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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON -29th AUGUST 2022
% **PRONOUNCED ON -21st SEPTEMBER, 2022**

+ W.P.(C) 2292/2015

NARENDER BAHADUR SINGH Petitioner

Through: Ms. Aayushi Jain, Advocate.

versus

MANAGEMENT OF CORPORATION BANK & ANR

..... Respondents

Through: Mr. Rajat Arora with Mr. Niraj
Kumar, Advocates

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

Background Facts

1. The present writ petition has been filed challenging the impugned Award dated 05.05.2014 passed in ID No.02/2014 titled *Sh. Narender Bahadur Singh Vs Corporation Bank*, whereby, the learned CGIT cum Labour Court directed the respondent bank to pay compensation in the sum of Rs. 50,000/- by way of damages to the petitioner/workman.



2. The facts, in brief, are that the petitioner/workman had filed a statement of claim against the respondent bank seeking the relief of reinstatement. The petitioner/workmen had alleged that he was employed by the respondent bank and was placed at Karol Bagh, Delhi branch on the sanctioned post of a Car driver with effect from 01.11.1999. The service of the petitioner/workman was terminated on 13.07.2006 without assigning any reason or cause of action. It was alleged that the respondent bank had neither issued a notice nor complied with the provisions of Section 25F of the Industrial Disputes Act, 1947. The petitioner/workmen also sent a demand notice to the respondent bank which remained un-responded. The contention of the petitioner/workman is that the petitioner/workman along with the other workman had raised a Charter of Demands for the regularisation of their services and the respondent bank got irked by it and terminated their services. It was also pleaded that the petitioner/workman has remained unemployed since the date of his termination and that he did not get any job despite his best efforts.
3. The respondent bank while contesting the claim of the petitioner/workman denied the relationship of master and servant between the parties. The contention of the respondent bank is that personal car drivers are engaged by the executives of the bank in their personal capacity. There is no cadre of a 'personal car driver' in the respondent bank and as per the policy, whenever the eligible officers engage personal drivers, reimbursement is provided to these officers under the head 'allowances' on the basis of the scale set down by



respondent bank. It is also contended that the respondent bank is a Nationalised Bank and its appointment are public appointments based on rules and regulations framed by the bank based on Directives of the Central Government. Thus, the service of the petitioner/workman was never under the supervision and direct control of the respondent bank and he cannot be termed as a 'workman' within the meaning of section 2(s) of the Industrial Disputes Act, 1947.

4. On the basis of the pleading of the parties, the learned CGIT framed the following issues:-

“1. Whether the action of the management of Corporation Bank, Arya Samaj Road, Karol Bagh in terminating the services of Sh. Narender Bahadur Singh, Personal Car Driver w.e.f. 13.07.2006 is legal and justified? If not, to what relief the concerned workman is entitled?

2. Relief “

5. The petitioner/workman in support of his case tendered his affidavit as WW1 and respondent bank produced one Sh. Anjani Kumar, Assistant Manager, Corporation Bank as MW1. Learned CGIT decided the reference in favour of the petitioner/workman and against the respondent bank. Learned CGIT in the impugned Award has *inter alia* held that reinstatement is not a necessary consequence whenever termination is held illegal. In the instant case, the petitioner/workman was held to be a casual worker and was awarded Rs. 50,000/- as compensation. Being aggrieved of this, the petitioner/workman has



filed the present writ petition seeking that the impugned award is either set aside or modified to the extent of granting the Petitioner/workman the relief of full back wages as well as reinstatement to his services on the sanctioned post with the respondent bank with retrospective effect.

Contentions of the petitioner/workman

6. Learned senior counsel for the petitioner has submitted that the Ld. CGIT on one hand took note of the statement of the witness produced by the respondent bank who admitted in his cross-examination that the appointments of the Respondents even as alleged personal drivers of the Executives of the Bank were done with the authority and approvals of the Appellant Bank's Head Office in Mangalore, Karnataka but on the other hand has refused to award the relief of reinstatement to the petitioner/workman on the ground that the petitioner/workman was not appointed by the respondent/management by following the due procedure of law or as per rules laid down by way of various judicial pronouncement. Further reliance has been placed on the following cases to buttress the aforesaid contention:
- i. ***Ram Singh v. Union of Territory, Chandigarh*** 2004 AIR (SC) 969
 - ii. ***Hussainbhai v. Alath Factory Thozillai Union & Ors.*** 1978 AIR (SC) 1410
 - iii. ***Sushilaben Indravadan Gandhi & Anr.***
 - iv. ***The New India Assurance Company Ltd*** SLP (C) No. 1170/2019



v. ***Balwant Rai Saluja v. Air India Ltd.*** AIR 2105 SC 375.

