

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.29959 of 2011
and M.P.No.1 of 2015
and W.M.P.No.786 of 2016

The General Manager,
Southern Railway,
Park Town, Chennai 600 003.

... Petitioner

Vs.

1.The Central Government Industrial Tribunal
Cum Labour Court, Chennai,
rep. By its Registrar.

2.P.Kulasekaran

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari, calling for the records from the file of the 1st respondent made in I.D.No.416 of 2001 dated 16.08.2011 and quash the same.

**For Petitioner : Mr.V.Radhakrishnan
Senior Counsel
for (*) M/s.Vijay Anand**

For R2 : Mr.T.P.Kathirraavan

O R D E R

Writ Petition is filed challenging the order of the 1st respondent in I.D.No.416 of 2001 dated 16.08.2011.

2.The petitioner is challenging the award of the Labour Court. The 2nd respondent raised Industrial Dispute in I.D.No.416 of 2001 alleging that he worked as a Casual Labourer in the services of the petitioner directly under the Inspector of Works, Tambaram from 04.11.1975. The petitioner without any notice and without following the provisions of Section 25(F) of

the Industrial Disputes Act [hereinafter, referred to as 'the Act'], stopped the service of the petitioner with effect from 21.12.1976. The petitioner's Juniors were allowed to continue in employment. The petitioner alone was denied employment. The petitioner denied various contentions of the 2nd respondent. Originally, the Labour Court considering the materials on record held that the termination is proper and legal and dismissed the I.D on 16.07.2001. The 2nd respondent challenged the dismissal of the I.D in W.P.No.9510 of 2003. This Court by the order dated 05.04.2011, disposed of the said Writ Petition, setting aside the order of dismissal of I.D.No.416 of 2001 and remanded the matter for fresh consideration on merits, giving liberty to the 2nd respondent for filing additional documents within a period of eight weeks. After remand, the 2nd respondent let in further evidence and marked additional documents as Ex.W4. The petitioner did not let in oral and documentary evidence. The 1st respondent considering the pleadings, oral and documentary evidence, held that the 2nd respondent has worked for more than 240 days in a 12 calendar months and on such finding, the 1st respondent set aside the order of termination and directed the petitioner to reinstate the 2nd respondent with continuity of service, attendant benefits and 25% backwages. Against the said award, the petitioner has come out with the present Writ Petition.

3.The learned Senior Counsel appearing for the petitioner contended that the 2nd respondent has not worked for 240 days in none of the year. The 2nd respondent after remand, marked xerox copy of the Muster Roll, Casual Labour card as Ex.W4. The said document was filed after 34 years. The petitioner is unable to verify the authenticity of the said document. The salary in the said document is not clear. The petitioner is unable to accept the authenticity and genuineness of the document. Even the said document does not show that the 2nd respondent has worked for 240 days in the preceding calendar year. The 1st respondent failed to see as per Rule 2004 of the Indian Railway Establishment Manual Vol.II, notice need not be issued to the casual Labours. The 1st respondent failed to appreciate the fact that the conditions applicable to the permanent and temporary staff do not apply to casual Labours. The 1st respondent is erroneous in ordering reinstatement into service with all attendant benefits and 25% backwages. The 1st respondent failed to see that the 2nd respondent has chosen wrong forum and was pursuing the matter for 25 years. Even on an admission of the 2nd respondent itself, it is seen that the 2nd respondent was working only for one year and two months as casual laborer on daily wages. The learned Senior Counsel appearing for the petitioner further submitted that the order of reinstatement is not automatic and reasonable compensation instead of reinstatement may be ordered.

4. The learned Senior Counsel appearing for the petitioner relied on the following judgments in support of his contentions:

(i) (2014) 7 SCC 177 [Bharat Sanchar Nigam Limited Vs. Bhurumal]:

"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) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753]]. 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.

37. In Man Singh [BSNL v. Man Singh, (2012) 1 SCC 558 : (2012) 1 SCC (L&S) 207] which was also a case of BSNL, this Court had granted compensation of Rs 2 lakhs to each of the workmen when they had worked for merely 240 days. Since the respondent herein worked for longer period, we are of the view that he should be paid a compensation of Rs 3 lakhs. This compensation should be paid within 2 months failing which the respondent shall also be entitled to interest at the rate of 12% per annum from the date of this judgment. The award of CGIT is modified to this extent. The appeal is disposed of in the above terms. The respondent shall also be entitled to the costs of Rs 15,000 (Rupees fifteen thousand only) in this appeal."

(ii) (2018) 12 SCC 294 [Rashtrasant Tukdoji Maharaj Technical Education Sanstha, Nagpur Vs. Prashant Manikrao Kubitkar]:

"1. Leave granted. The Labour Court held the termination of the respondent workman to be in infraction of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 and awarded reinstatement with continuity in service but without back wages. The approach to the Labour Court was after 13 years of the termination made on 1-6-1994. The High Court in writ petition filed by the appellant affirmed [Rashtrasant Tukdoji Maharaj Technical Education Sanstha v. Prashant Manikrao Kubitkar 2015 SCC OnLine Bom 8500] the said order. Hence, the present appeal.

