

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (L) No.8 of 2012

Premlal Patel, S/o Gajalu Patel, aged about 35 years, R/o Beside
Sitamani Rest House, Kumhar Mohalla, Korba, Distt. Korba (C.G.)
---- Petitioner

Versus

1. State of Chhattisgarh, through its Secretary, Water Resources Department, D.K.S. Bhawan, Raipur (C.G.)
 2. Executive Engineer, Hasdeo Canal Division No.1, Rampur, Korba, Distt. Korba (C.G.)
 3. Sub Divisional Officer, Hasdeo Left Canal (Tat), Sub Division No.2 (153), Rampur, Korba, Distt. Korba (C.G.)
- Respondents

For Petitioner: Mr. Vinod Deshmukh, Advocate.
For Respondents/State: Mr. Ashish Surana, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

13/07/2018

1. The appropriate Government referred the industrial dispute as to whether the termination of the petitioner is valid and proper, to the Labour court for adjudication. The Labour Court after recording evidence of the parties came to the conclusion that though the petitioner has worked 240 days in one calendar year preceding the date of termination for which the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947') are required to be complied with, but since the petitioner is a daily wager employee and, therefore, the provisions of Section 25-F of the Act of 1947 could not be applicable and in the light of the decision of the Supreme Court in the matter of **State of Karnataka v. Umadevi (3)**¹, the petitioner is

¹ (2006) 4 SCC 1

not entitled for reinstatement which is sought to be questioned in this writ petition.

2. Mr. Vinod Deshmukh, learned counsel appearing for the petitioner, would submit that the petitioner has not sought any regularisation on the post and is a workman and for non-compliance of Section 25-F of the Act of 1947, he would be entitled for reinstatement along with back-wages and would not be entitled for regularisation, and as such, he has not claimed regularisation and the order passed by the Labour Court is in contravention of Section 25-F of the Act of 1947. He would further submit that the principles of law laid down by the Supreme Court in the matter of Ramesh Kumar v. State of Haryana² (paragraph 13) and also 2010(3) SCC 786 would be applicable to the present case.
3. Mr. Ashish Surana, learned State counsel would support the impugned order and submit that the petitioner is not entitled for reinstatement.
4. I have heard learned counsel for the parties and also perused the records of the case with utmost circumspection.
5. The Labour Court has clearly reached to a complete finding that the petitioner has worked 240 days in one year preceding the date of termination, but declined to grant reinstatement relying upon Umadevi (3)'s case (supra).
6. In Ramesh Kumar (supra), the Supreme Court has clearly held that retrenchment should be in accordance with law and in case of termination in contravention of the provisions of Section 25-F of the Act of 1947, the workman would be entitled for reinstatement and he would not be entitled for regularisation. It was observed as under: -

² 2010 AIR SCW 897

“We are conscious of the fact that an appointment on public post cannot be made in contravention of recruitment rules and constitutional scheme of employment. However, in view of the materials placed before the Labour Court and in this Court, we are satisfied that the said principle would not apply in the case on hand. As rightly pointed out, the appellant has not prayed for regularisation but only for reinstatement with continuity of service for which he is legally entitled to. It is to be noted in the case of termination of casual employee what is required to be seen is whether a workman has completed 240 days in the preceding 12 months or not. If sufficient materials are shown that the workman has completed 240 days then his service cannot be terminated without giving notice or compensation in lieu of it in terms of [Section 25-F](#). The High Court failed to appreciate that in the present case appellant has completed 240 days in the preceding 12 months and no notice or compensation in lieu of it was given to him, in such circumstances his termination was illegal. All the decisions relied on by the High Court are not applicable to the case on hand more particularly, in view of the specific factual finding by the Labour Court.”

7. Similarly, the Supreme Court in the matter of Krishan Singh v. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana)³ has clearly held as under: -

“22. The decision of this Court in *State of Karnataka v. Umadevi* (3) (supra) cited by the counsel or the respondent relates to regularisation in public employment and has no relevance to an award for reinstatement of a discharged workman passed by the Labour Court under Section 11-A of the Act without any direction for regularisation of his services.”

8. In the present case also, the petitioner is not seeking regularisation and even only seeking reinstatement for non-compliance of Section 25-F of the Act of 1947 which has admittedly been not followed by the respondents for terminating the services of the petitioner. Following the judgments of the Supreme Court in afore-cited cases Ramesh Kumar (supra) and Krishan Singh (supra), the award of the Labour Court cannot be sustained. Even otherwise, the definition contained in Section 2(s) of the Act of 1947 does not exclude the daily wage.

³ (2010) 3 SCC 637

Therefore, for non-compliance of Section 25-F of the Act of 1947, the petitioner is entitled for reinstatement as daily wager. He would not be entitled for regularisation by this order.

9. Next question is of back-wages. The normal rule is a workman whose service has been illegally terminated would be entitled to full back-wages except to the extent during the enforced idleness. (See M/s. Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. and others⁴.)
10. In the matter of M/s. Reetu Marbles v. Prabhakant Shukla⁵, Their Lordships of the Supreme Court have emphasized the need for enquiry/material with regard to gainful employment before directing full back-wages particularly when the order is being modified and Their Lordships awarded only 50% of back-wages from the date of termination of service till reinstatement. Following the law laid down in this regard and considering the facts and circumstances of the case, I deem it appropriate to award only 50% back-wages to the petitioner from the date of termination till he is reinstated in service.
11. Therefore, in the light of the aforesaid decisions of the Supreme Court, the petitioner is entitled for 50% back-wages from the date of termination till he is reinstated in service.
12. For the foregoing reasons, the part of order refusing reinstatement is set aside and the writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

4 (1979) 2 SCC 80

5 (2010) 2 SCC 70