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W.P.No.11783 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2023

PRONOUNCED ON : 16.04.2024

C O R A M

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.11783 of 2015

R.Raghutama Adhithan

...Petitioner

Vs.

1. The Presiding Officer,
III Additional Labour Court,
High Court Buildings,
Chennai - 600 104.

2. The Management,
Rane TRW Streeing Systems Ltd.,
G.S.T.Road, Vallanchari Village,
Guduvancherry - 603 202.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari, calling for records and papers from the files of the first respondent in I.D.No.317/2009 and quash the impugned award made therein dated 05.11.2014 in so far as the first respondent has denied the



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petitioner claim for reinstatement, backwages, continuity of service and all other attendant benefits.

For petitioners : Mr.S.Kumaraswamy
for Mr.K.M.Ramesh

For R1 : Labour Court

For R2 : Mr.Manoha Gupta
for Ms. Gupta and Ravi

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ORDER

This writ petition is filed to call for records and papers from the files of the first respondent in I.D.No.317/2009 and quash the impugned award made therein dated 05.11.2014 in so far as the first respondent has denied the petitioner claim for reinstatement, backwages, continuity of service and all other attendant benefits.

2. The facts in brief culled out from the affidavit enclosed in the writ petition are as follows:



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2.1. The petitioner was working as a Machine Operator in the second respondent company and was wrongly designated as Trainee, though he was not given any official training by the second respondent. The petitioner was paid salary instead of stipend and was granted casual as well as privilege leave and also double wages for overtime work. The petitioner absented himself from 25.12.2008 to 29.12.2008, on account of medical advice and his leave was also informed to his incharge by name Ashok. While so, the second respondent by letter dated 24.12.2008 terminated the traineeship of the petitioner with immediate effect.

2.2. The petitioner filed I.D.317 of 2009 before the first respondent challenging the termination of his traineeship. The first respondent on going through the oral and documentary evidences passed impugned award dated 5/11/2014 that the petitioner was a workman and not a trainee and his termination was in violation of Section 25(F) and 25 (G) of the I.D.Act, 1947 and set aside the termination of the petitioner without reinstatement however, the second respondent was ordered to pay 50% of salary from



24.12.2008 to 05.12.2004 as one time lumpsum compensation within a period of 60 days from the date of the award with Rs.3,000/- and also stated that failure to pay the amount within the stipulated date would incur an interest of 9% till the date of realization. Being aggrieved, the petitioner has come forward with the instant writ petition.

3. Heard Mr.S.Kumaraswamy, learned counsel appearing for the petitioner and Mr.Manoha Gupta, learned counsel appearing for the second respondent.

4. The labour Court, after full fledged enquiry has concluded that the petitioner has worked for more than 240 days and that he is not a trainee and is workman under 2 F of the Industrial Disputes Act. However, instead of reinstating the petitioner back in service, the labour Court has directed the respondent Management to pay 50% of the pay calculated from 29/12/2008 until the date of disposal of I.D., which is 5/11/2014 as a one time lump sum compensation to be paid within 60 days from the date of award. The petitioner aggrieved by the finding of the labour Court of granting one time lump sum compensation instead of reinstatement has filed this writ petition.



Therefore, the short point that falls for consideration is whether the labour Court is justified in not ordering for reinstating the petitioner back into service instead of granting one time compensation.

5. The labour Court has held that termination of the petitioner without following the procedure under 25 F of the Act is irregular. In so far as setting aside the termination order of the Management terminating the petitioner is concerned, the Management has not filed any writ petition, thereby, that part of the finding of the labour Court in the impugned order has become final. However, in respect of reinstatement is concerned, normally as a thumb rule is in case, if the termination hold to be irregular, the workman should normally be reinstated back. But on account of march of law, now legal position has been changed, thereby, it is not mandatory that workman should be by default reinstated if it is found that termination is irregular.

