

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1062 of 2012

IN

Civil Writ Jurisdiction Case No. 8890 of 2008

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Shri Shashi Bhusan C/o Shri Yogendra Singh, Dr. Fani Ghosh Lane, P.O.-
Anisabad, District- Patna

.... Appellant/s

Versus

1. Chief Postmaster, Patna GPO (General Post Office) 800001
2. Union of India through Chief Postmaster, Patna GPO (General Post Office),
Patna
3. The Regional Labour Commissioner (C) Patna
4. The Assistant Director IR (IMP-1) Ministry of Labour, New Delhi
5. The Chief Labour Commissioner (C), New Delhi
6. Assistant Labour Commissioner (C), Patna
7. Industrial Tribunal, Shram Bhawan Baily Road, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vijoy Nandan Sahay, Advocate
Mr. Arun Srivastava, Advocate

For the Union of India : Mr. Anshuman Singh, C.G.C

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 16-11-2017

Seeking exception to an order dated 14.12.2010
passed by the learned Writ Court in Civil Writ Jurisdiction Case No.
8890 of 2008 and while refusing to interfere in a writ petition filed by
the employer challenging an award passed by the Industrial Tribunal,
Patna, but at the same time modifying the award pertaining to grant of
reinstatement with back wages and in stead, only granting a
compensation of Rs. 60,000/-, the appellant workmen has filed this



appeal under Clause-10 of the Letters Patent and seeks restoration of the award, so far as it directs reinstatement with payment of back wages.

The facts in brief goes to show that the appellant herein was appointed on 03.02.2001, continued to work for more than four years and when his services were terminated orally after 30th of April, 2004, an industrial dispute was raised immediately thereafter. Conciliation having failed, the matter was referred to the Central Government Industrial Tribunal-cum-Labour Court, Patna in the year 2005 itself and the case was registered as Reference Case No. 21 of 2005 and by an award passed on 11th of July, 2007, the learned Industrial Tribunal found that the employee was working as a daily wages employee. He had worked for more than 240 days on several calendar years. The mandatory requirement of Section 25F has not been complied with and therefore holding the termination to be illegal directed for his reinstatement with back wages. It was also found by the Industrial Court that the workman was engaged on daily wages and payments were made to him initially at Rs. 30/- per day, enhanced to Rs. 40/- per day and finally just before this termination, he was paid Rs. 60/- per day. Be that as it may be, the award in question was challenged by the respondent Department before the Writ Court in Civil Writ Jurisdiction Case No. 8890 of 2008, and the Writ Court, so



far as it pertains to holding the termination to be illegal, found the award to be in order, no error in the same and directed for upholding of the award. But, at the same time, after taking note of a judgment of Hon'ble Supreme Court in the case of **Pottery Mazdoor Panchayat, Appellant Versus The Perfect Pottery Co. Ltd. and Respondents reported in 1979 LAB. 827** and a subsequent judgment of the Supreme Court in the case of **Senior Superintendent Telegraph(Traffic) Bhopal versus Santosh Kumar Seal and Ors reported in (2010) 6 SCC 773**, learned Writ Court came to the conclusion that in a case like this where retrenchment is found to be illegal on account of non-compliance with the provisions of Section 25F, instead of granting reinstatement, compensation could be granted and accordingly directed for grant of compensation.

Learned counsel appearing for the parties brought to our notice various judgments with regard to the issue in question and tried to indicate that the interference made by the Writ Court was either proper or not.

Be that as it may be, we have considered the rival contentions and the only issue warranting consideration before us is as to whether the act of the learned Writ Court in modifying the award from reinstatement with back wages to one of payment of compensation in lieu of reinstatement is correct or not.



