



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 28.07.2023

% **Judgment delivered on: 18.08.2023**

+ **LPA 572/2018**

RAHUL SHARMA

..... Appellant

Through: Mr. Anuj Aggarwal and Ms. Shreya,
Advocates.

versus

**SOUTH DELHI MUNICIPAL CORPORATION
(SDMC)**

..... Respondent

Through: Mr. Arun Birbal and Mr. Sanjay
Singh, Advocates.
Mr. Satyakam, ASC for GNCTD.

+ **LPA 176/2019**

MEENU RANI

..... Appellant

Through: Mr. Anuj Aggarwal and Ms. Shreya,
Advocates.

versus

**SOUTH DELHI MUNICIPAL CORPORATION
(SDMC)**

..... Respondent

Through: Mr. Arun Birbal and Mr. Sanjay
Singh, Advocates.

+ **LPA 248/2019**

SHANKAR PRASAD ARYA

..... Appellant

Through: Mr. Anuj Aggarwal and Ms. Shreya,
Advocates.

versus

**SOUTH DELHI MUNICIPAL CORPORATION
(SDMC)**

..... Respondent

Through: Mr. Arun Birbal and Mr. Sanjay
Singh, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.



1. The aforesaid three Letters Patent Appeals (LPAs) are arising out of a common judgment dated 27.06.2018 (the “**Impugned Order**”) passed by the learned Single Judge in W.P.(C.) No.7309/2014 titled *Rahul Sharma Vs. North Delhi Municipal Corporation & Others*; W.P.(C.) No. 7311/2014 titled *Shankar Prasad Arya Vs. North Delhi Municipal Corporation & Others*; and W.P.(C.) No. 7312/2014 titled *Meenu Rani Vs. North Delhi Municipal Corporation & Others* (hereinafter, collectively referred to as the “**Writ Petitions**”)

2. The learned Single Judge – while deciding the Write Petitions upheld the Award(s) passed by the Tribunal wherein the Appellant(s) have been granted a lump-sum compensation to the tune of Indian Rupees One Lakh each along with interest @ 9% per annum and the management i.e. the Municipal Corporation of Delhi (the “**MCD**”) had been saddled with the costs of Indian Rupees Fifty Thousand in each case (the “**Awards**”).

3. The learned Single Judge has decided the Writ Petitions by a common order i.e. the Impugned Order. Therefore, the captioned LPAs are being decided by this common judgment as the facts in the Writ Petitions and LPAs are identical and arose out of the Awards passed in similar facts and circumstances.

4. The facts of the case reveal that the Appellant(s) i.e., Shankar Prasad Arya was appointed on 20.11.200; Rahul Sharma and Meenu Rani were appointed on 29.11.2007. The Appellants continued to serve the North Delhi Municipal Corporation (the “**NrDMC**”) till 31.05.2011 with intermittent breaks.



5. The facts of the case further reveal that by an order dated 20.11.2007, the Additional Deputy Commissioner – Information Technology (“IT”) (the “ADC IT”) appointed Shankar Prasad Arya as a daily wagger by way of a temporary arrangement arisen due to an emergent situation. The order dated 20.11.2007 is reproduced as under:

“ **MUNICIPAL CORPORATION OF DELHI**

No. D-338/17/MCD/07

Dated: 20/11/2007

OFFICE ORDER

The Competent Authority agreed to engage Sh. Shankar Prasad Arya s/o B.R. Arya as Assistant in I.T. Department @ Rs.152.45 per day for a period of 180 days on daily wages. This is purely a temporary engagement arisen due in the emergent situation and in this regard Sh. Shankar Prasad Arya will not have any right to seek the appointment on regular basis in M.C.D. The acceptance of the order shall reach to I.T. Deptt. MCD within two days of receipt of the order.

This issue with the approval of competent authority.

