



2024:DHC:4619



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 28th May, 2024**

+ **W.P.(C) 5138/2012**

MUNNA LAL

..... Petitioner

Through: **Mr. V.N Jha and Mr. Ashok Kumar
Thakur, Advocates**

versus

ASHBEE SYSTEMS (P) LTD AND ANR

..... Respondents

Through: **None**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition has been filed on behalf of the petitioner under Articles 226 & 227 of the Constitution of India seeking issuance of a writ in the nature of certiorari for modification of the Award dated 26th March, 2012 ("impugned Award" hereinafter) passed by the learned Presiding Officer, Labour Court – XI, Karkardooma Courts, New Delhi ("Labour Court" hereinafter), in Case No. 366/04.

2. The relevant facts leading to the filing of the instant petition are as under:

- a) The petitioner herein ("petitioner workman" hereinafter) was employed with the respondent no.1 i.e., M/s Ashbee Systems Private



Limited (principal employer of respondent no.2) and respondent no.2 i.e., M/s Allied Engineers (“respondent management” hereinafter) at the post of a ‘fitter’ on last drawn wages @ Rs.1765/- per month.

- b) The petitioner, on 21st June, 1996, after having worked for seven years with the respondent management, filed a complaint before the learned Labour Court stating that the respondent management has failed to provide the statutory benefits as provided for in the Industrial Disputes Act, 1947 (“the Act” hereinafter).
- c) Thereafter, on 30th June, 1996, the services of the petitioner workman along with seven other co-workers were terminated by the respondent management.
- d) Pursuant to the above, the petitioner along with seven other co-workers approached the appropriate government challenging the above said termination. Subsequently, the appropriate government *vide* reference dated 11th June, 1997 bearing no. F.24(640)/97-Lab./11702-07 referred the industrial dispute before the learned Labour Court in the following terms:

“Whether the services of S/Sh. Munna Lal, Ram Dev Yadav, Sashi Bhushan, Raj Kishore, Ram Kishan Sharma, Hari Shanker, Harihar and Kanhaiya were terminated illegally and/or unjustifiably by the Management, and if so, to what relief were they entitled and what directions were necessary in that respect?”

- e) Upon completion of the pleadings, the learned Labour Court on 23rd January, 2001 framed two issues, and thereafter, passed the impugned



Award dated 26th March, 2012, thereby, holding that since the retrenchment of the petitioner workman took place almost sixteen years ago, reinstatement is not a viable relief rather considering the length of service, amount of last wages drawn, inflation and devaluation of currency, a one-time lump-sum monetary compensation four times the compensation amount payable as per Section 25-F of the Act, shall be paid to the petitioner by the respondent management along with Rs.15,000/- as litigation expenses.

- f) Aggrieved by the aforementioned impugned Award, the petitioner workman has preferred the instant writ petition under Articles 226 and 227 of the Constitution of India seeking modification of the Award to the extent of relief i.e., reinstatement along with full back wages instead of a lump-sum compensation.
3. Learned counsel appearing on behalf of the petitioner workman submitted that the impugned Award is bad in law and is liable to be modified to the extent of the relief as granted by the learned Labour Court since the same has been passed without taking into consideration the entire facts and circumstances and the settled position of law.
4. It is submitted that the learned Labour Court failed to take into consideration the fact that the respondent management had failed to prove that the petitioner workman was gainfully employed during the pendency of the litigation thus, erred in law by not considering the settled position of law in such regard.



5. It is submitted that the learned Labour Court is granting the relief of lump-sum compensation, as it is a settled position of law that reinstatement along with back wages is not to be construed automatically in instances where the termination of a workman is found to be illegal and defective for non-compliance of the statutory mandate prescribed under Section 25-F of the Act and hence, the impugned Award may be modified and the petitioner workman be granted the relief of reinstatement along with full back wages. To substantiate the same, the learned counsel for the petitioner relied upon the judgment passed by the Hon'ble Supreme Court in *M/s Hindustan Tin Works Pvt. Ltd v. The Employees of M/s Hindustan Tin Works Pvt. Ltd and Others*, (1979) 2 SCC 80.

6. It is submitted that the learned Labour Court has categorically observed that the services of the petitioner workman were terminated illegally and hence, the relief of compensation does not suffice to the cause of the petitioner rather, the learned Court below ought to have reinstated the petitioner along with full back wages.

7. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs be granted as prayed for.

