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* IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON –15th November, 2022
PRONOUNCED ON –20th January, 2023

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W.P.(C) 8692/2018

SHRI VIKAS KUMAR

..... Petitioner

Through: Mr. Meghna De & Mr.L.Gangmei,
Advts.

versus

SOUTH DELHI MUNICIPAL CORPORATION Respondent

Through: Mr. Arun Birbal, Standing counsel
with Mr. Sanjay Singh, Advts. for
SDMC

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J.

PREFACE

1. Present writ petition has been filed by the petitioner workman challenging the impugned Award dated 25.07.2015 passed by the Ld. POLC – IX, Karkardooma Courts, Delhi in I.D. No.771/2014 (Old ID No. 83/07). In the impugned Award the learned Labour Court, while deciding in favour of the petitioner workman and against the management, has awarded compensation to the workman to the extent of 50% of the minimum wages from the date of receiving of the reference in the Court till the date of award, in lieu of reinstatement, back wages and all other consequential benefits.

The relief as granted by the learned Labour Court vide the impugned Award reads as under:

“33. Now coming to the relief part. The workman has claimed reinstatement in service with continuity and full back wages along with all consequential benefits. This court is of opinion that since the present dispute is pending between the workman and the management since 09.02.07 i.e. for about 8½ years, reinstatement of workman in service would not be in the interest of both the parties and as such instead of ordering the reinstatement, this court deems it proper to award compensation in favour of the workman.

34. Now coming to quantum of compensation. The services of the workman have been terminated by the management on 19.05.03 and the workman has stated that he is unemployed since the date of his termination and he has claimed reinstatement with full back wages including continuity of service and all other consequential benefits. Although the MW-1 during his cross examination deposed that they have no material or document to show that the workman concerned is gainfully employed after 19.05.03 yet this court cannot presume that an able bodied person would remain, unemployed for such a long period. Hence, in view of all these facts and circumstances, it would be in the interest of justice if the workman is ordered to be compensated in lieu of his reinstatement, back wages and all other consequential benefits. Accordingly, the management is directed to pay the compensation to the workman to the extent of 50% of the minimum wages whichever is higher from the time to time w.e.f. 09.02.07 i.e. the date of receiving of reference in the court to the date of award, in lieu of his reinstatement, back wages and all other consequential benefits. The management is directed to release this payment to the workman within a period of one month from the date of award, failing which this amount

shall carry a simple interest @ 8% per annum from the date of award till realization.”

2. It is pertinent to note that the impugned Award dated 25.07.2015 has been challenged by the Petitioner workman only to the limited extent of relief granted, as the petitioner workman is aggrieved of being denied reinstatement, back wages and all other consequential benefits. The said Award remains unchallenged by the respondent Corporation. Thus, the only question/ issue posed before this Court is with respect to the relief granted and whether the relief granted by the learned Labour Court was in accordance with the law?

BRIEF FACTS

3. Briefly stated the facts as stated in the petition are that the petitioner workman joined the services of the respondent as a Beldar w.e.f. 11.02.2002 and was engaged as a daily wager/ muster rolls employee receiving fixed wages, revised from time to time as per the Minimum Wages Act, 1948. Petitioner workman was arrested on 19.05.2003 in a false murder case and was released on bail after about a year on 22.05.2004. It has been alleged that after his release on bail, he approached the respondent Corporation seeking to resume his duties, however the management citing the pending murder trial in FIR No. 538/2003, informed the workman that his services can be only resumed after the final outcome in the said trial. Vide judgement dated 05.07.2004, the petitioner workman was acquitted of the said charges. It has been alleged that pursuant to his acquittal he again approached the

Corporation, but he was not taken on duty and was simply informed that his services have already been terminated w.e.f. 19.05.2003.

