

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 62 of 2014**

1. State of Chhattisgarh, through: the Secretary, Department of Water Resources, Mahanadi Bhawan, Capital Complex, Naya Mantralaya, Raipur, Chhattisgarh
2. The Chief Engineer, Research, Irrigation Building, G.E. Road, Raipur, Chhattisgarh
3. The Director, Hydrometeorology, Irrigation Building, Raipur, Chhattisgarh
4. The Dy. Director, Hydrometeorology, Division No.4, Irrigation Colony, Shantinagar, Raipur, Chhattisgarh

---- Petitioners**Versus**

Kamlesh Kumar Chandrakar, Aged about 30 years, S/o. Shri Nakul Prasad Chandrakar, R/o. Village Badaha, Post Beldar Seoni, Tahsil Tilda, District Raipur, Chhattisgarh

----Respondent

For Petitioners/State	:	Mr. Jitendra Pali, Dy. A.G. Mr. Rahul Mishra, Dy. G.A.
For Respondent/worker	:	Mr. Sudeep Johri, Advocate Mr. J.K. Gupta, Advocate Mr. Syed Ishhadil Ali, Advocate

AND**WPS No. 8214 of 2018**

Kamlesh Kumar Chandrakar, Aged about 48 years, S/o. Shri Nakul Prasad Chandrakar, R/o. Village Badha, Post Beldarseoni, Tahsil Tilda, District Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through The Secretary, Department Of Water Resources, Capital Complex, New Raipur, Raipur (Chhattisgarh)
2. Water Resources Department, Through Director, Jal Mausam Vigyan, Sinchai Bhawan, Raipur District Raipur Chhattisgarh
3. Deputy Director, Jal Mausam Vigyan, Division No. 4, Sinchai Colony, Shanti Nagar, Raipur, District Raipur Chhattisgarh.

----Respondents

For Petitioner/worker	:	Mr. Sudeep Johri, Advocate Mr. J.K. Gupta, Advocate Mr. Syed Ishhadil Ali, Advocate
For Respondents/State	:	Mr. Jitendra Pali, Dy. A.G. Mr. Rahul Mishra, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

16/01/2019

1. These are two writ petitions between same parties and where the relief sought for in one case is dependent upon the outcome of the second case, therefore this Court proceeds to decide both these writ petitions by a common order.
2. The WPL No. 62/2014 is a petition filed by the State/petitioners challenging an award of the Labour Court dated 31.12.2013, whereby the Labour Court has granted the relief of reinstatement without back-wages.
3. The WPS No. 8214 of 2018 is a petition, whereby the petitioner/worker- Kamlesh Kumar Chandrakar, who is the respondent-worker in WPL No. 62/2014, has sought for a relief in the nature of a direction to the respondents/State to consider the case of the petitioner/worker for regularization.
4. Vide the said impugned award, the Labour Court in Case No. 4/I.D.Act/2011/Reference has passed an award holding that the discontinuance of employment of the worker/respondent- Kamlesh Kumar Chandrakar was bad in law and illegal and therefore granted the relief of reinstatement without back wages.
5. The brief facts relevant for adjudication of the present case is that the respondent/worker was engaged by the petitioners/State as a daily wage employee against the vacant post of Chowkidar on 30.06.1990.

The said employment continued up till 31.01.2000, and from 31.01.2000 onwards, the services of the worker was retrenched by the petitioners.

6. The discontinuance was challenged by the worker by raising an industrial dispute under the Industrial Disputes Act before the appropriate government and the government in turn made a reference to the Labour Court, Raipur for adjudication of the terms of reference “whether the termination of service of the worker by the State was legal and justified, and if not to what relief he is entitled for”.
7. The worker in support of his contention has got himself examined and in the course of evidence, he has made a statement that before discontinuing the worker from service, he was not granted any retrenchment compensation. It was further contended by the worker that he was engaged on 30.06.1990 on daily wage basis and he was asked to discharge the duties of as a Gauze-Reader, which was a sanctioned vacant post. It was also the contention of the worker that right from June, 1990, the respondent/worker continuously worked up till 31.01.2000, when his services were abruptly discontinued. According to the respondent/worker, at the time of his retirement instead of one month's notice, the petitioners had paid him one month of salary in lieu of notice by way of bank draft and so far as the retrenchment compensation part was concerned, the Department intimated the respondent/worker that the same shall be paid to the respondent/worker in around 15 days' time and which ultimately was paid to the respondent/worker by directly depositing in the bank account of the respondent/worker on 17.02.2000. It was further the

contention of the respondent/worker that subsequent to the retrenchment of the respondent, the petitioners had engaged many people in the Department on daily wage basis.