8. Heard the learned counsel for the petitioner workman and perused the record. It is pertinent to mention herein that despite notices and opportunities, the respondent management failed to enter appearance or file their reply/counter affidavit to the instant petition. Therefore, this Court shall decide the issues agitated in the present petition on the basis of the Trial Court's Record.



9. The petitioner entity has approached this Court seeking to modify the relief of one time lump-sum compensation granted by the learned Labour Court *vide* the impugned Award dated 16th May, 2007, therefore, before delving into the averments made by the learned counsel appearing on behalf of the parties, in order to adjudicate upon the present matter, this Court deems it imperative to analyse the findings of the impugned Award dated 26th March, 2012, and ascertain the reasoning afforded by the learned Labour Court. The relevant paragraphs of the impugned Award are reproduced herein below:

“.....**RELIEF** :-

36. *The retrenchment of the workman Munna Lal took place in the year 1996 i.e., almost 16 years back. Therefore, reinstatement of this workman Munna Lal is not feasible. However, this court is of the view that the wrong caused to him can be made good by awarding him an appropriate amount of compensation.*

37. *The compensation to be given to the workman be calculated in accordance with Section 25 F of the Industrial Disputes Act on the basis of the findings of this court in para 33 above. This amount of compensation was to be given to this workman on the date of his termination i.e., 30.06.1996, but it was not given at the time. Therefore, this amount has to be re-appreciated keeping in view the value of the money in the year 1996 as compared to the value of money in 2012 as a consequence to the effect of inflation and devaluation of currency. This court is of the view that within this period of approximately 16 years between the date of retrenchment and the date of this award, this amount would have grown at least four times in its value.*

38. *This court after considering all aspects regarding the relationship between the workman and the Management e.g.*



length of service, amount of last drawn salary, efforts put in this legal battle by both parties, deem it fit to allow a compensation of a sum of rupees as calculated in the previous paragraph (i.e., Four Times the compensation amount) to the workman Munna Lal payable by the Management. The workman Munna Lal is also granted a sum of Rs.15,000/- as litigation expenses. This amount has to be paid by both the Managements jointly and severely.....”

10. Upon perusal of the aforementioned extracts it can be summarily stated that *qua* the relief, the learned Labour Court, taking into consideration the fact that the petitioner workman was illegally retrenched by the respondent management about sixteen years ago i.e., in the year 1996, opined that reinstatement is not an appropriate relief rather, a one-time lump-sum monetary compensation would serve as an appropriate relief for the wrong caused to him.

11. The learned Labour Court, bearing in mind the reasoning afforded by it while dealing whether or not the termination was illegal or not i.e., the termination was illegal, held that the petitioner workman is entitled to four times the compensation amount that he would have received at the time of termination i.e., in the year 1996, along with litigation expenses amounting to Rs.15,000/- which were to be paid by both the respondents jointly and severally.

12. At this juncture, bearing in mind the reasoning afforded by the learned Labour Court and the relief prayed by the petitioner workman, this Court deems it imperative to briefly state the settled position of law regarding the



circumstances in which the Court may grant the relief of reinstatement with back wages or compensation in lieu of reinstatement.

13. The Hon'ble Supreme Court in ***Incharge Officer v. Shankar Shetty***, (2010) 9 SCC 126, observed as to how and when the Labour Court/Tribunal must grant the relief of compensation in lieu of reinstatement along with back wages. The relevant paragraphs are reproduced herein below:

“.....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 [(2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] , 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 : 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] and stated as follows: (Jagbir Singh case [(2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] , 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, 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 [(2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal [(2010) 6 SCC 773 : (2010) 2 SCC (L&S) 309] , 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.”.....”

14. The afore stated judgment has been recently relied upon by the Hon’ble Supreme Court in one of its recent judgment titled ***Lucknow University v. Akhilesh Kumar Khare, (2016) 1 SCC 521***, wherein, the consideration of the Hon’ble Court was based upon *inter alia* the principles discussed in the aforesaid judgment.

15. The Hon’ble Supreme Court in ***BSNL v. Bhurumal, (2014) 7 SCC 177***, observed the following with respect to the shift in jurisprudence regarding the grant of relief in the form of compensation in lieu of reinstatement. The relevant paragraphs are reproduced herein 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 : (2012) 1 SCC (L&S) 207] , 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 : (2010) 2 SCC (L&S) 733], 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 : (2010) 2 SCC (L&S) 733], 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 : (2010) 1 SCC (L&S) 545] , 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 : 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] and stated as follows: (*Jagbir Singh case* [*Jagbir Singh v. Haryana State Agriculture Mktg. Board*, (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545], 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, 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 : (2010) 1 SCC (L&S) 545] has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal [(2010) 6 SCC 773 : (2010) 2 SCC (L&S) 309] , 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.’”

