

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 5385 of 2011**

Smt. Kunti Bai Kashyap W/o Late Dhaniram Kashyap, R/o Irrigation Colony, Purana Labour Hat, Near Madwarani Mandir Rampur, Korba, Teh. & Distt. Korba (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary, Water Resources Department, DKS Bhawan, Raipur (CG)
2. Executive Engineer, Hasdeo Baraj Water Resources Dept. Rampur, Korba, District Korba (CG)
3. Sub Divisional Officer, Hasdev Barrage Jalprabandh, Sub-Division Darri, Korba (CG)

----Respondents

For Petitioner	:	Mr. Vinod Deshmukh, Advocate
For State	:	Mr. Rahul Jha, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy
ORDER ON BOARD

31/03/2021

1. Being aggrieved by the order dated 09.12.2010 passed by the Labour Court, Korba whereby the learned Labour Court has answered the reference in negative the present writ petition has been filed.
2. The brief facts relevant for adjudication of the present writ petition are that the husband of the petitioner was working as a daily wage employee under the respondents who died in harness on 03.06.1988. Subsequently, the petitioner herein on compassionate ground was engaged as a daily wage employee by the respondents in August, 1988 and she continuously worked under the respondents till 28.02.1995 when the service of the petitioner was abruptly discontinued rendering

the petitioner unemployed. The petitioner raised a dispute before the State Govt. under the provisions of the Industrial Disputes Act in the year 2008 and the matter finally stood referred to the Labour Court, Korba to decide "Whether the termination of the services of the petitioner was legal and justified? If not, what directions can be issued to the respondents in this regard."

3. The Labour Court registered the dispute as Case No.12/ID Act/2009/Reference. Both the parties to the dispute entered appearance and submitted their respective statement of claim. Thereafter evidences were recorded on behalf of either side and the Labour Court finally vide impugned award answered the reference in negative holding that the petitioner is not entitled for any relief since she has not been able to establish the fact that there was continuous employment of the petitioner for a period of more than 240 days immediately before discontinuance from service. It is this award which is under challenge in the present writ petition.
4. The contention of the petitioner is that the finding of the Labour Court is totally perverse and contrary to the evidence which has come on record and the same deserves to be interfered with on that ground alone. The further ground of challenge is that there is documentary proof available firstly to establish the employment of the petitioner with the respondents and secondly showing that there was a written order of termination of the services of the petitioner which further establishes the employment part and therefore, the finding of the Labour Court is perverse and the same deserves to be set aside/quashed. Another ground which the petitioner has raised is that the persons who had been discontinued along with the petitioner and who had raised a dispute before the Labour Court have got an order of reinstatement in service and those

persons are still in employment of the respondents and therefore also the petitioner should be granted the relief of reinstatement.

5. Per contra, learned State counsel opposing the petition submits that a plain reading of the pleadings attached to the writ petition would show that admittedly the petitioner has claimed to have worked with the respondents between 1988 to 1995 and thereafter a dispute was raised by the petitioner for the first time after more than 13 years before the Labour Court. According to the State counsel, the very fact that the petitioner had not raised the dispute for 13 years itself shows that she was not interested to work under the respondents any further or at least it should be presumed that the petitioner was engaged elsewhere during the said period. He submits that perusal of the evidence of the applicant also would show that there is difficult to reach to a conclusion that there was continuous employment for more than 240 days as cogent documentary proof in this regard has not been produced by the petitioner. Further contention of the state counsel is that admittedly the work of the petitioner was that of a daily wage employee and the service of a daily wage employee stands discontinued on the end of the day he/she is engaged and that a daily wage employee is engaged subject to the availability of work as and when available. Further contention of the state counsel is that since the status of the petitioner was that of a daily wage employee, no substantive right would be created in her favour and therefore, the judgment of the Labour Court does not warrant any interference.
6. From the contentions that have been raised on behalf of either side, some of the admitted factual positions as it stand are that as per the claim of the petitioner, she had worked with the respondents between August, 1988 to February, 1995 and as such, she had put in about 6 ½

years of service. The petitioner had for the first time raised a dispute after more than 13 years though the petitioner submits that during the intervening period she had been repeatedly representing before the authorities concerned in respect of the alleged discontinuance of her employment though no such document is available on record nor is it reflected from the evidence of the petitioner. Along with the writ petition the petitioner has also enclosed a document dated 01.02.1995 Annexure P-4 which shows that there was a written order issued by the respondents by which the service of the petitioner was discontinued along with other similarly placed daily wage employees. Though this document had not been produced before the Labour Court by either side referring to the evidence of the worker i.e. the petitioner, there seems to be an admission on the part of the witness examined on behalf of the department namely Sunil Kumar Dhamija, the Sub Divisional Officer of Hasdeo Barrage Project. The witness on behalf of the department has deposed of there being records of the petitioner being engaged intermittently between 1989 to 1994. The witness of the department submits that the worker had voluntarily relinquished the work and therefore there was no occasion for issuance of a notice which however stands disproved from Annexure P-4 enclosed along with the writ petition which would show that there was a written order by the department which was not produced either inadvertently or knowingly before the Labour Court. Under the circumstances, this Court finds that there is sufficient evidence adduced before the Labour Court as would also substantiate from Annexure P-4 so far as the employment is concerned to establish the employment part of the petitioner having worked between 1988-89 to February, 1995.

7. From the aforesaid given admitted factual matrix, the case as it stands today is that the petitioner had put in around 6 ½ years service and at the same time for the last 26 years the petitioner was out of employment. Under the circumstances, the question of modifying the award of the Labour Court to the extent of granting reinstatement in service at this stage would be totally unjustified. However, there is no hesitation for this Court to reach to a conclusion that before discontinuing the services of the petitioner none of the provisions, as are otherwise required under Chapter V of the Industrial Disputes Act particularly in respect of issuance of notice, salary in lieu of notice or for payment of retrenchment compensation while discontinuing, have been complied with. Thus, the action and order of discontinuance is per se contrary to the Industrial Disputes Act.

8. 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 about 26 years take the employee back in service. True it is that the Hon'ble Supreme Court in the past has been holding that once when the termination is held to be bad in law, the automatic consequence of that is the entitlement of reinstatement with all consequential benefits. But of late, the Hon'ble Supreme Court has been of the view that the granting of reinstatement should be only after taking into consideration the entire factual matrix of the case and in a given factual scenario, if the Court finds the reinstatement part to be not very advisable, it can mold the relief to the extent of granting compensation in lieu of reinstatement. At this juncture, it would be relevant to refer to the judgment of the Hon'ble Supreme Court recently decided in the case of ***“District Development Officer & Anr. v. Satish Kantilal Amrelia”***

decided on 28.11.2017 in Civil Appeal Nos. 19857 and 19858 of 2017 in paragraphs No. 13 to 16 has held as under:

“13. Having gone through the entire record of the case and further keeping in view the nature of factual controversy, findings of the Labour Court, the manner in which the respondent fought this litigation on two fronts simultaneously, namely, one in Civil Court and the other in Labour Court in challenging his termination order and seeking regularization in service, which resulted in passing the two conflicting orders - one in respondent's favour (Labour Court) and the other against him (Civil Court) and lastly, it being an admitted fact that the respondent was a daily wager during his short tenure, which lasted hardly two and half years approximately and coupled with the fact that 25 years has since been passed from the date of his alleged termination, we are of the considered opinion that the law laid down by this Court in the case of [Bharat Sanchar Nigam Limited vs. Bhurumal](#) [(2014) 7 SCC 177] would aptly apply to the facts of this case and we prefer to apply the same for disposal of these appeals.

14. It is apposite to reproduce what this Court has held in the case of Bharat Sanchar Nigam Limited (supra):

“33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of [Section 25-F](#) of the Industrial Disputes Act, this Court is consistent in

taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under [Section 25-F](#) of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see [State of Karnataka v. Umadevi](#) (3)17]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

“35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned

terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.”

*15. We have taken note of one fact here that the Labour Court has also found that the termination is bad due to violation of [Section 25-G](#) of the Act. In our opinion, taking note of overall factual scenario emerging from the record of the case and having regard to the nature of the findings rendered and further the averments made in the SLP justifying the need to pass the termination order, this case does not fall in exceptional cases as observed by this Court in Para 35 of *Bharat Sanchar Nigam Limited* case (supra) due to finding of [Section 25-G](#) of the Act recorded against the appellant. In other words, there are reasons to take out the case from exceptional cases contained in Para 35 because we find that the appellant did not resort to any kind of unfair practice while terminating the services of the respondent.*

*16. In view of forgoing discussion, we are of the considered view that it would be just, proper and reasonable to award lump sum monetary compensation to the respondent in full and final satisfaction of his claim of re-instatement and other consequential benefits by taking recourse to the powers under [Section 11-A](#) of the Act and the law laid down by this Court in *Bharat Sanchar Nigam Limited* case (supra).”*

9. 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.

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.”

10. 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**.
11. 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).
12. 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 6 ½ years between August 1988 to February 1995 and from 1995 till date i.e. 2021 she has not physically worked with the department, this Court has no hesitation in reaching to the conclusion that so far as the finding of the Labour Court holding the termination to be justified does warrant interference and the same stands set aside/quashed. It is ordered accordingly.

- 13.** 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 about 26 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 circumstance, which was envisaged by the Hon'ble Supreme Court while deciding in the case of "Bharat Sanchar Nigam Limited" (supra).
- 14.** 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 her 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 i.e. the petitioner herein would be entitled for a lump sum amount of Rs.75000/- as compensation in lieu of reinstatement as full and final settlement of the award.

15. The State is directed to ensure that the compensation part is paid to the worker without any further delay within a period of 60 days from the date of receipt of copy of this order.

16. Accordingly, the writ petition stands partly allowed.

**Sd/-
(P. Sam Koshy)
Judge**

Khatai