

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 86 of 2013**

1. State of Chhattisgarh Through Secretary, Water Resources Department, Mahanadi Bhawan, Naya Mantralaya Naya Raipur P.S. Mandir Hasaud Raipur C.G.

(Petitioner No.1 was not a party before the learned Labour Court, but has been impleaded as Petitioner No.1 herein as it is necessary to implead the State Govt. through the Secretary of concerned Department)

2. The Chief Engineer Water Resources Department, P.S. Civil Lines Bilaspur District Bilaspur C.G.
3. The Sub Divisional Officer Minimata Bango Nahar Sub Division No. 17, Bilaspur P.S. Civil Lines, Bilaspur District Bilaspur C.G.

---- Petitioners**Versus**

1. Gaukaran Yadav S/o Sewaram Yadav R/o Bandhwapara Purana Shiv Mandir Sarkanda, P.S. Sarkanda Bilaspur District-Bilaspur (C.G.)
2. The Presiding Officer Labour, Court, P.S. Civil Lines, Bilaspur District Bilaspur C.G.

---- Respondents

For Petitioners/State	:	Shri Shashank Thakur, GA for the State
For Respondent No.1	:	Shri Vinod Deshmukh, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****02/03/2016**

1. The petitioner State preferred this petition seeking quashment of the order dated 1/9/2012, passed by the Labour Court, Bilaspur, in case No.25/ID Act/2011 (Ref.) whereby the labour Court directed for reinstatement of the workman in service without any back wages.
2. Learned counsel for the petitioner/State would submit that in 1991 the

services of the respondent-workman were taken on daily wages basis, however, on account of non-requirement of the service of the respondent-workman he was removed from the service in 1997. Being aggrieved the workman raised an industrial dispute under the provisions of Industrial Disputes Act, 1947 (for short 'the Act, 1947'). It was referred to the labour Court for adjudication. In the said matter the petitioner/employer submitted the reply. The Court below while passing the impugned award has not at all appreciated the facts and circumstances of the case in its true perspective. According to the petitioner, the workman was not in service against the sanctioned post and as such the provisions of the Act, 1947 would not be applicable to the facts of the present case. Learned counsel would submit that at the most, instead of reinstatement, the respondent workman would be entitled for monitory compensation.

3. The identical issue has already been considered and decided by the learned single Judge of this court in the State of Chhattishgarh & Another v. Dhaniram¹, and other connected writ petitions and instead of reinstatement, monetary compensation has been awarded. The said decision has been affirmed by the Division Bench of this Court in *Brij Nandan Chandra v. State of Chhattisgarh and another*² and other connected writ appeals and even the same has also been affirmed by the Supreme Court in *Brij Nandan Chandra v. State of Chhattisgarh and another*³.
4. The Supreme Court in the matter of *Bharat Sanchar Nigam Limited v. Man Singh*⁴ has observed as under:

1 WP (L) No.3034 of 2009 (decided on 2.2.2011)

2 WA No.50 of 2011 (decided on 17.02.2011)

3 Special Leave to Appeal Civil No.15761 of 2011 (decided on 5.7.2011)

4 (2012) 1 SCC 558

“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 passed. This Court has distinguished between a daily wagger 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.”

5. Similar view has been taken by the Supreme Court in *Assistant Engineer, Rajasthan Development Corporation and another v. Gitam Singh*⁵.

6. Yet again, recently in *Bharat Sanchar Nigam Limited v. Bhurumal*⁶, 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 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.

⁵ (2013) 5 SCC 136

⁶ (2014) AIR SCW 528

24. 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.”

7. 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.
8. In view of the above facts and circumstances of the case and applying the well settled principles of law to the facts of the present case, instead of reinstatement, monetary compensation would sub-serve the ends of justice. Thus, the respondent workman is entitled to a sum of Rs.2,00,000/- (two

lakhs) as compensation. Such payment shall be made within a period of 3 months from the date the respondent workman submits representation along with a copy of this order.

9. As an upshot, the writ petition is allowed to the extent indicated above. No order as to costs.

Judge

Prashant Kumar Mishra

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