

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.7.2018

Delivered on : 23.7.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.A.No.817 of 2015
and
M.P.No.1 of 2015

The General Manager (HR)
State Bank of India
Circle Top House,
No.16, College Road,
Chennai 600 006. ... Appellant

Versus

1. The Presiding Officer,
The Central Government Industrial
Tribunal cum Labour Court, Chennai.
2. Sri.D.L.Sekar ... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters
Patent against the order dated 6.2.2015 passed in W.P.No.26937
of 2010 on the file of this court.

W.P.No.26937 of 2010

Writ Petition praying to call for the records from the 1st
Respondent relating to the I.D.No.59 of 2007 and the Award dated
17.5.2010 on the file of the Central Government Industrial
Tribunal-cum-Labour Court Chennai the 1st Respondent herein
and quash the Award dated 17.5.2010 made in I.D.No.59 of 2007
and its proceedings

For appellant : Mr.T.S.Gopalan

For R2 : Mr.Balan Haridas

JUDGMENT

(Judgment of the court was made by M.DHANDAPANI, J.)

Heard the learned counsel appearing for the parties.

2. The intra-court appeal is filed by the writ petitioner-State Bank of India challenging the order passed by the learned Single Judge in dismissing the writ petition filed by them as against the order passed by the Industrial Tribunal granting the relief of reinstatement to the second respondent herein.

3. The brief facts behind this writ appeal are as under:-

The services of the second respondent was initially engaged by the writ petitioner-Bank, as Water Boy and later as a temporary messenger. However, after extracting work from him, the Bank had terminated his services on 30.3.2005, orally, without issuing any notice and failed to comply with the provisions of section 25-F of the Industrial Disputes Act. He was paid initially his wages at Rs.50/- per day and subsequently, at Rs.75/- per day on monthly basis. At the time when his services were terminated, he was being paid at Rs.100/- per day. Aggrieved by the illegal action on the part of the Bank, the second respondent raised an Industrial Dispute under section 25-F of the Industrial Disputes Act. Before the Industrial Tribunal, the second respondent had marked five documents while examining him as WW1. On the side of the appellant-Bank, two witnesses were examined and 13 documents were marked. The Tribunal, on analysing the entire case and having found that the second respondent had worked for more than 240 days within a calendar year immediately prior to the termination, ordered for reinstatement of the second respondent herein into service with full backwages and continuity of service so that he will not be deprived of fair and equal treatment with that of his counterparts, who had been regularised in service. Aggrieved by the said award the appellant-Bank had filed the writ petition wherein, the learned single Judge, after elaborate discussion of the facts and circumstances of the case in the light of various decisions of the Apex Court and this Court, dismissed the writ petition confirming the award passed by the Labour Court.

4. For brevity of time and the short question that needs to be answered in the writ appeal, we are of the view that it is not necessary to go into the factual aspects and the decisions relied upon by the learned Single Judge in detail.

5. In the writ appeal, the only issue that requires to be adjudicated is whether the termination of services of the second respondent is in violation of section 25-F of the Industrial

Disputes Act or not and in the event of arriving at a conclusion that there is a violation of the said provision, whether the second respondent is entitled to reinstatement with backwages as ordered by the Labour Court and as confirmed by the learned Single Judge or he can be suitably compensated by paying lumpsum amount.

6. Mr. Anandha Gopalan, learned counsel appearing for the appellant would submit that the second respondent has completed only SSLC and he was engaged temporarily and he had worked only for 42 months in the appellant-Bank. He would further submit that the appellant-Bank was engaging employees on temporary basis from the year 1970 onwards, while so, a Settlement was entered between the appellant-Bank and All India State Bank of India Staff Federation on 17.11.1987 and subsequently another settlement on 16.7.1988 and based upon such settlements, it was agreed that the temporary employees in the subordinate cadre would be given a chance for being considered for permanent absorption in the bank's services subject to satisfaction of conditions and accordingly, the employees, who had been temporarily engaged for more than 20 years of service had been regularised periodically, however, the second respondent, who has rendered only 42 months, seeks reinstatement and regularisation, which, if granted, would be depriving of the other employees, who had put in more service than the second respondent and therefore, the appellant-bank is not in a position to reinstate the second respondent with backwages. He would further submit that if at all the court comes to the conclusion that there is violation of section 25-F of the Industrial Disputes Act, the second respondent could be suitably compensated by way of lumpsum payment.