*Sd/-
Addl. Deputy
Commissioner
(IT)*

Copy to:

- 1. Sh. Shankar Prasad Arya s/o Sh. B.R. Arya*
- 2. ACA/Central Zone*
- 3. O/C”*

6. Thereafter, the ADC IT by another order dated 29.11.2007, appointed Rahul Sharma and Meenu Rani as a daily wagers under similar circumstances. The said order dated 29.11.2007 is reproduced as under:



MUNICIPAL CORPORATION OF DELHI
DEPARTMENT OF INFORMATION TECHNOLOGY
Ring Road, Lajpat Nagar, New Delhi

No. D-352/17/MCD/07

Dated: 29/11/2007

OFFICE ORDER

The Competent Authority agreed to engage the following two persons as Assistants in the I.T. Department @ Rs.152.45p per day, for a period of 180 days on daily wages. This is purely a temporary arrangement arisen due to the emergent situation and in this regard, the following two persons will not have any right to seek the appointment on regular basis in MCD:

1. Sh. Rahul Sharma s/o. Shri Jagat Narayan Sharma
2. Km.Meenu Rani d/o. Shri Ashok Kumar

The acceptance of the order shall reach to the I.T. Department, MCD within two days of receipt of the order.

This issues with the approval of the competent authority.

Sd/-

29.11.2007

Addl.Dy. Commissioner (I.T.)

29.11.2007

DISTRIBUTION:

1. Shri Shri Rahul Sharma s/o. Shri Jagat Narayan Sharma
2. Km. Meenu Rani d/o. Sh. Ashok Kumar
3. A.C.A. (Central Zone)
4. Office Copy. ”

7. The aforesaid office orders reveal that the Appellants were appointed for a period of 180 days. Moreover, the facts of the case reveal that, the Appellant's services were extended for a period of 89 days from time to



time. The last extension was given on 09.05.2011 and their services continued till 31.05.2011. No extension was granted to the Appellants thereafter.

8. The Appellants before this Court raised an industrial dispute under Section 2(a) of the Industrial Disputes Act, 1947 (the “**ID Act**”) claiming that they have been appointed in the year 2007 for a period of 180 days; they were granted extensions from time to time for a period of 89 days; and they have continued with intermittent breaks with the IT Department up to 31.05.2011. The Appellants claimed before the Tribunal that they were entitled to reinstatement in service with back wages as they had put in 240 days service in a calendar year. Further, the Appellants claimed before the Tribunal that the termination was in violation of Section 25F of the ID Act.

9. It was also contended before the Tribunal that several employees junior to the Appellants had been retained in service at the time of illegal termination, and therefore, the termination was in violation of Section 25G of the ID Act. Moreover, it was contended that the termination was in violation of Sections 25H & 25N of the ID Act and a prayer for reinstatement of the Appellants with back wages on the post of LDC was made before the Tribunal.

10. The MCD filed a written-statement in all the three cases and submitted that the Appellants were appointed at the time when digitization of records was being undertaken in a mission mode and the IT Department engaged some Assistants on a temporary basis to *inter alia* populate relevant data into the MCD’s computers. It has been stated that their services were continued till regular appointments were made. It was also stated that they



were temporary contractual employees and keeping in view Section 2(oo)(bb) of the ID Act, non-renewal of a contract cannot be termed as ‘retrenchment’ or ‘termination’.

11. It was also brought to the notice of the Tribunal that for the purposes of recruitment to the post of LDC, competitive examination is conducted by the Delhi Subordinate Services Selection Board (DSSSB), and as the contractual employees have not at all participated in the process of selection, the question of reinstating them with back wages does not arise.

12. The Tribunal has passed an Award dated 10.09.2014 and arrived at a conclusion that the Appellants had certainly completed more than 240 days in the preceding year of termination of their service and, therefore, the termination is in violation of Section 25F of the ID Act. However, the Industrial Adjudicator held that there was no violation of Section 25G and 25H of the ID Act. The Tribunal – while passing the Awards, instead of directing reinstatement with back wages has granted compensation to the tune of Indian Rupees One Lakh to each of the Appellant(s) along with interest @ 9% per annum. Further, costs had also been imposed upon the MCD to the tune of Indian Rupees Fifty Thousand in each case.

