

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13159 OF 2017

Dattu Nivrutti Shinde .. Petitioner
Age. 42 years, Occ. Labour,
R/o. Loni Sayyed Mir, Tq. Aashti,
Dist. Beed.

Versus

Maharashtra State Road Transport .. Respondent
Corporation, Aashti, Tq. Aashti,
Dist. Beed,
Through its Depot Manager.

Mr.S.S. Bora, Advocate for the petitioner.
Mr.A.B. Dhongade, Advocate for sole respondent.

CORAM : N.J.JAMADAR, J.
RESERVED ON : 15.03.2021
PRONOUNCED ON : 06.04.2021

J U D G M E N T :-

01. Rule. Rule made returnable forthwith and with the consent of the learned Counsels for the parties, heard finally at the stage of admission.

02. The petitioner/workman takes exception to the judgment and award passed by the Labour Court in IDA No.1800132/2011 dated 15th February, 2017, to the extent

of award of reinstatement compensation of Rs.2,625/- only.

03. The petition arises in the backdrop of the following facts :-

a] The petitioner joined the services of the respondent-Corporation at its Ashti Depot, as a Sweeper on the wages of Rs.750/- per month, on 1st February, 2004. The petitioner rendered the services till the year 2010. On 21st September, 2010, the petitioner's services were terminated without adhering to the mandate prescribed under sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 [the Act, 1947]. The petitioner raised an industrial dispute. Post failure of the conciliation proceeding, the matter was referred to the Labour Court, Aurangabad for adjudication.

b] After an enquiry, the Labour Court by the impugned judgment and award dated 15th February, 2017 recorded a finding that the services of the petitioner

were terminated in breach of the provisions contained in section 25-F of the Act, 1947. Instead of ordering reinstatement in service, the Labour Court found it expedient to award compensation. However, the quantum of compensation was determined at Rs.2,625/- by adopting the formula prescribed in sub-clause (b) of Section 25-F. Being aggrieved by and dissatisfied with the quantum of reinstatement compensation, the petitioner has invoked the writ jurisdiction of this Court.

04. I have heard Mr.Bora, learned Counsel for the petitioner and Mr.Dhongade, learned Counsel for the respondent. With the assistance of learned Counsels for the parties, I have also perused the material on record. Mr.Bora, learned Counsel for the petitioner strenuously urged that the Labour Court completely misdirected itself in determining the compensation on the basis of the daily wage of Rs.25/-, which the petitioner was then paid. The Labour Court completely lost sight of the fact that the petitioner had worked for six years and eight months and,

though the petitioner was shown as a temporary employee, the petitioner was discharging the work which was permanently available. The measure of determination of retrenchment compensation envisaged by section 25-F(b) of the Act, 1947, could not have been applied while awarding compensation in lieu of reinstatement, canvassed the learned Counsel for the petitioner.

05. Mr.Bora, learned Counsel for the petitioner would further urge that the Labour Court ought to have determined the quantum of compensation taking into account the minimum of the pay-scale which a permanent employee, discharging the duties which the petitioner rendered, draws. In any event, the rate of minimum wages for the work rendered by the petitioner ought to have been considered. To lend support to this submission, learned Counsel for the petitioner placed reliance on a judgment of the Supreme Court in the case of Sabha Shanker Dube Vs. Divisional Forest Officer and Ors., AIR 2019 SC 220, wherein it was enunciated that the temporary

employees are entitled to draw wages at the minimum pay-scale which are applicable to the regular employees holding the same post.

06. In a line of decisions, according to learned Counsel for the petitioner, the Supreme Court as well as this Court have awarded compensation in the range of Rs.30,000/- to Rs.50,000/- for each years service rendered by the workman in lieu of reinstatement.

