

Dattu Shankar Dhumal ... Petitioner
Versus
M/s. Shipping Services & Ors. ... Respondents

Ms. Anjali Purav Yajurvedi, for Respondent.

JUDGMENT:

1. **Rule.** Rule made returnable forthwith. With the consent of the learned counsel for parties, Petition is taken up for hearing and disposal.
2. Petitioner has filed this petition challenging Judgment and Order dated 04 July 2018 passed by the First Labour Court at Mumbai in Complaint (ULP) No.203 of 2016 as well as Judgment and Order dated 30 April 2019 passed by the Industrial Court, Mumbai in Revision Application (ULP) No.98 of 2018. The Labour Court has dismissed complaint filed by the Petitioner challenging his termination and his Revision Application is dismissed by the Industrial Court. Petitioner is before this Court challenging the concurrent findings recorded by the Labour Court and Industrial Court.

3. Briefly stated, facts of the case are that Petitioner claims to have initially joined M/s. United Carriers on the post of 'Clerk' on 01 June 1992. According to him, M/s. United Carriers was being run by same management as that of Respondent No.1-M/s. Shipping Services. He claims that in the year 2006, the operations of M/s. United Carriers were closed and Petitioner was transferred in the services of the first Respondent – M/s. Shipping Services where he started functioning as Head Clerk. That M/s. Shipping Services is engaged in the business of transportation. Respondent No.2 is the proprietor of Respondent No.1. That there is another sister concern of same management M/s. Damani Shipping Pvt. Ltd. and the employees of M/s. Shipping Services were often deployed to carry out work of M/s. Damani Shipping Pvt. Ltd., which is a Custom House Agent.

4. Petitioner further pleads that Respondent No.1 used to pay bonus to its employees until the year 2013. Suddenly it stopped paying any bonus to the employees. That Respondent No.1 also stopped granting medical and traveling allowances to the employees. Petitioner joined Union named Maharashtra Navnirman Kamgar Sena in May 2015 after which, according to Petitioner, the management started harassing him. That all work of the Petitioner was taken away and handed over to another employee and Petitioner was made to sit idle without any work. That his salary was not paid for the month of July 2016 and when he demanded the same, the management insisted on he rendering resignation from membership of the Union. That the Union filed complaint of unfair labour practice bearing No.289 of 2016 before Industrial Court on 6 September 2016. That through the reply filed to the said complaint by Respondents, he came to know that his services

were terminated on 7 July 2016. The Union withdrew the complaint with liberty to file fresh complaint to challenge the termination.

5. In the above background Petitioner filed Complaint (ULP) No.203 of 2016 challenging his termination by Order dated 7 July 2016. The Labour Court granted interim relief directing the first Respondent to allow Petitioner to report on duty during pendency of the Complaint. His monthly wages were also directed to be deposited in the Labour Court. Respondents moved application for stay of Order dated 7 February 2017, which was stayed by the Labour Court on condition of allowing Petitioner to report on duty. The Interim Order was challenged by the Respondents before the Industrial Court by filing Revision Application No.16 of 2017, which was allowed by Order dated 02 March 2017 whereby the Industrial Court directed Respondent No.1 to deposit amount of Rs.3,07,904/- in the Labour Court with liberty to the Petitioner to withdraw the said amount. The amount was not directed to be considered as legal dues against the order of termination. Respondent No.1 however was directed to deposit Rs.21,000/- per month under the head 'wages' with effect from July 2016 onwards during pendency of Complaint (ULP) No.203 of 2016. The Revision Application was accordingly disposed of. Petitioner withdrew the amount of Rs.3,07,904/- from Labour Court.

6. Petitioner led evidence of himself as well as two other witnesses Mr. Santosh Vithoba Kode and Shri. Satyendra Prakash Ramnaresh Tiwari. Respondents examined Shri. Ashwin Damani as their witness.

7. After considering pleadings and evidence on record, the Labour Court delivered Judgment and Order dated 04 July 2018 dismissing the Petitioner's complaint. Petitioner filed Revision

Application (ULP) No.98 of 2018 before the Industrial Court, which has been dismissed by Judgment and Order dated 30 April 2019. Aggrieved by the decisions of Labour Court and the Industrial Court, Petitioner has filed the present petition.

