

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL. No. 849 OF 2009**

Gopal Manikpuri S/o Gyan Das Manikpuri, Aged about 42 years c/o Shri Chautaram Sahu, Lane No.5, Azad Chowk, kasardihi Durg distt.-Durg Chhattisgarh

---- Petitioner

Versus

1. Chhattisgarh Infrastructure Development Corporation Shastri Chowk, Raipur, Chhattisgarh, Through Its Managing Director.
2. Depot Manager Chhattisgarh Infrastructure Development Corporation, Bus Stand, Durg, Chhattisgarh.

---- Respondent

WPL No. 845 of 2009

Akbar Hussain S/o Late Shri Makbool Hussain, Aged About 40 Years R/o Village Banbarat, Teenbathhi Chowk, Ward No.17, Nandini, Post Office Nandini, District Durg, Chhattisgarh

---- Petitioner

Versus

1. Chhattisgarh Infrastructure Development Corporation Shastri Chowk, Raipur, Chhattisgarh, Through Its Managing Director.
2. Depot Manager Chhattisgarh Infrastructure Development Corporation, Bus Stand, Durg, Chhattisgarh

---- Respondent

WPL No. 851 of 2009

1. Ram Kumar Sahu S/o Bondhu Ram Sahu, Aged about 48 years R/o Ward No.7, Village Ahiwara, Post Ahiwara, Durg District Durg.

---- Petitioner

Versus

1. Chhattisgarh Infrastructure Development Corporation Shastri Chowk, Raipur, Chhattisgarh, Through Its Managing Director
2. Depot Manager Chhattisgarh Infrastructure Development Corporation, Bus Stand, Durg, Chhattisgarh.

---- Respondent

WPL No. 852 of 2009

Balram Soni S/o Baijnath Soni Aged About 42 Years R/o Near Laxmi Narayan Mandir, Polsai Para, Durg, District Durg, Chhattisgarh, Chhattisgarh

---- Petitioner

Versus

1. Chhattisgarh Infrastructure Development Corporation Shastri Chowk, Raipur, Chhattisgarh, through Its Managing Director.
2. Depot Manager Chhattisgarh Infrastructure Development Corporation, Bus Stand, Durg, Chhattisgarh

---- Respondent

WPL No. 853 of 2009

Fakiralal S/o Shri Jaipal, Aged about 42 years R/o House No.306 Near Maharaj Lakdi Tall, Ward No.6, Post-Ahiwara, Distt.-Durg

---- Petitioner

Versus

1. Chhattisgarh Infrastructure Development Corporation Shastri Chowk, Raipur, Chhattisgarh, Through Its Managing Director.,
2. Depot Manager Chhattisgarh Infrastructure Development Corporation, Bus Stand, Durg, Chhattisgarh., District : Durg, Chhattisgarh

---Respondent(s)

For Petitioner	:	Mr. B.D. Guru along with Mr. Sanjay Patel Advocates.
For Respondents	:	Mr. Syed Majid Ali, Adv.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14.10.2019

1. The Challenge in all these writ petitions is to the order passed by the Industrial Court, Bench at Raipur dated 06.01.2009 in a bunch of Appeals preferred by the Petitioners as well as by the respondents No. 2 & 3-Corporations. Vide the impugned order, the Industrial Court has set aside the order passed by the Labour Court granting relief of reinstatement without back wages and hold that they are not entitled for any relief.
2. Brief facts of the case is that, the petitioners who were employee/worker before the Labour Court admittedly were working as Drivers under the respondents No. 2 & 3 corporation which was early known as Madhya Pradesh State Road Transport Corporation (In short, MPSRTC). The petitioners were engaged during the period 1995-1996. They continued to discharge their duty till 31.12.2002. Thereafter, the services of the petitioners were abruptly discontinued allegedly on the ground that the respondents-corporation did not

intend to operate in the State of C.G. as they have taken a decision not to have State Road Transport Corporation in the State of Chhattisgarh and thereby the operations of the Madhya Pradesh State Road Transport Corporation which fell within the territories in the State of Chhattisgarh were closed.