07. Reliance was placed on the judgment of this Court in the case of Rangnath s/o. Nana Patare & Ors., Vs. The Director, Ground Water Survey and Development Agency & Ors., 2016(7) ALL MR 47, wherein a learned Single Judge of this Court, after adverting to the previous pronouncements, had determined the compensation on the basis of Rs.40,000/- per year of service. Reliance was also placed on another judgment of this Court in the case of Ahmednagar Mahanagar Palika, Ahmednagar Vs. Rajendra Bandu Suryanarayan, Writ Petition

No.3767 of 2017 and connected matter dated 26th November, 2019, wherein this Court had determined the compensation on the scale of Rs.50,000/- per year of service, as the respondent therein had worked for about 8 years.

08. By a catena of decisions, the legal position is crystallized to the effect that an order of retrenchment in violation of Section 25-F of the Act, 1947 does not automatically lead to award of reinstatement in service. Especially, in the case of daily wager, an award of reinstatement with full back wages, where the workman has completed 240 days of work in a year preceding the date of termination, has not been found to be justifiable and, instead, compensation is considered to be a proper relief, since a daily wager does not hold a post.

09. In the case at hand, the Labour Court has proceeded to determine the compensation by applying the formula envisaged by clause (b) of Section 25-F of the Act, 1947. It reads as under :-

"25-F. **Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

10. A plain reading of the aforesaid provision would indicate that no workman in any industry, who has been in continuous service for not less than one year, can be retrenched until the conditions enumerated in clauses (a) and (b) are satisfied qua the workman. In terms of clause (a), the employer is required to give workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty on the employer to pay to the workman at the time of retrenchment, the compensation equivalent to 15 days average pay for every completed years of continuous service or any part thereof in excess

of six months. Non-compliance with the aforesaid clauses renders the retrenchment invalid.

11. The aforesaid requirement of payment of compensation under clause (b), at the time of retrenchment cannot be construed as a measure for determination of compensation in lieu of reinstatement. It cannot be lost sight of that the compensation is awarded as a substitute for reinstatement in service. The quantum of compensation is, therefore, required to be determined keeping in view the fact that despite having found that the termination is bad in law, instead of automatically reinstating the workman in service, he is awarded compensation. To adopt the formula, at which retrenchment compensation is to be given under clause (b) of section 25, at the time of retrenchment, while determining the compensation in lieu of reinstatement in service, would denude the amount so determined the element of recompense for loss of service. To determine the reinstatement compensation on the said basis would

amount to putting a premium on the illegality of termination. Retrenchment compensation, to be paid by the employer at the time of retrenchment, and the compensation in lieu of reinstatement are distinct in juristic connotation, diverse in point of time of payment and their quantum depends upon altogether different considerations.

12. The learned Judge, Labour Court, in my considered view, committed an error in law in determining the quantum of compensation on the basis of formula prescribed in clause (b) of Section 25-F of the Act. To this extent, the impugned judgment and award deserves to be interfered with.

13. What should be the quantum of compensation? The Courts have determined the compensation in lumpsum or on the scale of yearly compensation multiplied by number of years of service put by the employee. Indeed, the determination of reinstatement compensation in each case

is rooted in facts. No straight jacket formula can be devised. The broad factors which bear upon the determination of compensation in lieu of reinstatement are the nature of employment, the period for which the workman had rendered services, the wages paid to the workman, the age of the workman at the time of determination of said question, the possibility of re-employment of the workman and the like.

14. In the case at hand, the petitioner had worked for six years and eight months. He rendered the service as a Sweeper. He was paid wages @ Rs.25/- per day. The petitioner appears to be in his late forties. By this time the employability of the petitioner might have been diminished. In the totality of the circumstances, it would be just and reasonable to award a sum of Rupees One Lakh as compensation in lieu of reinstatement.

15. For the foregoing reasons, the petition deserves to be partly allowed. Hence, the following order :-

O R D E R

The petition stands partly allowed.

The impugned judgment and award stands modified to the extent of award of compensation of Rs.2,625/- and instead the respondent shall pay compensation of Rs.1,00,000/- [Rupees One Lakh], in lieu of reinstatement.

The compensation be paid within a period of six weeks from the date of this order, failing which, it shall carry interest @ 9% p.a.

Rest of the impugned award stands confirmed.

No costs.

Rule made absolute in aforesaid terms.

[N . J . J A M A D A R , J .]