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HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (L) NO. 172 OF 2017**

1. State of Chhattisgarh, through Secretary, Health & Family Welfare Department, Medical Education Department, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, Police Station Mandir Hasaud, Raipur (C.G.)
2. The Director, Medical Education, Health & Family Welfare Department, Government of Chhattisgarh, Raipur (C.G.)
3. The Superintendent, Chhattisgarh Institute of Medical Sciences (CIMS), Bilaspur (C.G.)
4. The Dean, Chhattisgarh Institute of Medical Sciences (CIMS), Bilaspur (C.G.)

... Petitioner**versus**

1. Mahesh Ram Thawait, S/o Shri Ram Thawait, R/o Near Shiv Temple, Sanjay Nagar, Chantidih, Police Station Sarkanda, District Bilaspur (C.G.)
2. Ku. Ranjana Yadav, D/o Shri M.L. Yadav, R/o Jarhabhata, Near Jhulaghar, Omnagar, Police Station Civil Lines, District Bilaspur (C.G.)
3. Somesh Kumar Pathak, S/o Late S.K. Pathak, R/o Pathakpara, Ramgopal Tiwari Ward, Police Station Mungeli, District Mungeli (C.G.)
4. Mahendra Kumar Gauraha, S/o Shri T.P. Gauraha, R/o Kilaward, Near Radhakrishnan Temple, Police Station Civil Lines, District Bilaspur (C.G.)
5. Sunil Kumar Sharma, S/o Govardhanlal Sharma, aged about 45 years, C/o M.L.Rao, Gali No.4, Near Sultania Niwas, Kranti Nagar, Police Station Civil Lines, District Bilaspur (C.G.)
6. Ku. Sushila Ratre, D/o Shri D.L.Ratre, Shrikant Verma Marg, Behind Sai Darbar, Sharda Nagar, Police Station Civil Lines, District Bilaspur (CG)
7. Manish Tiwari, S/o Shri Bharatlal Tiwari, R/o Nariyal Kothi, Dayalband, Police Station Kotwali, District Bilaspur (C.G.)
8. Smt. Priti Soni, W/o Shri Hemant Soni, R/o Quarter No. MIG-C/29, Nehru Nagar, Police Station Civil Lines, District Bilaspur (C.G.)
9. Roman Gaygawal, S/o Shri Beni Madhav Gaygawal, Address Post Khorsi Via Kharod, Tahsil Pamgarh, Police Station Pamgarh, District Janjgir-Champa (C.G.)
10. Sunit Kumar Mishra, S/o Shri R.S. Mishra, R/o Jabrapara, Gali No. 2, Police Station Sarkanda, District Bilaspur (C.G.)

... Respondents

For Petitioner	:	Ms. Akanksha Jain, Dy. Govt. Adv.
For Respondents	:	Mr. Rohit Sharma, Advocate, along with Mr. Sunil Kumar Soni, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****[20.09.2021]**

1. The present is a Writ Petition preferred by Petitioners/State Government challenging the Award dated 5.5.2017 (pronounced on 6.6.2017) passed in Case No. 9/I.D.Act/Ref./2013 by the Labour Court under the Industrial Disputes Act, Bilaspur.
2. Vide the impugned Award dated 5.5.2017, the Labour Court has answered the reference in favour of Respondents/Workers holding that the discontinuance of services of 10 workers/employees was unjustified and illegal and has thus ordered for reinstatement in services with 20% of back-wages.
3. Petitioners/State Government thereafter immediately filed the present Writ Petition on 1.8.2017 and this Court vide its Order dated 12.3.2021 had stayed the effect and operation of the impugned Award dated 5.5.2017 so far as back-wages is concerned, subject to Petitioners complying with the provisions of Section 17B of the Industrial Disputes Act, 1947.
4. Brief facts of the case relevant for the adjudication of the dispute are that the 10 Workers involved in the dispute claimed themselves to be working with the different Colleges in and around District Bilaspur. That, in the year 2003 in a recruitment process in the establishment of Chhattisgarh Institute of Medical Sciences (CIMS) at Bilaspur, all the Respondents No.1 to 10 had participated in the recruitment process and were appointed as Lower Division Clerk. From the year 2003 onwards, they all continued to discharge their duties to the satisfaction of the Authorities when abruptly their services stood discontinued on 11.9.2008.
5. In the year 2003 when the Respondents/Workers were appointed, the CIMS, Bilaspur was then under the control of Guru Ghasidas University, Bilaspur. In 2007 i.e. on 1.7.2007, the CIMS, Bilaspur was

taken over/acquired by the State Government and the Workers in the present dispute came under the control of the management of CIMS, Bilaspur. However, abruptly, on 11.9.2008, the services of Respondents/Workers were terminated.