4. Aggrieved thus, the petitioner served a demand notice dated 28.12.2004 (Ex. – WW -1/1) to the respondent corporation. However no reply was received thereto. It is pertinent to note that the Management witness has admitted in his cross examination that Ex. WW – 1/1 bears the address of the management at point A and also bears the receipt of the management at point B. Thereafter, the petitioner workman raised an industrial dispute by filing statement of claim before the learned Conciliation officer, which culminated into a failure, and the following reference was made to be adjudicated before the learned Labour Court:

“Whether the service of Sh. Vikas Kumar s/o Sh. Rajinder Singh have been terminated illegally and/or unjustifiably by the management and if so, to what sum of money as monetary relief along with other consequential benefits in terms of existing Law/ Government Notifications and to what other relief is he entitled and what direction are necessary in this respect?”

5. After receipt of reference, notice was issued to the workman and management- Corporation, who filed the Statement of Claim and Written Statement respectively. Workman filed rejoinder to the Written statement of the management/ Corporation and after competition of pleadings, the following issues were framed to be adjudicated:

“1. Whether the reference is bad in law for the reason that dispute has not been espoused by the union and for the

- reason that no demand notice has been received by the management?*
2. *Whether the claimant abandoned his service after 17.05.2003? OPM*
 3. *Whether the claimant had worked for 240 days continuously in the year preceding the alleged termination? OPW*
 4. *Whether the claim suffers from laches and if so, whether it is fatal to the claim? OPM*
 5. *Whether it is a case of termination, if so, whether it is illegal and/or unjustified?*
 6. *Relief, if any to which workman is entitled?"*

6. Thereafter, the matter was fixed for evidence. The workman examined himself as WW - 1 and the Management examined one Mr. M.S. Yadav (Engineering Department) as MW – 1. As a matter of record, the workman moved an application u/s 11 (3) (b), ID Act r/w Rule 15 of the Industrial Disputes (Central) Rules, 1957 seeking direction for the management to produce the combined Seniority List of Beldars of the department who joined the employment of the management w.e.f. 11.02.2002, till date. The said application was allowed by the learned Labour Court vide its order dated 01.11.2004, pursuant to which the management filed the Seniority list on judicial record.

7. During the course of the arguments the petitioner workman raised a plea that while he was being treated as a muster roll employee governed under the Minimum Wages Act, his counterparts, who were doing identical work of the same value are being treated as regular employees and were paid their salaries in the proper scale and allowance as admissible under the

Rules. Another plea was raised regarding Section 2A, ID Act, to state that as per the said provision, there is no need of espousal in the matter of dismissal or termination of an individual workman. Petitioner Workman also raised a plea that abandonment from services is a matter of intention and cannot be attributed upon the workman unless the same is proved by way of cogent evidence by the management, and which the management failed to prove. Moreover, the management did not raise the plea of abandonment before the Conciliation officer. Petitioner workman also contended that the management deliberately did not produce all the muster rolls to intentionally conceal that the workman has worked over 240 days preceding his termination.

8. On the contrary, the management corporation refuting the contentions of the petitioner plead that the workman has not worked for 240 days but only for 147 days w.e.f 11.02.2002 to 16.05.2003 and that too, on time-to-time specific sanctions. Management further contended that the claim of the workman in the form u/s 2A, ID Act suffers from laches as the claimant/workman has alleged illegal termination w.e.f. 2003, whereas the claim was only filed in 2007 i.e., after a lapse of four years as opposed to the mandate of three years as per Section 2A, ID Act.

9. The learned Labour Court passed the impugned Award dated 25.07.2015 deciding all the issues in favour of the petitioner workman and against the management, while granting relief of compensation to the workman instead of reinstatement with back wages and other consequential benefits.

CONTENTIONS OF THE PETITIONER WORKMAN

10. Learned Counsel for the Petitioner workman submits that the learned Labour Court should have granted reinstatement with full back wages and other consequential benefits as it was held that the services of the petitioner was terminated illegally and unjustifiably in violation of Section 25F, G and H of ID Act 1948.

