IN THE HIGH COURT OF JUDICATURE OF MADRAS
DATED: 22.04.2019

CORAM:
THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.37135 of 2004
and
W.M.P.No.44576 of 2004

The Deputy General Manager,
State Bank of India,
No.39, Rajaji Salai,
Chennai. ...Petitioner

Vs

1. The Central Government
Industrial Tribunal cum
Labour Court, Chennai.
Block No.1, Sastry Bhavan,
Haddows Road,
Chennai - 600034.

2. P.Palani,
No.29, A Block
Pallakku Manager,
Chennai - 600034. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari and call for the records from the first respondent relating to the I.D.No.657 of 2001 and the Award dated 28.04.2004 on the file of the Central Government Industrial Tribunal cum Labour Court and quash the Award dated 28.04.2004 made in I.D.No.657 of 2001.

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

For Respondents: Mr.Balan Haridoss
for R2

R1 - Court

O R D E R

The second respondent herein, who had been engaged as a Temporary Messenger in the petitioner Bank is claimed to have been terminated from services, owing to which, he had raised a

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dispute for reinstatement and other benefits. By an order dated 28.04.2004 made in I.D.No.657 of 2001, the second respondent herein was directed to be reinstated into services without backwages. The Bank has challenged the award in the present writ petition.

2. Today, when the matter was called, it is brought to the notice of this Court that in cases of identically placed Temporary Messengers, this Court had denied the relief of reinstatement and have ordered compensation of Rs.2,00,000/- (Rupees Two Lakhs) in an order dated 10.07.2018 passed in W.P.No.27931 of 2003 and in an order dated 23.07.2018 passed in W.A.No.817 of 2015. The grievance of the petitioners in the aforesaid cases is similar to that of the grievance of the petitioner in the present writ petition. As such, the compensation in lieu of the reinstatement would be an appropriate relief and would also secure the ends of justice. It is seen that the petitioner has now attained the age of superannuation and he has also been receiving the benefits of 17B wages of the Industrial Dispoutes Act to the tune of Rs.3,85,560/-.

3. The observations of the Hon'ble Division Bench in the aforesaid writ appeal in W.A.No.817 of 2015 are as follows:

> 7. In support of his contention, the learned counsel appearing for the appellant relied upon an unreported decision of this court in W.A.No.1749 of 2015 wherein a Division Bench of this court, in a similar case, has held thus:-
>
> "6. The question as to whether violation of Section 25-F of the I.D. Act would entail automatic reinstatement with backwages came into consideration in catena of decisions. Lately, in Vice-Chancellor, Lucknow University, Lucknow, U.P. Vs. Akhilesh Kumar Khare and another (2015 SCC Online SC 797), the Supreme Court has examined the issue afresh in the light of the various decisions rendered earlier and held as under :
>
> 16. In considering the violation of Section 25F of the Industrial Disputes Act, 1947 in Incharge Officer & Anr. vs. Shankar Shetty (2010) 9 SCC 126 and after referring to the various decisions, this Court held that the relief by way of back wages is not automatic and compensation instead of reinstatement has been held to meet the ends of justice and it reads as under:-
>
> 2.Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short

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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 Mktg. 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 Development 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 (2009) 15 SCC 327, SCC pp. 330 & 335, paras 7 & 14) 7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

* * *

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

4. Jagbir Singh (2009) 15 SCC 327 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

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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.

7.Thus, deducing from the ratio laid down by the Supreme Court, it is well settled that reinstatement is not automatic, but the infringement of mandatory provision of Section 25-F of the I.D. Act may be compensated by payment of a lump sum amount. The learned Single Judge has granted compensation to the tune of Rs.5,00,000/-. We do not find any infirmity in the said order and no interference is warranted."

8. Per contra, Mr.Balan Haridas, learned counsel for the second respondent would submit that when once there is a violation of section 25-F of the Industrial Disputes Act, the apposite remedy would be only reinstatement. In support of his contention, he relied upon an unreported decision of this court in W.A.No.506 of 2013, wherein, a Division Bench of this court, having observed that the employee had served for more than eight years, held thus:-

"5. Considering the fact that the first respondent was engaged from 9.8.1991 to 25.4.1999 and served for more than eight years, the learned Single Judge was right in setting aside the award ordering compensation alone for non-compliance of Section 25-F of the Act. However, the order of the learned Single Judge needs modification as the first respondent was not serving in a sanctioned post, for which, no salary was fixed and salary was also calculated on a daily wage basis. Hence, the order of the learned Single Judge is modified ordering reinstatement with continuity of service without backwages. It is also made clear that as and when Group-D posts are called for, it is open to the first respondent to apply and participate in the regular selection."

