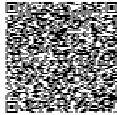


CWP-23950-2017 and
Other connected matters

1

2024:PHHC:123500



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

238 (06 cases)

CWP-23950-2017 (O&M)
Date of Decision : 19.09.2024

PRINCIPAL HINDU COLLEGE, DHAB KHATIKAN, AMRITSAR

.... PETITIONER

V/S

RAVI KUMAR AND OTHERS

.... RESPONDENTS

2.

CWP-23287-2017 (O&M)

PRINCIPAL HINDU COLLEGE, DHAB KHATIKAN, AMRITSAR

.... PETITIONER

V/S

AMAN KUMAR AND ANR.

.... RESPONDENTS

3.

CWP-23942-2017 (O&M)

PRINCIPAL HINDU COLLEGE, DHAB KHATIKAN, AMRITSAR

.... PETITIONER

V/S

RAM SINGH AND OTHERS

.... RESPONDENTS

4.

CWP-23948-2017 (O&M)

PRINCIPAL HINDU COLLEGE, DHAB KHATIKAN, AMRITSAR

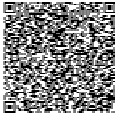
.... PETITIONER

V/S

CWP-23950-2017 and
Other connected matters

2

2024:PHHC:123500



SANJAY THAKUR AND ANR.

.... RESPONDENTS

5.

CWP-24003-2017 (O&M)

PRINCIPAL HINDU COLLEGE, DHAB KHATIKAN, AMRITSAR

V/S

RAM PARSHAD AND ANOTHER

.... RESPONDENTS

6.

CWP-29219-2018 (O&M)

PRINCIPAL HINDU COLLEGE, DHAB KHATIKAN, AMRITSAR

.... PETITIONER

V/S

SUBHASH CHANDER AND OTHERS

.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Pankaj Jain, Sr. Advocate with
Mr. Sachin Bhardwaj, Advocate
Mr. Divya Suri, Advocate and
Mr. Yogesh Kumar Mittal, Advocate
for the petitioner (s).

Mr. Vishal Sodhi, Advocate
for respondent No.1.

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, the above-said petitions are disposed
of as issues involved and prayer sought in all the petitions are common.
For the sake of convenience and with the consent of parties, the facts are
borrowed from CWP-23950-2017.



2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 13.07.2017 (Annexure P-10) whereby Labour Court has answered the reference in favour of workman.

3. The petitioner is a Government aided private college and it is registered under Societies Registration Act, 1860. It is engaged in imparting education. It is getting 95% aid from State Government with respect to sanctioned posts. The petitioner on 02.05.2002 appointed respondent as Peon. He was appointed on ad hoc basis. His appointment was never approved by education department which is necessary to get aid from Government. He came to be retrenched on 28.02.2006. He approached Labour Authorities and matter came to be referred to Labour Court which vide award dated 23.04.2014 did not order to reinstate but asked the management to pay lump sum compensation of Rs.50,000/- to each workman. The said award dated 23.04.2014 was not challenged by workman but management challenged the said award before this Court. This Court vide order dated 14.12.2016 passed in a bunch of petitions including CWP-15599-2014 remanded the matter back to Labour Court to pass a fresh order. The management was directed to pay Rs.15,000/- towards litigation expenses to workman.

4. Pursuant to aforesaid order of this Court, the Labour Court passed afresh award whereby workman was ordered to be reinstated with 50% back wages. The said award is under challenged before this Court.

5. Mr. Pankaj Jain, Sr. Advocate submits that in the 1st round of



litigation, the Labour Court had awarded lump sum compensation and the said award was not challenged by workman. It was petitioner who challenged the said award and the matter was remanded to Labour Court. The said Court going beyond the earlier order has ordered to reinstate the workman with back wages. The management had not appointed workman against a sanctioned post. There was no approval from competent authority, thus, the petitioner was not getting grant-in-aid. The management is ready to pay back wages as ordered by Labour Court as well as lump sum compensation as fixed by this Court.

6. Per contra, Mr. Vishal Sodhi, Advocate submits that the petitioner has adopted unfair labour practices. The petitioner is a government aided private college and getting 95% grant-in-aid. It is replacing workers after every 2/3 years. There are many cases where the petitioner after termination of workman has appointed another set of employees. There are few cases where employees have been regularized. The petitioner cannot replace one set of ad hoc/temporary employees by another set of ad hoc/temporary employees. The present salary of Peon/Clerks is much higher than salary which respondents were getting in 2005-06. In support of his contention, he relied upon judgment of Supreme Court in Jeetubha Khansangji Jadeja v. Kutchh District Panchayat, AIR OnLine 2022 SC 1086 and Tapash Kumar Paul v. BSNL and another, 2014 (15) SCC 313.

7. I have heard the arguments of counsel for the parties and perused the record.

8. The workman as per his claim and findings of Labour Court



was appointed in 2002 and the petitioner is claiming that he was appointed in 2005. The Labour Court has examined the record and concluded that workman was actually appointed in 2002. There is no reason to disbelieve the workman and discard findings of Labour Court.

9. 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 workman has completed 240 days or 2/3 years' service 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.

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 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.

10. 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] .*

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*

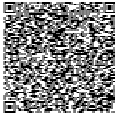


respondent in full and final satisfaction of his claim of reinstatement and other consequential benefits by taking recourse to the powers under Section 11-A of the Act and the law laid down by this Court in BSNL case [BSNL v. Bhurumal, (2014) 7 SCC 177].

11. The judgments cited by workman disclose that it is not necessary to pay lump sum compensation and workman should be reinstated. Section 11-A of Industrial Disputes Act, 1947 provides for reinstatement as well as any other relief which the Court deems fit.

12. In the case in hand, the workman was appointed in 2002 and he came to be retrenched in 2006. He had completed 240 days during preceding 12 months and was retrenched without complying with provisions of Section 25-B read with 25-F of ID Act. He was appointed without getting prior sanction from competent authority, thus, petitioner was not entitled to grant-in-aid from State Government. He was appointed on ad hoc basis and never regularized. His appointment was not made after following procedure prescribed by law, thus, any order of continuation of his service would be contrary to judgment of Constitution Bench in **State of Karnataka v. Umadevi (3) (2006) 4 SCC 1.** In the first round of litigation, he was awarded lump sum compensation and he did not assail said award. Meaning thereby, he was satisfied with lump sum compensation of Rs.50,000/-. In these circumstances, this Court does not find appropriate to reinstate the workman. He deserves lump sum compensation.

13. The Labour Court has awarded 50% back wages apart from



reinstatement. The petitioner on account of interim order passed by this Court has not paid 50% back wages and paid last drawn salary in terms of Section 17-B of ID Act upto February’ 2024. The petitioner is liable to pay 50% back wages as ordered by Labour Court as well as last drawn salary in terms of Section 17-B from March’ 2024 to till date. The said payment shall be made within one month by way of cheque in favour of workman and without asking any documentary evidence in the form of Pan Card, Aadhar Card or Voter Card.

The petitioner shall further pay lump sum compensation of Rs. 3.5 lakhs to each workman. The said payment shall also be made within one month from today. In case, payment is not paid within aforesaid period, the petitioner shall be liable to pay interest @ 12% from the expiry of said period. The aforesaid amount shall not be subjected to TDS and if there is any income tax liability, it would be discharged by petitioner.

- 14. Disposed of.
- 15. Pending miscellaneous application (s), if any, shall also stand disposed of.

19.09.2024
anju

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No