8. Mr. Cama, the learned senior advocate appearing for Petitioner would submit that Petitioner's termination is in violation of provisions of Section 25F of the Industrial Disputes Act, 1947 (**I. D. Act**). That no termination letter was served on Petitioner, nor he was paid any retrenchment compensation. That there is no documentary evidence on record to prove that termination letter was sent to Petitioner by post. That Respondents' stand is that the termination letter was acknowledged by union, which clearly shows its non-service on Petitioner. There is no evidence of cheque or compensation being handed over to the Petitioner. The compensation was ultimately deposited in the Labour Court and withdrawn by the Petitioner.

9. Under Section 25-F(c), service of notice on appropriate government is a *sine qua non* for effecting retrenchment of workman. Admittedly, no notice under Section 25-F(c) was sent to the government. Mr. Cama would further submit that the termination order is in contravention of Section 25-G as the principle of 'last come, first go' is admittedly not followed. Relying on the information procured from Employees Provident Fund Organization under Right to Information Act, Mr. Cama would submit that several employees are appointed after termination of the Petitioner. That the defence of the Respondent about non availability of work for Petitioner is false. That Petitioner was working as clerk and therefore all clerks appointed by the management would fall in one category and it is not permissible to draw distinction between different categories of clerks depending on

works assigned to them. That it has come in evidence that all co-workers of the Petitioner were also doing same work. That thus employment of new workers after termination of Petitioner is proved in evidence. That Respondents admittedly did not maintain seniority list as required under Rule 81 of the Industrial Disputes (Maharashtra) Rules, 1957. That Respondent did not produce any documentary evidence of maintenance of such seniority list. Mr. Cama would thus submit that the termination of Petitioner was unlawful was fully proved to be unlawful before the Labour Court. It was also proved that he was not gainfully employed after the termination. Therefore, reinstatement with full backwages ought to have been awarded to Petitioner.

10. Ms. Purav, the learned counsel appearing for Respondents would oppose the petition. She would submit that services of Petitioner were required to be terminated as the work, which he used to perform, came to an end. That Petitioner used to send the Export Promotion (**EP**) copies to the customers of Respondents and that as per the circular issued by the Customs Department on 23 November 2016, the requirement of sending copies of export promotion to customers was discontinued. She would submit that Petitioner was idle without doing any work for over two years during 2014 to 2016. That therefore his services were terminated by paying him retrenchment compensation plus one month's notice pay totaling Rs.3,07,904/-. That termination letter alongwith cheque was attempted to be handed over to Petitioner, who read contents of letter and refused to accept both letter as well as cheque. That Petitioner has not provided his residential address to the Respondent-Management. However, another employee residing in the same building as that of Petitioner intimated Petitioner's address on

which the termination letter was sent by ordinary post. Ms. Purav would invite my attention to the Union's letter dated 14 July 2016, which according to her, clearly shows acquisition of knowledge of his termination. That initially Complaint on behalf of Petitioner's behalf was filed by the Union before the Industrial Court on 02 September 2016 which was later withdrawn and Petitioner filed fresh complaint under Item-1 (a), (b), (d) and (f) of Schedule IV of MRTU & PULP Act before Labour Court.

11. So far as the reliance of the Petitioner on list of workers provided by Employees Provident Fund Organization is concerned, Ms. Purav would submit that list does not mention the department where the concerned workers were employed. That Section 25-G of the I.D. Act refers to 'the particular category of workman'. That therefore it was necessary for Petitioner to demonstrate that clerk performing same work was employed by the management after his termination. Ms. Purav would submit that there are concurrent findings recorded by Labour and Industrial Court and therefore interference by this Court in exercise of writ jurisdiction in such concurrent findings is not warranted.

12. Rival contentions of the parties now fall for my consideration.

13. Petitioner's services are shown to have been terminated by letter dated 07 July 2016. There is a handwritten endorsement at the foot of the said letter dated 07 July 2016 that the Petitioner was called to the chamber of the person making endorsement at 5:00 p.m. on 07 July 2016 and the letter of termination alongwith cheque of Rs.3,07,904/- was handed over to him. That he read contents of the termination letter and refused to accept the letter or the cheque.

Petitioner denies issuance or any attempt to serve termination letter on him on 7 July 2016. According to him, Respondent-Company did not make any attempt to serve termination letter on him at any point of time. If the contention of the Petitioner is that the letter dated 07 July 2016 was never served on him by any means, he has not explained as to whether he reported for duty on 08 July 2016. There is no correspondence on record by the Petitioner immediately after 07 July 2016. Perusal of the complaint filed by the Petitioner before Labour Court under Section 28 of the MRTU & PULP Act would indicate that he has made following pleadings in respect of happening of the events during the months of July and August 2016.

