

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.02.2018

Delivered on : 28.02.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.4268 of 2012

The Senior Manager (P),
Union Bank of India,
Regional Office,
139, Broadway,
Chennai-600 108

.. Petitioner

versus

1. The Presiding Officer,
The Central Government Industrial,
Tribunal cum Labour Court,
Chennai.

2. Smt.T.Parvathy

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records of the first respondent in I.D.No.119 of 2003 and quash its award dated 15.11.2011.

For Petitioner : Mr.Anand for
M/s.T.S.Gopalan & Co.

For Respondents: Mr.K.M.Ramesh for R2

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue Writ of Certiorari, to call for the records of the first respondent in I.D.No.119 of 2003 and quash its award dated 15.11.2011.

2. The second respondent employee joined the petitioner bank as Casual sub-staff on daily wage basis on 30.10.1998. Initially, she was paid Rs.50/- per day which was subsequently increased to Rs.60/- which was the last drawn wages. The service of the second respondent was utilized by the petitioner bank at their Besant Nagar Branch both as Sweeper and Scavenger on part

time basis. According to the petitioner, her services were continued from 30.10.1998 onwards till 29.1.2002 with few artificial breaks in service. On 29.1.2012 when the second respondent was terminated by the Branch Manager of the petitioner bank on the basis of oral instructions, the bank did not comply with the mandatory provision of Section 25(F) of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act'). Therefore, the second respondent employee raised an industrial dispute under Section 2(A) of the Act, challenging her termination. The said dispute was referred to before the first respondent Industrial Tribunal-cum-Labour Court, Chennai by the Central Government, Ministry of Labour vide Order dated 13.6.2003. After reference, a claim statement was filed on behalf of the second respondent before the first respondent Tribunal in I.D.No.119 of 2003. In response to the claim statement, the petitioner bank also filed a counter statement.

3. In the proceedings before the first respondent Industrial Tribunal-cum-Labour Court, the employee examined herself as WW1 and gave evidence about nature of work performed by her and the number of days she worked in Besant Nagar Branch of the petitioner bank. On behalf of the petitioner bank, one Management witness (MW.1) was examined. Several documents were marked both on behalf of the employee and the Management.

4. In fact, in the proceedings before the first respondent Tribunal, an order was passed in I.A.No.47 of 2004 in I.D.No.119 of 2003, directing the petitioner bank to produce Muster Roll for the period from 1998 to 2002, during which period, the second respondent was employed. However, in spite of the order, no Muster Roll was produced by the Management. In the above circumstances, the first respondent Tribunal passed an award on 19.12.2005, ordering reinstatement of the second respondent with continuity of service and also with 50% back wages along with other benefits.

5. As against the award, the petitioner bank filed a writ petition in W.P.No.10727 of 2006 before this Court. By order dated 26.4.2001, this Court disposed of the said Writ Petition, by setting aside the award passed by the first respondent Tribunal insofar as it relates to the findings given by the Industrial Tribunal with regard to non-production of relevant records by the petitioner bank and consequent adverse inference drawn against the petitioner bank with regard to number of days worked by the employee concerned. Relevant portion of the order passed by this court as found in paragraph 20, is extracted as under:

"20. It is also noted that even though the relevant documents had been produced by the petitioner Bank, they had not been marked, either by the petitioner Bank or by the second respondent. It is also noted that some of the documents had been verified by the learned counsel for the second respondent, like the consolidated statements and the vouchers for the years 1998, 1999 and 2000. In such circumstances, without going into the other issues raised before this Court, the award of the first respondent Industrial Tribunal-cum-Labour Court, made in I.D.No.119 of 2003, is set aside, only in so far as it relates to the findings given by the first respondent relating to the non-production of the relevant records by the petitioner Bank and the consequent adverse inference drawn by the first respondent, with regard to the number of days worked by the second respondent employee, and the matter is remitted back to the first respondent to cause an enquiry and to give its findings, by giving sufficient opportunity to the petitioner, as well as to the second respondent, on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order. The parties to the industrial dispute, in I.D.No.119 of 2003, are expected to co-operate, fully, in the enquiry proceedings to be held by the first respondent. The parties concerned shall be permitted by the first respondent to mark the relevant documents and to let in the necessary oral evidence, in respect of the issue in question. The writ petition is ordered accordingly. No costs."

