

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.17038 OF 2010

Date: 23.01.2018

Between:

The Junior Telecom Officer,
Departmental Telegraph Office,
Vizayanagaram and another.

.....Petitioners

and

Smt B.Appalakonda, W/o Srinivasa Rao,
D.No.10-4-52, Kotta Kovila, Near Anaspuvari
Street, Vizayanagaram and another.

.....Respondents



The Court made the following:

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ORDER:

Heard learned counsel Sri R.S.Murthy, for petitioners, Sri K.V.Janardhan Rao, learned counsel for respondent no.1 and none appeared for 2nd respondent.

2. By award dated 02.02.2010 in I.D.L.C.No.229 of 2004 raised by first respondent alleging illegal retrenchment as Part-time Sweeper by Bharat Sanchar Nigam Limited (BSNL), the Central Government Industrial Tribunal-cum-Labour Court at Hyderabad recorded finding that petitioner therein worked for more than 240 days in a year before retrenchment and the statutory mandate enshrined in Section 25-F of the Industrial Disputes Act, 1947 (Act, 1947) was not complied and, therefore, retrenchment is vitiated. The Industrial Tribunal directed reinstatement of workwoman as Part-time Sweeper within two months from the date of receipt of award and to pay wages accordingly. However, back-wages were denied. Aggrieved by the said award, BSNL filed this writ petition.

3. Learned counsel for petitioners submit that as 1st respondent was aged 18 years at the time of engagement whereas employment in BSNL is provided only after a person completes 21 years, she was not eligible to be appointed and, therefore, her retrenchment cannot be called as illegal. When she was initially engaged, her correct age was not known and when it has come to the notice of competent authority that she was only 18 years old in March, 2001, she was not continued. He further submits that she was engaged as Sweeper only when a regular

Sweeper applied for leave, that too on Part-time basis and, therefore, it cannot be said that 1st respondent was continuously engaged for 240 days in a year. He would therefore submit that provisions of Section 25-F of the Act are not attracted.

4. Per contra, learned counsel for 1st respondent submits that services of 1st respondent were utilized continuously and even though she was treated as Part-time Sweeper, her services were utilized for entire day and she was at the disposal of BSNL for 365 days and, therefore, it cannot be said that she has not completed 240 days. Since no procedure was followed and no retrenchment compensation was paid when her services were dispensed with, Section 25-F of the Act was violated. He would therefore submit that declaration and direction issued by the Industrial Tribunal is valid.

5. The fact that 1st respondent was engaged from March, 2001 is not disputed. On thorough analysis of material on record, the Industrial Tribunal found that 1st respondent completed 240 days in a year and, therefore, provision in 25-F of the Act were required to be complied to validate retrenchment. This is a finding of fact arrived at by the Industrial Tribunal. In a writ petition filed under Article 226 of the Constitution of India, this Court cannot re-appreciate the evidence on record and record different finding, contrary to finding of fact recorded by Industrial Tribunal.

6. The next submission of learned counsel for petitioners that 1st respondent was only 18 years old and was less than 21 years when she was engaged has no merit. Having utilized her services, it is not open to the petitioners to raise such contention, more

particularly with reference to statutory compliance before retrenching a workwoman. As 1st respondent has completed 240 days and she was not paid retrenchment compensation, I do not see any error in the finding arrived at by the Industrial Tribunal nor can it be called as perverse.

7. The next issue that requires consideration is, in the facts of this case, what relief can be granted to the 1st respondent.

8. The Industrial Tribunal held that retrenchment compensation was not paid and, therefore, termination is vitiated and directed re-engagement of petitioner as Part-time Sweeper and payment of wages applicable to Part-time employee. Fact remains that 1st respondent worked for approximately 3 years only and last engagement was in the year 2004. At the time of admission of this writ petition, this Court granted interim stay of reinstatement. Due to interim order of this Court, she was not engaged and is out of service for more than 13 years. Further, direction issued was for engagement as Part-time Sweeper only. Thus, at this stage, direction to engage the 1st respondent cannot be granted.

9. This very issue has come up for consideration before this Court in W.P.No.5009 of 2011. Following the decision of Supreme Court in **Bharat Sanchar Nigam Limited v. Man Singh**¹, this Court disposed of the said writ petition, directing payment of compensation in lieu of reinstatement. This Court observed as under:

“9. At this stage, learned counsel for the petitioner submits that the Supreme Court in the case of **Bharat Sanchar Nigam Limited v. Man Singh**, held that instead

¹ (2012) 1 SCC 558

of reinstatement, consolidated amount of compensation may be determined. The said principle is followed by the Supreme Court in the case of **Bharat sanchar Nigam Limited v. Bhurumal**².

10. Following the decision in **Man Singh** (1 supra), in **Bharat Sanchar Nigam Limited** (2 supra), it was held that in matters of this nature, consolidated amount of compensation can be determined instead of directing re-engagement, more particularly, when there is huge gap between the date of termination and the date of adjudication. In **Man Singh** (1 supra), the claim was the workman worked about more than 240 days while in **Bharat Sanchar Nigam Limited** (2 supra), the employee was working for longer period. Therefore, though in **Man Singh**'s case (1 supra) the compensation of 2 lakhs was determined, in the subsequent decision, the compensation was enhanced."

10. In the instant case, 1st respondent worked for approximately three years. First respondent is a physically challenged person. Having regard to these facts and to give quietus to the litigation, I deem it just and proper to award compensation of 3,00,000/- in lieu of reinstatement. Writ Petition is accordingly disposed of directing petitioners to pay an amount of 3,00,000/- (Rupees three lakhs only) to the 1st respondent within a period of two months from the date of receipt of copy of this order. In case of any delay in payment of amount beyond the time fixed above, petitioners shall pay simple interest @ 18% per annum for the delayed payment.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

JUSTICE P.NAVEEN RAO

Date: 23.01.2018
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² (2014) 7 SCC 177

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