13. The Awards were subjected to judicial scrutiny by way of the Writ Petitions filed before this Court. The learned Single Judge *vide* the Impugned Order dismissed the Writ Petitions. The operative portion of the Impugned Order – as contained in paragraphs 33 to 36, reads as under:

“33. Admittedly, the appointments of the petitioners were made to meet out the exigency by the respondent/management



on contractual basis on daily wage rate due to induction of computerization. In view of urgency of the issue of making the entries in the computers, the appointments were made without following the requisite recruitment procedure. The petitioners were designated as Assistants for which there were no sanctioned posts. Thus the appointment of the petitioners was not as per the recruitment rules. Since the petitioners had worked for more than 240 days in the year preceding to their termination by not giving them further extension beyond 31.05.2011, the Industrial Adjudicator found it to be illegal termination in violation of Section 25-F of the ID Act. The Industrial Adjudicator did not grant the relief of reinstatement in service for the reasons mentioned herein before but awarded a lump sum compensation of Rs.1,00,000/- along with exemplary cost of Rs.50,000/- to each of the petitioners. Admittedly, the respondent/management has not impugned the award and rather preferred to make the payment of the awarded amount to the petitioners. The particular issue involved in the case has been answered by the Hon'ble Supreme Court in Bhurumal's case (supra) to the effect that when the workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization and 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. Para 21 and 24 of the judgment reads as under: -

“21. In the case of Telecom District Manager Vs. Keshab Deb MANU/SC/7620/2008: (2008) 8 SCC 402 the Court emphasized that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one months” pay in lieu of one month’s notice and wages of 15 days of each completed year of service as envisaged under Section 25F of the Industrial Disputes Act. He could not have been directed to be regularized in service or granted/given a temporary status. Such a scheme



has been held to be unconstitutional by this Court in A.Umarani v. Registrar, Coop. Societies MANU/SC/0571/2004: (2004) 7 SCC 112 and Secy., State of Karnataka v. Umadevi Manu/SC/1918/2006: (2006) 4 SCC 1.

24. 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 nonpayment of retrenchment compensation and notice pay as mandatorily required under Section 25F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by payment 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 MANU/SC/1918/2006: (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 it 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.”

34. In the light of these judgments of Hon’ble Supreme Court in Umadevi’s case (supra) and Bhurumal’s case (supra), when the petitioners were appointed on daily wage basis without following the requisite recruitment process and their services have come to an end after expiry of the contractual period, the petitioners have no vested right to seek their reinstatement or reinstatement with a different designation as LDC or on the similar post of Assistant which does not exist. In such a



situation, they could only be considered for granting of lump sum compensation, which has been adequately granted to them by the Industrial Adjudicator by the impugned award.

35. The judgment of Krishan Singh's case (supra) relied upon by the learned counsel for the petitioners is not applicable as in that case the management had not taken the plea in its written statement that the post on which the workman was working was not a sanctioned post or that appointment was contrary to the statutory rules; whereas in the present case specific defence has been taken by way of preliminary objection no.3 in the written statement by the respondent/management, which has not been controverted by the petitioners in the corresponding paras of the rejoinder. This factual position was not disputed by the learned counsel for the petitioners even at the time of arguments. The Judgment of Single Bench of this Court in Vimal Kumar's case (supra) the workman Vimal Kumar was admittedly appointed by following the due procedure of recruitment and is distinguishable. The judgment of Division Bench of this court in Delhi Cantonment Board's case (supra) is also distinguishable in view of the later development in law particularly in view of the judgments of Hon'ble Supreme Court in Umadevi's (supra) and Bhurumal's (supra). The judgment of Deepali Gundu Surwase's case (supra) also does not apply as the workman involved was not appointed on contractual or daily wages basis but was a regular teacher working in a private school in which aid-in-grant was being given by the State Government. The judgment of Jasmer Singh's case (supra) does not come to the rescue of the petitioners since the State had taken the only plea of abandonment of service by the workman and no plea was taken about his appointment in violation of recruitment rules.