6. After the remand by this Court, the petitioner bank examined one more Management witness (MW.2) and three exhibits were marked. However, no further materials were marked in order to sustain the claim of the petitioner bank in regard to the number of days worked by the second respondent employee as asserted by her. Therefore, the petitioner bank was forced to file a memo on 25.8.2011 to the effect that the employee might have been engaged as Sub Staff continuously for more than 240 days. Thereafter, the first respondent Tribunal passed impugned award in I.D.No.119 of 2003 ordering reinstatement of the second

respondent employee with 75% back wages and continuity of service with all attendant benefits. The said award is put to challenge in the writ petition by the petitioner bank.

7. The learned counsel appearing for the petitioner bank would assail the award, contending that the first respondent Tribunal need not have ordered reinstatement with 75% back wages since the second respondent employee was only a part time daily wager and was not entitled to protection by virtue of Section 25 (f) of the Act and Section 2(o) of the Act is not attracted in her case. He would alternatively submit that even assuming that Section 25(f) of the Act is attracted, while terminating the service of the second respondent employee, the first respondent Tribunal injudiciously ordered reinstatement as a matter of routine with 75% back wages. At best, the learned counsel would submit that the first respondent Tribunal ought to have granted some lump sum compensation to the second respondent employee in lieu of reinstatement, for more than one reason. Firstly, he would submit that the services of the second respondent stood terminated as early as on 29.1.2002 and by the time, the award was passed, more than nine years have lapsed and the second respondent employee being a part time daily wager was by then replaced by a regular employee in her place. Since the petitioner bank has to follow proper procedure in making regular appointment of Sweeper-cum-Scavenger and during the pendency of the industrial proceedings, the petitioner bank resorted to regular recruitment and appointed several persons as Sweeper-cum-Scavengers and in the recruitment, one such person was recruited and appointed in Besant Nagar Branch in the place of the second respondent. Therefore, the question of reinstating the petitioner at this distant point of time would not arise. Secondly, the learned counsel would submit that as per the recent legal trend, in the case of daily wage employee, even in the matter of violation of the provisions of the Act, reinstatement is not automatic and the Courts have ordered only compensation in such cases. Therefore, he would submit that this is a fit case where this Court can modify the award and grant a lump sum compensation to be fixed by this Court and not to confirm the award as such. He would reiterate the fact that there is no vacancy available as on date and the services of the second respondent were utilised on ad hoc basis till regular appointment took place. Such recruitment having taken place during the pendency of the industrial proceedings, the question of accommodating the second respondent as of now does not arise and the same is also not possible.

8. In support of his contentions the learned counsel appearing for the petitioner would rely on the decision of the Hon'ble Supreme Court reported in "2014(7) SCC 177 (Bharat Sanchar Nigam Limited versus Bhurumal)". He would draw the attention of this Court to various paragraphs which would

significantly point out to the fact that in the case of daily wager, automatic reinstatement is not called for. He would particularly draw the attention of this Court to paragraphs 29 to 37, which are extracted as under:

"29. The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In the case of BSNL vs. Man Singh[1], this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In the case of Incharge Officer & Anr. vs. Shankar Shetty [2], it was held that those cases where the workman had worked on daily wage basis, and worked merely for a period of 240 days or 2- 3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.

"30. In this judgment of Shankar Shetty (supra), this trend was reiterated by referring to various judgments, as is clear from the following discussion.

"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.

In Jagbir Singh v. Haryana State Agriculture Mktg..Board[3], 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[4], Uttaranchal Forest Development Corpn. V. M.C. Joshi[5], State of M.P. v. Lalit Kumar Verma[6], M.P.Admn v.Tribhuban[7], Sita Ram v.Moti Lal Nehru Farmers Training Institute[8], Jaipur Development Authority v. Ramsahai[9], GDA v. Ashok Kumar[10]

and Mahboob Deepak v.Nagar Panchyat, Gajraula[11] and stated as follows: (Jagbir Singh case, SCC pp.330 & 335 paras 7 & 14) "It is true that the earlier view of this Court articulated in many decision 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.