31. *In Deptt. of Telecommunications v. Keshab Deb [(2008) 8 SCC 402 : (2008) 2 SCC (L&S) 709] 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 : 2004 SCC (L&S) 918] and State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] .*

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 : (2011) 1 SCC (L&S) 750] and Metropolitan Transport Corpn. v. V. Venkatesan [(2009) 9 SCC 601 : (2009) 2 SCC (L&S) 719] .*

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)][(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.....”

16. The aforesaid judgment has been relied upon by the Hon’ble Supreme Court in one of its recent judgment titled ***K.V. Anil Mithra v. Sree Sankaracharya University of Sanskrit, 2021 SCC OnLine SC 982***, wherein the consideration of the Hon’ble Court was based upon *inter alia* the principles discussed in the aforesaid judgment.

17. Upon perusal of the aforementioned judicial dictum, it is inferred that ordinarily when the termination is found to be illegal, the principle of grant of reinstatement with full back wages has to be applied as per the facts and circumstances of each case and shall not be awarded mechanically.

18. It is further observed that termination of a workman when found illegal on account of procedural defects, reinstatement with back wages is not to be construed automatically rather, in the interest of justice, the Court may grant the workman a relief in the form of a lump-sum monetary compensation if it deems it to be a more appropriate relief.

19. The Hon’ble Supreme Court has held that although the earlier position of law articulated in various decisions reflected that ordinarily a workman is entitled to the relief of reinstatement with full back wages if the termination of an employee was found to be illegal, however, there has been a paradigm shift in the above stated legal position.

20. This Court as well, in a catena of judgments, has consistently taken a different view wherein even though the termination of an employee was held



to be in contravention of the procedural defects, relief by way of reinstatement along with the back wages is not to be construed as automatic rather monetary compensation in lieu of reinstatement may be granted in the cases as it subserves the ends of justice.

21. The premise of the same is that the workman at best would have been entitled to merely a 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 Act.

22. In this backdrop, this Court is of the view that the jurisprudence pertaining to the grant of reinstatement with back-wages has witnessed a pivotal shift wherein earlier the Hon'ble Supreme Court construed reinstatement along with back-wages as a general rule in instances where it was found that the services of the workman was terminated illegally whereas, the contemporary approach is different and it is no more a general norm to reinstate a workman and rather it has been observed that one time lump-sum monetary compensation is a rather appropriate relief.

23. This Court has time and again reiterated that reinstatement is not a vested right following wrongful termination, particularly if the employee has not rendered any services to the management during the litigation process. Consequently, the Hon'ble Supreme Court had opted to grant lump-sum compensation instead of reinstatement.

24. This Court is further of the view that while construing what is the most appropriate relief that may be granted to a workman, the Courts must



be mindful of all relevant factors such as the manner of appointment, length of service, grounds for termination, etc. to arrive at a considered holding.

25. This Court is of the considered view that the learned Labour Court has dealt with each of the issues thereby, affording a detailed reasoning after having appraised the evidence placed on record, as well as the settled position of law.

26. Thus, in view of the above discussions on law and fact, it is observed that the learned Labour Court, after having perused the evidence, facts and circumstances, has rightly arrived at the finding that since the retrenchment of the petitioner workman took place almost sixteen years ago, reinstatement is not a viable relief rather considering the length of service, amount of last wages drawn, inflation and devaluation of currency, a one-time lump-sum monetary compensation is an appropriate relief.

27. In light of the above, it is perceptible from the findings of the learned Labour Court that it had gone into depth of the material placed before it, therefore, this Court discerns no material to establish the propositions put forth by the petitioner entity and no error on account of appraising evidence by the learned Labour Court is noted by this Court, thus, the relief prayed by the petitioner workman cannot be granted.

28. It is accordingly held that there is no material to characterise relief granted in the impugned Award as perverse and the learned Court below is well justified in passing the same.

29. In view of the foregoing discussions, this Court finds no infirmity in the impugned Award dated 26th March, 2012, passed by the learned



2024:DHC:4619



Presiding Officer, Labour Court – XI, Karkardooma Courts, New Delhi, in Case No. 366/04 and the same is hereby upheld.

30. Based on the aforementioned observations, the instant writ petition is accordingly dismissed along with pending applications, if any.

31. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 28, 2024

rk/da/ryp