11. It has been contended by the learned Counsel for petitioner workman that the reasoning propounded by the learned Labour Court for granting compensation in lieu of reinstatement and back wages is that the dispute is pending between the parties for 8 and ½ years and it would not be in the interest of both the parties that the workman is reinstated. Learned Counsel submits that the said reasoning of the learned Labour Court is arbitrary and perverse as the Petitioner cannot be penalized for the delay caused in adjudication of the dispute as the delay is not his fault and has not been caused by him. Reliance has been placed on *Hindustan Tin Works Pvt Ltd. v. The Employees Hindustan Tin Works Pvt Ltd and Ors.*, (1979) 2 SCC 80; *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. Ed) and Ors.* (2013) 10 SCC 324.

12. It has been submitted that the presumption of the learned Labour Court, that an able-bodied person such as the workman would not remain unemployed for such a long time, despite the workman deposing that he has not been gainfully employed since his illegal termination, and in the absence of any cogent proof/documents filed on behalf of the management to prove otherwise, is perverse and contrary to the material on record.

13. Learned Counsel for the petitioner further submits that as per the cross examination of MW –1, it was an admitted position of the management that they have no material or document to show that the petitioner is gainfully employed. Learned Counsel contends that since he has proved that he was unemployed since his illegal termination and the Respondent has not discharged its burden to prove otherwise, he is entitled for full back wages. Reliance has been placed on ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. Ed) and Ors. (Supra)***.

14. Learned Counsel for the petitioner submits that MW – 1 had admitted in his cross examination that the workmen who were similarly placed as the Petitioner herein, have been regularized in the services of the Respondent corporation. It has been submitted that when similarly situated workers or juniors to the workman have been regularized in services, the terminated workman should not be denied the relief of reinstatement. Reliance has been placed on ***B.S.N.L. vs. Bhurumal***, AIR 2014 SC 1188.

15. It has been submitted that once it has been held that the services of the workman were terminated illegally without him being found guilty, then the workman cannot be deprived of what he is entitled to get. Petitioner submits that when the workman has been deprived of his service illegally, then it is misconduct on the part of the employer. The employer cannot be permitted to deprive a person of what is due to him. Reliance has been placed on ***Harjinder Singh vs Punjab State Warehousing Corporation***, AIR 2010 SC 1116.

CONTENTIONS OF THE RESPONDENT CORPORATION

16. Per contra, it has been submitted by the Learned Counsel for the respondent corporation that the petitioner was engaged w.e.f. 11.02.2002 on muster roll basis from time-to-time and was being paid wages as notified under the Minimum Wages Act. It has been contended that the petitioner workman has not completed 240 days of work in the year preceding his alleged termination and has in fact worked for only 147 days in total. Learned Counsel submits that the attendance record of the petitioner reflecting the same is on judicial record.

17. Learned Counsel for the respondent submits that the petitioner, after a slumber of three years from the passing of the Award, has filed the present petition seeking reinstatement with full back wages and other consequential benefits.

18. Learned Counsel further submits that the petitioner was arrested in a murder case on 19.05.2003 and remained in custody for more than a year. The petitioner was granted bail on 22.05.2004 and was acquitted on 05.07.2004. It has been submitted that the petitioner remained in custody almost during the pendency of the entire trial and the Corporation could not have been expected to wait for the conclusion of the trial. Learned Counsel submits that it was for the petitioner to make himself available for the services. It has been submitted that MCD/SDMC is a statutory body and involvement of the workman in a murder case does not inspire confidence.

Learned counsel further submits that the petitioner has not even placed the judgment of the criminal case on record.

19. It has been submitted the petitioner was a daily wager/ muster roll employee having no right to any post. The very purpose of engagement of an employee on muster roll basis is to meet the exigencies of emergent situations. In these circumstances, the award of the learned Labour Court to the extent that it holds the termination of the petitioner as illegal is not in accordance with the law and is erroneous. Learned counsel submits that provisions of sections 25F, 25G & 25H, ID Act do not attract the facts of the present case and no case for reinstatement is made out.

20. Learned counsel states that even assuming, though not admitting, that the alleged termination of the petitioner was illegal, the award of relief of compensation in lieu of reinstatement and back wages is in fact in accordance with the recent trend in the law on this subject matter. Learned Counsel submits that the learned Labour Court has exercised its discretion in the matter and has granted relief of compensation. Thus, no case for interference by this Court with the discretion of the Tribunal is made out.