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, 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." Jagbir Singh has been applied very recently in Telegraph Deptt. V. Santosh Kumar Seal[12], wherein this Court stated: (SCC p.777, para 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."

"31. In the case of Telecom District Manager v. Keshab Deb [13] the Court emphasized that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one months' pay in lieu of one month's notice and wages of 15 days of each completed year of service as envisaged under Section 25-F of the Industrial Disputes Act. He could not have been directed to be regularized in service or granted /given a temporary status. Such a scheme has been held to be unconstitutional by this Court in A.Umarani v. Registrar, Coop.Societies [14] and Secy., State of Karnataka v. Umadevi [15].

"32. It was further submitted by the learned counsel for the appellant that likewise, even when reinstatement was ordered, it does not automatically follow full back wages should be directed to be paid to the workman. He drew our attention of this Court in the case of Coal India Ltd. Vs. Ananta Saha [16] and Metropolitan Transport Corporation v. V.Venkatesan [17].

"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 malafide and/or by way of victimization, 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 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.

"34. 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 regularization (See: State of Karnataka vs. Uma Devi (2006) 4 SCC 1). Thus when he cannot claim regularization 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 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 regularized under some policy but the concerned workman 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.

"36. Applying the aforesaid principles, let us discuss the present case. We find that the respondent was working as a daily wager. Moreover, the termination took place more than 11 years ago. No doubt, as per the respondent he had worked for 15 years.

However, the fact remains that no direct evidence for working 15 years has been furnished by the respondent and most of his documents are relatable to two years i.e. 2001 and 2002. Therefore, this fact becomes relevant when it comes to giving the relief. Judicial notice can also be taken of the fact that the need of lineman in the telephone department is drastically reduced after the advancement of technology. For all these reasons, we are of the view that ends of justice would be met by granting compensation in lieu of reinstatement.

"37. In Man Singh (supra) which was also a case of BSNL, this Court had granted compensation of Rs.2 Lakh to each of the workmen when they had worked for merely 240 days. Since the respondent herein worked for longer period, we are of the view that he should be paid a compensation of Rs. 3 lakhs. This compensation should be paid within 2 months failing which the respondent shall also be entitled to interest at the rate of 12% per annum from the date of this judgment. Award of the CGIT is modified to this extent. The appeal is disposed of in the above terms. The respondent shall also be entitled to the cost of Rs.15,000/- (Rupees Fifteen Thousand only) in this appeal."

9. According to the learned counsel, in the above case, an employee worked with the Management for nearly 15 years and the ultimate compensation which was ordered to be paid by the Hon'ble Supreme Court was Rs.3 lakhs with 12% p.a. interest. As regards the present case on hand is concerned, the second respondent had worked for little more three years.

10. The learned counsel for the petitioner would also draw the attention of this Court to another decision of the Hon'ble Supreme Court of India, reported in "2012 (1) SCC 558 (Bharat Sanchar Nigam Limited versus Man Singh, etc.)", wherein, it has been held as under in paragraphs 4 and 5.

"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 respondents - 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 compensation would meet the ends of justice."

11. Yet another decision of the Hon'ble Supreme Court reported in "2010(9) SCC 126 (Incharge Officer and another versus Shankar Shetty)" was also relied upon by the learned counsel, wherein, after adverting to the various decisions, the Hon'ble Supreme Court has held that even in case of violation of Section 25(f) of the Act, the relief of reinstatement was not justified and ordered one lakh compensation to be appropriate, just and equitable relief. Relevant paragraphs are 2 to 7 and they are extracted 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 'ID Act')? The course of decisions of this Court in recent years has been uniform on the above question.