6. The learned counsel appearing for the petitioner has cited the following decisions:-



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(i). In ***HINDUSTAN TIN WORKS PVT LTD Vs. EMPLOYEES OF HINDUSTAN TIN WORKS PVT LTD (1979 AIR 75)***, wherein at paragraph 9, it has been held thus:-

“It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The specter of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and



simultaneously deprived the workman of his earnings.”

(ii). In ***T.I.MILLER LTD Vs. ADDITIONAL LABOUR COURT, MADRAS AND OTHERS (W.A. Nos.1171 and 1172 of 1983 and W.A.No.680 of 1984)***, wherein at paragraph Nos.17 and 18, it has been held thus:-

“17. The petitioner was a fitter in the tools room. He belonged to the category of "blue collar" workmen. Though it could not be said that reinstatement in service invariably follows as a consequence of holding a termination void, yet in the case of blue collar workmen and white collar-employees, other than those belonging to the managerial or similar high level cadre, reinstatement would be the rule and compensation in lieu of reinstatement, a rare exception. The



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second respondent seemed conscious of this aspect. Having found that dismissal was out of proportion to the gravity of the charge and a lesser sentence was called for, the second respondent found that reinstatement without back-wages but with continuity of service and attendant benefits, could be awarded. However, under point (5), merely on the ground that ordering reinstatement would bring about embarrassment to the first respondent, payment of monetary compensation in lieu of reinstatement had been ordered. As rightly contended by Sri Prasad and as rightly held by the learned Judge, this concept of embarrassment to the management, if accepted without any qualification or rider, could easily be imported in each and every case of dismissal or discharge of the workman, so as to deny substantial justice to the workmen II would defeat all claims of



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workmen for reinstatement, and would negative the basic principle of natural justice, that the punishment should be commensurate with the gravity of the offence proved.

18. According to the second respondent, if on future occasions, issuing a memo to the petitioner was necessitated, it would upset the petitioner emotionally and he would develop peptic ulcer and the scene that was enacted on the midnight of 17 September 1975 would be repeated, causing considerable embarrassment to the first respondent. Courts cannot countenance such a concept, particularly, when it relates to workmen of the category to which the petitioner belongs. In these days of extensive unemployment and under-employment, Courts cannot miss the fact that a workman thrown out of employment



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following a disciplinary enquiry, would have to face innumerable difficulties in securing another employment. The relief of reinstatement, therefore, ought not to be denied to the workman, except when the same is strictly warranted by the gravity of the proved charges. Flimsy considerations like embarrassment to management, should never be the deciding factors in the matter of reinstatement of workmen--skilled or unskilled. Sri Prasad, would bring to our notice, the observation of the Supreme Court in Sukhdev Singh v. Bagatram Sardar Singh Raghuwanshi [MANU/SC/0667/1975 : 1975--I L.L.N. 366], that the original concept of employment as between that of master and servant, based upon a contract of personal service, has far receded with changing times, particularly in these days of large impersonnel corporate employers, large scale



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industries, and Government enterprises conducted by bodies which are created under special statutes. The petitioner is one among the 160 permanent employees in the factory and it would be most inappropriate to refuse reinstatement on the sole ground that reinstatement would cause embarrassment to the first respondent. The petitioner, at the time of this incident was aged only 30, and had put in only 7 years of service. He had a long career of service before him. It was, on these relevant considerations that the learned Judge had rightly set aside the order directing payment of monetary compensation. Neither dismissal from service nor payment of monetary compensation, would be a proper exercise of discretion in the circumstances of this case.”

7. The learned counsel appearing for the second respondent has filed the following citations:-

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(i). In ***TELECOM DISTRICT MANAGER AND OTHERS {2008***

(3) LLN – 676}, at para 23 and 24, the Hon'ble Supreme Court has held

thus:-

“23. Even if the provisions of Section 25F of the Industrial Disputes Act had not been complied with, respondent was only entitled to be paid a just compensation. While, however, determining the amount of compensation we must also take into consideration the stand taken by the appellants. They took not only an unreasonable stand but raised a contention in regard to absence of jurisdiction in the Tribunal. They admittedly did not comply with the order passed by the Tribunal for a long time. It had raised contention which are not otherwise tenable.

