

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 7002 of 2009

- State Of Chhattisgarh, Through Executive Engineer, Public Works Department, District Durg (C.G.)
- The Sub Divisional Officer, Public Works Department, Patan, Distt.-Durg (Cg)

---- Petitioner

Versus

- Digardhar, S/o Bhaskar, R/o Rest House, Public Works Department, Patan, District Durg (C.G.)
- The Labour Court, Durg (Cg)

---- Respondent

For Petitioner/State
For Respondent No.1

Shri P. K. Bhaduri, GA
Shri H. B. Agrawal, Senior Advocate with
Ms. Shipra, Biswas, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

17/03/2016

1. The State of Chhattisgarh has preferred this writ petition under Article 226/227 of the Constitution of India to assail the legality and validity of the award dated 30.05.2009 passed by the labour Court, Durg, whereby the respondent No.1 has been reinstated in service without any back wages.
2. The respondent workman raised the industrial dispute, which was referred for adjudication to the labour Court, *inter alia*, claiming that he was working on daily wages from 1991 to 14.03.2000,

however, he was removed from service without issuing any notice or paying any retrenchment compensation on the date of retrenchment. It was submitted by him that he had worked for a continuous period of 240 days in the preceding calendar year, therefore, the retrenchment is contrary to the provisions of Section 25-F of the Industrial Disputes Act (for short 'the ID Act').

3. The State denied the claim on submission that the workman was engaged w.e.f. 22.04.1992 and had worked till 14.03.2000. His services were dispensed with after scrutiny by the Scrutiny Committee and upon payment of retrenchment compensation. Therefore, there is no violation of Section 25-F of the ID Act.
4. The labour Court has recorded a finding that the service book was prepared in the year 1991, therefore, the workman was engaged in 1991, however, the record of the labour Court does not contain any such service record prepared in the year 1991. The service book of the respondent workman clearly carries an entry that he was engaged on daily wages w.e.f. 22.04.1992. Thus, the finding that the workman was engaged in 1991 is absolutely perverse being contrary to record.
5. The Supreme Court in the matter of *Bharat Sanchar Nigam Limited v. Man Singh*¹ has observed as under:

“4. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of Section 25-F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be

1 (2012) 1 SCC 558

passed. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

5. In view of the aforementioned legal position and the fact that the respondent workmen were engaged as “daily wagers” and they had merely worked for more than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice.

6. Accordingly, the impugned judgment passed by the High Court as also the award dated 27-5-2005 passed by the Labour Court are set aside. We direct the appellant, Bharat Sanchar Nigam Ltd. to pay Rs 2 lakhs to each of the respondents in full and final settlement of their claim, within six weeks from today. In case the payment is not made within the aforementioned stipulated time, the amount shall carry interest at the rate of 12% per annum.”

6. Similar view has been taken by the Supreme Court in *Assistant Engineer, Rajasthan Development Corporation and another v. Gitam Singh*².

7. Yet again, recently in *Bharat Sanchar Nigam Limited v. Bhurumal*³, the Supreme Court has held thus:

“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 mala fide and/or by way of victimisation, 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 a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such

² (2013) 5 SCC 136

³ (2014) AIR SCW 528

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.

The 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 regularisation [see *State of Karnataka v. Umadevi* (2006) 4 SCC 1: AIR 2006 SC 1806]. Thus when he cannot claim regularisation 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.”

8. In an identical matter i.e. WPL No.168/2013 (**State of Chhattisgarh and others v. Sukhpal Singh and another**), this Court by order dated 10.12.2013 granted monetary compensation in lieu of reinstatement. Thereagainst the workman preferred an appeal before the Division Bench of this Court in Writ Appeal No.68/2014 (**Sukhpal Singh v. State of Chhattisgarh and others**), which was dismissed by order dated 14.02.2014. Against the said order, the workman travelled up to the Supreme Court by filing SLP (C) No.25153-25154 of 2015. The said SLP

was dismissed by the Supreme Court by order dated 24.08.2015 and affirmed the order passed by this Court.

9. In the case at hand, the respondent workman had worked only for 8 years. Although he was removed in March 2000, the industrial dispute was raised after 6 years i.e. in 2006.
10. Thus, considering the settled legal position, it would appear to this Court that ends of justice would be served if instead of reinstatement, the respondent is paid monetary compensation. In several cases, this Court has consistently held that in cases where the workman has worked for 10 years or more the award of reinstatement will not be interfered and in cases, where the length of service prior to retrenchment was less than 10 years, monetary compensation would sub-serve the ends of justice. The present case falls in the later category, therefore, the award of reinstatement is set aside and instead the respondent workman is held entitled compensation to the tune of Rs.2.00 lacs to be paid by the petitioner within a period of 3 months.
11. In the result, the writ petition is allowed in part to the extent indicate above. No order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri