

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 2067 of 2008**

J.P. Tiwari, S/o Shri Prahlad Prasad, R/o Salampur, Post Sakari,
District Bilaspur Chhattisgarh

---- Petitioner**Versus**

1. Presiding Officer, Under Industrial Disputes Act, Labour Court, Bilaspur, Chhattisgarh
2. Vishesh Kartvya Adhikari Department of Directorate of Geology And Mining Village Purena, Post Ravigram National Highway No. 6, Raipur, Chhattisgarh
3. Regional Chief, Department of Geology And Mining, Warehouse Road Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. S.P. Kale, Advocate
For Respondents	:	Mr. Anshuman Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****05/07/2019**

1. The present is writ petition by the worker who has raised dispute in respect of his discontinuance from service and labour Court vide the impugned award dated 04.12.2007 answered the reference in the negative holding that the petitioner worker is not entitled for any relief.
2. The facts leading to the present case is that the petitioner raised reference before the Deputy labour Commissioner, Raipur, Chhattisgarh alleging that he has been wrongly removed from service without following due process of law and in total violation of provisions of Industrial Disputes Act and thus prayed for declaring the removal from service to be bad in law and in violation of the

provisions of the Industrial Disputes Act and sought for the relief of reinstatement with all consequential benefits.

3. The State Government vide its order dated 21.01.2001 on failure of the conciliation referred the matter to the labour Court, Bilaspur for adjudicating upon the dispute. Following was the terms of reference sent to the labour Court for adjudication :-

“Whether the termination of service of Shri J.P. Tiwari is proper and legal? If not, then to what relief is he entitled for and what directions can be issued to the employer in this regard?”

4. The petitioner as well as State Government entered appearance before the labour Court where the case was registered as case No. 9/IDA/2002/(Ref.). The worker filed a statement of claim before labour Court stating that he was engaged by the respondents as a driver against a vacant post on 22.02.1995. According to the petitioner he continued to discharge the duties as driver till 15.12.2000. When the respondents by an oral order terminated the services of the petitioner. According to the petitioner the termination of service was illegal, bad in law for more than one reasons. As per the petitioner, the persons who were engaged subsequent to the petitioner were still continuing in the department. That the petitioner has been without any reasons and justification discontinued. It was further the contention of the petitioner that before discontinuing him from service the respondents have not complied with the mandatory requirements under Section 25(F) in as much as no retrenchment compensation nor was any notice of termination issued or salary in

lieu of notice paid to the petitioner before discontinuance. Thus, prayed for relief of reinstatement with all consequential benefits.

5. Respondent- State Government also submitted its written statement contending that the averment of the petitioner being appointed as a Driver was incorrect and denied the same. It was also the contention of the respondent that petitioner infact was engaged as a Daily Wage Muster Roll Employee for a brief period between 1999 to 2000, that too only while there was availability of work. It was also the contention of the respondent State that dispute/reference made to the labour Court itself was not maintainable for the reason that respondent establishment is one which does not fall within the ambit of an industry under the Industrial Disputes Act and therefore reference itself should not have been made and prayed for closure of the same holding the case to be not maintainable.
6. After hearing the parties, the labour Court finally answered the reference in the negative holding that firstly the petitioner has not been able to adduce sufficient evidence to show that he was appointed as a Driver and worked between 1995 to 2000. Secondly, the Court below also reached to the conclusion that considering the nature of work primarily carried out by the department, it does not appear to be an Industry as defined under provisions of Industrial Disputes Act. Leading to the filing of the present writ petition.
7. The contention of the counsel for the petitioner is that in the light of then landmark judgment of the Hon'ble Supreme Court in the case of **“Banglore Water Resource and Sewerage Board Vs. A.**

Rajappa and Others” (1978) 2 SCC 213. The respondents would fall within the definition of “Industry” under the provisions of I.D. Act and the instant case falls within the ambit of Industrial Disputes. Thus the finding of the labour Court is therefore contrary to law and also contrary to the judgment of the Supreme Court. Thus, matter deserves to be remitted back on this count on merits. The contention of the petitioner is that there is a categorical finding by the labour Court of the fact being undisputed that petitioner has infact worked with the respondent between 1995 to 2000. It was also the contention of the petitioner that evidence before the labour Court would reveal that before discontinuance of the petitioner the petitioner was not issued with any notice nor was any retrenchment compensation paid to him.

8. The petitioner also contended that the discontinuance of the services of the petitioner was apparently illegal as it was in blatant violation of the principles of natural justice. It was also in total violation of the provision of the Industrial Disputes Act inasmuch as before discontinuing, none of the provisions as is required under Chapter-V of the ID Act was complied with. Thus, prayed for the setting aside of the award and directing the respondents for reinstating the petitioner with all the consequential benefits.
9. The Counsel for the Respondents on the other hand, opposing the petition submits that status of the petitioner all along was that of a daily wager employee and he was engaged as and when there was requirement to work and as such there was no indefeasible right

created in favour of the petitioner calling for an interference of the award.

10. It was further the contention of the State Counsel that since the petitioner was not a regular employee, the petitioner would not have got the advantage of the provisions of the I.D. Act while being discontinued from service.
11. It was further contention of the Respondents/State that the services of the petitioner was attached to the Mining Department of the State Government, which as such is not a commercial establishment and, therefore, the dispute raised by the petitioner is not one which could be entertained under the provisions of the Industrial Dispute Act. That since the respondent establishment would not fall within the ambit of an "Industry" as per I.D. Act, the reference itself was bad and the finding of the Labour Court therefore was proper and legal.
12. The contention of the State Counsel was also that the worker in the instant case has failed to establish his case by leading cogent, strong and documentary evidence firstly, establishing his employment and secondly establishing the fact that he had continuously worked for a period of more than 240 days and for all these reasons, the respondents prayed for rejection of the writ petition.
13. Having heard the contentions put forth on either side and on perusal of record, it would be relevant first to decide the issue, whether the respondent-department is an industry or not? Without making a detailed discussion on the issue, this Court is of the opinion that since as on date the judgment of the Supreme Court in

the case “Bangaluru Water Supply and Sewerage Board” (supra) still holds the field under which the respondent establishment would fall within the ambit of an industry and the dispute raised by petitioner also being an industrial dispute, the dispute was properly raised and the provisions of Industrial Disputes Act would be applicable on the respondents. That, there were a couple of judgments of the Supreme Court passed taking a different view which later on has been placed before the Supreme Court for the constitution of a larger bench to decide the dispute and the decision of constitution or the larger bench on the issue is still pending. This means that as long as the judgment in the case of “Bangluru Water Supply and Sewerage Board” (supra) is not set-aside/quashed or held to be bad-in-law by the Supreme Court, the disputes under Industrial Disputes Act can be raised against such establishment of the Government.

14. A similar view has also been taken by this High Court in the case of “Devraj Gupta & Ors. v. State of Chhattisgarh & Ors.” (2015) 3 CGLJ 82. Thus, the finding of the Labour Court holding that the respondent/establishment is not an Industry under the Industrial Dispute Act is as of now.
15. So far as the issue whether the termination was proper, legal and justified or not, one has to look that the evidence that has been brought on record on the part of the petitioner. The petitioner led evidence stating that he was working with the respondents as a daily wage employee since 1995 and continued to work uninterruptedly till 2000 when the services of the petitioner was

discontinued. The petitioner immediately, raised the dispute and the matter stood referred to the Labour Court. Before the Labour Court the worker had examined himself and reiterated the contentions that he had raised in his claim, so far as his being engaged by the respondents and he having worked for about 5 years time.

16. The worker also made a statement before the Labour Court and has enclosed certain documents marked as Annexure P-1 to P-13 to prove his employment. On the contrary, no witnesses were examined on behalf of the Government. Thus, except for the pleadings that the State had raised in their written statement, there was no evidence to rebut the contentions. To further strengthen the case of the petitioner, if we take into consideration the pleadings of the respondent/department, it would reveal that they have accepted the fact that the petitioner has been engaged intermittently, subject to the availability of work. However, the respondents have not adduced any evidence in support of their contentions and objections that they have raised. In the absence of which it has to be presumed that the petitioner has in fact established his case, as far as his engagement with the respondents between 1995 to 2000 is concerned. It is also undisputed that before discontinuing the petitioner, he was not paid any compensation whatsoever neither was he issued with any show cause. All these clearly forces this Court to hold that the discontinuance is bad-in-law, illegal and violative of the Chapter-V of the I.D. Act.
17. Now, coming to the conclusion that the discontinuance being bad in law and being set-aside by this Court, what could be the relief that

could be granted to the petitioner. That under the normal consequence, once this Court reaches to the conclusion that discontinuance from service is illegal and bad-in-law, the petitioner or an employee has to be deemed to have been reinstated in service with consequential relief. However, what has to be seen is that from the date of discontinuance i.e. from 2000 onwards till date i.e. for a period of almost 20 years, the petitioner is out of employment. Moreover the total number of years the worker has worked during the period from 1995 to 2000, is only about 5 years, the petitioner has remained out of employment by now for a period of about 2 decades and at this juncture, granting the relief of reinstatement would not be justified.