(d) The Complainant states that he become of the Union maharashtra Navnirman Kamgar Sena in the month of May, 2015, which was noticed by the management in the month of January, 2016. The Complainant states that as they came to know that Complainant has become the member of the Union, they started to harass him and his routine work was being taken away and handed over to Mr. Palav, Dhawal and Mr. Mourya. The Complainant states that just to harass him he was being forced to sit idle without any work. The Complainant states that after demand made by him he has been the salary till July, 2016. The Complainant states that with prior intimation to the big sister concern M/s. Damani Shipping Pvt. Ltd. as it operates from same address the office bearers of the Complainant's Union meet the management on 27.07.2016 and 09.08.2016 and asked the explanation from the management. about the harassment to the Complainant. In the said meeting the office bearers requested the management of the Respondent No.1 Establishment to allot the work to the Complainant and also pay his monthly wages. The Complainant states that though he regularly reporting on duty he was not paid the wages for the month of July, 2016. The Complainant states that on 7th August, 2016 when he approached the management with a request to pay the wages for the month of July, 2016 he was told by Respondent No.2 that he has to resign from the membership of the Union and if he fails to do so management will not pay his monthly wages hereinafter and will terminate his services. The Complainant states that the office bearers of the Union approached the Respondents on 17th August, 2016 and requested the management to pay the wages of the

Complainant and therefore the management paid his wages on 20th August, 2016 for the month of July, 2016.

14. Petitioner thus claims that he alongwith office bearers of the Union various Respondent-Management on various days in July and August 2016 about the alleged harassment and non-payment of wages to Petitioner. He further pleaded in his complaint that there was apprehension of his termination and therefore the Union filed complaint No.289 of 2016 before the Industrial Court, Mumbai on 2 September 2016 and in written statement filed by the Respondent-Management on 30 September 2016. They took a stand that Petitioner's services were already terminated on 07 July 2016. The pleading in paragraph No.3(d) of the complaint are as under:

(d) The Complainant states that since there was apprehension of termination of his services and the management was not interested to pay his monthly wages his Union, Maharashtra Navnirman Kamgar Sena filed a Complaint of Unfair Labour Practice No. 286 of 2016 before Hon'ble Industrial Court, Mumbai on 06.09.2016. The Complainant states that since there was dire urgency in the matter the Union moved the matter before Hon'ble Industrial Court, where the Respondents filed their Written Statement and Reply to Interim Relief Application on 30.09.2016 and stated that they have terminated the services of Complainant on the 7th July, 2016 vide letter dt. 07.07.2016 and therefore the Complainant Union is not entitled for any relief.

15. Thus, the plea raised by the Petitioner before the Labour Court was that he was unaware about his termination till 30 September 2016. This stand taken by Petitioner is belied by Union's letter dated 14 July 2016. By that letter addressed by the Union to the Respondent-Management, Union stated as under:

Sir, you are informed by this letter that Shri. Dattu Shankar Dhumal Ex-employee in your establishment for last 29 years. Said Shri. Dhumal has been unlawfully terminated by the Management without assigning any written reason. This is

against the provisions of Labour Laws and injustice to the workman. The Management is violating Labour laws and has indulging in unfair labour practices.

You may take cognizance of the letter and reinstate Shri. Dattu Ashok Dhumal as early as possible, failing which legal action would initiated against for which your Management would be fully responsible.

Copies of letter dated 13 July 2016 were addressed to Labour Court Commissioner and Senior Police Inspector, Mata Ramabai Ambedkar Road Police Station, Fort, Mumbai.

16. Thus, the letter dated 14 July 2016 addressed by Union leaves no manner of doubt that the Union had acquired knowledge about Petitioner's termination on 14 July 2016. Thus, Petitioner took a false plea in his complaint that he acquired knowledge about his termination only when Respondent-Management filed written statement in Complaint No.289 of 2016 on 30 September 2016. The Petitioner had fully acquired knowledge about his termination and had approached the Union about the same this is why the Union addressed letter to Respondent-Management within 7 days after Petitioner's termination. Since he took a false plea in his Complaint about lack of knowledge about his termination till 30 September 2016, his plea of non service of termination letter dated 07 July 2016 cannot be accepted.