"3. In the case of Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr.¹, 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 Corporation Ltd. & Anr.² v. Uday Narain Pandey²; Uttranchal Forest Development Corporation vs. M.C. Joshi³ ; State of M.P. & Ors. v. Lalit Kumar Verma⁴; Madhya Pradesh Admn v. Tribhuban⁵; Sita Ram & Ors. v. Motil Lal Nehru Farmers Training Institute⁶; Jaipur Development Authority v. Ramasahai & Anr.⁷; Ghaziabad Development Authority & Anr. v. Ashok Kumar & Anr.⁸ and (2009) 15 SCC 327 (2006) 1 SCC 479 (2007) 9 SCC 353 (2007) 1 SCC 575 (2007) 9 SCC 748 (2008) 5 SCC 75 (2006) 11 SCC 684 (2008) 4 SCC 261 Mahboob Deepak v. Nagar Panchayat, Gajraula & Anr.⁹ and stated as follows:

"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 Singh¹ has been applied very recently in the case of Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh (2008) 1 SCC 575 Kumar Seal & Ors. (Civil Appeal No. 3815 of 2010) decided on April 26, 2010 wherein this Court stated:

"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".

"5. Shankar Shetty - the respondent was initially engaged as daily wager by the appellants in 1978. He worked for 57 days in that year. The respondent had also worked for 316= days in 1979, 335= days in 1980, 242= days in 1981, 33= days in 1982, 10= days in 1983, 103 days in 1984 and 50 days in 1985. According to him he was terminated from service on September 6, 1985 without following the procedure prescribed in Section 25 F of the ID Act . He raised industrial dispute relating to his retrenchment which was referred for adjudication to the Labour Court, Mysore but later on the dispute was transferred to the Labour Court, Chickmagalur. The Labour Court, Chickmagalur by its award on December 21, 1994 rejected the respondent's claim. The Labour Court held that Section 25 F of the ID Act was not attracted since the workman failed to prove that he had worked continuously for 240 days in the calendar year preceding his termination on September 6, 1985.

"6. The respondent challenged the award passed by the Labour Court by filing a writ petition before the Karnataka High Court. The Single Judge of the High Court overturned the finding of the Labour Court about non-applicability of Section 25 F and held that Section 25 F of the ID Act was attracted and the procedure provided therein having not been followed, the termination of respondent (petitioner therein) was illegal. The Single Judge, accordingly, vide his judgment and order dated August 13, 2001 directed reinstatement of the respondent into service but without back wages and continuity of service. The present appellants challenged the judgment and order of the Single Judge in writ appeal before Division Bench but without any success. On December 9, 2004, the writ appeal preferred by the present appellants was dismissed by the Division Bench.

"7. We think that if the principles stated in Jagbir Singh¹ and the decisions of this Court referred to therein are kept in mind, it will be found that the High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 years intermittently upto September 6, 1985 i.e. about 25 years back. In a case such as the present one, it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion, the compensation of Rs. 1,00,000/- (Rupees One lac) in lieu of reinstatement shall be appropriate, just and equitable. We order accordingly. Such payment shall be made within 6 weeks from today failing which the same shall carry interest at the rate of 9 per cent per annum.

"8. The appeal is allowed to the above extent. Since the respondent has not chosen to appear despite service of notice, there will be no order as to costs."

12. In the light of legal principles as enunciated by the Hon'ble Supreme Court of India, the learned counsel would submit that even in case of violation of Section 25(f) of the Act, automatic reinstatement is not called for and such order of reinstatement by the first respondent Tribunal is contrary to the law laid down by the Hon'ble Supreme Court of India. He would urge this Court to award a just and reasonable compensation to the second respondent employee. He would also submit during the course of arguments that the second respondent employee has been paid the last drawn wages from the date of writ petition which has been pending for more than five years. Therefore, this Court may take that also into consideration while awarding the appropriate compensation and modify the award to that extent.

13. The learned counsel for the petitioner would also bring to the notice of this Court that pending the litigation, the petitioner had relocated at far of place, i.e. Shevapet, Thiruvallur District and it would be practically difficult for her to reach Besant Nagar Branch in time for discharge of her duties as Sweeper-cum-Scavenger. Therefore, he would urge this Court to grant compensation which would take care of the second respondent employee and also the interest of the petitioner bank.