3. The petitioners initially had filed a Writ Petition i.e. WP No. 602/2003 which was got disposed of vide order dated 27.01.2004 directing the respondents-Corporation to consider the case of each of the petitioners and to pass a fresh order so far as their claim for reinstatement is concerned. The authorities concerned after due consideration on the claim of the petitioners, vide its order dated 24.04.2004 have rejected the claim of the petitioners.
4. This order was subjected to challenge before the Labour Court by each of the petitioners vide the proceedings drawn under section 31 (3) read with section 61 of the Chhattisgarh Industrial Relations Act, 1960 (in short, the Act, 1960). The Cases were registered before Labour Court as case Nos. 97/CGIR Act/Civil/2004, 105/CGIR Act/Civil /2004, 96/ CGIR Act/Civil/2004, 108/CGIR Act/ Civil 2004 and 107/CGIR Act/Civil/2004. After the pleadings and evidences were complete the Labour Court vide award dated 20.12.2007 allowed the claim application of the petitioners and set aside the order dated 24.04.2004 holding the termination or discontinuance of the services of the petitioners to be bad in law and thereby awarded the relief of reinstatement without back wages.

5. The order of the Labour Court dated 20.12.2007 in respect of each of the petitioners were subjected to challenge by either side before the Industrial Court. The petitioners claimed for the relief of full back wages whereas, the Corporation challenged the order of reinstatement.
6. The appeals preferred by either side before Industrial Court were registered as Civil Appeal Nos. 09/CGIR Act/A/11/2008, 10/CGIR Act/A/11/2008, 08/CGIR Act/A/11/2008, 11/CGIR Act/A/11/2008 and 13/CGIR Act/A/11/2008. The Industrial Court subsequently vide order dated 06.01.2009 reversed the order of the Labour Court and further held that the petitioners are not entitled for any relief. At the same time, the Industrial Court had also rejected the appeals preferred by the petitioners claiming back wages. It is these orders passed by the Industrial Court which are under challenge in this bunch of writ petitions.
7. The contention of the petitioners in assailing the same is that, the only ground of challenge for reversing the order of the Labour Court is that the petitioners had failed to prove that they had worked for 240 days in one calendar year till 31.12.2002. The contention of the petitioners is that there were sufficient evidences led by the petitioners before the Labour Court and which also stood substantiated by the evidences of the Management-Corporation themselves and therefore, there was hardly any scope left for the Industrial Court to interfere with finding of facts.

8. The Further contention of the petitioners is that admittedly the petitioners were working under the respondents for a considerable period of time as Drivers and their services were abruptly discontinued. While discontinuing of the services, the petitioners were not paid any retrenchment compensation as was supposed to be paid by the respondent-corporation at the time of retrenchment of their service. These aspects were not properly appreciated by the Industrial Court reversing the order of the Labour Court.
9. Counsel appearing for the respondent-Corporation, however, opposing the petitions submits that the order of the Industrial Court is proper, legal and justified as would be evident from the findings given by the Industrial Court. Since the substantive status of the petitioners were that of a Badli worker, they did not have any indefeasible right for continuing. The moment the corporation was closed down by a policy decision of the State Government, their services were no longer required. Therefore, the order of the Industrial Court does not warrant any interference.
10. The further contention of the Corporation is that, admittedly the Corporation did not operate its transport wing any further in the State of Chhattisgarh. The petitioners substantially being Badli workers as Drivers, the requirement of work was not available to them any further and the Corporation had no other option, but to discontinue them.
11. The further contention of the corporation is that since the petitioners were Badli workers, the requirement of retrenchment

compensation while discontinuing their services was not required. In support of his contention, Learned Counsel for the corporation refers a judgment of the Supreme Court in the case of **Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Another (2005) 3 SCC 409** thus prayed for rejection of all the writ petitions.

12. Having heard the contention put forth on either side and on perusal of records, the facts which are undisputed from the evidence and pleadings are that;

1. All the petitioners admittedly were working as Drivers under the respondent-corporation,
2. Three of the petitioners were engaged in the year 1996, two petitioners were engaged in the year 1995 and all the petitioners had continuously worked till 31.12.2002.
3. All the petitioners were abruptly discontinued from service after 31.12.2002.
4. No retrenchment compensation, any compensation or a show-cause notice etc. were issued to the petitioner before they were discontinued, neither was the services of any of the petitioners discontinued for unsatisfactory work.

13. So far as evidences which had come before the Labour Court is concerned, what is again reflected from the records is that, all the petitioners had entered appearance before the Labour Court and had given deposition of having worked with the corporation uninterruptedly between 1995/1996 to 2002. Further deposition of these petitioners were that, they were not working as Badli

workers, but were working as regular employees and that there was never any occasion where the services of the petitioners were engaged in place of some persons who were absent, rather the petitioners were given regular work. Another fact which is evident from the pleadings is that, the witnesses brought in by the management i.e. the respondent-corporation before the Labour Court, in their cross examination had admitted engagement/employment of the petitioners. They have also admitted the fact that the petitioners were in continuous employment before they were discontinued. They have also admitted that there was no break in services of the petitioners while they were working with the respondents. The management witness also admitted the fact that they were paid monthly wages regularly and paid the salary of basic pay plus DA and all other admissible wages that were paid to a regular Driver of the respondent-corporation. It was also admitted by the management witnesses that monthly due chart of the petitioners were also maintained. The fact which has also come before in the evidences and pleadings is that the services of the petitioners were discontinued on account of closure of MPSRTC by the State Government of Chhattisgarh as a policy decision.