24. We, therefore, are of the opinion that in the peculiar facts and facts and circumstances of



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the case interest of justice shall be subserved if respondent is directed to be paid a compensation of Rs. 1,50,000/- (Rupees one lakh fifty thousand only). The said sum should be paid to him within four weeks failing which it will carry interest @ 9% per annum.”

(ii). In ***BHARAT SANCHAR NIGAM LTD Vs. MAN SINGH (Civil Appeal No.8747 of 2011)***, at para 6, it was observed thus:-

“6.In view of the aforementioned legal position and the fact that the Respondents - workmen were engaged as 'daily wagers' and they had merely worked for more than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice.”



8. In ***LL 2021 SC - 428 (Civil Appeal No.4483 of 2010, RANBIR***

SINGH Vs. EXECUTIVE ENG. P.W.D), the Hon'ble Supreme Court at

para Nos.5 to 10, it is held as follows:-

“5. However, we notice that there is another line of decisions, and the latest of the same, which is brought to our notice by Shri Samar Vijay Singh, learned AAG, is Raj Kumar (supra). We may refer only to paragraphs-9 and 10:

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, MANU/SC/1276/2013 : (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, MANU/SC/1498/2017 : (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, MANU/SC/1276/2013 : (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



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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), MANU/SC/1918/2006 : (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.



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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.

6. 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 25F 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 No. 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 (supra), 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 25F being established, suitable compensation would be the appropriate remedy.

7. In such circumstance, noticing that, though the Appellant was reinstated after the award of the Labour Court in 2006, the Appellant has not been working since 2009 following the impugned order, and also taking note of the fact that the Appellant was, in all likelihood, employed otherwise, also the interest of justice would be best subserved with modifying the impugned order and directing that in place of Rs. 25000/- (Rupees Twenty Five Thousand), as lumpsum compensation, Appellant be paid Rs. 3.25 lakhs (Rupees Three Lakhs and Twenty Five



Thousand), as compensation, taking into consideration also the fact that the Appellant had already been paid Rs. 25000/- (Rupees Twenty Five Thousand) as compensation.

8. Accordingly, the appeal is partly allowed. We modify the impugned judgment by directing that over and above, compensation directed of Rs. 3.25 lakhs (Rupees Three Lakhs and Twenty Five Thousand), shall be paid to the Appellant.

9. This will be done within a period of eight weeks from today.

10. The appeal is partly allowed as above. The aforesaid payment shall effectuate a full and final settlement of all claims of the Appellant.”

9. Considering the above, as law laid down by the Hon’ble Apex Court, as referred above, it is clear that it is not mandatory that whenever an employee is retrenched, without following 25 F of the Industrial Disputes Act, he shall be reinstated. However, basing on the circumstances, if a just



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compensation is awarded, in lieu of reinstatement, it will meet the ends of justice. In the case on hand, the petitioner was working with the second respondent. Though the second respondent has submitted that the petitioner has been working only as a trainee, it could not be proved before the labour Court that he was worked as a trainee and thereby, the labour Court has considered the status of the petitioner as a workman under 2 (s) of the Act. However, admittedly, the petitioner was not a permanent employee. Therefore, the authorities referred above squarely applicable to the facts of the case. Neither the petitioner nor the second respondent did not dispute in respect of quantum of compensation. Therefore, this Court is of the opinion that quantum of compensation awarded by the labour Court is sufficient. The petitioner has failed to make out a case.

10. In the result, this writ petition is dismissed. No costs.

16/4/2024

vca/mvs.

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Neutral Citation : Yes/No

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To:

The Presiding Officer,
III Additional Labour Court,
High Court Buildings,
Chennai - 600 104.



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DR. D.NAGARJUN,J

Vca/mvs.

Pre-delivery order made in
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