14. Per contra, Shri K.M.Ramesh, learned counsel appearing for the second respondent would submit that the award passed by the first respondent Tribunal dated 15.11.2011 is very clear and based on sound reasoning and appreciation of factual and legal position. He would rely on the operative portion of the award as found in paragraph 14, which is extracted below:

"14. Respondent having admitted in writing and filed a memo to the effect that petitioner might have worked not less than 240 days, the said question is not to be looked into any further. It is pertinent to note that in the matter of appreciation of facts sought to be proved allowances have to be given by Courts to marginal discrepancies in the versions of the witnesses. Petitioner's version is to be so understood. Now the question is whether her termination from service is legal and justified. There is no whisper regarding the manner in which petitioner's cessation of service was brought about. Evidently it is clear that she has not been issued notice not even notice pay or compensation as provided under Section 25-F of the ID Act. Therefore, there is violation of Section 25F of the ID Act rendering the action illegal and unjust. The petitioner is therefore entitled to be reinstated into service forthwith with continuity of service and all attendant benefits including 75% back wages. Thereafter whether she is to be regularized or not is to be examined and appropriately decided by the Management in accordance with the norms and rules governing regularization and in vogue and as per the relevant recruitment procedures under the Management. The petitioner is therefore entitled to the above relief."

15. It was an admitted case that Section 25(f) of the Act was not complied with and once the violation of Section 25(f) of the Act was made out without any dispute, the termination becomes void and the second respondent employee is entitled to reinstatement. In fact, the Labour Court has only granted 75% of the back wages and not full back wages and also not granted the benefit of regularization of her service. Such finding of fact and the ultimate award of the Labour Court does not call for interference of this Court.

16. The learned counsel for the second respondent would also submit that on behalf of the management, there was neither a pleading nor an argument advanced in regard to payment of one lump sum amount in lieu of reinstatement. In the absence of such submissions on the part of the Management, it is not open to the petitioner management herein to canvass the said argument as the first respondent Tribunal was not given an opportunity to adjudicate such claim. If only such submission had been made before the Industrial Tribunal, the Tribunal would have evaluated the facts vis-a-vis the claim of the employee on the basis of materials and oral evidence.

17. Therefore, he would urge this Court to reject the plea of the management for grant of lump sum compensation in lieu of reinstatement with 75% back wages. According to the learned counsel, this Court is called upon to test the correctness and validity of the award passed by the first respondent Tribunal and such validity and correctness can be tested only based on the submissions made before the Industrial Tribunal and not before this Court for the first time.

18. In contrast, the arguments advanced on behalf of the petitioner management, the learned counsel would rely upon the following decisions in support of his contentions that the non-compliance of Section 25(f) of the Act would entail reinstatement in service as the provision as contained in Section 25(f) of the Act has been unilaterally held by the Courts as 'mandatory' and the same has to be followed scrupulously.

i) "2010 STPL 3700 SC = (2010) 3 SCC 192 (Harjinder Singh versus Punjab State Warehousing Corporation)" wherein, the learned counsel would draw the attention of this Court to paragraph 14 which reads as under:

"14. A reading of the impugned order shows that the learned Single Judge did not find any jurisdictional error in the award of the Labour Court. He also did not find that the award was vitiated by any error of law apparent on the face of the record or that there was violation of rules of natural justice. As a matter of fact, the learned Single Judge rejected the argument of the corporation that termination of the appellant's service falls within the ambit of Section 2(oo)(bb) of the Act, and expressed unequivocal agreement with the Labour Court that the action taken by the Managing Director of corporation was

contrary to Section 25G of the Act which embodies the rule of last come first go. Notwithstanding this, the learned Single Judge substituted the award of reinstatement of the appellant with compensation of Rs.87,582/- by assuming that appellant was initially appointed without complying with the equality clause enshrined in Articles 14 and 16 of the Constitution of India and the relevant regulations. While doing so, the learned Single Judge failed to notice that in the reply filed on behalf of the corporation before the Labour Court, the appellant's claim for reinstatement with back wages was not resisted on the ground that his initial appointment was illegal or unconstitutional and that neither any evidence was produced nor any argument was advanced in that regard. Therefore, the Labour Court did not get any opportunity to consider the issue whether reinstatement should be denied to the appellant by applying the new jurisprudence developed by the superior courts in recent years that the court should not pass an award which may result in perpetuation of illegality. This being the position, the learned Single Judge was not at all justified in entertaining the new plea raised on behalf of the corporation for the first time during the course of arguments and over turn an otherwise well reasoned award passed by the Labour Court and deprive the appellant of what may be the only source of his own sustenance and that of his family. "