21. Learned Counsel further submits that in the present case, it cannot be justifiably contended that the petitioner was kept on muster roll by the corporation as an Unfair Labour Practice. The argument of possible regularization raised by the petitioner herein is thus completely misconceived as regularization was not even the subject matter of reference.

FINDING & ANALYSIS

22. The Industrial Disputes Act, 1947 is a piece of beneficial legislation. ID Act has conferred wide powers and jurisdiction to the Labour Courts/Tribunals to make appropriate awards in determining the industrial disputes presented before it. In an Award passed by the Labour Courts/Tribunals, the adjudicator may impose new obligations on the management taking into account the theory of social justice in order to strike a balance and to secure peace and harmony between the employer and the workman. Reliance may be placed upon *Bharat Bank Ltd. vs. Employees of the Bharat Bank Ltd. Delhi*, AIR 1950 SC 188 and *Bidi, Bidi Leaves vs. The State of Bombay*, AIR 1962 SC 486.

23. The aim and object of the Industrial Disputes Act is to impart social justice to the workman but the same does not imply or guarantee automatic relief of reinstatement especially in light of the recent shift in law of granting compensation in lieu of reinstatement, especially in cases where granting reinstatement would not serve the purpose and be improper.

24. Section 11 A, ID Act, gives the Labour Courts/ Tribunals plenary jurisdiction to grant appropriate relief in case of discharge or dismissal of workmen. Labour Courts/ Tribunals are empowered to use their discretion to grant relief of either reinstatement with back wages or compensation as the case may be.

25. In *Hindustan Steel Ltd. Rourkela vs. AK Roy*, AIR 1970 SC 1401, the Supreme Court held that Courts before granting reinstatement must weigh all the facts and exercise discretion properly whether to grant reinstatement or to award compensation. Moreover, in *Sant Raj & Anr. vs. OP Singla and Anr.* (1985) 2 SCC 349 the Supreme Court has *inter alia* held as under:

“3. Ordinarily where the termination of service is found to be bad and illegal, in the field of industrial relations a declaration follows that the workman continues to be in service and has to be reinstated in service with full back wages. (See Hindustan Tin Works P Ltd. v. Employees of Hindustan Tin Works P Ltd. [(1979) 2 SCC 80 : 1979 SCC (L&S) 53 : AIR 1979 SC 75 : (1979) 1 SCR 563 : (1978) 2 LLJ 474 : (1979) 54 FJR 14 : 1978 Lab IC 1667]) The Labour Court has, however, the discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional so as to make reinstatement inexpedient or improper. (See Hindustan Steels Ltd., Rourkela v. A.K. Roy [(1969) 3 SCC 513 : AIR 1970 SC 1401 : (1970) 3 SCR 343] .)

4. Whenever, it is said that something has to be done within the discretion of the authority then that something has to be done according to the rules of reason and justice and not according to private opinion, according to law and not humour. It is to be not arbitrary, vague and fanciful but legal and regular and it must be exercised within the limit to which an honest man to the discharge of his office ought to find himself. (See Sharpe v. Wakefield [1891 AC 173 : 1886-90 All ER Rep 651 : 64 LT 180 : 39 WR 561 (HL)] . Discretion means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful. (See S.G. Jaisinghani v. Union of

India [AIR 1967 SC 1427 : (1967) 2 SCR 703 : 65 ITR 34] .)

18. In the instant case the appellant was engaged as a casual labour by the Department of P.H.E.D. He worked for the period 1 October 1991 to 31 August 1992. The removal was found to be in violation of the provisions of S. 25F of the Industrial Disputes Act. The Tribunal following the decision of the Apex Court in Delhi Horticulture v. Delhi Administration reported in 1992 (1) L.L.N. 939, directed to pay compensation in the sum of Rs. 23,000 in lieu of dismissal. He has recorded the following reasons for granting compensation in lieu of reinstatement.:-

- (i) The workman had worked only for a brief period of 11 months.*
- (ii) No junior to the workman was allowed to continue in service.*
- (iii) The workman was engaged as a casual labour for a brief period on daily wages.*
- (iv) There was a gap of 8 years computing from the date of removal.*
- (v) At the time of removal, the workman was only 18–19 years of age and even after 8 years he would be reinstated only as a casual labour on daily wages.*

The learned Single Judge considered the reasons given by the Labour Court just and appropriate for refusing reinstatement and awarding compensation in lieu thereof. We are of the view that the case of appellant falls in the exceptional category referred to above. No interference is warranted with the order of the learned Single Judge confirming the order of the Labour Court.”

