

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO. 314 OF 2010
IN WRIT PETITION NO. 5982 OF 2005

Hemant Babruvahan Parchake,
aged about 30 years, R/o Gondpura,
near Akre Bandhu Bicchayat Kendra,
Nagpur.

...APPELLANT

Versus

1. Social Welfare Officer,
Somalwar Bhavan, Mount road,
Sadar, Nagpur.
2. The District Social Welfare Officer,
Administrative Building, Civil Lines,
Nagpur.
3. The Superintendent,
Government Beggar's Home,
Near Head Quarter of Nagpur Rural Police,
Behind Lalgodam, Kamptee Road,
Nagpur.

...RESPONDENTS

Shri P. D. Meghe, Advocate for the appellant.
Mrs. S.S. Jachak, A.G.P. for the respondents.

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CORAM : A.S. CHANDURKAR AND
PUSHPA V. GANEDIWALA, JJ.

Date on which arguments were heard : JUNE 22, 2021.

Date on which judgment is delivered : JUNE 29, 2021

JUDGMENT : (PER : PUSHPA V. GANEDIWALA, J.)

This Letters Patent Appeal is directed against the judgment and order dated 14.12.2009 passed by the learned Single Judge of this Court in Writ Petition No.5982 of 2005.

2. A short question, which arises for consideration of this Court, reads thus:

“Whether the retrenchment of a workman without complying with the conditions in terms of Section 25-F (a) and (b) of The Industrial Disputes Act, 1947, would automatically result in the reinstatement of the workman?”

3. The facts necessary to decide the present Appeal, are as under:

The appellant was appointed as a 'Senior Caretaker' on daily wage basis by respondent No. 2 with effect from 02.05.1998 at Government Beggar's Home. His services were terminated by respondent No. 2 on 06.11.1999.

4. Being aggrieved by the said termination, the appellant filed U.L.P.A. bearing Complaint No. 740/1999 before

the Labour Court, Nagpur. In the complaint, he has stated about rejection of his request for appointment on compassionate ground in place of his father, who had retired as a Class-IV employee with the respondents' department. However, he was given temporary appointment as a Senior Caretaker with effect from 02.05.1998. He worked till his termination, i.e., 06.11.1999. It is his case that his services have been terminated orally without complying with the mandate of Section 25-F of the Industrial Disputes Act (for short "I.D. Act").

5. The contesting respondent No.4, in his reply, denied all the adverse allegations in the complaint and stated that the appointment of the appellant was made purely on temporary basis and only a stop-gap arrangement at the relevant point of time, as the regular Caretaker Mr. B.K. Hadke was suspended and thereafter reinstated by an official order. As the services of the appellant were not required, he was terminated.

6. The Labour Court framed issues and recorded evidence as adduced by both the parties and after considering

the material on record, allowed the complaint and resultantly, the appellant was reinstated with full back wages. The Revisional Court/ Industrial Court, however, set-aside the judgment and order of the Labour Court, and remanded the matter for reconsideration in accordance with law. The Labour Court then reconsidered the matter and dismissed the Complaint vide judgment and order dated 06.05.2004 especially on the ground that the case of the complainant/ appellant falls under Section 2(oo)(bb) of the I.D. Act, as he was appointed on daily wage basis temporarily as per the terms and conditions mentioned in Exhibit 38 by the respondent. It is further observed that the complainant/ appellant has also given a '*Pratigya Patra*' that the services shall be terminated at any time without assigning any reasons. According to the learned Judge, as the termination of the complainant/ appellant falls under Section 2(oo)(bb) of the I.D. Act, there was no need to comply with the provisions of Section 25-F of the I.D. Act while terminating the services of the complainant/ appellant. The judgment and order of the Labour Court was further upheld in Revision Application No.68/2004 before the Industrial Court, Nagpur, vide judgment and order dated

19.07.2005.

7. The appellant assailed the said judgment by filing Writ Petition bearing No.5982 of 2005. The learned Single Judge in this Writ petition observed that there was no material on record to hold that the provisions of Section 2 (oo) (bb) of the I.D.Act were attracted. The facts disclosed by the petitioner himself show that he was aware that he had no right to remain in employment and that he had not worked on any sanctioned vacant post. By referring to the judgment of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors. [AIR 2006 SC 1806], the learned Single Judge observed that the Labour Court could not have given the relief of reinstatement to the petitioner. The learned Single Judge didn't find any jurisdictional error or perversity in the judgment of the Courts below, and accordingly dismissed the Writ Petition. This judgment of the learned Single Judge is impugned in this appeal.

8. We have heard Shri P. D. Meghe, learned counsel for the appellant and Mrs.S.Jachak, learned Assistant

Government Pleader for the respondents.

9. Shri Meghe, learned counsel for the appellant, strongly placed reliance on the judgment of the Hon'ble Supreme Court in the case of Anoop Sharma Vs. Executive Engineer, Public Health Division No.1, Panipat (Haryana) [(2010) 5 SCC 497], and submitted that it has been repeatedly held that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Sections 25-F (a) and (b) of the I.D. Act, has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.

10. The learned counsel further submitted that the learned Single Judge has wrongly applied the ratio laid down in the case of Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors. (*supra*), as the said judgment was in respect of claim made by an employee for regularization; whereas the issue involved in the present case is in respect of legality of

termination when statutory provisions are not complied with. He further submitted that the impugned judgment is based on erroneous application of case law, and thus needs to be quashed.

11. Per contra, Ms. Jachak, learned AGP appearing on behalf of the respondents – State, submits that the appellant could not have claimed reinstatement, as he was knowing since beginning that his services are on temporary basis and terminable without notice. Accordingly, he had also executed one ‘Pratigya Patra’.

12. The learned AGP further submits that the appointment of the appellant was made only as a stop-gap arrangement at the relevant point of time in place of regular Caretaker Mr. B.K. Hadke, who was suspended and thereafter reinstated by an official order. As the services of the appellant were not required, he was terminated.

13. It is further submitted that the appellant being a temporary employee, who was not appointed against

sanctioned post, in view of the ratio laid down in the case of *Umadevi* (supra), he could not have been reinstated without following the statutory Rules and the mandate of the Constitution. The learned AGP further submits that the terms and conditions in the appointment letter (Ex.38) was agreeable to the appellant and hence, now, the appellant has to be estopped from claiming reinstatement with continuity of service. In support of her submission, learned AGP placed reliance on the judgment of the Hon'ble Apex Court in the case of *Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Limited* [(2014) 11 SCC 85].

14. We have considered the submissions made on behalf of both the sides and carefully perused the record. Before adverting to discuss the rival contentions and the law laid down on the issue, it would be apposite to reproduce Section 25-F of I.D.Act, which reads thus:

“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."

15. The term '*retrenchment*' is defined under Section 2 (oo) of the I.D. Act, which reads thus :

"2(oo) "*retrenchment*" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the

age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;”

16. The findings recorded by the Courts below as regards the status of the appellant as ‘workman’ and the Social Welfare Department of the respondent as ‘industry’, have reached finality. The learned Courts below also recorded negative finding with regard to the commission of unfair labour practice at the hands of the respondents.

17. It is not in dispute that the appellant was engaged as a daily wager and his appointment was not against any vacant post. Evidently, the appellant was appointed by way of stop-gap arrangement as the erstwhile incumbent on the post

of Senior Caretaker was suspended. No sooner than the suspended employee reinstated as per official order, the services of the appellant came to be terminated. However, undisputedly, the period of service rendered by the appellant with the respondent's department was more than 240 days in a preceding year. The finding recorded by the learned Single Judge that the provisions of Section 2 (oo) (bb) of the I.D. Act were not attracted is not challenged by the respondents. It is thus clear that such termination fits in the definition of retrenchment in terms of Section 2(oo) of the I.D. Act and the retrenchment was ordered without complying with the conditions in terms of Section 25-F (a) and (b) of the I.D. Act., i.e., neither he was issued one month's advance notice nor paid one month's salary in lieu thereof. It is pertinent to note that no amount was paid to the appellant as compensation. Now, the question before us is whether his termination, in the absence of compliance of the mandatory conditions (a) and (b) of Section 25-F of the I.D. Act, is illegal warranting his reinstatement? Considering the recent judicial pronouncements of the Hon'ble Apex Court, the answer to this question would be clear '*No*'. The Hon'ble Apex Court in a catena of decisions

has clearly laid down that although an order of retrenchment passed in violation of Section 25-F of the I.D. Act, may be set aside, the award of reinstatement should not be ordinarily passed especially in the case of a daily wager, who does not hold a post as a permanent employee.

18. In the case of Bharat Sanchar Nigam Ltd. Vs. Man Singh [(2012) 1 SCC 558], and Assistant Engineer, Rajasthan Development Corporation Vs. Gitam Singh [2013(5) MhLJ 1] in similar facts and circumstances, as are in the present case, the Hon'ble Apex Court has held that the respondents – workmen were engaged as '*daily wagers*' and they had merely worked for more than 240 days, hence the relief of reinstatement cannot be said to be justified and instead monetary compensation would meet the ends of justice.

19. In the case of Incharge Officer and Ors. Vs. Shankar Shetty, [2011 (1) ALL MR (SC) 931], the question before the Hon'ble Apex Court was, "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 I.D. Act ?” The Hon’ble Apex Court has held that the course of decisions of this Court in recent years has been uniform on the above question. The Hon’ble Apex Court has relied on a series of earlier decisions mainly Jagbir Singh Vs. Haryana State Agricultural Marketing Board and Anr., [(2009) 15 SCC 327], wherein it is held as under:

“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”.

20. In the case of Punjab Land Development and Reclamamation Corporation Ltd. Vs. Presiding Officer Labour Court, Chandigarh [(1990) 3 SCC 682], the Hon’ble Apex Court in paragraph 59 has held as under:

"59. In a fast developing branch of Industrial and Labour law it may not always be of particular importance to rigidly adhere to a precedent, and a precedent may need be departed from if the basis of legislation changes. The House will depart from a previous decision where it is right to do so and where adherence to a previous decision may lead to injustice in a particular case. Constitutional and administrative law are not fields where it is of particular importance to adhere to precedent. A recent precedent may be more readily departed from than one which is of long standing. A precedent may be departed from where the issue is one of statutory construction."

21. In the case of Haryana State Electronics Development Corporation Ltd. Vs. Mamni [AIR 2006 SC 2427], the Hon'ble Apex Court observed that, even if the respondent is reinstated in her service on an ad-hoc basis, her services cannot be regularized in view of the decision of the Hon'ble Apex Court in *Secretary, State of Karnataka and ors. Vs. Uma Devi and Ors.* (supra). It is further observed by the Hon'ble Apex Court that interest of justice would be sub-served if in place of reinstatement with back wages, a lump sum amount is directed to be paid by way of compensation.

22. The Hon'ble Apex Court in the case of Mahboob Deepak Vs. Nagar Panchayat Gajraua and Ors. [(2008) 1 SCC 575] observed in para 6 as under:

"6. Such termination of service, having regard to the fact that he had completed 240 days of work during a period of 12 months preceding the said date, required compliance of the provisions of Section 6N of the U.P Industrial Disputes Act. An order of retrenchment passed in violation of the said provision although can be set aside but as has been noticed by this Court in a large number of decisions, an award of reinstatement should not, however, be automatically passed".

23. In the case of Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumr Seal and Ors. [AIR 2010 SC 2140], in similar facts, i.e., casual employee having worked for more than 240 days, the Hon'ble Apex Court has observed 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 the monetary compensation in lieu of reinstatement and back

wages can be granted.

24. In the case of *BSNL v/s Bhurumal (supra)*, the Hon'ble Apex Court held in paragraph Nos. 33, 34 and 35, which read thus :

“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. 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”.

25. It is now well settled by a catena of decisions of the Hon'ble Apex Court referred to above that in a situation where appointment of the employee is not regular and his retrenchment is proved to be illegal for not complying with Section 25-F of the I.D. Act, instead of directing reinstatement with full back wages, the workmen should be granted

adequate monetary compensation.

26. Considering the ratio laid down in the aforesaid judgments which is squarely applicable to the facts of the present case, the judgment in the case of *Anoop Sharma (supra)* relied on by Shri P. D. Meghe, learned counsel for the appellant, could not be of any assistance to the appellant as this case is distinguishable on facts. In this case, the Hon'ble Apex Court has observed that the learned Division Bench of the High Court had set aside the award of the Labour Court without even advertting to the fact that other similarly situated employees whose services were also terminated, had been reinstated by the order of the Labour Court in separate proceedings which was confirmed by the High Court and then the Apex Court. The Apex Court specifically mentioned that it was not pleaded by the respondent before the Labour Court or even before the High Court that the appellant was engaged/employed without following the statutory rules or Articles 14 and 16 of the Constitution of India and that was the basis for discontinuing his engagement. So, in the case of *Anoop Sharma (supra)*, reinstatement of the employee was justified

on the ground that similarly situated employees had been reinstated and the employer had failed to plead that the appointment of the employee was not in accordance with the statutory rules and Articles 14 and 16 of the Constitution of India. The facts in the present case are quite different. In the present case, evidently, the appointment of the appellant was on daily wage basis as a stop-gap arrangement and not against any vacant post.

27. One of the contentions of Shri Meghe, learned counsel for the appellant was that as non-compliance of the conditions in terms of Section 25-F of the I.D. Act would result in illegal retrenchment, import thereof is reinstatement. We are unable to accept this argument considering the legal position discussed above, especially in the case of *BSNL v/s Bhurumal (supra)*. In this case the Hon'ble Supreme Court has held 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)."

28. In said the case of *BSNL v/s Bhurumal (supra)*, the Hon'ble Supreme Court added the words of caution by observing that *"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."*

29. Coming to the facts of the present case, the learned Single Judge has rightly held that the case of the appellant does not fall under Section 2(oo)(bb) of the I.D. Act, in the absence of any contract of employment between the parties which prescribes particular duration therefor. However, the learned Single Judge has failed to consider from the material on record that the termination of the appellant falls in the definition of retrenchment as defined under Section 2(oo) of the I.D. Act and the appellant had worked for more than 240 days and, therefore, statutory procedure as mandated under Section 25-F ought to have been followed. The learned Single Judge directly came to the conclusion that as the appellant himself admits that his appointment was temporary, considering the ratio laid down in the case of *Umadevi (supra)*, the appellant could not have been reinstated.

30. Admittedly, the appointment of the appellant was in the year 1998 on daily wage basis and he worked for about 18 months with artificial weekly break of one day. This shows that the appellant worked for more than 240 days in the preceding year. This fact is not disputed by the respondents

too. Therefore, it was incumbent upon respondent No.2 to comply with the conditions in terms of Sections 25-F (a) and (b) of the I.D. Act. The non-compliance of these conditions would entitle the appellant for retrenchment compensation. There is no distinction in law for applicability of Section 25-F of the I.D. Act, to the employee whose appointment is regular or temporary.

31. Now, with regard to the quantum of compensation, the appellant was engaged as daily wager on 02.05.1998 and he worked hardly for eighteen months from 02.05.1998 to 06.11.1999, hence, in our view, compensation of Rs.25,000/- (Rs. Twenty five thousand only) to the appellant would meet the ends of justice. It is pertinent to note that the learned AGP could not point out from the record that the appellant was gainfully employed at any time during the pendency of the proceedings. Accordingly, the respondent No.2 is directed to pay Rs.25,000/- (Rs. Twenty five thousand only) to the appellant towards retrenchment compensation within a period of two months from today, failing which, the same shall carry interest @ 9% per annum from the date of this judgment.

32. The appeal is accordingly partly allowed to the above extent with no order as to costs.

JUDGE

JUDGE

Sumit/ Ambulkar