According to the learned counsel, the Industrial Tribunal did not get an opportunity to consider the issue as to whether payment of compensation can be ordered in lieu of reinstatement for violation of Section 25(f) of the Act.

ii) "2005 STPL 17009 SC = (2006) 1 SCC 106 (R.M.Yellatti versus The Asst.Executive Engineer)". The learned counsel relied upon this judgment in relating to the factum that the second respondent worked for more than 240 days in a year. This Court does not think that the issue requires any serious adjudication in view of the fact that already a memo was filed on behalf of the management conceding the fact that the second respondent employee might have worked for 240 days.

iii) "CDJ 2011 MHC 1526 (Syndicate Bank versus The Presiding Officer, Central Government Industrial Tribunal and another). This decision was rendered by a single Judge of this Court in relation to Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. The said decision cannot be applied to the factual matrix of the present case.

iv) "1976 (1) LLJ 478 (SC) = (1976) 1 SCC 822 (State Bank of India versus Shri N.Sundara Money)", wherein, the Hon'ble supreme Court, while considering the scope of Section 2(oo) and 25 of the Act, has made strong observation as under:

"(1) If the workman swims into the harbour of s. 25F of the Industrial Disputes Act, 1947, he cannot be retrenched without payment, at the time of retrenchment, compensation computed as prescribed therein read with s. 25B(2).

(2) Statutory construction, when courts consider welfare legislation with an economic justice bias, cannot turn on cold print, glorified as grammatical construction, but on teleological purpose and protective intendment. Sections 25F, 25B and 2(oo), of the Industrial Disputes Act, 1947 have a workers' mission and the input of Part IV of the Constitution also underscores this benignant approach. while canons of traditional sanctity cannot wholly govern, courts cannot go hay wire in interpreting provisions, ignoring the text and context. Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. Dictionaries are not dictators of statutory construction where the benignant mood of a law and, more emphatically, the definition clause furnish a different denotation. Section 2(oo) is the master of the situation and the Court cannot truncate its amplitude. The words "for any reason whatsoever" in s. 2(oo) of the Industrial Disputes Act are very wide and almost admit of no exception.

(3) A breakdown of s. 2(oo) unmistakably expands the semantics of retrenchment. "Termination .. for any reason whatsoever" are the key words.

Every termination spells retrenchment. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. Retrenchment is no longer terra incognita but area covered by an expansive definition. It means 'to end' conclude, cease'. That to write into the order of appointment the date of termination confers no moksha from s. 25F(b) is inferable from the proviso to s. 25F(1). A separate subsequent termination of the service is not the sole magnetic pull of the provision. A preemptive provision to terminate is struck by the same vice as a post appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision."

The learned counsel would rely upon the above decision to say that a welfare legislation like the provisions of the Industrial Disputes Act have to be scrupulously followed and infraction of the same like the present one will attract not less than reinstatement in service. Any compensation payable cannot be a just and reasonable compensation as the right of the second respondent employee to get back her employment cannot be taken away by merely ordering one time lump sum as compensation. Right to employment cannot be negated by orders of this Court sidestepping the well considered award passed by the Tribunal which cannot be assailed on the stated ground by the management in the absence of pleadings before the Industrial Tribunal.

v) "1990(2) LLJ (Punjab Land Development and Reclamation Corporation Ltd., versus Presiding Officer, Labour Court, Chandigarh)". This is a case where the Hon'ble Supreme Court regarding the scope of construction of Section 2(oo) and 25(f) of the Act. As narrated above, violation of Section 25(f) is not seriously disputed by the management atleast before this Court. Therefore, the question of appreciating the above decision of the Hon'ble Supreme Court does not arise at all for considering the inter se merit of the arguments of the learned counsels.

19. In all, the learned counsel for the second respondent employee would submit that this Court, exercising jurisdiction under Article 226 of the Constitution of India, cannot brush aside the award of the first respondent Tribunal unless the same is found to be illegal, unsustainable and perverse. In the absence of such finding, the award as such has to be upheld and need not be tinkered with.