36. In view of these discussions, I do not find any merit in the writ petitions. The writ petitions are accordingly dismissed."

14. This court has heard learned counsel for the parties and perused the record. The undisputed facts of the case reveal that the MCD started a



initiative to digitize its record, and in order to meet exigency to feed the data in the computers, pending recruitment through DSSSB. The Appellants were appointed by the MCD for a period of 180 days as daily wagers at the rate of Rs. 152.45/- per day vide office orders dated 29.11.2007 and 20.11.2007 respectively. They continued in service up to 31.05.2011.

15. Learned Counsel for the appellant has vehemently argued before this Court that once the Industrial Adjudicator has arrived at a conclusion that the termination of services of the workmen was in violation of Section 25F of the I.D. Act, the workmen were entitled for reinstatement, continuity in service with full backwages.

16. Heavy reliance has been placed upon judgments delivered by the Hon'ble Supreme Court *Anoop Sharma v. Public Health Division, Haryana*, (2010) 5 SCC 497 and *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED.) and Others*, (2013) 10 SCC 324.

17. Learned Counsel for the appellant has vehemently argued before this Court that the I. D. Act does not distinguish between a daily wager and a regular employee. Therefore, in light of the judgment delivered by Division Bench of this Court in the case of *Delhi Cantonment Board v. Central Govt. Industrial Tribunal*, 2006 SCC OnLine Del 97, the Appellants are entitled for reinstatement and backwages.

18. Learned Counsel for the Appellants has vehemently argued before this Court that once the Appellants services was illegally terminated, there should have been reinstatement instead of granting compensation.



19. This Court has carefully gone through the entire record. It is certainly true that the Appellants were appointed as Assistants (i.e. daily wagers) for a period of 180 days and thereafter, continued with intermittent breaks till 31.05.2011. It is also an undisputed fact that the Appellants were inducted to meet out an exigency vis-à-vis population of data under the digitization drive in the MCD. Subsequently, the MCD granted approval for creation of 13 Group 'C' post in I. T. Department and undisputedly the posts are to be filled through DSSSB.

20. The Appellants worked only as daily wagers, pending recruitment. Pertinently, *vide* a notification dated 09.05.2011 the MCD sanctioned *inter alia* 3 (three) LDC posts i.e., posts wherein the work was similar to that undertaken by the Appellants, however the said posts/vacancies have been filled up by way of direct recruitment.

21. The undisputed facts make it very clear that the Appellants were appointed as daily wagers till regular recruitment took place. Thus, in absence of sanctioned posts, the question of directing reinstatement of the Appellants does not arise. The Tribunal as well as the learned Single Judge were justified in granting lump-sum compensation keeping in view the judgments delivered by the Hon'ble Supreme Court on the subject.

22. The law relating to grant of compensation in lieu of reinstatement has been crystallized by the Hon'ble Supreme Court and the Hon'ble Supreme Court in the case of ***Senior Superintendent Telegraph Deptt. Vs. Santosh Kumar Seal***, (2010) 6 SCC 773 in Paragraph 9 has held as under:



“9. In the last few years it has been consistently held by this Court 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 monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate. (See U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey [(2006) 1 SCC 479 : 2006 SCC (L&S) 250] , Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353 : (2007) 2 SCC (L&S) 813] , State of M.P. v. Lalit Kumar Verma [(2007) 1 SCC 575 : (2007) 1 SCC (L&S) 405] , M.P. Admn. v. Tribhuban [(2007) 9 SCC 748 : (2008) 1 SCC (L&S) 264] , Sita Ram v. Moti Lal Nehru Farmers Training Institute [(2008) 5 SCC 75 : (2008) 2 SCC (L&S) 71] , Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684 : (2007) 1 SCC (L&S) 518] , GDA v. Ashok Kumar [(2008) 4 SCC 261 : (2008) 1 SCC (L&S) 1016] and Mahboob Deepak v. Nagar Panchayat, Gajraula [(2008) 1 SCC 575 : (2008) 1 SCC (L&S) 239] .)”

23. In light of the aforesaid judgment, it can be safely gathered that even if the termination of an employee is found to be illegal, the relief of reinstatement with full backwages is not automatic and compensation instead of reinstatement can be awarded to meet the ends of justice. Therefore, keeping in view the aforesaid judgment of the Hon’ble Supreme Court, this Court is of the opinion that the Tribunal as well as the learned Single Judge were justified in granting lump-sum compensation to the workmen instead of reinstatement.

24. The Hon’ble Supreme Court in the case of ***Bhavnagar Municipal Corpn. Vs. Jadeja Govubha Chhanubha***, (2014) 16 SCC 130 has again dealt with the issue of grant of compensation. Paragraph Nos. 9, 12, 13 & 14 of the aforesaid judgment reads as under:



“9. The only question that remains to be examined in the above backdrop is whether reinstatement of the respondent as a Conductor is imperative at this late stage. We say so because the appellant claims to have worked for a period of just about 18 months that too nearly three decades ago. The respondent today may be past fifty if not more. The Transport Department where he was working appears to have been wound up and transport work outsourced. That apart, this Court has in a series of decisions held that the illegality in an order of termination on account of non-payment of retrenchment compensation does not necessarily result in the reinstatement of the workman in service. This Court has, in cases where such termination is found to be illegal, directed compensation in lieu of reinstatement. We may at this stage refer to some of those decisions.

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12. To the same effect is the decision of this Court in Jagbir Singh v. Haryana State Agriculture Mktg. Board [Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] wherein this Court held that while awarding compensation in lieu of reinstatement a host of factors should be kept in mind. The Court said : (SCC p. 335, paras 17-18)

“17. While awarding compensation, the host of factors, inter alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances.

18. In a case such as this where the total length of service rendered by the appellant was short and intermittent from 1-9-1995 to 18-7-1996 and that he was engaged as a daily wager, in our considered view, a compensation of Rs 50,000 to the appellant by Respondent 1 shall meet the ends of justice.”
(emphasis supplied)

13. Reference may also be made to the decision of this Court in Telegraph Deptt. v. Santosh Kumar Seal [Telegraph Deptt. v. Santosh Kumar Seal, (2010) 6 SCC 773 : (2010) 2 SCC (L&S) 309] , wherein this Court referred to the previous decisions on the subject to declare that even when a



retrenchment order passed in violation of Section 25-F may be set aside, reinstatement need not necessarily follow as a matter of course. The following passage from the decision is apposite : (SCC p. 777, para 10)

“10. ... ‘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.’ (Jagbir Singh case [Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] , SCC p. 335, para 14)”

(emphasis supplied)

14. To the same effect is the decision of this Court in Incharge Officer v. Shankar Shetty [Incharge Officer v. Shankar Shetty, (2010) 9 SCC 126 : (2010) 2 SCC (L&S) 733] , wherein this Court said : (SCC p. 129, para 7)

“7. We think that if the principles stated in Jagbir Singh [Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] and the decisions of this Court referred to therein are kept in mind, it will be found that the High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as a daily wager in 1978 and his engagement continued for about 7 years intermittently up to 6-9-1985 i.e. about 25 years back. In a case such as the present one, it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion, the compensation of Rs 1,00,000 (Rupees one lakh) in lieu of reinstatement shall be appropriate, just and equitable.”

(emphasis supplied)”



25. In light of the aforesaid judgment, keeping in view the fact that the workmen were appointed on (i) 20.11.2007; and (ii) 29.11.2007 by the MCD in its I. T. Department for a period of 180 days, and thereafter the Appellants have continued with intermittent breaks up to 31.05.2011, the Tribunal was justified in awarding compensation to the workmen in question.