7. In support of his contention, the learned counsel appearing for the appellant relied upon an unreported decision of this court in W.A.No.1749 of 2015 wherein a Division Bench of this court, in a similar case, has held thus:-

"6. The question as to whether violation of Section 25-F of the I.D. Act would entail automatic reinstatement with backwages came into consideration in catena of decisions. Lately, in Vice-Chancellor, Lucknow University, Lucknow, U.P. Vs. Akhilesh Kumar Khare and another (2015 SCC Online SC 797), the Supreme Court has examined the issue afresh in the light of the various decisions rendered earlier and held as under :

"16. In considering the violation of Section 25F of the Industrial Disputes Act, 1947 in Incharge Officer & Anr. vs. Shankar Shetty (2010) 9 SCC 126 and after referring to the various decisions, this

Court held that the relief by way of back wages is not automatic and compensation instead of reinstatement has been held to meet the ends of justice and it reads as under:-

"2. Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the ID Act")? The course of the decisions of this Court in recent years has been uniform on the above question.

3. In *Jagbir Singh v. Haryana State Agriculture Mktg. Board*, (2009) 15 SCC 327, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, *U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey*, (2006) 1 SCC 479, *Uttaranchal Forest Development Corpn. v. M.C. Joshi*, (2007) 9 SCC 353, *State of M.P. v. Lalit Kumar Verma* (2007) 1 SCC 575, *M.P. Admn. v. Tribhuban* (2007) 9 SCC 748, *Sita Ram v. Moti Lal Nehru Farmers Training Institute* (2008) 5 SCC 75, *Jaipur Development Authority v. Ramsahai* (2006) 11 SCC 684, *GDA v. Ashok Kumar* (2008) 4 SCC 261 and *Mahboob Deepak v. Nagar Panchayat, Gajraula* (2008) 1 SCC 575 and stated as follows: (*Jagbir Singh* case (2009) 15 SCC 327, SCC pp. 330 & 335, paras 7 & 14)

"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."

4. Jagbir Singh (2009) 15 SCC 327 has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal (2010) 6 SCC 773, wherein this Court stated: (SCC p. 777, para 11)

"11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice."

7. Thus, deducing from the ratio laid down by the Supreme Court, it is well settled that reinstatement is not automatic, but the infringement of mandatory provision of Section 25-F of the I.D. Act may be compensated by payment of a lump sum amount. The learned Single Judge has granted compensation to the tune of Rs.5,00,000/-. We do not find any infirmity in the said order and

no interference is warranted."

8. Per contra, Mr. Balan Haridas, learned counsel for the second respondent would submit that when once there is a violation of section 25-F of the Industrial Disputes Act, the apposite remedy would be only reinstatement. In support of his contention, he relied upon an unreported decision of this court in W.A.No.506 of 2013, wherein, a Division Bench of this court, having observed that the employee had served for more than eight years, held thus:-

"5. Considering the fact that the first respondent was engaged from 9.8.1991 to 25.4.1999 and served for more than eight years, the learned Single Judge was right in setting aside the award ordering compensation alone for non-compliance of Section 25-F of the Act. However, the order of the learned Single Judge needs modification as the first respondent was not serving in a sanctioned post, for which, no salary was fixed and salary was also calculated on a daily wage basis. Hence, the order of the learned Single Judge is modified ordering reinstatement with continuity of service without backwages. It is also made clear that as and when Group-D posts are called for, it is open to the first respondent to apply and participate in the regular selection."

9. The learned counsel appearing for the second respondent would also rely upon the decision in HARI NANDAN PRASAD v. FOOD CORPORATION OF INDIA ((2014) 7 SCC 190 to contend that the employee in the said case was reinstated with 50% backwages and regularization of service.

10. We have considered the decisions relied upon by the learned counsel appearing for either side and perused the materials available on record. On the factual aspect, it is not in dispute that the second respondent had worked only for 42 months. In the unreported decision of a Division Bench of this court in W.A.No.506 of 2013, the employee appears to have worked for more than eight years, but, in the case on hand, the second respondent is said to have worked for only 42 months. In the case of HARI NANDAN PRASAD, cited above, there are two appellants and the first appellant is not covered by the Circular which the respondent therein viz., Food Corporation of India is liable to follow and therefore, the Apex Court had held that monetary compensation in lieu of reinstatement would be more appropriate in his case, while ordering for reinstatement with backwages for the other appellant, who was covered by the said Circular. In the case on hand, it appears that the appellant-Bank needs to satisfy the settlement arrived by them

with the All India State Bank of India Staff Federation and accordingly, they appear to have been regularizing the services of the employees, who had worked for more than 20 years on temporary basis. Therefore, the decisions relied upon by the learned counsel appearing for the second respondent, would not be applicable to the facts and circumstances of the case on hand.

