

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 88 of 2013

- State Of Chhattisgarh Through Divisional Forest Officer, Rajnandgaon C.G.

---- **Petitioner**

Versus

1. Shri Ram Ratan Nirmalkar S/o Radhe Lal Nirmalkara, R/o Atra, Post Kallu Banjari, Thana Suriya, District Rajnandgaon (C.G.)
2. Presiding Officer, Labour Court, Rajnandgaon, C.G.

---- **Respondent**

And

WPL No. 89 Of 2013

- State Of Chhattisgarh Through Divisional Forest Officer, Rajnandgaon C.G.

---- **Petitioner**

Vs

1. Shri Mannu Lal @ Balwant S/o Ramau Ram Gond, R/o Atra, Post Kallu Banjori, Thana Curiya Distt. Rajnandgaon C.G.
2. Presiding Officer, Labour Court, Rajnandgaon C.G.

---- **Respondent**

For Petitioners/State
For Respondent No.1

Shri Shashank Thakur, GA
Shri H. B. Agrawal, Senior counsel with Shri
Pankaj Agrawal, counsel

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

19/02/2016

1. Since both the writ petitions involve common facts and common question of law and as such, they are being considered and decided by this common order.
2. The petitioners/State preferred these writ petitions seeking quashment of the award dated 17.04.2012 and 16.04.2012 passed by the labour Court, Rajnandgaon in case Nos.61/ID Act/Ref./2010 and 62/ID Act/Ref./2010 respectively, whereby the learned labour Court directed for reinstatement of the respondents/workmen in the service without any back wages.
3. Learned counsel appearing for the petitioners/employer would submit that in 2002-03, the services of the respondents/workmen were taken on daily wage basis, however, on account of non requirement of the service of the respondents/workmen, they were removed from service after some years. Being aggrieved, the respondents/workmen raised the industrial disputes under the provisions of the Industrial Disputes Act, 1947, which were referred to the labour Court for adjudication. In the said matter, the petitioners/employer submitted the reply. The Courts below while passing the impugned awards has not at all appreciated the facts and circumstances of the case in its true perspective. The respondents/workmen was not in service against the sanctioned post and as such, the provisions of the Industrial Disputes Act, 1947 would not be applicable to the facts of the case at hand. Learned counsel would next submit that at the most, instead of reinstatement, the respondents/workmen would be entitled for monetary compensation.

4. On the contrary, learned counsel appearing for the respondents/workmen, while supporting the impugned award, would submit that though there is no order of regularization, but the respondents/workmen were given the permanent status looking to the length of services rendered by them. Learned counsel would also submit that the respondents/workmen were removed from the service without following the due process of law.
5. 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.
6. The Supreme Court in the matter of *Bharat Sanchar Nigam Limited v. Man Singh*⁴ 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 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

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

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.”

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

8. 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.

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

5 (2013) 5 SCC 136

6 (2014) AIR SCW 528

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.”

9. 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.
10. 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, each of the respondent workman is entitled to a sum of Rs.1,50,000/- 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.

11. As an upshot, both the writ petitions are allowed to the extent indicated above. No order as to costs.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala