

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 90 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 Sub Divisional Officer Hasdev Bayi Tat Nahar Up Sambhag No. 4, Sivni, Champa, P.S. Champa, District-Janjgir - Champa C.G.

---- Petitioner

Versus

1. Chaituram Yadav S/o Nirdhin Yadav Aged 51 Years Ex Helper, R/o Village Sivni, Tahsil Champa, P.S. Champa, Distt. Janjgir Champa C.G.
2. The Presiding Officer Labour Court, Janjgir-Champa P.S. Janjgir District Janjgir Champa C.G.

---- Respondent

And

WPL No. 91 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 Sub Divisional Officer Hasdev Bayi Tat Nahar Up Sambhag No. 4, Sivni, Champa, P.S. Janjgir, District-Janjgir - Champa C.G.

---- Petitioner

Vs

1. Kartikram Rathore S/o Sarman Rathore, Age 40 Years, R/o Village Sivni, Tahsil Champa, P.S. Champa, Distt. Janjgir Champa C.G.

2. The Presiding Officer Labour Court, Janjgir-Champa P.S. Janjgir District Janjgir Champa C.G.

---- Respondent

And

WPL No. 92 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 Executive Engineer Hasdev Canal Water Management Division. Janjgir P.S. Janjgir District Janjgir Champa C.G.

---- Petitioner

Vs

1. Rajaram Sahu S/o Late Sudharam Sahu, Age 42 Years, R/o Village Mudpar, Post Khisora, P.S. Nawagarh, Tahsil Nawagarh Distt. Janjgir Champa C.G.
2. The Presiding Officer Labour Court, Janjgir-Champa P.S. Janjgir District Janjgir Champa C.G.

---- Respondent

And

WPL No. 93 OF 2013

1. State Of Chhattisgarh Through Secretary, Water Resources Deptt, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, Ps Mandir Hasaud, Raipur, Distt Raipur, CG

(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 Executive Engineer Hasdev Canal Water Management Division. Janjgir P.S. Janjgir District Janjgir Champa C.G.

---- Petitioner

Vs

1. Loknath Kashyap S/o Badri Prasad Kashyap Age 45 Years, R/o

Village Mudpar Post Khisora (Salkhan), P.S. Nawagarh, Tahsil
Nawagarh, District Janjgir Champa C.G.

2. The Presiding Officer Labour Court, Janjgir-Champa P.S. Janjgir
District Janjgir Champa C.G.

---- Respondent

For Petitioners

Mr. Y.S. Thakur, Dy. A.G.

For Respondent/Workmen

Mr. KPS Gandhi and Mr. Luv Sharma,
Advocates

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

7/4/2016

3. The petitioner State preferred these petitions seeking quashment of the awards passed by the Labour Court, Janjgir-Champa, whereby the Labour Court directed for reinstatement of the workmen in service without any back wages.
4. Learned counsel for the petitioner/State would submit that the services of the respondent-workmen were taken on daily wages basis in 1989, 1990, 1983 and 1983 respectively, however, on account of non-requirement of the service of the respondent-workmen, they were removed from the service in 1996, 1994, 1990 and 1990 respectively. Being aggrieved the workmen 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 workmen were 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 workmen would be entitled for monitory compensation.

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 considered view, relief of reinstatement cannot be said to be justified and instead, monetary

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

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 be illegal because of non-payment of

5 (2013) 5 SCC 136

6 (2014) AIR SCW 528

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.25,000/- for each completed calendar year of service as daily wage as compensation. The petitioner State is directed to make proper calculation of the compensation payable to each of the workman looking to their period of service before removal and thereafter, the payment shall be made within a period of 3 months from the date the respondent workmen submit representations along with copy of this order.

11.As an upshot, all the writ petitions are allowed to the extent indicated above. No order as to costs. Sd/-

Judge

(Prashant Kumar Mishra)

Gowri/Shyna