26. It is an undisputed fact that the MCD in order to digitize its records appointed the Appellants as daily wagers pending recruitment, and later on the sanctioned *inter alia* 13 Group 'C' posts in its I.T. Department which came to be filled up through DSSSB. Hence, the Tribunal has taken a correct view in the matter by granting compensation in lieu of reinstatement. This Court keeping in view the totality of the circumstances of the case is of the opinion, that the compensation granted to the Appellants in question, is just and equitable that meets the ends of justice.

27. The Hon'ble Supreme Court in the case of ***State of Uttarakhand Vs. Raj Kumar***, (2019) 14 SCC 353, in Paragraph Nos. 13 and 14 has held as under:

“13. In view of the 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 reinstatement 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 BSNL case [BSNL v. Bhurumal, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373] .

14. Having regard to the totality of the facts taken note of supra, we consider it just and reasonable to award a sum of Rs 1,00,000 (Rupees one lakh) to the respondent in lieu of his right to claim reinstatement and back wages in full and final



satisfaction of this dispute in place of Rs 30,000 awarded by the Labour Court. Only to this extent we modify the award of the Labour Court in quantum of award of compensation by enhancing it from Rs 30,000 to Rs 1,00,000 (Rupees one lakh). ”

28. The Hon’ble Supreme Court in the aforesaid case has again granted compensation to the workmen in lieu of reinstatement.

29. In the case of ***Sita Ram Vs. Moti Lal Nehru Farmers Training Institute***, (2008) 5 SCC 75, in Paragraph Nos. 24 & 25, the Hon’ble Supreme Court has held as under:

“24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice. (See Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684 : (2007) 1 SCC (L&S) 518] , M.P. Admn. v. Tribhuban [(2007) 9 SCC 748 : (2008) 1 SCC (L&S) 264 : (2007) 5 Scale 397] and Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353 : (2007) 2 SCC (L&S) 813 : (2007) 3 Scale 545] .)

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs 1,00,000 to each of the Appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs. ”

30. The Hon’ble Supreme Court in the aforesaid case has also granted compensation to the tune of Rs. 1,00,000/- to each of the workmen in the interest of justice instead of reinstatement. Therefore, in present case the Tribunal and learned Single Judge were justified in the granting compensation keeping in view the peculiar facts and circumstances of the case.



31. In the case of ***M. P. Admn. Vs. Tribhuban***, (2007) 9 SCC 748, in Paragraph Nos. 6 and 11, the Hon'ble Supreme Court has held as under:

“6. The question, however, which arises for consideration is as to whether in a situation of this nature, the learned Single Judge and consequently the Division Bench of the Delhi High Court should have directed reinstatement of the respondent with full back wages. Whereas at one point of time, such a relief used to be automatically granted, but keeping in view several other factors and in particular the doctrine of public employment and involvement of the public money, a change in the said trend is now found in the recent decisions of this Court. This Court in a large number of decisions in the matter of grant of relief of the kind distinguished between a daily wager who does not hold a post and a permanent employee. It may be that the definition of “workman” as contained in Section 2(s) of the Act is wide and takes within its embrace all categories of workmen specified therein, but the same would not mean that even for the purpose of grant of relief in an industrial dispute referred for adjudication, application of constitutional scheme of equality adumbrated under Articles 14 and 16 of the Constitution of India, in the light of a decision of a Constitution Bench of this Court in Secy., State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] and other relevant factors pointed out by the Court in a catena of decisions shall not be taken into consideration.

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11. We may also notice that in *Uttranchal Forest Development Corpn. v. M.C. Joshi* [(2007) 9 SCC 353 : (2007) 3 Scale 545] this Court held:

“Although according to the learned counsel appearing on behalf of the appellant the Labour Court and the High Court committed an error in arriving at a finding that in terminating the services of the respondent, the provisions of Section 6-N of the U.P. Industrial Disputes Act were contravened, we will proceed on the basis that the said finding is correct. The question, however, would be as to whether in a situation of this nature, relief of



reinstatement in services should have been granted. It is now well settled by reason of a catena of decisions of this Court that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration, one of them being as to whether such an appointment had been made in terms of the statutory rules. Delay in raising an industrial dispute is also a relevant fact.