8. In response to the evidence of the worker/respondent, the petitioner/employer led the evidence of one Rajesh Kumar Sharma, who in his evidence has clearly admitted the employment of the respondent/worker between 30.06.1990 to 31.01.2000. He also admitted the fact that the respondent was discharging the duties of a Chowkidar on daily wage basis and that he was discontinued at the instance of the order passed by the State Government. The said witness had admitted the fact that the respondent/worker was not paid retrenchment compensation, while discontinuing his services and that the same was paid to the respondent/employee after about 15-16 days.
9. Coming to the contentions put forth by the parties, what has to be seen is that the State/petitioners challenging the impugned order submitted that the findings of the Labour Court was not proper, legal and justified, as the Labour Court has not properly appreciated the evidence led by the Department. According to the State counsel, the witness on behalf of the management had clearly stated before the Labour Court that while discontinuing the services of the respondent/worker, he was paid one month of salary in lieu of notice and in addition, he has also been paid the retrenchment compensation, therefore there is no illegality on the action of discontinuing the respondent/worker from employment. It was further the contention of the petitioners/State that even otherwise the respondent/worker does not have any indefeasible right attached as the respondent substantially was an employee on daily wage basis,

whose services gets automatically discontinued after the days work. According to the State/petitioners, the Labour Court has not properly appreciated these facts and has passed an order in a mechanical manner and thus prayed for setting aside of the said order.

10. Per contra, the counsel for the respondent/worker opposing the petition submits that the order passed by the Labour Court is a well reasoned speaking order with no ambiguity whatsoever and therefore the writ petition deserves to be rejected. It was the contention of the counsel for the respondent that the Labour Court in fact has threadbare considered the evidence led by either side and has also referred to the statutory provisions, which have been said to be violated at the time of retrenchment of the respondent/worker.
11. Having heard the contentions put forth on either side and on perusal of record, what has to be seen at this juncture is “whether the order passed by the Labour Court is in any manner contrary to the evidence, come on record” or “whether the findings is in any manner perverse”.
12. One should not forget the fact that the present writ petition is one under Articles 226 & 227 of the Constitution of India and this Court in exercise of its writ jurisdiction would not sit as an Appellate Court over the judgment of the Labour Court or Industrial Tribunal under the power of judicial review under Article 226 of the Constitution of India. This Court would only consider the decision making process and not the decision itself.
13. A bare perusal of the impugned award would clearly reflect that the order passed by the learned Labour Court is a well considered

reasoned and speaking order. The Labour Court in fact has considered all the contentions put forth and has discussed the evidence, which was adduced by either side and has then reached to a conclusion referring to the statutory provisions involved in the case.

14. It is settled position of law that the power of this Court is very limited while examining the legality and validity of the award passed by the Labour Court. The Hon'ble Supreme Court in the case of “**Indian Overseas Bank v. I.O.B. Staff Canteen Workers Union & Anr.**”, reported in **2000 SCC (L&S) 471** has held that while exercising the power under Articles 226 & 227 of the Constitution of India, it is impermissible under Article 226 of the Constitution of India to interfere with pure finding of fact or re-appreciation of the evidence. According to the Hon'ble Supreme Court, the High Court does not exercise the appellate jurisdiction under Article 226 of the Constitution of India, even if another view is possible, even then the High Court cannot substitute its decision.
15. Again in the case of “**Sugarbai M. Siddiq And Ors v. Ramesh S. Hankare (D) By Lrs.**”, reported in **2001(8) SCC 477** the Hon'ble Supreme Court has dealing with an award passed by the Labour Court has held that the scope of High Court is concerned, not with the decision of the Labour Court/Tribunal, but the decision making process. All that the High Court has to ascertain is whether the Court below had jurisdiction to deal with the matter, and whether the issue in question stands vitiated for any procedural irregularity only then can the High Court interfere with the findings of the Labour Court and not otherwise.

