money value has gone down, the price rise has moved already astronomically high, all the essential items are very costly in the market, for the purposes of granting relief, the Court has to see that when petitioner was deprived of employment 20 years earlier will not be proper option to send him back in service but will have to do something for his livelihood. The aforesaid view is fortified from the passage of Lucknow University case (supra). It will be relevant to quote paragraphs 18 and 19 of the said judgment, are as follows:-

Para-18 In considering the violation of Section 25F of the Industrial Disputes Act, 1947 in *Incharge Officer v. Shankar Shetty* and after referring to the various decisions, this Court held that the relief by way of back wages is not automatic and compensation instead of reinstatement has been held to meet the ends of justice and it reads as under:-

“2. Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short “the ID Act”)? The course of the decisions of this Court in recent years has been uniform on the above question.

3. In *Jagbir Singh v. Haryana State Agriculture Mktg. Board* delivering the judgment of this Court, one of us (R.M.Lodha, J.) noticed some of the recent decisions of



this Court, namely, *U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey*, *Uttaranchal Forest Development Corpn. v. M.C. Joshi*, *State of M.P. v. Lalit Kumar Verma*, *M.P. Admn. v. Tribhuban*, *Sita Ram v. Moti Lal Nehru Farmers Training Institute*, *Jaipur Development Authority v. Ramsahai*, *GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchayat, Gajraula* and stated as follows: (*Jagbir Singh case (2009) 15SCC 327, SCC pp. 330 & 335, paras 7 & 14*)

“7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages

in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.”

4. *Jagbir Singh (2009) 15 SCC 327* has been applied very recently in *Telegraph Deptt. v. Santosh Kumar Seal (2010) 6 SCC 773*, wherein this Court stated: (SCC p. 777, para 11)

“11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.”

Para 19 In the light of the above discussion, the impugned judgment of the High Court is modified and keeping in view the fact that the respondents are facing hardship on account of pending litigation for more than two decades and the fact that some of the respondents are over aged and thus have lost the opportunity to get a job elsewhere, interest of justice would be met by directing the appellant-university to pay compensation of rupees four lakhs to each of the respondents. By order dated 11.07.2011, this Court directed the appellant to comply with the requirements of Section 17B of the Industrial Disputes Act, 1947 and it is stated that the same is being

complied with. The appellant-university is directed to pay the respondents rupees four lakhs each within four months from the date of receipt of this judgment. The payment of rupees four lakhs shall be in addition to wages paid under Section 17B of the Industrial Disputes Act, 1947.

This Court is of the view that the compensation amount of Rs. 1,25,000/- is not sufficient to the petitioner and accordingly, the amount is enhanced Rs. 3,00,000/-. (three lakhs).

If in future the Bank goes for appointment of class-IV employee, the petitioner will have liberty to apply against the same and the Bank without being prejudiced of the present litigation, will consider the case of the petitioner in accordance with law.

With the above observation/direction, this petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

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