Even though learned counsel appearing for the Department placed heavy reliance on the judgment rendered in the case of Santosh Kumar Seal (supra) so also another judgment in the case of **2013(5) SCC 136 (Assistant Engineer, Rajasthan Development Corporation & Anr versus Gitam Singh)**, wherein the principle laid down in the case of Santosh Kumar Seal (supra) was followed, but we find that subsequent to all these judgments, in the year 2014, in the case of **Iswarlal Mohan Thakkar versus Paschim Gujarat Vij Co. Ltd., (2014) 6 SCC 434**, another Bench of the Hon'ble Supreme Court has considered the law laid down in the case of Santosh Kumar Seal(supra) and various other judgments on the issue in question and this Bench also considered all these judgments recently on 14.09.2017 in L.P.A. No. 431 of 2011 (Sandeep Hari versus Prasar Bharti Broadcasting Corporation of India and Others) and after taking note of various judgments on the issue in question found that in the case of **Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and Ors (2013) 10 SCC 324** and **Tapas Kumar Paul versus B.S.N.L and Anr, 2014(4) Supreme Court Reporter 875**, it has been held by the Hon'ble Supreme Court that the normal rule is reinstatement with consequential benefits and deviation can be made only if circumstances are available to show that reinstatement is not possible,



and, therefore, the alternate remedy of granting compensation should be awarded. In fact, in the order passed by this Bench on 14.09.2017 in L.P.A. No. 431 of 2011, the matter has been dealt with in detail and the discussion in the aforesaid judgment made by us reads as under :-

*“Admittedly, the employee in question was retrenched. He had been in continuous service for a period of one year as contemplated under Section 25B of the Industrial Disputes Act, his termination amounts to retrenchment as laid down under Section 2(oo) of the Industrial Disputes Act and the same was not preceded by following the procedure laid down under Section 25F and, therefore, both the Industrial Tribunal and the learned Writ Court have held the termination to be illegal. As far back as in the year 1981 in the case of **Mohan Lal Vs. The Management of M/s Bharat Electronics Ltd.-A.I.R 1981 Supreme Court 1253** it has been held by the Supreme Court that once a workman is retrenched in violation to the requirement of Section 25F, the retrenchment in question for the termination becomes void ab initio and non est in the eye of the law. Once a termination is not only found to be illegal but is void ab initio and non est in the eye of the law, Hon’ble Supreme Court in the case of **Mohan Lal’s** case that it has to be assumed under law that such an order was never passed and the employee continued in service even though in real sense he was not in service. The Hon’ble*



*Supreme Court says that by operation of law he is deemed to have continued in service. If that being the position and if a retrenchment is found to be illegal, the normal consequence would be reinstatement with all consequential benefits as the workman was deprived from working by virtue of the illegal order passed. However, the Hon'ble Supreme Court in the cases of **Jagbir Singh** and **Santosh Kumar Seal** (supra) relied upon by learned counsel for the respondents has laid down certain principles which goes to show that even though initially the concept of law was that if the retrenchment is found to be illegal, the consequence would be reinstatement with all consequential benefits, the same has undergone certain changes and now the concept has developed that instead of granting reinstatement with full back wages, compensation can also be granted. Both these judgments in the case of **Santosh Kumar Seal** and **Jagbir Singh** have been considered again by the Supreme Court both in the cases of **Deepali Gundu Surwase** (supra) and recently in the case of **Tapash Kumar Paul** (supra). After considering the aforesaid judgments, the Hon'ble Supreme Court refers to the judgment in the case of **Deepali Gundu Surwase** Paragraphs 22 and 23 thereof which reads as under:-*

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same



position in which he would have been but for the illegal action taken by the employer. The inquiry suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money.

With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement



to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

23. A somewhat similar issue was considered by a three-Judge Bench in Hindustan Tin Works (P) Ltd. V. Employee of M/s Hindustan Tin Works Pvt. Ltd & Ors (1979) 2 SCC 80 in the context of termination of services of 56 employees by way of retrenchment due to alleged non-availability of the raw material necessary for utilization of full installed capacity by the petitioner. The dispute raised by the employees resulted in award of reinstatement with full back wages. This Court examined the issue at length and held:

“It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is



bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time



and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly underserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Article 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services



were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.

In the very nature of things there cannot be a straitjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full



back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular.

(emphasis supplied)

After enunciating the abovenoted principles, this Court took cognizance of the appellant's plea that the company is suffering loss and, therefore, the workmen should make some sacrifice and modified the award of full back wages by directing that the workmen shall be entitled to 75% of the back wages."