16. Keeping all these facts into consideration and on perusal of the impugned award, this Court does not find any infirmity in the order of the Labour Court, either in appreciating the evidence or in reaching to the conclusion and the same is a well reasoned speaking order with no scope of interference in exercise of the writ jurisdiction of this Court.
17. At this juncture, the counsel for the State submits that in the instant case, the respondent/worker has not been reinstated in service by the State, but is being paid the last wage drawn in compliance of the provisions of Section 17-B of the Industrial Disputes Act. Therefore, from the facts it would reveal that right from February, 2000 onwards, the respondent/worker is out of employment and at this juncture reinstating the respondent/worker back in service would not be justified.
18. Given the aforesaid submissions by the State counsel that the worker has not been reinstated, but instead the Department has been paying last wage drawn from the time the award is under challenged before this Court, would show that the respondent/worker is out of employment from the time of discontinuance, that was w.e.f. 31.01.2000 and as such by now the respondent/worker has remained out of employment for a period of about 19 years.
19. In para 17 of **(2014) 7 Supreme Court Cases, 190 (Hari Nandan Prasad and Another v. Employer I/R to Management of Food Corporation of India & Another)**, it has been held as under:-

“17.....At the time of their disengagement even when they had continuous service for more than 240 days (in fact about 3 years) they were not given any notice or pay in lieu of notice as well as retrenchment compensation. Thus, the mandatory precondition of

retrenchment I paying the aforesaid dues in accordance with Section 25-F of the ID Act was not complied with. That is sufficient to render the termination as illegal. Even the High Court in the impugned judgment has accepted this position and there was no quarrel on this aspect before us as well.....”

Applying the same analogy and again reiterating the same in the case of **(2014) 7 Supreme Court Cases 177 (Bharat Sanchar Nigam Limited vs. Bhurumal)**, it has been held in paragraph- 27 as under:-

“27.....In any case, the award is passed on the basis that the respondent had worked for 240 days in the preceding 12 months’ period prior to his termination and therefore it is a clear case of violation of Section 25-F of the Industrial Disputes Act. The termination is, thus, rightly held to be illegal. We do not find any perversity in this outcome.”

20. This Court therefore 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.
21. 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 19 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 reinstatement 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)**.”*

22. 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.*

23. 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.

24. 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).
25. 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 3 years between 1990 to January, 2000 and from February, 2000 till date i.e. 2018 he has not physically worked with the department, as he has been paid the last wage drawn without reinstatement even after the award of the Labour Court till date. 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 19 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).

26. 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 line with the ratio laid down by the Hon'ble Supreme Court in its judgment starting 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 orders that the worker would be entitled for an amount of Rs.3 lacs as a lump sum monetary compensation in lieu of reinstatement in service as full and final settlement of award.
27. Accordingly, the present writ petition filed by the State Government stands partly allowed to the extent that the award of the Labour Court stands modified in terms of the observations and directives given in the previous paragraphs.
28. So far as the WPS No. 8214 of 2018 filed by the worker- Kamlesh Kumar Chandrakar claiming regularization is concerned, this Court is of the opinion that since the writ petition filed by the State challenging the order of the Labour Court dated 31.12.2013 has been partly allowed to the extent that the order of reinstatement has been modified by

ordering payment of a lump-sum compensation and also considering the fact that the worker involved in the dispute i.e. Kamlesh Kumar Chandrakar is out of employment for the last 19 years except for the fact that he has been receiving last wage drawn in compliance of Section 17-B of the Industrial Disputes Act, the relief of reinstatement was not found by this Court to be justified and accordingly the writ petition, which the worker- Kamlesh Kumar Chandrakar has filed, also cannot be decided in favour of the employee as the relief of regularization could have been granted to only a person, who was already in employment and not persons, who were out of employment.

29. Accordingly, since the writ petition of the State has been allowed in part, this Court does not find any strong case made out by the respondent/ worker for issuance of a direction to the State to consider the claim of the respondent/worker for regularization, the writ petition i.e. WPS No. 8214 of 2018 filed by Kamlesh Kumar Chandrakar stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved