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

WRIT PETITION NO.4503 OF 2010

Someshwar P. Wrgane

Vs.

The Principal, Government Residential Ladies Polytechnic, Yavatmal and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Shri Abhijit Barahate h/f Shri N.R. Saboo, Advocate for petitioner.
Ms H.N. Jaipurkar, AGP for respondent nos.1 and 2.

CORAM : AMIT BORKAR, J.

DATE : AUGUST 24, 2022.

This writ petition challenges the judgment and order passed by the Industrial Court directing to pay retrenchment compensation to the petitioner by recording a finding of non-compliance with Section 25F of the Industrial Disputes Act, 1947 (for short, "**ID Act**").

2. The facts relevant for adjudication of the petition are as under:

The petitioner was appointed as a Driver in the year 1997. The petitioner's services were terminated by order dated 15th May 2004 w.e.f. 1st June 2004. The petitioner, therefore, filed Complaint (ULP) No.13 of 2004 alleging unfair labour practice under Section 28 read with Item 1 of Schedule-IV of the ID Act.

The respondents contested the claim by submitting that the petitioner's services were temporary in nature. He

never worked continuously for more than 240 days before the termination date. His services were availed only when the work was available. The Labour Court dismissed the complaint by judgment and order dated 21st May 2008. Against which, the petitioner filed Revision (ULP) No.36 of 2008. The Industrial Court, by impugned judgment dated 6th April 2010, allowed the revision directing the respondents to pay retrenchment compensation recording breach of Section 25F of the ID Act.

3. The learned Advocate for the petitioner submitted that the petitioner was appointed on a permanent post and, having worked for more than seven years, was entitled to reinstatement. He relied upon the judgment of the Apex Court in the case of **Tapash Kumar Paul Vs. BSNL and another**¹.

4. *Per contra*, learned Assistant Government Pleader relied upon Apex Court's judgments in the cases of **Mahboob Deepak Vs. Nagar Panchayat, Gajraula**², **Incharge Officer and another Vs. Shankar Shetty**³ and **Krishna Bhagya Jala Nigam Ltd. Vs Mohammed Rafi**⁴ to urge that the necessary consequence of a finding of non-compliance of Section 25F is not relief of reinstatement. She submitted that the Court must consider the factors the court considers before granting reinstatement are whether the employee was appointed after

¹ 2014 DGLS (SC) 79

² (2008) 1 SCC 575

³ (2010) 9 SCC 126

⁴ 2009 (6) SCALE 655

following statutory rules, whether he was appointed on a sanctioned post and the period for which the employee worked. In the present case, the petitioner was neither appointed on sanctioned posts nor to following statutory rules.

5. Having reflected on the submissions made on behalf of both sides, at this stage, it is necessary to consider paragraph 3 in the case of **Shankar Shetty** (supra), which reads as under:

"3. In the case of Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr. (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 Corporation Ltd. & Anr. v. Uday Narain Pandey (2006) 1 SCC 479; Uttranchal Forest Development Corporation vs M.C. Joshi (2007) 9 SCC 353; State of M.P. & Ors. v. Lalit Kumar Verma (2007) 1 SCC 575; Madhya Pradesh Admn v. Tribhuban (2007) 9 SCC 748; Sita Ram & Ors. v. Motil Lal Nehru Farmers Training Institute (2008) 5 SCC 75; Jaipur Development Authority v. Ramasahai & Anr. (2006) 11 SCC 684; Ghaziabad Development Authority & Anr. v. Ashok Kumar & Anr. (2008) 4 SCC 261 and Mahboob Deepak v. Nagar Panchayat, Gajraula & Anr. (2008) 1 SCC 575 and stated as follows: (Jagbir Singh case (2009) 15 SCC 327, SCC pp.330 & 335, paras 7 & 14)

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an

employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

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, be 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".

6. Statutory rules govern the terms and conditions of the employment of the respondents. Merely because, due to some exigency of work, an employee is appointed on the said post, he cannot claim any right to be permanently absorbed in service or made permanent in the absence of any statute or statutory rules. Considering the fact of a

technical violation of Section 25F, the same by itself does not entitle the employee to claim reinstatement.

7. The learned Industrial Court has balanced equity by directing payment of retrenchment compensation. The Apex Court adopted such a mode in the case of **M. P. Administration Vs. Tribuhuwan**¹. Therefore, in my opinion, there is no perversity in the impugned judgment. There is no miscarriage of justice. The petition is therefore dismissed. Pending civil application (s), if any, stand(s) disposed of.

JUDGE

Wagh

¹ (2007) 9 SCC 748