6. Respondents/Workers thereafter filed a Writ Petition before this Court vide W.P.(S) No.1738/2009. However, the said Writ Petition was declined to entertain by this Court reserving the right of Workers to avail appropriate remedies available to them before appropriate forum.

7. The 10 Workers thereafter raised a dispute before the Labour Commissioner under the provisions of the Industrial Disputes Act and the Labour Department of the Government made a reference to the Labour Court for proper adjudication on the following terms of reference :-

“Whether the termination of services of Applicants Mahesh Thawait, Ku. Ranjana Yadav, Suneet Kumar Mishra, Somesh Kumar Pathak, Sunil Kumar Sharma, Roman Gaygwal, Mahendra Kumar Gouraha, Ku. Sushila Ratre, Manish Tiwari and Smt. Priti Soni, is legal and proper?

If not, to what relief the Applicants are entitled for? In this regard, what is the appropriate direction to be given to Non-applicants?”

8. The Labour Court registered the matter as Case No.9/I.D.Act/Ref./2013. All the Workers involved in the dispute after filing their Statement of Claim also adduced their evidence in the form of an Affidavit under Order 18 Rule 4 of the Code of Civil Procedure. Thereafter, all the Workers were also subjected to cross-examination and on behalf of Petitioners/State Government i.e. the Second Party before the Labour Court, it was the evidence of one Dr. V.P. Verma which was adduced.

9. In the said Statement of Claim, the above mentioned witness Dr. V.P. Verma submitted that the Workers were initially engaged by Guru Ghasidas University as Daily Wage employees. According to said

Witness, after the State Government had acquired/taken over the CIMS, Bilaspur, the then employees who were working on daily wages were taken in services on contract basis and subsequently in the year 2009 all the employees engaged by Guru Ghasidas University were sent back to the University. The said Witness was later extensively cross-examined on behalf of the Workers.

10. After appreciating the evidence adduced on behalf of the parties, the Labour Court finally vide the impugned Award answered the reference in favour of the Workers by granting a relief of reinstatement with 20% of back-wages. It is this Award which is under challenge in the present Writ Petition.

11. From the afore-stated factual matrix of the case, the admitted position as it stands is that the Workers were all been appointed on Daily Wages by Guru Ghasidas University in the year 2003 at CIMS, Bilaspur. They continued to discharge their duties at the CIMS, Bilaspur till 11.9.2008 when abruptly they were removed.

12. What is really to be appreciated at this juncture is that from the pleadings it appears that from the date of Award till now the Workers involved in the dispute have not been reinstated. The Workers herein have worked under the Guru Ghasidas University for a period between 2003 to 2008 that is for roughly 5 years. From 2008 till now, that is for 13 years, the Workers have been out of employment.

13. Keeping the aforesaid factual matrix, if we look into the admitted facts as have been stated in the preceding paragraphs, there is no dispute so far as the engagement of the Workers is concerned. There is also no dispute of the fact that all the Workers were engaged on Daily Wage basis. From the records, there does not seem to be any formal Order of

Appointment issued to any of these Workers, which has been brought on record or exhibited in the course of evidence.

14. The fact also is not in dispute that the Workers had continuously worked only from 2003 to 2008 for about 5 years. Further admitted factual matrix of the case is also that before discontinuance of the services of Workers, they were neither issued any Show Cause Notice nor were they granted any salary in lieu of notice. At the same time, the Workers also were not given any retrenchment compensation or, for that matter, retrenchment compensation before discontinuance of their services.

15. In the afore given admitted factual matrix of the case, the questions of law which need to be considered at this juncture are :-

- (i) Whether the finding given by the Court below holding the termination to be bad in law and violative of the provisions of the Industrial Disputes Act is proper, legal and justified?
- (ii) Whether the awarding of 20% of back-wages is justified or not?
- (iii) What would be the proper relief that can be granted to Respondents/Workers at this juncture after 13 years of remaining out of employment as compared to only 5 years of services that they have rendered?