26. In ***Babu Lal vs Labour Court, Jodhpur and Others***, 2004 (2) LLN 872, it was *inter alia* held as under:

“11. ...the power of Tribunal to grant relief in industrial adjudication in case of wrongful termination, dismissal or

removal of the concerned employee either by way of reinstatement or compensation is discretionary. The learned Single Judge while observing that no hard and fast rule can be laid down as exception to general rule still provided the following guidelines:

(1) The Tribunal in each case keeping in mind the objective of the industrial adjudication in the spirit of fairness and justice confront with the question whether the circumstances of the case require that an exception should be made and compensation will meet the needs of justice.

(4) A elapse of long period since termination may be good ground for awarding compensation in lieu of reinstatement and back-wages.”

27. It is up to the discretion of the Industrial Tribunals or Labour Courts whether to award relief of compensation or reinstatement to the workman as per the facts and circumstances of the case. Under section 11A, ID Act, discretion is vested with the Tribunal or the Labour Court to grant relief to the workman by way of awarding compensation in lieu of discharge or dismissal. The vesting of such a discretion with the Tribunal or the Labour Court has been felt necessary in the interest of industrial harmony and peace as in some cases imposition of service of a workman on an unwilling employer might not be conducive to harmony and peace of the industries. (Refer - ***Dal Chand vs. Judge Labour Court & Ors.***, 2004 (3) LLN 451).

28. This Court in its writ jurisdiction can interfere with an Award of the Labour Court/Tribunal, only if it is perverse, or there is patent illegality, or if the award rendered is contrary to law, or if there is an error apparent on

the face of the record. The jurisdiction of the Writ Courts while interfering with the awards of the Labour Court has been discussed in great detail by the Supreme Court in a plethora of cases including *Syed Yakoob vs. K.S. Radhakrishnan & Ors.*, AIR 1964 SC 477 and *Sadhu Ram vs. DTC*, (1983) 4 SCC 156.

29. In *Syed Yakoob vs. K.S. Radhakrishnan & Ors.*, (*supra*) it has been *inter alia* held as under:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said

finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque, Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, and Kaushalya Devi v. Bachittar Singh.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly rounded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is

apparent on the face of the record. It may also be that in some cases. the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

30. The legislature in its wisdom has not provided any appeal against the award of the Labour court/Industrial Tribunal, thus, making the Labour Court/Tribunal the final adjudicator of facts. The writ courts must be circumspect while entering into the realm of factual disputes and the findings given thereon. In the case of ***State of Haryana vs. Devi Dutt & Ors.***, (2006) 13 SCC 32, the Apex Court has *inter alia* held that the writ Court can interfere with the findings of fact only if (1) the Award is perverse; (2) the Labour Court has applied wrong legal principles; (3) the Labour Court has posed wrong questions; (4) the Labour Court has not taken

into consideration the relevant facts; or (5) the Labour Court has arrived at findings on the basis of irrelevant facts or on extraneous consideration.

31. Be that as it may, it is reiterated that the present petition has only been moved by the petitioner workman challenging the Award to the extent of relief granted. The main grievance of the petitioner being, denied reinstatement with full back wages and consequential benefits. Respondent Corporation has not challenged the said Award. Thus, the only issue posed before this Court is limited to whether the relief of compensation granted by the learned Labour Court was in accordance with the law.

32. In this regard, it becomes inevitable to retrace the trajectory of the recent trend of cases on the subject matter of compensation in lieu of reinstatement with back wages and to examine whether the relief granted vide the impugned Award is in consonance with the settled legal propositions.