The Supreme Court finally came to the conclusion that in the case before the Supreme Court because the Company was facing financial loss, the award of



*full back wages was reduced to reinstatement with 75% back wages. However, if the principles laid down and approved by the Supreme Court is taken note of, it is to the effect that the idea of restoring an employee to the position he held before dismissal, removal or termination is a normal rule but deviation from the same is permissible if there are circumstances to show that it is impossible or wholly inequitable vis a vis the employer and the employee to direct reinstatement with full back wages or there are other circumstances like hardship to the employer on reinstatement, financial crisis, closing down of the establishment or the employee having attained the age of superannuation and, therefore, physical reinstatement being impossible. A complete reading of the law laid down by the Supreme Court in the case of **Tapas Kumar Paul** and **Deepali Gundu Surwase** would show that now for denying the benefit of reinstatement with full back wages circumstances, as are detailed in the aforesaid judgment, should be available because of which under normal circumstances reinstatement cannot be granted and, therefore, it is a case where now we are required to examine as to whether in the facts and circumstances of the present case the exceptional circumstances carved out by the Supreme Court as discussed hereinabove are available.*

Nothing has been brought to our notice in this appeal which goes to show that in the case of the present



*employer, namely, Prasar Bharti Broadcasting Corporation any of these circumstances are available. It is not the case of the respondent employer that they are facing financial crisis and, therefore, reinstatement is not permissible. They also do not say that they are in the hardship or it is impossible for them to reinstate the employee. It is only stated that vacancies were not available and, therefore, reinstatement is not possible. The learned Tribunal has only held that the termination of the employee, who was working as a casual/temporary employee was illegal. There is nothing either in the award to the Tribunal to show that he has to be granted regular appointment. That apart, even in the case of a Government employee, non-availability of vacancy cannot be a ground for non-complying with an award passed by the Industrial Tribunal or a judicial order passed by a Court of law. In such cases, the fundamental rule always contemplates the provision for creating a supernumerary post for adjustment of an employee and, therefore, even if vacancies are not available, that cannot be a ground for denying benefit to an employee. Accordingly, having found that no exceptional circumstances are available in this case and keeping in view the law laid down in the case of **Deepali Gundu Surwase and Tapas Kumar Paul**, we are of the considered view that it is a fit case where the appeal should be allowed and the consequential benefit of reinstatement with back wages should be awarded to the employee*



concerned.

That apart in this case the information supplied to the appellant under the Right to Information Act on 09.07.2009 does indicate that in the year 2009 vacancies were available and therefore, even this ground is not available to the respondents.”

Once, after taking note of the law laid down by the Supreme Court as indicated hereinabove, particularly the judgments in the case of Tapas Kumar Paul (supra) and Deepali Gundu Surwase (supra), we have accepted similar contentions that has been advanced before us today, we see no reason to take a different view and deny the benefits to the appellant. In this case also as in the establishment of Doordarshan, there is no question of difficulty in reinstatement of employee nor are there any exonerating circumstances available on the basis of which a finding can be recorded that now reinstatement of the employee is not possible. This is a case where the employee was terminated on 30th of April, 2004. He raised the dispute immediately in the year 2005 and since then he has been agitating the matter before various Courts and Authorities.

Taking note of the aforesaid, we see no reason to reject the prayer of the appellant. We are constrained to hold that the leaned Writ Court was not right in interfering with an award which



was passed in accordance with law, and, therefore, it is a fit case where the appeal should be allowed, the order passed by the Writ Court set at naught and the award of the learned Tribunal is restored.

Accordingly, we allow this appeal, quashed the order dated 14.12.2010 passed by the Writ Court in Civil Writ Jurisdiction Case No 8890 of 2008, restore the award passed by the Industrial Tribunal, Patna in Reference Case No. 21 of 2005 and direct that all consequential benefits accruing to the appellant out of the award, including reinstatement with back wages be now granted to the appellant within a period of sixty days.

With the aforesaid, the appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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