7. It has been submitted that mere compensation was awarded as a satisfactory relief in those cases because the employees were terminated on the grounds of misconduct and/or illegal/irregular appointments. However, in the present case, the Petitioner was abruptly terminated from his services without assigning any reason and it has nowhere been pleaded by the respondent bank before any court that the Petitioner/workman was guilty of any misconduct whatsoever.
8. Learned senior counsel for the petitioner has submitted that the relief of reinstatement with full back wages is the ordinary rule and not an exception. Learned CGIT should not have been denied the relief of reinstatement to the petitioner/workman without some weighty reasons for adopting the course of the grant of compensation instead of reinstatement. Reliance was placed on the judgment of Supreme Court in the cases of ***Ram Manohar Lohia Joint Hospital & Ors. vs. Munnu Prasad Saini & Anr.***, Civil Appeal No. 5810/2021 arising out of SLP No. 9097/2019 and ***Pradeep S/o Rajkumar Jain vs. Manganese Ore (India) Ltd. & Ors.***, Civil Appeal No.7607/2021 arising out of SLP No. 21346/2017.
9. Learned senior counsel for the petitioner has also submitted that no distinction has been provided in the Industrial Disputes Act, 1947 between a permanent employee and a temporary employee. Further, it is a settled proposition of law that as long as the person is employed



to do any manual, skilled, unskilled, technical, operational, clerical or supervisory work, he is a workman under the Industrial Disputes Act, 1947. In view thereof, Tribunal has wrongly held that the Petitioner was merely a casual worker in the Respondent Bank and is only entitled to a relief of compensation. To support the above propositions, the learned senior counsel for the petitioner relied upon the judgments of this court in WP(C) 3321/2000 titled *National Textile Corporation Ltd. vs. The Presiding Officer*, as well as *Delhi Cantonment Board vs. Central Government Industrial Tribunal & Ors.* 2006 (88) DRJ 75 DB.

Contentions of the respondents/management

10. Learned counsel for the respondent, at the outset, submitted that there is no substantial question of law involved in the present writ and the findings of facts based on record cannot be re-appreciated at this stage. It has been submitted that merely because on the same evidence another conclusion is possible, it does not vitiate the findings of the learned Labour Court/Tribunal. This Court while exercising its writ jurisdiction cannot substitute its judgment for that of the learned Labour Court/Tribunal.
11. Learned counsel for the respondent has submitted that the Learned CGIT is competent to grant the relief of reinstatement with back wages or award compensation as it may deem fit. The Supreme Court has taken the view that even if the violation of Section 25 F is established or termination is found to be illegal, still reinstatement



may not be ordered. Reliance has been placed on the judgments of the Supreme Court in the cases of *Jaipur Development Authority vs Ram Sahai* (2006) 11 SCC 684 and *State of Rajasthan Vs Sarjeet Singh* (2006) 8 SCC.

12. Further, learned counsel for the respondent has also denied the existence of employer-employee relationship between the petitioner/workman and the respondent bank. It has been submitted that the petitioner/workman failed to discharge the burden of proof to establish the employer-employee relationship.
13. It has also been submitted that indeed the personal drivers employed by Executives of the Bank were offered employment as Driver cum Peon under a Scheme if they fulfilled other conditions and under the Scheme, one Sanjiv Kumar was also taken in the service of the bank, however, it has been contended that Govt. of India through their letter dated 23.06.1997 informed the Banks not to offer public employment to personal car drivers and the scheme for absorption of personal car drivers seized to be in operation after such date of the letter. Therefore the petitioner/workman who got engaged as a personal driver on 01.11.1999 is not entitled to any benefit under the said Scheme.

Findings and Analysis

14. It is a settled proposition of law that the High Court in the exercise of its writ jurisdiction can interfere with an Award of the Labour Court/Tribunal, if there is patent illegality or if the award rendered is



contrary to law as a measure of ‘misplaced sympathy’ and was thus perverse. The jurisdiction of Writ Courts while interfering with the awards of Labour Court has been discussed in detail by the Apex Court in a plethora of cases including ***Syed Yakoob vs. K.S. Radhakrishnan & Ors.***: AIR 1964 SC 477 and ***Sadhu Ram vs. DTC***: (1983) 4 SCC.

15. It is also pertinent to take note of the fact that the legislature in its wisdom has not provided any appeal against the award of the Labour court/Industrial Tribunal. Thus making the Labour Court/Tribunal the final arbitrator of facts. The writ courts have time and again been cautious not to enter into the realm of factual disputes and the findings given thereon and if a writ court intends to reconsider a finding of facts, it is obligatory for such a court to record reasons. In the case of ***State of Haryana vs. Devi Dutt & Ors.***: (2006) 13 SCC 32, the Apex Court has *inter alia* held that the writ Court can interfere with the factual findings of fact only if (1) the Award is perverse; (2) the Labour Court has applied wrong legal principles; (3) the Labour Court has posed wrong questions; (4) the Labour Court has not taken into consideration the relevant facts; or (5) the Labour Court has arrived at findings on the basis of irrelevant facts or on extraneous consideration.
16. The petitioner/workman has assailed the impugned Award to the extent that it does not grant the relief of reinstatement. Therefore, at this juncture, this court finds it necessary to discuss the latest legal



trend as adopted by the Supreme Court in awarding compensation in place of reinstatement.

17. In *Incharge Officer vs. Shankar Shetty*: (2010) 9 SCC 126, it was *inter alia* held that in 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. The Apex Court reiterated the trend by referring to the various judgments and *inter alia* held 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 “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*, 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*, *Uttaranchal Forest Development Corpn. V. M.C. Joshi*, *State of M.P. v. Lalit Kumar Verma*, *M.P.Admn v.Tribhuban*, *Sita Ram v.Moti Lal Nehru Farmers Training Institute*[8], *Jaipur Development Authority v. Ramsahai*, *GDA v. Ashok Kumar and Mahboob Deepak v.Nagar Panchyat, Gajraula* 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.

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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, 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.”

18. In **BSNL vs. Bhurumal (2014) 7 SCC 177** the Supreme Court *inter alia* held as under:-



“31. In Deptt. of Telecommunications v. Keshab Deb the Court emphasized that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one months’ pay in lieu of one month’s notice and wages of 15 days of each completed year of service as envisaged under Section 25-F of the Industrial Disputes Act. He could not have been directed to be regularized in service or granted /given a temporary status. Such a scheme has been held to be unconstitutional by this Court in A.Umarani v. Registrar, Coop.Societies and State of Karnataka v. Umadevi .

32. It was further submitted by the learned counsel for the appellant that likewise, even when reinstatement was ordered, it does not automatically follow full back wages should be directed to be paid to the workman. He drew our attention of this Court in the case of Coal India Ltd. Vs. Ananta Saha and Metropolitan Transport Corpn. v. V.Venkatesan.

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 vs. 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.”

19. However, the workman is required to assert such facts in order to bring its case within the purview of caveat.
20. This Court in **Ashok Kumar vs. Hindustan Vegetable Oil Co.**: 2017 SCC Online Del 9516, noting the shift of trend *inter alia* held as under:



“13 Subsequently, however, the view of the Supreme Court has sharply swung from the theory of "reinstatement with back wages (in whole or in part)" to the theory of "lump sum compensation". This swing of judicial thought has been definitively captured in the following passages from the judgment in *Senior Superintendent Telegraph (Traffic) v Santosh Kumar Seal*, (2010) 6 SCC 773:

"9. In the last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate. (See U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey [(2006) 1 SCC 479 : 2006 SCC (L&S) 250] , Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353 : (2007) 2 SCC (L&S) 813] , State of M.P. v. Lalit Kumar Verma [(2007) 1 SCC 575 : (2007) 1 SCC (L&S) 405] , M.P. Admn. v. Tribhuban [(2007) 9 SCC 748 : (2008) 1 SCC (L&S) 264] , Sita Ram v. Moti Lal Nehru Farmers Training Institute [(2008) 5 SCC 75 : (2008) 2 SCC (L&S) 71] , Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684 : (2007) 1 SCC (L&S) 518] , GDA v. Ashok Kumar [(2008) 4 SCC 261 : (2008) 1 SCC (L&S) 1016] and Mahboob Deepak v. Nagar Panchayat, Gajraula [(2008) 1 SCC 575 : (2008) 1 SCC (L&S) 239] .)

10. In a recent judgment authored by one of us (R.M. Lodha, J.) in Jagbir Singh v. Haryana State Agriculture Mktg. Board [(2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] , the aforesaid decisions were noticed and it was stated: (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.”

21. Thereafter, the Supreme Court in a plethora of cases has directed compensation in lieu of reinstatement. Reliance can be made on judgments in the case of ***Mahboob Deepak vs. Nagar Panchayat, Gjraula***: (2008) 1 SCC 575, ***M.P. Admn. V. Tribhuban***, (2008) 1 SCC (L&S) 264, ***Sita Ram vs. Moti Lal Nehru Farmers Training Institute***: (2008) 5 SCC 75, ***GDA vs. Ashok Kumar***: (2008) 4 SCC 261.
22. In ***Jagbir Singh vs. Haryana State Agriculture Marketing Board***: (2009) 15 SCC 327 while awarding compensation in lieu of reinstatement, this court held that a host of factors should be kept in mind and *inter alia* held as under:-

*“16. While awarding compensation, the host of factors, inter-alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its **own** facts and circumstances.....”*



23. Recently, this court after taking into account the manner and method of appointment, nature of employment and length of service in the case of *The Management Guru Gobind Indraprastha University v. Lokesh Kumar & Anr.* in W.P.(C.)4822/2014 followed the latest trend as adopted by the Supreme Court and awarded compensation in the sum of Rs. 5 Lakhs to the workman.
24. A perusal of the impugned award passed by the Learned CGIT indicates that there is nothing suggesting any perversity in the impugned award. Learned CGIT has considered the entire evidence on record and has not passed the Award on any material which was not available on record or was extraneous. The relief has rightly been granted by adopting the latest trend as laid down in the cantena of judgments by the Supreme Court as discussed above.
25. Hence, the present writ petition challenging the impugned award to the extent that relief of compensation has been granted by the Learned CGIT as opposed to the relief of reinstatement with full back wages and consequential benefits is dismissed and the Award of the learned Labour Court is upheld.

DINESH KUMAR SHARMA, J

SEPTEMBER 15, 2022

Pallavi