33. In the case of **BSNL vs. Man Singh**: (2012) 1 SCC 558, the Apex Court held that when the termination is set aside because of violation of 25F of the ID Act, it is not necessary that the relief of reinstatement be given as a matter of right.

34. In **In charge Officer vs. Shankar Shetty**, (2010) 9 SCC 126, it was *inter alia* held that in 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. The Apex Court reiterated the trend by referring to the various judgments and *inter alia* held as under:

“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 Mktg..Board, 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, Uttaranchal Forest Development Corpn. V. M.C. Joshi, State of M.P. v. Lalit Kumar Verma, M.P.Admn v. Tribhuban, Sita Ram v. Moti Lal Nehru Farmers Training Institute[8], Jaipur Development Authority v. Ramsahai, GDA v. Ashok Kumar and Mahboob Deepak v.Nagar Panchyat, Gajraula 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 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, 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*, 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.”

35. In *BSNL vs. Bhurumal* (supra), taking the trend further, the Supreme Court *inter alia* held as under:

“31. In Deptt. of Telecommunications v. Keshab Deb 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 25-F 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 and State of Karnataka v. Umadevi.

32. It was further submitted by the learned counsel for the appellant that likewise, even when reinstatement was ordered, it does not automatically follow full back wages should be directed to be paid to the workman. He drew our attention of this Court in the case of Coal India Ltd. Vs. Ananta Saha and Metropolitan Transport Corpn. v. V.Venkatesan.

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 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.”

36. Learned counsel for the petitioner workman has invited the attention of this Court to the caveat added by the Supreme Court in **BSNL vs. Bhurumal (supra)**, which reads as under:

“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.”

37. It is pertinent to note that in the present case, there is no material on record to show that any worker junior to the petitioner workman were retained or employed at the cost of the petitioner workman. Even the Seniority List filed by the management before the learned Labour Court in no way depicts that junior workmen were retained while the petitioner workman was let go. Moreover, the admission of the MW – 1 (AR of the management) in his cross examination, qua regularization of similarly placed workmen with that of the petitioner, again in no way reflects that workmen junior to the petitioner were retained or employed at the cost of the Petitioner herein. Thus, the present case does not fall under purview of the aforesaid caveat as enumerated in ***BSNL vs. Bhurumal (supra)***.

38. Further, this Court in ***Ashok Kumar vs. Hindustan Vegetable Oil Co.***, 2017 SCC Online Del 9516, noting the shift of trend inter alia held as under:

“13. Subsequently, however, the view of the Supreme Court has sharply swung from the theory of "reinstatement with back wages (in whole or in part)" to the theory of "lump sum compensation". This swing of judicial thought has been definitively captured in the following passages from the judgment in Senior Superintendent Telegraph (Traffic) v Santosh Kumar Seal, (2010) 6 SCC 773:

“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] .”

39. Thus, the latest trend being adopted by the Supreme Court in a catena of decisions is that even if the order of termination has been found to be illegal on account of non-payment of retrenchment compensation, it does not necessarily result in the reinstatement of workmen in service and compensation may be granted in lieu of reinstatement.

40. The Apex Court in a plethora of cases has directed compensation in lieu of reinstatement. Reliance is placed on *Mahboob Deepak vs. Nagar Panchayat, Gjraula*: (2008) 1 SCC 575, *M.P. Admn. V. Tribhuban*, (2008) 1 SCC (L&S) 264, *Sita Ram vs. Moti Lal Nehru Farmers Training Institute*: (2008) 5 SCC 75, *GDA vs. Ashok Kumar*: (2008) 4 SCC 261.

41. This Court in *Jagbir Singh vs. Haryana State Agriculture Marketing Board*, (2009) 15 SCC 327 held that while awarding compensation in lieu of

reinstatement, a host of factors should be kept in mind and inter alia held as under:

“16. 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.....”.