In Haryana State Electronics Development Corpn. v. Mamni Ltd. [(2006) 9 SCC 434 : 2006 SCC (L&S) 1830 : AIR 2006 SC 2427] this Court directed payment of compensation. Similar orders were passed in North-Eastern Karnataka Rt. Corpn. v. Ashappa [(2006) 5 SCC 137 : 2006 SCC (L&S) 942] and U.P. SRTC v. Man Singh [(2006) 7 SCC 752 : 2006 SCC (L&S) 1776] .

In Man Singh [(2006) 7 SCC 752 : 2006 SCC (L&S) 1776] it was held : (SCC p. 754, paras 7-8)

'7. The respondent admittedly raised a dispute in 1986 i.e. after a period of about 12 years, it may be true that in an appropriate case, as has been done by the Labour Court, delay in raising the dispute would have resulted in rejection of his claim for back wages for the period during which the workman remains absent as has been held by this Court in Gurmail Singh v. Principal, Govt. College of Education [(2000) 9 SCC 496 : 2001 SCC (L&S) 105] . But the discretionary relief, in our opinion, must be granted upon taking into consideration all attending circumstances. The appellant is a statutory corporation. Keeping in view the fact that the respondent was appointed on a temporary basis, it was unlikely that he remained unemployed for such a long time. In any event, it would be wholly unjust at this distance of time i.e. after a period of more than 30 years, to direct reinstatement of the respondent in service. Unfortunately, the Labour Court or the High Court did not consider these aspects of the matter.



8. *Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that instead and in place of the direction for reinstatement of the respondent together with back wages from 1986, interest of justice would be subserved if the appellant is directed to pay a sum of Rs 50,000 to him. Similar orders, we may place on record, have been passed by this Court in State of Rajasthan v. Ghyan Chand [(2006) 7 SCC 755] , State of M.P. v. Arjunlal Rajak [(2006) 2 SCC 711 : 2006 SCC (L&S) 429] , Nagar Mahapalika (now Municipal Corpn.) v. State of U.P. [(2006) 5 SCC 127 : 2006 SCC (L&S) 934] and Haryana State Electronics Development Corpn. Ltd. v. Mamni [(2006) 9 SCC 434 : 2006 SCC (L&S) 1830 : AIR 2006 SC 2427] . ’ ”*

It was further held:

“The legal position has since undergone a change in the light of a Constitution Bench decision of this Court in Secy., State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] wherein this Court held that ‘State’ within the meaning of Article 12 of the Constitution of India is under a constitutional obligation to comply with the provisions contained in Articles 14 and 16 of the Constitution of India.”

32. In the aforesaid case, keeping in view the delay involved in the matter instead of directing reinstatement with backwages, the Hon’ble Supreme Court has granted Rs. 15,000/- compensation to the workmen.

33. In the case of **Allahabad Jal Sansthan vs. Daya Shankar Rai**, (2005) 5 SCC 124, the Hon’ble Supreme Court in Paragraph 16 has held as under:

“16. We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realised that industry is being compelled to pay the workman for a period during which he apparently contributed little or



nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at.”

34. The Hon’ble Supreme Court in the aforesaid case also granted lump-sum compensation keeping in view the peculiar facts and circumstances of the case. In the present case, as the Appellants were appointed as daily wagers, purely on a temporary basis without following the due process of recruitment, their services came to end after expiry of the contractual period. The sanctioned posts have been filled up by direct recruitment through DSSSB and there are no relevant posts and / or vacancies available in the IT Department. Therefore, keeping the totality and circumstances of the case, the Tribunal and the learned Single Judge were justified in directing the department to pay compensation to the workmen. Resultantly this Court does not find any reason to interfere with the award passed by the Tribunal, nor with the judgment passed by the Learned Single Judge.

35. Dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SANJEEV NARULA)
JUDGE

AUGUST 18, 2023
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