

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION Nos. 26480 and 26741 of 2009

COMMON ORDER:

1) Both the writ petitions came to be filed, questioning the awards passed by the Labour Court in I.D.Nos.77 and 78 of 2006, dated 13.07.2009 notified by the Labour Employment Training and Factories (Lab.I) Department in G.O.Rt.Nos.1225 and 1224, dated 05.08.2009, respectively, in not granting reinstatement of the petitioners with back wages after declaring the termination order is irregular.

2) Since the issue involved in both the writ petitions is common, they are disposed of by this common order.

3) The facts are as under:

The petitioners were appointed as N.M.R. Technical Works Inspector on daily wage basis on 28.03.1985 and 23.04.1986 respectively, but they were disengaged from services with effect from June, 1993 by the respondents. Similarly placed N.M.R.s filed applications before the Administrative Tribunal, which were allowed and reinstated into service. Having regard to the above, the petitioners filed I.D.No.77 and 78 of 2006 respectively, which were disposed of by the Industrial Tribunal-cum-Labour Court, holding the removal of the petitioners as violation of Section 25-F of the Industrial Disputes Act (for short "the Act"). The main

ground urged by the learned counsel for the petitioners, before the Labour Court, was that the petitioners being workmen, the authorities could not have retrenched their services without following the procedure contemplated under Section 25 (F) of the Act. Learned Standing Counsel for the respondents mainly relied upon Act 2 of 1994 contending that there is a prohibition in regularizing the services of the daily wage workers as the petitioners are not workmen.

4) The petitioners as well as the respondents adduced oral and documentary evidence in support of their plea. After considering the rival submissions made, the Tribunal held that the Provisions of Act 2 of 1994 do not override Chapter 5-A and 5-B of the Act and hence held that the petitioners are entitled to benefits provided under Section 25 (F) of the Act, though not reinstatement. As retrenchment was found to be legal but irregular, awarded compensation. Challenging the same, the present writ petitions came to be filed by the petitioners.

5) It is to be noted here that the judgment of the Labour Court has become final insofar as the employer is concerned as they have not challenged the findings given therein. Therefore, the plea which is now sought to be taken by the respondents-employer, that in view of Act 2 of 1994, the petitioners are not entitled for any relief, as the Government has every right to terminate the services of the workmen, cannot be accepted. If really, they were aggrieved by the findings of the Labour Court,

they should have challenged the same by questioning the findings arrived at by the Labour Court. In the absence of the same, there is no justification for the respondents to contend or comment upon the findings of the Labour Court with regard to applicability or otherwise of Act 2 of 1994.

6) It is also to be noted here that the learned counsel for the respondents mainly argued about the issue of regularization of the services of the petitioners. It is to be noted here that the dispute on hand, does not relate to regularization of the services of the petitioners, but the question is whether the respondents were justified in not reinstating the petitioners.

7) Insofar as applicability and enforcement of Act 2 of 1994, the learned counsel for the respondents relied upon the judgment of the Apex Court in *A.Manjula Bhashini and others v. Managing Director, Andhra Pradesh Women's Cooperative Finance Corporation Limited and another*¹.

8) It is to be noted here that the findings of the Tribunal with regard to applicability of Act 2 of 1994 have become final since the employer never challenged the said findings. In a writ petition filed by the employee, questioning the relief granted, the respondents cannot be allowed to agitate the very applicability of Act 2 of 1994.

¹ (2009) 8 SCC 431

9) In *Jagbir Singh v. Haryana State Agriculture Mktg. Board*², the Apex Court in Para Nos.7 and 14, held as under:

“7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of [Section 25-F](#) although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.”

² (2009) 15 SCC 327

10) In *Vice-Chancellor, Lucknow University, Lucknow v. Akhilesh Kumar Khare and another*³ (delivered on 08.09.2015), the Apex Court after referring to *State of Karnataka v. Umadevi*⁴ case observed as under:

“Keeping in view the fact that the respondents are facing hardship on account of pending litigation for more than two decades and the fact that some of the respondents are over aged and thus have lost the opportunity to get a job elsewhere, interest of justice would be met by directing the appellant-university to pay compensation of rupees four lakhs to each of the respondents. By order dated 11.07.2011, this Court directed the appellant to comply with the requirements of [Section 17B](#) of the Industrial Disputes Act, 1947 and it is stated that the same is being complied with. The appellant-university is directed to pay the respondents rupees four lakhs each within four months from the date of receipt of this judgment. The payment of rupees four lakhs shall be in addition to wages paid under [Section 17B](#) of the Industrial Disputes Act, 1947.”

11) Subsequently, in *Rajkumar v. Director of Education and others*⁵ (delivered on 13.04.2016), dealing with an identical situation, the Apex Court while setting aside the order of retrenchment, directed the Managing Committee to reinstate the appellant therein at his post, and directed payment of back wages till the date of order along with consequential benefits from the date of termination of his services. It was further directed that

³ (2016) 1 SCC 521

⁴ (2006) 4 SCC 1

⁵ (2016) 6 SCC 541

the back wages shall be computed on the basis of periodical revision of wages/ salary.

12) It is also to be noted here that in the subsequent judgment i.e. In Rajkumar case (5 supra) there was no reference to Umadevi case (4 supra).

13) At this stage, learned counsel for the petitioner placed on record the order of the Labour Court in I.D.No.101 of 1997, wherein a daily wage worker, who was working along with the petitioners in the same Department, challenged his retrenchment. By an order, dated 08.09.1999, the Labour Court not only set aside the order of retrenchment but ordered reinstatement with continuity of service but however denied back wages.

14) It is an un-disputed fact that the order passed in I.D.No.101 of 1997, wherein a person similarly placed as that of the petitioners was reinstated with back wages has become final. However, the situation now is different, in view of the recent judgments of the Apex Court, referred to above.

15) In the instant case, the petitioners herein joined in service in the year 1985 and were disengaged with effect from June, 1993. Under those circumstances, what is the compensation that is to be awarded, in view of the ratio laid down in Jagbir Singh Case (2 supra).

16) In Akhilesh Kumar Khare case (3 supra), the respondent and others were engaged in the petitioner university in the year 1989

and thereafter their services were terminated on 01.01.1991. Though they worked only for a period of one year, the Court awarded compensation of RS.4.00 lakhs, while taking into consideration the period of pendency of litigation which was more than two decades.

17) In the instant cases, the petitioners herein worked for nearly 7 years and have been fighting the litigation for more than two decades as well. Under those circumstances and having regard to the judgments of the Apex Court in Jagbir Singh case (2 supra) and Akhilesh Kumar Khare case (3 supra), this Court is of the view that the respondents be directed to pay a sum of Rs.10.00 lakhs each, within a period of three to four months from the date of receipt of a copy of this order. The said amount shall include the amount which was already paid to the petitioners.

18) Accordingly, both the writ petitions are disposed of.

19) Consequently, miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

18.09.2017
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