18. Given the aforesaid factual matrix of the case what requires consideration at this juncture is whether it would be advisable, fruitful and practical directing the State Government to now after a period of more than 20 years take the employee back in service. True it is that the Hon'ble Supreme Court in the past has been holding that once when the termination is held to be bad in law, the automatic consequence of that is the entitlement of reinstatement with all consequential benefits. But of late, the Hon'ble Supreme Court has been of the view that the granting of reinstatement should be only after taking into consideration the entire factual matrix of the case and in a given factual scenario. If the Court finds the reinstatement part to be not very advisable, it can mold the relief to the extent of granting compensation in lieu of reinstatement. At this juncture, it would be relevant to refer to the judgment of the Hon'ble Supreme Court recently decided in the case of "***District***

Development Officer & Anr. v. Satish Kantilal Amrelia” decided on 28.11.2017 in Civil Appeal Nos. 19857 and 19858 of 2017 in paragraphs No. 13 to 16 has held as under:

“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)*.”

19. It would also be relevant at this juncture to refer to the judgment of the Hon’ble Supreme Court in the case of “*Hari Nandan Prasad & Anr. v. Employer I/R to Management of Food Corporation of India & Anr.*” 2014(7) SCC 190 wherein in paragraphs No. 19 & 20 dealing on the issue, the Hon’ble Supreme Court has held as under:-

“19. Following passage from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement:

“29. The learned Counsel for the Appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In the case of *BSNL v. Man Singh* (2012) 1 SCC 558, 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 and Anr. v. Shankar Shetty* (2010) 9 SCC 126, 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*, this trend was reiterated by referring to various judgments, as is clear from the following discussion:

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 Mktd. 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 Department 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, SCC pp. 330 & 335 paras 7 & 14).

7. 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.

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, 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 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.

20. Taking note of the judgments referred to in the aforesaid paragraphs and also few more cases in other portion of the said judgment, the legal position was summed up in the following manner:

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. 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 regularization (See: *State of Karnataka v. 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.”

20. A similar view has also been taken by the Hon'ble Supreme Court in the case of *“Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited”* 2014 (11) SCC 85.
21. Coming to the various judgments which have been relied upon by the counsel for the worker, if we go through the contents of these judgments, there is no quarrel so far as the ratio or the principles that have been laid down in all these judgments and which still hold good. However what cannot be brushed aside is the fact that there

has been shift from the earlier position that was taken by the Hon'ble Supreme Court and that is the power which has now been given to the Labour Courts and even to the High Courts to see whether it would be equitable at this juncture to order for a reinstatement in service in the factual backdrop of each case. Particularly, the judgments, which have been laid down by the Hon'ble Supreme Court after the decision rendered by it in "***Bharat Sanchar Nigam Limited v. Bhurumal***" 2014(7) SCC 177 and which has further been reiterated time and again, which recently now stands also reiterated in the case of "***Satish Kantilal Amrelia***" (supra).

22. Under the aforesaid factual matrix of the case and also taking note of the judgment referred to in the preceding paragraphs, when we peruse the facts of the instant case, it would reveal that the petitioner had only worked for a period of 5 years and for the last 20 years he was out of employment. Thus, for the aforesaid reasons, it is a fit case where the order of reinstatement would not be equitable or justified at this point of time. This Court also does not have any hesitation in holding that in the given facts, it would not fall within the exceptional circumstances entailing reinstatement, considering it to be an exceptional circumstances which were envisaged by the Supreme Court while deciding the case of Bharat Sanchar Nigam Limited (Supra).
23. Thus, this Court finds that it is a fit case, where the worker could be awarded compensation in lieu of reinstatement as full and final settlement of his claim, keeping in view the ratio laid down by the

Hon'ble Supreme Court in its judgment staring from "Bharat Sanchar Nigam Limited" (supra) and which stood reiterated right up till the judgment in the case of "Satish Kantilal Amrelia" (supra). This Court considering the entire facts and circumstances of the case, order that the worker would be entitled for an amount of Rs. 40,000/- for each years of service that he has rendered with the State Government i.e. for 5 years and for which, the worker would be entitled for a total amount of Rs. 2,00,000/- as compensation in lieu of reinstatement as full and final settlement.

24. Accordingly, the present Writ Petition stands partly allowed to the extent that the award of the Labour Court stands set-aside and discontinuance of the petitioner has been held to be illegal termination and the petitioner, however, in lieu of reinstatement is being awarded compensation to the tune of Rs. 2 lacs as full and final settlement.
25. The State is directed to ensure that the compensation part is paid to the worker without any further delay within a period of 60 days from the date of receipt of the Certified Copy of this Order.

Sd/-
(P. Sam Koshy)
Judge