- 14.** Thus, from the aforesaid facts admittedly the factual position admissible is that, the petitioners had worked with the respondent corporation for a period of 6/7 years and they were not paid any compensation before their services were discontinued or retrenched.
- 15.** The definition of any employee in the Act, 1960 clearly envisages that any employee engaged by the management for hire or reward

would fall within the definition of any employee and for such persons if their services were to be discontinued, the proceedings Chapter-V of I.A. Act, 1947 would be automatically applicable irrespective of the status of the designation or nomenclature of the category to which the petitioners were working. This fact had been duly considered by the Labour Court while allowing the claim application of the workers vide its order dated 20.12.2007. To reverse the order of the Labour Court by the Industrial Court, there does not seem to be any strong material available for the Industrial Court, except for vague and bald averments that there is no sufficient proof of the petitioners having worked for 240 days in one calendar year before their services were discontinued. These findings of the Industrial Court is without any cogent evidence. On the contrary, the evidence discussed in the award of the Labour Court clearly reflects admission on the part of the witnesses examined on behalf of the respondent-corporation i.e. Depot Manager Shri G.L. Gokhle and Bill Assistant Shri Lakhanlal Mahobia.

16. Given the said facts and circumstances of the case, the findings of Industrial Court apparently is not sustainable and the same deserves to be and is accordingly set aside.

17. Supreme Court in the case of Divisional Manager, New India Assurance Company Limited Vs. A. Sankaralingam (2008) 10 SCC 698 in paragraphs No. 14 to 18 has held as under:-

“14 It will be seen from a perusal of the aforequoted passages that the observations made therein clearly suggest that a workman employed on a part-time basis but under the control and supervision of an employer is a workman in terms of Section 2(s) of the Act, and is

entitled to claim the protection of section 25-F thereof, should the need so arise. The fact that the workman was working under the control and supervision of the appellant employer is admitted on all sides. We also find that the preponderance of judicial opinion in the High Courts is also to this effect. As a sample we reproduce passages from two such judgments.

15. A Division Bench of the Punjab and Haryana High Court in Simla Devi case has observed as under: (LLj p. 789, para 4)

“4. A Plain reading of the definition of 'workman' does not exclude the part-time workmen from the definition of 'workman'. Such exclusion cannot be read into it ipso facto, except if it is expressly provided or implied that no other interpretation is possible, which is not the case in the case in hand. We find support for our view from the observations made by the Supreme Court in Birdhichand Sharma V. Civil Judge⁴ wherein the Supreme Court in the facts and circumstances of the case, found that the workers even doing the job at their home are still workmen. Thus, we are of the considered view that a part-time workman shall fall within the definition of 'workman' and the finding returned by the Labour Court that a part-time worker is not a workman, cannot be sustained. We may hasten to add that nothing has been pointed out that on any principle of equity, justice, good conscience or the technical interpretation of the definition of workman that a part-time workman cannot be termed as a workman is unknown to the industrial world”.

16. Like wise, in Telecom case¹¹ it has been observed thus : (Lab IC pp. 2129-30, para 11)

“11. The definition of workman as given in the Act does not make any distinction between full-time employee and part-time employee. It does not lay down that only a person employed for full-time will be said to be a workman and that the one who is employed for part-time should not be taken as a workman. What is required is that the person should be employed for hire to discharge the work manual, skilled or unskilled, etc. in any industry. If this test is fulfilled, a part-time employee can also be said to be a 'workman'. Now, if this test is applied to the present case, it can very well be said that Respondent 1, who was appointed as a part-time sweeper and was required to do manual and unskilled work is a 'workman' within the meaning assigned to the said terms in the Act and as he worked for more than 240 days in a year, the provisions of Section 25-F of the Act are applicable to the case in hand and as neither any notice, as

contemplated under Section 25-F of the Act, was served upon Respondent 1 nor was he paid compensation in lieu of the said notice, nor was paid retrenchment compensation, it cannot be said that the provisions of Section 25-F of the Act were duly complied with. It has been time and again held by this Court as well as by the Apex Court that the non-compliance with the mandatory provisions of Section 25-F of the Act would render the termination of service void ab initio. I am fortified in this view by a decision of the Apex Court in Mohan Lal V. Bharat Electronics Ltd¹⁴.”