20. Upon consideration of the rival submissions of the learned counsels, this Court is entrusted with the task of finding a reasonable solution to the dispute raised by the second respondent employee herein before the first respondent Tribunal. Although this Court has no quarrel with the findings rendered by the Industrial Tribunal in regard to non-compliance of Section 25(f) of the Act, this Court has to see in the light of the submissions made by the learned counsel for the petitioner management as to whether reinstatement ordered by the first respondent Tribunal is in line with the present legal trend and philosophy expressed through its various decisions by the Hon'ble Supreme Court of India.

21. After all this Court is bound by law declared by the Hon'ble Supreme Court of India from time to time under Article 41 of the Constitution of India. As rightly contended by the learned counsel appearing for the petitioner management and that the Hon'ble Supreme Court of India while considering a similar issue of non-compliance of Section 25(f) in regard to daily wages, has held that the payment of one time lump sum as compensation is preferable to mechanical direction of reinstatement.

22. The decision as relied upon by the learned counsel appearing for the petitioner management as extracted supra, would squarely cover and support the contentions raised by the learned counsel for the petitioner management in this behalf. More over this Court has to take into consideration not only the legal aspect, but also on the factual scenario as unfolded as between the petitioner management and the second respondent employee. It was an admitted case that the second respondent employee was employed for a brief period little over three years between 30.10.1998 and 29.1.2002 as part time Sweeper-cum-Scavenger in one of the branches of the petitioner bank. It is also not disputed that subsequent to the termination of the second respondent employee, regular recruitment had taken place during 2004-2006 etc., and on that basis, regular Sweepers were appointed in various branches including the branch in which the second respondent employee was originally working at the time of termination. Further, the second respondent employee was only

employed as a stop gap arrangement before regular recruitment took place and such stop gap arrangement cannot give rise to any substantial right to the second respondent employee for staking permanent employment. In fact, the Industrial Tribunal has merely directed the reinstatement of second respondent employee herein not on a regular basis and left it open to the management to consider regular service in accordance with all norms and rules governing regularization. Such being the case, the second respondent employee cannot be factually put back to service as stop gap arrangement in view of the subsequent development that the bank itself had recruited regular Sweepers and posted one of the regularly recruited Sweepers in the place of the second respondent employee. It is also admitted fact that the second respondent employee relocated herself in Shevapet, Thiruvallur District which is far away from the location of the petitioner bank branch at Besant Nagar, Chennai and it may not be possible for her to travel between her place of residence and the working place at Besant Nagar in order to earn a meagre livelihood as a part time Sweeper. In any event, this Court has to ultimately see whether the reinstatement ordered by the first respondent Tribunal is implementable or whether the same is called for interference or whether the first respondent Tribunal was right in proceeding with the single purpose of ordering reinstatement without exploring the possibility of compensation to the wronged employee. This Court is of the considered view that in the facts and circumstances of the case, the first respondent Tribunal could have explored the possibility of awarding just and reasonable compensation to the employee without mechanically and duty fully ordering reinstatement after finding fault with the petitioner management in not following the procedure contemplated under Section 25(f) of the Act. After all in the industrial adjudication, just and reasonable solution has to be found while adjudicating the right of the employee and the interest of the management. Such adjudication calls for out of box thinking and not merely following the rigid rule of law by a pedantic approach.

23. As rightly contended by the learned counsel appearing for the petitioner that in view of the facts as established and circumstances as reasoned, the second respondent employee can be justly compensated by a lump sum payment without ordering reinstatement. This approach is particularly more imperative in the particular circumstances where the second respondent employee was admittedly employed as stop gap arrangement being a part time daily wager earning a meagre sum of Rs.60/- per day when she was appointed. More over whatever may be the circumstances, services of the second respondent employee stood terminated as early as in 2002 and 15 years have lapsed and therefore, it is not in the interest of both the employee as well as the bank to sustain the order of reinstatement passed by the first respondent Tribunal.

24. As held by the Hon'ble Supreme Court in various decisions relied upon by the learned counsel appearing for the petitioner, this Court has to ultimately take a call in regard to what compensation will be just and reasonable in the facts and circumstances of the case.