17. Also of relevance is the conduct of the Union in filing Complaint No.289 of 2016 before Industrial Court, which was filed on 02 September 2016 seeking following prayers :

(a) That the Hon'ble Court be pleased to declare that the Respondents have indulged in unfair labour practices under Item 1(a) of Schedule II and Item 9 and 10 of Schedule IV of MRTU & PULP ACT 1971.

(b) That direct the Respondents or either of them to cease and desist from engaging in unfair labour practice under Item 1(a) of Schedule II and item 9 and 10 of Schedule IV of MRTU & PULP ACT 1971.

(c) That the Hon'ble Court be pleased to direct the Respondents to pay the medical and traveling allowance to the member of Complainant Union and also pay the arrears of this medical and traveling allowance since the date of entitlement.

(d) That the Hon'ble Court be pleased to direct the Respondents to pay the bonus to its member employee's alongwith the arrears from the year ending March, 2013.

(e) Any other relief being fit and proper towards the ends of justice in the nature and circumstances of the case.

18. When Union had already acquired knowledge about the Petitioner's termination and had addressed letter dated 14 July 2016 to Respondents, why it filed Complaint on 02 September 2016 before Industrial Court for payment of medical and traveling allowances to Petitioner is beyond comprehension. Apparently, the Complaint was deliberately lodged to create picture as Union as well as Petitioner were unaware of termination letter dated 07 July 2016. The entire conduct of the Petitioner and the Union is thus untrustworthy.

19. It has come on evidence that Petitioner did not supply his correct residential address to the Respondent-Management and had given address of his Union. He admitted that he was residing at Room No. 61, Tambawala Building, Dongri, Jail Road, Umerkhadi, Mumbai since 2009 and that Mr. Chandrakant Patil, another employee was also residing in the same building. It is Respondent-Company's contention that the termination letter alongwith cheque were sent by ordinary post to the Petitioner at the address provided by Shri. Chandrakant Patil. It is observed about that Petitioner had acquired knowledge about his termination and accordingly the Union had address letter dated 14 July

2016 to that effect. In my view therefore, the plea of non-service of termination letter adopted by Petitioner is factually incorrect.

20. Alongwith termination letter dated 14 July 2016, Respondent-Company offered one month notice pay as well as retrenchment compensation (total amount of Rs.3,07,904/-) to Petitioner. Thus, provisions of Section 25-F (a) and (b) are fully complied with. So far as the provisions of Section 25-F(c) are concerned, there is debate between the parties about mandatory requirement of service of notice on the appropriate government. Mr. Cama has relied upon Judgment of the Apex Court in ***Raj Kumar V/s. Director of Education & Ors.***, 2016 II CLR 353 in support of his contention that service of notice under Section 25-F(c) is mandatory. As against this Ms. Yajurvedi has relied upon Judgment of this Court in ***Bajaj Auto Limited, Akurdi, Pune V/s. Ashok Dnyanoba Dhumal & Anr.***, 2006 I CLP 441 in support of her contention that service of such notice is not mandatory requirement. In ***Raj Kumar*** the Apex Court held in paragraph Nos.23, 24, 25 and 26 as under :

23. We are unable to agree with the reasoning adopted by the Tribunal as well as the High Court in the instant case. Admittedly, the notice under S.25F(c) of the ID Act has not been served upon the Delhi State Government. In support of the justification for not sending notice to the State Government reliance has been placed upon the decision of this Court in the case of Bombay Journalists (supra). This decision was rendered in the year 1963 and it was held in the said case that the provisions of S.25F(c) of the I.D. Act is directory and not mandatory in nature. What has been ignored by the Tribunal as well as the High Court is that subsequently, the Parliament enacted the Industrial Disputes (Amendment) Act, 1964. S.25F(c) of the I.D. Act was amended to include the words:

“or such authority as may be specified by the appropriate Government notification in the Official Gazette” by The statement of objects and reasons provides:

“Opportunity has been availed of to propose a few other essential amendments which are mainly of a formal or clarificatory nature”

24. Nothing was done on part of the legislature to indicate that it intended Section 25F(c) of the I.D. Act to be a directory provision, when the other two sub- sections of the same section are mandatory in nature. The amendment was enacted which seeks to make it administratively easier for notice to be served on any other authority as specified.