17. Similar views have been expressed in two Single Bench decisions of the Delhi High Court, Coal India Ltd.¹² and Kailash Chand Saigal¹³, by a Single Judge of the Gujarat High Court in Govindbhai case⁶ and a Division Bench of the Rajasthan High Court in Yashwant Singh Yadav case⁷. We are in respectful agreement with these opinions as well.

18. The question as to whether a part-time workman would be covered within the definition of Section 2(s) of the Act and whether he would be entitled to the benefit of continuous service under Section 25-B and the benefit of Section 25-F, is answered in favour of the respondent workman. The appeal is accordingly dismissed.”

18. The issue now left is as to what relief can be granted to the petitioners at this juncture. It is factually established that the petitioners have not worked beyond 2002 i.e. for last about 17 years the petitioners are out of employment. It is also true that the petitioners have worked for a period of 6 to 7 years before they were discontinued.

19. Another fact, which can not be lost sight is that the respondent-corporation are not carrying with the transport business any further and as such they do not have vehicles which could be operated by the petitioners. Under the circumstances, what has to be seen is that whether the relief of reinstatement can be granted to the petitioners in the present bunch of writ petitions.

20. Recently, this Court in WPL 7745 of 2007 and other connected writ petitions, decided on 27.10.2018, under similar circumstances discussing on the issue whether the reinstatement would be justified or not in paragraph 15 onwards had discussed the various judicial pronouncement laid down by the Supreme Court in this regard. For ready reference the relevant portion of the said judgment reads as under:-

“15. 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 28 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)."

16. 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 held as under:-*

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."*

17. 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.

18. 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 a slight 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).

19. Under the aforesaid factual matrix of the present case and also taking note of the judgments discussed in the preceding

paragraphs, this Court is of the opinion that since as enumerated earlier, the worker has in fact physically worked with the department only for a period of about 4 years between 1990 to 1994 and from 1994 till date i.e. 2018 he has not physically worked with the department, as he has been paid the last wage drawn without reinstatement after the award of the Labour Court till date. This Court has no hesitation in reaching to the conclusion that so far as the finding of the Labour Court holding the termination to be bad in law on account of non-compliance of mandatory provisions of Section 25 of the Industrial Disputes Act does not warrant interference and the same stands affirmed. However for the reasons, which emerged from the discussions made in the preceding paragraphs and the fact that the worker is out of employment for a period of now over 24 years, it is a fit case where the order of reinstatement would not be equitable or justified at this point of time and this Court also does not have any hesitation in holding that in the given facts it would not fall under any of those exceptional circumstances entailing reinstatement considering it to be an exceptional circumstances, which were envisaged by the Hon'ble Supreme Court while deciding in the case of "Bharat Sanchar Nigam Limited" (supra).

- 21.** Given the aforesaid judicial pronouncement of the Supreme Court as discussed in the preceding paragraphs and factual matrix of the case where the petitioners in the instant case have worked 6 to 7 years and for last more than 17 years they have been out of employment, coupled with the fact that the respondent-corporation is not carrying transportation work, it would not be proper to grant relief of reinstatement to the petitioners at this juncture. However, since the order of termination is apparently bad, this Court is of the opinion that awarding of lum sum compensation in lieu of reinstatement as full of final settlement of the claim would be a justified order that could be passed in favour of the petitioners.

22. Considering the entire aforesaid factual matrix of the case, this Court is of the opinion that each petitioners should be compensated by paying an amount of Rs. 40,000/- (forty thousand only) for each years of services rendered by them i.e. for the petitioners in WPL Nos. 849/2009, 851/2009 and 853/2009, they shall be entitled for Rs. 40,000/- per year for 6 years service that they have worked amounting Rs. 2,40,000/- as lump-sum compensation. So far as WPL No. 852/2009 and 845/2009 is concerned, the petitioners would be entitled for Rs.40,000/- per year as compensation for 7 years service that they have rendered i.e. Rs. 2,80,000/- to each of the petitioners.

23. Accordingly, all these writ petitions stand partly allowed. The respondent-corporation is directed to ensure that the amount of compensation is paid to the petitioners at the earliest preferably within a period of 4 months from the date of receipt of copy of this order.

Sd/-

(P. Sam Koshy)
Judge