2. The respondent workman had worked under the appellant for a period of two years and three months whereafter he was terminated on 1-6-1994. Judicial opinion has been consistent that if the

termination is found to be contrary to Sections 25-F and 25-G of the Industrial Disputes Act, 1947, reinstatement in service is not the rule but an exception and ordinarily grant of compensation would meet the ends of justice.

3. The respondent workman in the present case had worked for a period of two years and three months and that apart he had approached the Labour Court after 13 years. Taking into account the totality of the facts and circumstances of the case, we are of the view that the order of the Labour Court and the High Court ought to be modified by granting compensation of Rs 1,00,000 (Rupees one lakh) in lieu of reinstatement without back wages as ordered. It is ordered accordingly. The aforesaid amount of compensation will be paid within a period of six weeks from today.

4. The appeal is allowed with the aforesaid modification of the order of the Labour Court as also the High Court."

(iii) (2016) 16 SCC 610 [State of Madhya Pradesh and another Vs. Vinod Kumar Tiwari]:

"2. The Labour Court has held that the respondent workman was terminated from service in violation of the provision of Section 25-F of the Industrial Disputes Act, 1947. Accordingly, reinstatement was ordered by the learned Labour Court which was upheld [State of M.P. v. Vinod Kumar Tiwari, WP No. 721 of 2009, order dated 28-2-2009 (MP)] in the writ proceeding instituted by the employer State before the High Court. The High Court having maintained the order of the learned Labour Court, this appeal has been filed.

3. Time and again, this Court has reiterated that reinstatement is not automatic upon a finding that retrenchment is in violation of Section 25-F of the Industrial Disputes Act. In fact, this Court while issuing notice has taken note of our earlier decision in Jagbir Singh v. Haryana State Agriculture Mktg. Board [Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] .

4. In the present case, neither the Labour Court nor the High Court has given any special reason why the workman should be reinstated. Having perused the material on record that the workman was employed as a daily wager and had rendered service from 1-7-1997 to 31-7-1999 i.e. about two

years and having regard to the totality of the facts of the case, we are of the view that the grant of reinstatement was not proportionate and therefore incorrect and the ends of justice would be met in the present case by granting retrenchment compensation.

5. We, therefore, allow this appeal and set aside the order of the High Court insofar as the reinstatement is concerned and direct that the appellants shall pay retrenchment compensation of Rs 1,00,000 (Rupees one lakh) to the respondent within a period of six weeks from the date of receipt of a copy of this order."

(iv) (2016) 16 SCC 608 [State of Madhya Pradesh Vs. Mohan Lal]:

"3. Heard the learned counsel for the parties. In view of the order dated 15-9-2014 passed by this Court in State of M.P. v. Vinod Kumar Tiwari [State of M.P. v. Vinod Kumar Tiwari, (2016) 16 SCC 610], in our considered opinion, it is a fit case where some compensation should be awarded to the respondent instead of directing the appellant to reinstate him to his position as a daily-wage chowkidar.

4. Looking at the facts of the case and in view of the fact that the respondent was appointed on daily-wage basis and had approached the authorities after more than 14 years, we direct that by way of final settlement, instead of reinstatement as a daily wager, the respondent be paid a sum of Rs 2 lakhs, in addition to what has already been paid to him when the notice had been issued."

(v) (2018) 12 SCC 298 [District Development Officer and another Vs. Satish Kantilal Amrelia]:

"12. Having gone through the entire record of the case and further keeping in view the nature of factual controversy, the findings of the Labour Court, the manner in which the respondent fought this litigation on two fronts simultaneously, namely, one in the civil court and the other in the Labour Court in challenging his termination order and seeking regularisation in service, which resulted in passing the two conflicting orders – one in the 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 wage during his short tenure, which lasted hardly two-and-half years approximately and coupled with the fact that 25 years have since passed from the date of his alleged termination, we are of the considered opinion that the law laid down by this Court in BSNL v. Bhurumal [BSNL v. Bhurumal, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373] would aptly apply to the facts of this case and we prefer to apply the same for disposal of these appeals.

13. It is apposite to reproduce what this Court has held in BSNL [BSNL v. Bhurumal, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373] : (SCC p. 189, paras 33-35)

"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) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]]. 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."

14. 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 BSNL case [BSNL v. Bhurumal, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373] 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.

15. In view of the foregoing 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 BSNL case [BSNL v. Bhurumal, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373] .

16. 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 reinstatement and back wages in full and final satisfaction of this dispute.