9. The learned counsel appearing for the second respondent would also rely upon the decision in HARI NANDAN PRASAD v. FOOD CORPORATION OF INDIA ((2014) 7 SCC 190 to contend that the employee in the said case was reinstated with 50% backwages and regularization of service.

10. We have considered the decisions relied upon by the learned counsel appearing for either side and perused the materials available on record. On the factual aspect, it is not in dispute that the second

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respondent had worked only for 42 months. In the unreported decision of a Division Bench of this court in W.A.No.506 of 2013, the employee appears to have worked for more than eight years, but, in the case on hand, the second respondent is said to have worked for only 42 months. In the case of HARI NANDAN PRASAD, cited above, there are two appellants and the first appellant is not covered by the Circular which the respondent therein viz., Food Corporation of India is liable to follow and therefore, the Apex Court had held that monetary compensation in lieu of reinstatement would be more appropriate in his case, while ordering for reinstatement with backwages for the other appellant, who was covered by the said Circular. In the case on hand, it appears that the appellant-Bank needs to satisfy the settlement arrived by them with the All India State Bank of India Staff Federation and accordingly, they appear to have been regularizing the services of the employees, who had worked for more than 20 years on temporary basis. Therefore, the decisions relied upon by the learned counsel appearing for the second respondent, would not be applicable to the facts and circumstances of the case on hand.

11. It is relevant to note that in an unreported decision in DISTRICT DEVELOPMENT OFFICER v. SATISH KANTILAL AMRELIA (SLP(C) Nos.11956 & 11957 of 2015), the Apex Court has held thus:

"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.

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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

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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).

17) Having regard to the totality of the facts taken note of supra, we consider it just and reasonable to award a total sum of Rs.2,50,000/- (Rs.Two Lakhs Fifty Thousand) to the respondent in lieu of his right to claim re-instatement and back wages in full and final satisfaction of this dispute."

12. In yet another unreported decision in BHAVNAGAR MUNICIPAL CORPORATION ETC. v. JADEJA GOVUBHA CHHANUBHA AND ANOTHER (SLP(C) Nos36800 & 36801 of 2012), the Supreme Court has held thus:-

"16. The case at hand, in our opinion, is one such case where reinstatement must give way to award of compensation. We say so because looking to the

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totality of the circumstances, the reinstatement of the respondent in service does not appear to be an acceptable option. Monetary compensation, keeping in view the length of service rendered by the respondent, the wages that he was receiving during that period which according to the evidence was around Rs.24.75 per day should sufficiently meet the ends of justice. Keeping in view all the facts and circumstances, we are of the view that award of a sum of Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand only) should meet the ends of justice.

17. In the result, we allow these appeals but only in part and to the extent that the award made by the Labour Court and the orders of the High Court shall stand modified to the extent that the respondent shall be paid monetary compensation of Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand only) in full and final settlement of his claim. The amount shall be paid by the appellant-Corporation within a period of two months from today failing which the said amount shall start earning interest @ 12% p.a. from the date of this order till actual payment of the amount is made to the respondent."

13. In the present case, the termination of the employee is, of course, by not following section 25-F of the Industrial Disputes Act. However, considering the circumstances narrated above and the principle laid down in the above decisions, we are of the view that the ends of justice could be met if the second respondent could be suitably compensated instead of granting reinstatement. Accordingly, this court is convinced that the second respondent can be awarded a lumpsum compensation of Rs.2,00,000/- instead of reinstatement which shall be paid by the appellant bank within a period of two months from the date of receipt of a copy of this judgement.

14. With the above direction, the writ appeal is disposed of. No costs. The connected miscellaneous petition is closed.

4. The above observations are self-explanatory. In my view, the above decision of the Hon'ble Division Bench of this Court can be adopted for the purpose of awarding compensation to the petitioner herein.

5. In the light of the above observations, the petitioner herein is directed to pay a sum of Rs.2,00,000/- as a lump sum compensation to the second respondent herein in lieu of reinstatement and other benefits awarded by the Labour Court in I.D.No.657 of 2001. The compensation of Rs.2,00,000/- shall be

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in addition to the 17B wages already paid to the second respondent herein. It is made clear that the second respondent shall not claim for any other benefits, in view of the compensation ordered by this Court in the present writ petition.

6. Accordingly, the writ petition stands ordered. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

hvk

To

1. The Deputy General Manager,
   State Bank of India,
   No.39, Rajaji Salai,
   Chennai.

2. The Central Government
   Industrial Tribunal cum
   Labour Court, Chennai.
   Block No.1, Sastry Bhavan,
   Haddows Road,
   Chennai - 600034.

+1cc to Mr.T.S.Gopalan and Co, Advocate, S.R.No.38029
+1cc to Mr.Balan Haridass, Advocate, S.R.No.38054

W.P.No.37135 of 2004
and
W.M.P.No.44576 of 2004

SAI(CO)

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