16. As regards the first question, from the factual aspect narrated in the preceding paragraphs, true it is that undoubtedly the Workers had worked under the Petitioners uninterruptedly from 2003 to 2008 for a period of five years. It is not in dispute that before discontinuance of their services, no notice whatsoever was issued to them. It is also not in dispute that they were all engaged as contractual employees and before their

discontinuance from services, they had also not paid any salary in lieu of notice or any retrenchment compensation or any other compensation in terms of the Industrial Disputes Act.

17. It is by now a well settled position that contractual employee as such may not have any indefeasible right for being continued in service as a regular employee. If we look into the Award passed by the Labour Court, it is evidently clear that there was sufficient evidence produced by Respondents/Workers to show that the Petitioners had not followed the principles of “last come, first go” for the purpose of discontinuing the services of the employees worked under the Petitioners in the year 2008.

18. Factually, it has also been established before the Labour Court that the provisions of Sections 25F and 25N of the Industrial Disputes Act were also not followed by Petitioners before discontinuance of the services of Respondents. Another admitted position as it stands is that though the Award of the Labour Court has been passed as early as on 5.5.2017, till date the Respondents have not been reinstated. That, this Court had ordered only for compliance of the provisions of Section 17B of the Industrial Disputes Act which speaks of payment of last pay drawn if the employer is not willing to take back an employee.

19. The fact that there has been non-compliance of the provisions of Sections 25F and 25N of the Industrial Disputes Act and the fact that there was no notice or salary in lieu of notice given to Respondents/Workers, particularly when admittedly there is a continuous employment of Respondents/Workers for a period of about five years, the finding of the Labour Court holding that the order of discontinuance is *per se* illegal and amounts to illegal termination, cannot be said to be either bad or contrary to the evidence which have come on record. Neither can the finding of the

Labour Court to the extent of declaring the termination illegal, can be said to be a perverse finding. On the other hand, the finding of the Labour Court in declaring the termination to be bad is a finding of fact which cannot be otherwise interfered by the High Court in exercise of its jurisdiction as a matter of routine.

20. The scope of interference for the High Court with an order of the Labour Court is too minimal. The High Court can interfere with the finding only in the event of the order being passed without jurisdiction or in excess of jurisdiction. It is a settled position of law that the High Court would not substitute itself as an Appellate Authority sitting over the Award of the Labour Court passed under the Industrial Disputes Act. The permissible interference is only to the extent of the Award being perverse so far as the finding is concerned or in the event of any patent mistake leading to grave error in law and on fact in reaching to the conclusion. There is no infirmity in the decision making process pointed out so far as the termination is concerned. In view of the same, the order of the Labour Court so far as declaring the termination to be illegal, does not warrant interference and the same therefore is affirmed to the extent of the termination being declared illegal.

21. Now, coming to the next question of law i.e. whether the granting of 20% of back-wages is justified or not, as has been discussed earlier there is no dispute to the fact that on the date of discontinuance from service, the status of Respondents/Workers was that of contractual nature. A contractual employee does not otherwise have a legal indefeasible right. The services of a contractual employee are only for the period stipulated in the order of appointment as a contractual employee. Beyond the contractual period, he cannot have any claim as a matter of right.

22. The Hon'ble Supreme Court in a catena of decisions has repeatedly held that awarding of back-wages cannot be an automatic consequence. It would depend upon the facts of each case and the substantial nature of appointment of the concerned employee/worker. No justifiable reasons have been provided by the Labour Court in awarding the 20% of back-wages. The awarding of 20% back-wages therefore is bad in law.

23. The view of this Court in this regard stands fortified by the decision of the Hon'ble Supreme Court recently rendered in the case of “**Rajasthan State Road Transport Corporation, Jaipur Vs. Shri Phool Chand (Dead) through L.Rs.**” decided on 20.9.2018 in Civil Appeal No.1756/2010, wherein from paragraphs 11 to 14 it has been held as under:-

“11. In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.

