

CWP-12809-2012 (O&M) -1-
and other connected cases

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-12809-2012 (O&M)
Date of decision: 18.10.2024

**THE CIVIL SURGEON GENERAL HOSPITAL GURGAON AND
ANOTHERPETITIONERS**

V/S

MANOJ KUMAR AND OTHERS **...RESPONDENTS**

CWP-8569-2013

MANOJ KUMAR **....PETITIONER**

V/S

**PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I AND ORS** **...RESPONDENTS**

CWP-12810-2012 (O&M)

**THE CIVIL SURGEON GENERAL HOSPITAL
GURGAON AND ANOTHERPETITIONERS**

V/S

NASIR HUSSAIN AND ANR **...RESPONDENTS**

CWP-8516-2013

NASIR HUSSAIN **....PETITIONER**

V/S

**PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I AND ORS ...RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Raman Sharma, Addl. A.G., Haryana
for the petitioner(s) in CWP-12809-2012 and
CWP-12810-2012 and for respondent Nos.2 and 4
in CWP-8569-2013 and CWP-8516-2013.

Mr. Imtiyaz Hussain, Advocate
for respondent No.1 (in CWP-12809-2012 and CWP-12810-2012),
and for the petitioners (in CWP-8516-2013 and CWP-8569-2013).

Mr. Akash Yadav, Advocate
for respondent No.3 (in CWP-12809-2012 and
CWP-12810-2012).



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JAGMOHAN BANSAL, J (ORAL)

1. By this common order CWP-12809-2012, CWP-8569-2013, CWP-12810-2012 and CWP-8516-2013 are being disposed of since issues involved in all the petitions and prayer sought therein are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-12809-2012.

2. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of Award dated 30.01.2012 (Annexure P-4) whereby Labour Court has answered the reference in favour of the workman.

3. The petitioners are instrumentalities of State of Haryana. As per petitioners, for the purpose of organizing health Mela at Nuh, District Mewat/ Gurugram, respondent No. 1 was engaged as health worker-driver. As per appointment letter, the tenure of service was 89 days. The said period was extended from time to time, however, no extension was granted after 31.03.2005.

4. Mr. Raman Sharma, Addl. A.G., Haryana submits that case of workman falls within the clutches of Section 2(o)(bb) of the Industrial Disputes Act, 1947 (for short '1947 Act'), thus, workman was not entitled to protection granted by Section Sections 25-B and 25-F of 1947 Act.

5. Mr. Akash Yadav, Advocate submits that Labour Court has recorded categorical finding to the effect that workman had completed 240 days during 12 months preceding the date of termination, thus, workman was entitled to compensation in terms of Section 25-F of 1947 Act. As workman was retrenched without complying with the provisions of Section 25-F of 1947 Act, he was entitled to reinstatement with back wages.

6. Supreme Court in **B.S.N.L. v. Bhurumal, 2014 (7) SCC 177** has held that it is not necessary to reinstate workmen in every case. Though, the



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workman has completed 240 days in 12 months preceding the date of termination yet it is not necessary that he should be reinstated. Lump sum compensation may be awarded. In case the worker is found to be terminated on illegal grounds or management has adopted unfair labour practice or violated principle of 'last come first go', the retrenched worker may be reinstated. The relevant extracts of judgment in **Bhurumal's case (supra)** are reproduced as below :

28. *The only question that survives for consideration is as to whether the relief of reinstatement with full back wages was rightly granted by CGIT.*

29. *The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In BSNL v. Man Singh [BSNL v. Man Singh, (2012) 1 SCC 558] , this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In Incharge Officer v. Shankar Shetty [(2010) 9 SCC 126], it was held that those cases where the workman had worked on daily-wage basis, and worked merely for a period of 240 days or 2 to 3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.*

30. *In this judgment of Shankar Shetty [(2010) 9 SCC 126] , this trend was reiterated by referring to various judgments, as is clear from the following discussion: (SCC pp. 127-28, paras 2-4)*

“2. Should an order of reinstatement automatically follow in a case where the engagement of a daily-wager has been brought to an 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.



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3. *In Jagbir Singh v. Haryana State Agriculture Mktg. Board [Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327]* , delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, *U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey [(2006) 1 SCC 479]* , *Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353]* , *State of M.P. v. Lalit Kumar Verma [(2007) 1 SCC 575]* , *M.P. Admn. v. Tribhuban [(2007) 9 SCC 748]* , *Sita Ram v. Moti Lal Nehru Farmers Training Institute [(2008) 5 SCC 75]* , *Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684]* , *GDA v. Ashok Kumar [(2008) 4 SCC 261]* and *Mahboob Deepak v. Nagar Panchayat, Gajraula [(2008) 1 SCC 575]* and stated as follows: (*Jagbir Singh case [Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327]*)

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

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of



reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily-wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily-wager who does not hold a post and a permanent employee.'

4. *Jagbir Singh [Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327] has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal [(2010) 6 SCC 773], wherein this Court stated:*

'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.'"

31. *In Deptt. of Telecommunications v. Keshab Deb (2008) 8 SCC 402 the Court emphasised that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one month's 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 regularised 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 [(2004) 7 SCC 112] and State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1].*

32. *It was further submitted by the learned counsel for the appellant that likewise, even when reinstatement was ordered, it does not automatically follow that full back wages should be directed to be paid to the workman. He drew the attention of this*



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Court to Coal India Ltd. v. Ananta Saha [(2011) 5 SCC 142] and Metropolitan Transport Corpn. v. V. Venkatesan [(2009) 9 SCC 601] .

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.*

7. Supreme Court in **State of Uttarakhand & Anr. v. Raj Kumar, 2019 (14) SCC 353** has reiterated its opinion in **Bhurumal's case (supra)** and held as under :

11. *Here is also a case where the respondent claimed to have worked as daily wager hardly for a period of one year or so in PWD of the State; secondly, he had no right to claim regularisation; thirdly, he had no right to continue as daily wager and lastly, the dispute was raised by the respondent (workman) almost after 25 years of the alleged termination before the Labour Court.*

12. *It is for these reasons, we are of the view that the case of the respondent would squarely fall in the category of cases discussed by this Court in para 34 of the judgment rendered in BSNL [BSNL v. Bhurumal, (2014) 7 SCC 177] .*



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13. *In view of the forgoing discussion, we are of the considered view that it would be just, proper and reasonable to award lump sum monetary compensation to the respondent in full and final satisfaction of his claim of reinstatement and other consequential benefits by taking recourse to the powers under Section 11-A of the Act and the law laid down by this Court in BSNL case [BSNL v. Bhurumal, (2014) 7 SCC 177].*
8. On being confronted with afore-cited judgments and factual position, counsel for the parties submit that they leave it to this Court to decide amount of lump sum compensation.
9. Considering the length of service, period expired from the date of termination, salary of workman and above-said judgments, this Court finds it appropriate to direct the petitioner to pay a sum of Rs. 1,00,000/- to each workman within two months from today, failing which the said amount will carry interest @ 9% per annum.
10. Disposed of.
11. Pending miscellaneous application(s), if any, shall also stand disposed of.

18.10.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No