17. Let the payment of Rs 2,50,000 be made by the appellant (State) to the respondent within three months from the date of receipt of this judgment failing which the amount will carry interest @ 9% p.a. payable from the date of this judgment till payment to the respondent."

The learned Senior Counsel further contended that the 2nd respondent has attained superannuation on 30.06.2012. As per the order of this Court, the 2nd respondent withdrew a sum of Rs.1,13,800/- and there is balance amount of Rs.4,29,233/- in the Court deposit. A sum of Rs.1,00,000/- in addition to the amount already withdrawn by the 2nd respondent would be a reasonable compensation and prayed for suitable orders to be passed.

5. Per contra, the learned counsel appearing for the 2nd respondent contended that the 2nd respondent has proved that he worked for 240 days by producing Ex.W4. Juniors of the 2nd respondent were allowed to continue in employment. The 2nd respondent alone was denied employment. The 1st respondent considering the entire materials on record, has rightly rejected the contention of the petitioner that after 35 years, the petitioner could not verify the authenticity and genuineness of Ex.W4. The 2nd respondent was agitating the matter immediately after his termination in Civil Court and Labour Court and after provisions of the Act was made applicable to the petitioner. The 2nd respondent is not at fault for having initially filing the suit in Civil Court. Due to unreasonable attitude of the petitioner, the 2nd respondent was forced to face the litigation for 35 years. The 2nd respondent has proved that he worked for 240 days. In support of his contention, the learned counsel relied on the judgment reported in AIR 2010 SC 1116 [Harjinder Singh Vs. Punjab State Warehousing Corporation]:

"16. In view of the above discussion, we hold that the learned Single Judge of the High Court committed serious jurisdictional error and unjustifiably interfered with the award of

reinstatement passed by the Labour Court with compensation of Rs 87,582 by entertaining a wholly unfounded plea that the appellant was appointed in violation of Articles 14 and 16 of the Constitution and the Regulations."

The learned counsel for the 2nd respondent further submitted that this Court and the Hon'ble Apex Court has held that if there is violation of Section 25(F) of the Act, reinstatement is mandatory. The petitioner has not issued any notice and has not given any retrenchment compensation to the 2nd respondent. The termination without following Section 25(F) of the Act cannot be sustained and prayed for dismissal of the Writ Petition.

6. Heard the learned Senior Counsel appearing for the petitioner as well as the learned counsel appearing for the 2nd respondent and perused the materials available on record.

7. The issue to be decided in the Writ Petition is whether the 2nd respondent has worked continuously for 240 days in 12 calendar months and whether termination of the 2nd respondent by the petitioner is valid or not. The contention of the 2nd respondent is that he was continuously working for more than 240 days without any blemish and the petitioner had terminated his services without issuing any notice and without complying the provisions of Section 25(F) of the Act. On the other hand, it is the contention of the petitioner that the 2nd respondent never worked for 240 days in any calendar year. To substantiate his contention, the 2nd respondent has produced Ex.W4 to prove that he worked for 240 days. The 1st respondent considering Ex.W4 has held that the 2nd respondent has worked for more than 240 days. While coming to the said conclusion, the 1st respondent following the judgment of the Hon'ble Apex Court reported in 1985-4-SCC 201 [H.D.Singh Vs. Reserve Bank of India and others], held that while calculating 240 days, Sundays and holidays must also be taken into consideration. The 1st respondent taking into consideration the Sundays and Holidays, has held that the 2nd respondent has worked for 240 days.

8. From the materials on record, it is seen that after the award of the 1st respondent ordering reinstatement, the petitioner did not reinstate the 2nd respondent, but has deposited the last drawn wages in Court as per the order of this Court in the petition filed by the 2nd respondent under Section 17(B) of the Act. After the 2nd respondent was permitted to withdraw a sum of Rs.1,13,800/-, there is a sum of Rs.4,29,233/- in the Court deposit. The 2nd respondent has attained the age of superannuation on 30.06.2012. Considering the fact that the 2nd respondent has worked for short period, but he is fighting for his right for 35 years and he has attained superannuation, it

will be in the interest of justice to permit the 2nd respondent to withdraw further sum of Rs.2,00,000/- from the amount in the Court deposit in lieu of reinstatement. The petitioner is entitled to withdraw the balance amount from the Court deposit. The award of the Labour Court is modified with the above direction.

9. In the result, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IV)

Dated:10/12/2019

(*)Corrected as per order dated 12/02/2020 made herein

Sd/-

Assistant Registrar(CS-IV)

Dated:17/02/2020

//True Copy//

Sub Assistant Registrar

gsa

To

To be substituted the order already despatched on 29/01/2020

The Registrar,
Central Government Industrial Tribunal
Cum Labour Court,
Chennai.

+1cc to Mr.T.P.Kathiravan, Advocate Sr.73524

+1cc to Mr.M.Vijay Anand, Advocate Sr.73133

W.P.No.29959 of 2011

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