12. It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.

13. In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages is required to be decided, what are the factors to be taken into consideration awarding back wages, on whom the initial burden lies etc. were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer res integra. These cases are, **M.P. State Electricity**

Board v. Jarina Bee(Smt.), (2003) 6 SCC 141, **G.M. Haryana Roadways v. Rudhan Singh**, (2005) 5 SCC 591, **U.P. State Brassware Corporation v. Uday Narain Pandey**, (2006) 1 SCC 479, **J.K. Synthetics Ltd. v. K.P. Agrawal & Anr.**, (2007) 2 SCC 433, **Metropolitan Transport Corporation v. V. Venkatesan**, (2009) 9 SCC 601, **Jagbir Singh v. Haryana State Agriculture Marketing Board & Anr.**, (2009) 15 SCC 327) and **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya(D.Ed.) & Ors.**, (2013) 10 SCC 324.

14. The Court is, therefore, required to keep in consideration several factors, which are set out in the aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages and, if so, to what extent.”

24. Coming to the last question of law as to what would be the most appropriate relief that could be given to Respondents/Workers, it cannot be lost sight of the fact that they have worked for a period of just about 5 years between 2003-2008 under the Petitioners that too on contractual basis. The fact further to be appreciated is that for the last more than 13 years they have been out of employment, coupled with the fact that the Petitioners/State Government must have by efflux of time filled up all the regular vacant posts lying at the establishment where the Respondents/Workers were working by way of contract recruitment. That, accommodating the Respondents/Workers again and again on contract basis may not be either feasible nor would it be justifiable.

25. 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 rendered in the case of **“District Development Officer & Anr. Vs. Satish Kantilal Amrelia”** decided on 28.11.2017 in Civil Appeal Nos. 19857 and 19858 of 2017, where in paragraphs 13 to 16 it has been 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).”

26. It would also be relevant at this juncture to refer to the judgment of the Hon’ble Supreme Court delivered in the case of “**Hari Nandan Prasad & Anr. Vs. Employer I/R to Management of Food Corporation of India & Anr.**” [(2014) 7 SCC 190] wherein in paragraphs 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.”

27. A similar view has also been taken by the Hon'ble Supreme Court in the case of “**Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Limited**” [2014 (11) SCC 85].

28. Coming to the various judgments which have been relied upon by learned Counsel for Respondents/Workers, 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. It is clear that there has been a slight shift from the earlier position that was taken by the Hon'ble Supreme Court. The power 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, after the judgment which has been laid down by the Hon'ble Supreme Court in the case of “**Bharat Sanchar Nigam Limited Vs. Bhurumal**” [(2014) 7 SCC 177] and which has further been reiterated time and again and which now recently also stands reiterated in the case of “**Satish Kantilal Amrelia**” (supra).

29. 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, as enumerated earlier, the Workers have in fact physically worked with the Department only for a period of about 5

years between 2003 to 2008. That, from 2008 till date they have not physically worked with the Department, as they have been paid only the last wage drawn without reinstatement after the Award of the Labour Court till date. This Court thus has no hesitation in reaching to the conclusion that as regards 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, the same does not warrant interference and accordingly stands affirmed. At the same time, the awarding of 20% of back-wages by the Labour Court for the reasons discussed in the preceding paragraphs is not sustainable and the same stands set-aside/quashed.

30. As regards the consequential relief, what emerges from the discussion made in the preceding paragraphs and the fact that Respondents/Workers are out of employment for a period of now over 13-14 years, it is a 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 the exceptional circumstances which were envisaged by the Hon'ble Supreme Court while deciding the case of "**Bharat Sanchar Nigam Limited**" (supra).

31. This Court, thus, finds that it is a fit case where the Respondents/Workers should be awarded compensation in lieu of reinstatement as full and final settlement of their 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 rendered in the case of "**Satish Kantilal Amrelia**" (supra).

32. Accordingly, considering the entire facts and circumstances of the case, this Court orders that the Respondents/Workers would be entitled for an amount of Rs.50,000/- for each years of service that they have rendered with the State Government, i.e., for 5 years, and for which they would be entitled for a total amount of Rs.2,50,000/- each as compensation in lieu of reinstatement as full and final settlement of the claim.

33. Writ Petition accordingly stands partly allowed to the extent that the Award passed by the Labour Court stands modified in terms of the observations made in the preceding paragraphs.

/sbarad/

Sd/-
(P. Sam Koshy)
Judge