25. In the decision relied upon by the learned counsel appearing for the petitioner reported in "2014(7) SCC 177 (Bharat Sanchar Nigam Limited versus Bhurumal)", the Hon'ble Supreme Court of India has finally ordered compensation of Rs.3 lakhs in a case wherein, the workman therein had worked for nearly 15 years. In the present case, the second respondent was employed little more three years only. Nevertheless this Court is of the considered view that if the yardstick is taken into consideration as to the number of years put in by the workman covered in the decision passed by the Hon'ble Supreme Court and applied to the present case, the compensation to be worked out will be woefully low and it may not be just and reasonable particularly, the dispute had seen a long adjudicatory process that has consumed more than 15 years before the Industrial Tribunal as well as before this Court.

26. The litigant also must be compensated adequately for the failure of the system to deliver justice in time as right to speedy remedy is enshrined as one of the basic rights which found expression in the Constitution of India.

For the above reasons, this Court is of the view that a compensation of Rs.2 lakhs (Rupees Two lakhs) payable to the second respondent in lieu of reinstatement, is just, reasonable and adequate and the petitioner bank is directed to pay compensation of Rs.2 lakhs (Rupees Two lakhs) and the said amount shall carry simple interest at 12% p.a. from the date of award till the date of payment. In the view of the orders passed by the Court, the award of the Labour Court is modified to that extent. As regards the grant of back wages, the same cannot be sustained on the principle 'no work, no pay'. The petitioner management is directed to implement this order within a period of eight weeks from the date of receipt of a copy of this order.

With the above modification and direction, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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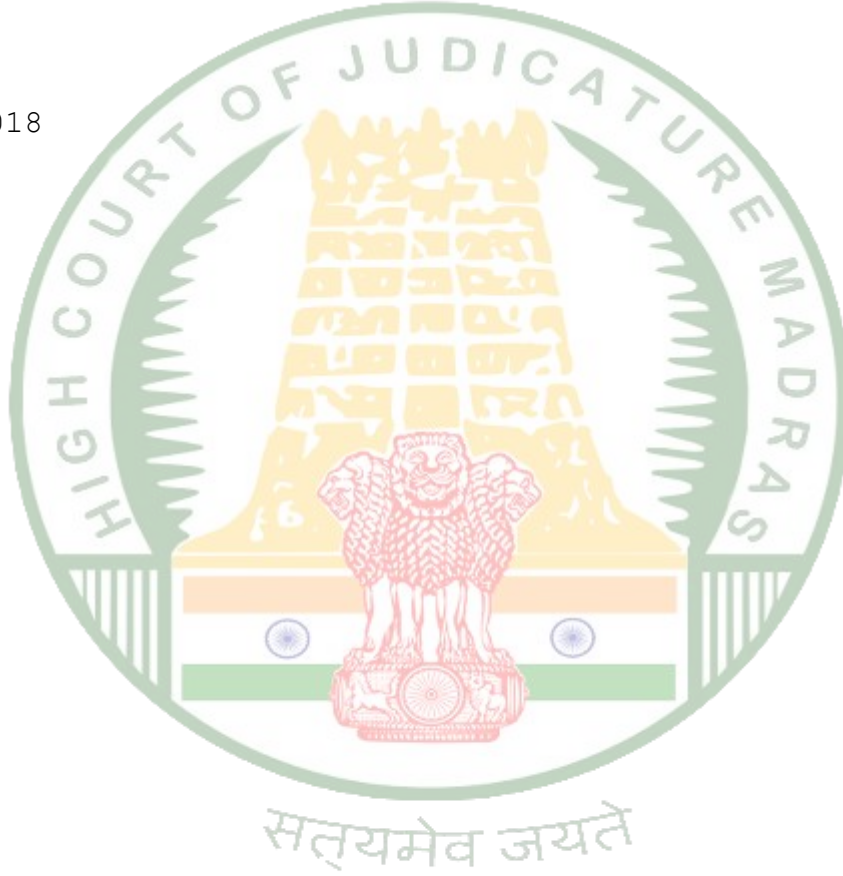
The Presiding Officer,
The Central Government Industrial,
Tribunal cum Labour Court,
Chennai.

+1 cc to M/s.T.S.Gopalan & Co Advocate sr 15134

+1 cc to M/s.K.M.Ramesh Advocate sr 15251

W.P.No.4268 of 2012

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