11. It is relevant to note that in an unreported decision in DISTRICT DEVELOPMENT OFFICER v. SATISH KANTILAL AMRELIA (SLP(C) Nos.11956 & 11957 of 2015), the Apex Court has held thus:

"13) Having gone through the entire record of the case and further keeping in view the nature of factual controversy, findings of the Labour Court, the manner in which the respondent fought this litigation on two fronts simultaneously, namely, one in Civil Court and the other in Labour Court in challenging his termination order and seeking regularization in service, which resulted in passing the two conflicting orders - one in respondent's favour (Labour Court) and the other against him (Civil Court) and lastly, it being an admitted fact that the respondent was a daily wager during his short tenure, which lasted hardly two and half years approximately and coupled with the fact that 25 years has since been passed from the date of his alleged termination, we are of the considered opinion that the law laid down by this Court in the case of *Bharat Sanchar Nigam Limited vs. Bhurumal* [(2014) 7 SCC 177] would aptly apply to the facts of this case and we prefer to apply the same for disposal of these appeals.

14) It is apposite to reproduce what this Court has held in the case of *Bharat Sanchar Nigam Limited* (supra):

"33. 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 that 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.

34. 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 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](#) (3)17]. 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.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the

principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.

15) We have taken note of one fact here that the Labour Court has also found that the termination is bad due to violation of Section 25-G of the Act. In our opinion, taking note of overall factual scenario emerging from the record of the case and having regard to the nature of the findings rendered and further the averments made in the SLP justifying the need to pass the termination order, this case does not fall in exceptional cases as observed by this Court in Para 35 of Bharat Sanchar Nigam Limited case (supra) due to finding of Section 25-G of the Act recorded against the appellant. In other words, there are reasons to take out the case from exceptional cases contained in Para 35 because we find that the appellant did not resort to any kind of unfair practice while terminating the services of the respondent.

16) In view of forgoing discussion, we are of the considered view that it would be just, proper and reasonable to award lump sum monetary compensation to the respondent in full and final satisfaction of his claim of re-instatement and other consequential benefits by taking recourse to the powers under Section 11-A of the Act and the law laid down by this Court in Bharat Sanchar Nigam Limited case (supra).

17) Having regard to the totality of the facts taken note of supra, we consider it just and reasonable to award a total sum of Rs.2,50,000/- (Rs.Two Lakhs Fifty Thousand) to the respondent in lieu of his right to

claim re-instatement and back wages in full and final satisfaction of this dispute."

12. In yet another unreported decision in BHAVNAGAR MUNICIPAL CORPORATION ETC. v. JADEJA GOVUBHA CHHANUBHA AND ANOTHER (SLP(C) Nos36800 & 36801 of 2012), the Supreme Court has held thus:-

"16. The case at hand, in our opinion, is one such case where reinstatement must give way to award of compensation. We say so because looking to the totality of the circumstances, the reinstatement of the respondent in service does not appear to be an acceptable option. Monetary compensation, keeping in view the length of service rendered by the respondent, the wages that he was receiving during that period which according to the evidence was around Rs.24.75 per day should sufficiently meet the ends of justice. Keeping in view all the facts and circumstances, we are of the view that award of a sum of Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand only) should meet the ends of justice.

17. In the result, we allow these appeals but only in part and to the extent that the award made by the Labour Court and the orders of the High Court shall stand modified to the extent that the respondent shall be paid monetary compensation of Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand only) in full and final settlement of his claim. The amount shall be paid by the appellant-Corporation within a period of two months from today failing which the said amount shall start earning interest @ 12% p.a. from the date of this order till actual payment of the amount is made to the respondent."

13. In the present case, the termination of the employee is, of course, by not following section 25-F of the Industrial Disputes Act. However, considering the circumstances narrated above and the principle laid down in the above decisions, we are of the view that the ends of justice could be met if the second respondent could be suitably compensated instead of granting reinstatement. Accordingly, this court is convinced that the second respondent can be awarded a lumpsum compensation of Rs.2,00,000/- instead of reinstatement which shall be paid by

the appellant bank within a period of two months from the date of receipt of a copy of this judgement.

14. With the above direction, the writ appeal is disposed of. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The General Manager (HR)
State Bank of India
Circle Top House,
No.16, College Road,
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2. The Presiding Officer,
The Central Government Industrial
Tribunal cum Labour Court, Chennai.

+1cc to Mr.Balan Haridas, Advocate, S.R.No.49215

+1cc to Mr.T.S.Gopalan & Co, Advocate, S.R.No.49044

W.A.No.817 OF 2015

GSP (05/09/2018)

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