42. Similarly, this Court in ***The Management Guru Gobind Indraprastha University v. Lokesh Kumar & Anr.***, W.P.(C.) 4822/2014, following the latest trend as promulgated by the Supreme Court, awarded compensation to the tune of Rs. 5 Lakhs to the workman.

43. Moreover, in ***Triloki vs. Ashok Hotel***, WP (C) 5227/2012, this Court recapitulating the recent trend of granting compensation in lieu of reinstatement *inter alia* held as under:

“24. The perusal of the above judgments makes it clear that new established trend is grant of compensation in lieu of reinstatement. The order of reinstatement can be granted only in exceptional cases. The discretion of reinstatement may be exercised in cases where the employee has joined the service after going through the entire selection process against a sanctioned post and has remained employed for a sufficient long period. It may be difficult to define “sufficient long period” but it has to be substantial, i.e, 10/15/20 years. The order of reinstatement in case of daily wager or contractual employee may be a difficult proposition. The Courts have also to see the time lapse between the cessation of employment and the final order. Though workman/employee may not be punished for the

delay but the Courts have to take a pragmatic view. If the order of reinstatement is made after 15-20 years, it would be impractical and unworkable for both employer and employee. The work culture and atmosphere at working place totally changes. The job requirements also changes. An employee who might be suitable for a job around 15-20 years may not be suitable now. The dynamics of functioning have totally changed.

25. In the present case, the cessation took place in 2003. Thus, around 20 years have lapsed. I consider that order for re-instatement may not be passed in such a case. However, the compensation awarded by the Court is to the lower side. I consider it needs to be enhanced substantially. Thus, this Court awards compensation in the sum of Rs.10 lakhs to be paid to the respondent/workman within 8 weeks, failing which the amount shall be paid with an interest @ 12% per annum. In view of the discussion made hereinabove the award stands modified accordingly.

26. Accordingly, the present petition stands disposed of.”

44. In the present case there is nothing on record to suggest that the petitioner was terminated by way of victimization or unfair labour practice. Thus, upon applying the settled law to the case at hand, it can be observed that the relief awarded by the learned Labour court is in consonance with the latest trend adopted, and thus requires no interference of this Court. As the petition itself is challenging the impugned Award only to the limited extent of relief granted by the workman, and as the Award remains unchallenged on behalf of the respondent management, this Court need not delve into the merits of the case and may only restrain itself to the limited issue of

ascertaining whether the learned Labour Court was right in awarding relief of compensation instead of reinstatement and back wages.

45. In the instant case, it is an admitted fact that the petitioner workman was employed as a daily wager/ muster roll employee with the respondent corporation w.e.f. 11.02.2002 and remained in service only till 19.05.2003. Thus, the petitioner workman was employed with the respondent corporation only for a short period after which he was arrested in a murder case and was acquitted by the learned Additional and Sessions Judge vide its judgement dated 05.07.2004. Thus, a considerable time of thirteen years have lapsed from cessation of employment till when the Award was passed and reinstating the workman at this stage may render reinstatement inexpedient and improper. This is however not to say that the workman is held accountable or being punished for the delay caused as the legal machinery can tend to be laborious.

46. This Court considers that in view of the aforesaid discussion and the latest trend of the Supreme Court coupled with fact that the petitioner workman was a daily wager/ muster roll employee, who was employed with the Corporation management only for a short period, and especially given the long gap from the date of cessation of service till the passing of Award, this Court deems it fit not to interfere in the Award.

47. It is worth mentioning that the relief granted by the learned Labour Court is clarified to the extent that the respondent management is directed to pay 50% of the minimum wages or the last drawn wages, whichever is

higher, revised from time-to-time w.e.f. 09.02.07 i.e., the date of receiving of reference in the court to the date of the Award, in lieu of his reinstatement, back wages and all other consequential benefits. The management is directed to release this payment to the workman within a period of one month from the date of award, failing which this amount shall carry a simple interest @8% per annum from the date of award till realization.

48. Accordingly, the Award passed by the learned Labour Court is upheld and the present petition stands disposed of.

DINESH KUMAR SHARMA, J

JANUARY 20, 2023

Pallavi..