25. Further, even the decision in the case of Bombay Journalists (*supra*) does not come to the rescue of the respondents. On the issue of interpretation of Section 25F(c) of the ID Act, it was held as under:

“The hardship resulting from retrenchment has been partially redressed by these two clauses, and so, there is every justification for making them conditions precedent. The same cannot be said about the requirement as to clause (c). Clause (c) is not intended to protect the interests of the workman as such. It is only intended to give intimation to the appropriate Government about the retrenchment, and that only helps the Government to keep itself informed about the conditions of employment in the different industries within its region. There does not appear to be present any compelling consideration which would justify the making of the provision prescribed by clause (c) a condition precedent as in the case of clauses (a) & (b). Therefore, having regard to the object which is intended to be achieved by clauses (a) & (b) as distinguished from the object which clause (c) has in mind, it would not be unreasonable to hold that clause (c), unlike clauses (a) & (b), is not a condition precedent.”

(emphasis laid by this Court)

Thus, this Court read the ID Act and the relevant Rules thereunder together and arrived at the conclusion that Section 25F(c) is not a condition precedent for retrenchment. By no stretch of imagination can this decision be said to have held that there is no need for industries to comply with this condition at all. At the most, it can be held that Section 25F(c) is a condition subsequent, but is still a mandatory condition required to be fulfilled by the employers before the order of retrenchment of the workman is passed. This Court in the case of *Mackinnon Mackenzie & Company Ltd. v. Mackinnon Employees Union* (2015) 4 SCC 544 held as under:

“Further, with regard to the provision of Section 25F Clause (c), the Appellant- Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the Appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F Clauses (a) and (c) of the I.D. Act which are mandatory in law.”

In the instant case, the relevant rules are the Industrial Disputes (Central) Rules, 1957. Rule 76 of the said Rules reads as under:

“76. Notice of retrenchment.- If any employer desires to retrench any workman employed in his industrial establishment who has been in continuous service for not less than one year under him (hereinafter referred to as 'workman' in this rule and in rules 77 and 78), he shall give notice of such retrenchment as in Form P to the Central Government, the Regional Labour Commissioner (Central) and Assistant Labour Commissioner (Central) and the Employment Exchange concerned and such notice shall be served on that Government, the Regional Labour Commissioner (Central), the Assistant Labour Commissioner (Central), and the Employment Exchange concerned by registered post in the following manner:-

(a) where notice is given to the workman, notice of retrenchment shall be sent within three days from the date on which notice is given to the workman;

(emphasis laid by this Court)

Rule 76(a) clearly mandates that the notice has to be sent to the appropriate authorities within three days from the date on which notice is served on the workman. In the instant case, the notice of retrenchment was served on the appellant on 7.1.2003. No evidence has been produced on behalf of the respondents to show that notice of the retrenchment has been sent to the appropriate authority even till date.

26. That being the case, it is clear that in the instant case, the mandatory conditions of Section 25F of the I.D. Act to retrench a workman have not been complied with. The notice of retrenchment dated 7.1.2003 and the order of retrenchment dated 25.7.2003 are liable to be set aside and accordingly set aside.

21. Since ***Raj Kumar*** (supra) being Judgment of Apex Court rendered in the year 2016, same would prevail over other Judgment of this

Court in ***Bajaj Auto Limited*** rendered in the year 2006. In ***Raj Kumar***, Apex Court held that service of notice on the appropriate government under Section 25-F(c) is not directory under Industrial Disputes (Amendment) Act 1964 and that the same is mandatory. In the present case, admittedly notice to the appropriate government was not issued under Section 25-F(c) of the Industrial Disputes Act.

22. So far as the issue of violation of Section 25G of the I.D.Act is concerned, in my view mere production of list of workers obtained through Right to Information Act, 2005 from the office of Employees Provident Fund Organization would not suffice to demonstrate that any fresh worker was employed after termination of Petitioner in the category in which the Petitioner was working. Section 25G of the I. D. Act reads thus:

25-G. Procedure for retrenchment. Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman

23. Thus, to prove violation of provisions of Section 25G, it was incumbent for the Petitioner to prove that any junior worker, belonging to the category in which he was working, was either retained in service or that a fresh employee was employed in his place. After going through the list of workers produced at page No.47 and 48 of the petition, it is difficult to ascertain whether any worker was retained or employed fresh in the category in which Petitioner was working. The Respondent management has come with a specific case that Petitioner was performing work of delivery of Export Promotion copies to the

customers and that as per circular dated 23 November 2016 issued by Customers Department, the system of taking out print of EP was discontinued and therefore there was no question of services thereof on its customers. Respondent Company thus successfully proved before the Labour Court that Petitioner was the only workman doing the particular nature of work. In fact, he admitted in his cross-examination that he was sitting idle from 2014 to 2016. He further admitted that there was no other employee other than him, who was doing the work which he used to do. Thus, admissions given by Petitioner proved beyond any iota of doubt that no other worker than the Petitioner was either retained or recruited afresh after his termination. Since the Petitioner was the only worker in the particular category, there was no question of maintaining any seniority list.

24. After considering overall aspects of the case, I am of the view that Petitioner has succeeded only in technical plea of failure to give notice under Section 25F(c) to the Government while effecting his retrenchment. I am not inclined to set aside the order of retrenchment or order Petitioner's reinstalment for violation of Section 25F(c) of the ID Act. for every violation of Section 25F of ID Act, reinstatement with backwages is not the answer. In ***State of Uttarakhand v. Raj Kumar***, (2019) 14 SCC 353 the Apex Court has held as under:

9. In our opinion, the case at hand is covered by the two decisions of this Court rendered in BSNL v. Bhurumal [BSNL v. Bhurumal, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373] and Distt. Development Officer v. Satish Kantilal Amrelia [Distt. Development Officer v. Satish Kantilal Amrelia, (2018) 12 SCC 298 : (2018) 2 SCC (L&S) 276] .

10. It is apposite to reproduce what this Court has held in BSNL [BSNL v. Bhurumal, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373] : (SCC p. 189, paras 33-35)

“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 mala fide and/or by way of victimisation, 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 a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that 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 regularisation [see *State of Karnataka v. Umadevi* (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]]. Thus when he cannot claim regularisation 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 that 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 regularised under some policy but the workman concerned 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. The ratio in *State of Uttarakhand Vs. Raj Kumar* is followed by the Apex Court in *Ranbir Singh v. PWD*, (2021) 14 SCC 815 in which it is held as under:

7. In the light of the state of the law, which we take note of, we notice certain facts which are not in dispute. This is a case where it is found that, though the appellant had worked for 240 days, appellant's service was terminated, violating the mandatory provisions of Section 25-F of the Act. The authority involved in this case, apparently, is a public authority. At the same time, it is common case that the appellant was a daily wager and the appellant was not a permanent employee. It is relevant to note that, in the award answering Issue 1, which was, whether the termination of the appellant's service was justified and in order, and if not, what was the amount of back wages he was entitled to, it was found, inter alia, that the appellant could not adduce convincing evidence to establish retention of junior workers. There is no finding of unfair trade practice, as such. In such circumstances, we think that the principle, which is enunciated by this Court, in the decision, which is referred to in Raj Kumar [State of Uttarakhand v. Raj Kumar, (2019) 14 SCC 353 : (2020) 2 SCC (L&S) 258] , which we have referred to, would be more appropriate to follow. In other words, we find that reinstatement cannot be automatic, and the transgression of Section 25-F being established, suitable compensation would be the appropriate remedy.

26. Petitioner has already been paid retrenchment compensation and one month notice pay totaling Rs.3,07,904/- which has been withdrawn by him from Labour Court. In my view additional compensation of 2,00,000/- for technical violation of failure to give notice to appropriate government under Section 25F(c) of the ID Act would meet the ends of justice.

27. Petition accordingly partly succeeds and I proceed to pass the following Order:

(i) Judgment and Order dated 04 July 2018 passed by the First Labour Court at Mumbai in Complaint (ULP) No.203 of 2016 as well as Judgment and Order dated 30 April 2019 passed by the Industrial Court, Mumbai in Revision Application (ULP) No.98 of 2018 are modified to the extent that the Respondents

shall pay to Petitioner compensation of Rs. 2,00,000/- over and above the amount already paid to him.

(ii) The compensation of Rs. 2,00,000/- shall be paid to Petitioner within 6 weeks, failing which the amount shall carry interest @ Rs. 8% p.a..

28. With the above directions, Writ Petition is partly allowed. Rule is made partly absolute. No costs.

SANDEEP V. MARNE, J.

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