



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

% Date of Decision: 08.07.2025

+ **W.P.(C) 4391/2018 and CM APPL. 17017/2018**

UNION BANK OF INDIAPetitioner
Through: Mr. Rajat Arora, Advocate

versus

JITENDER KUMARRespondent
Through: Mr. Chirayu Jain, Advocate

+ **W.P.(C) 9138/2023**

SHRI JITENDRA KUMARPetitioner
Through: Mr. Chirayu Jain, Advocate

versus

UNION BANK OF INDIARespondent
Through: Mr. Rajat Arora, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present petitions have been preferred challenging the impugned award dated 01.11.2017 passed in ID No. 257/2011 by Ld. Presiding Officer, Central Government Industrial Tribunal Cum Labour Court No. 1, Room No. 38-A (GF) Karkardooma Courts Complex, Shahdara, Delhi whereby the Labour Court held that termination of the services of the workman Mr. *Jitendra Kumar* was illegal and rather than reinstatement, has directed the management bank to pay the workman monetary compensation to the tune of Rs.1,00,000/- and interest.



2. While the management has challenged the award in W.P.(C) 4391/2018, the workman has challenged the award in W.P.(C) 9138/2023 to the limited extent that the relief of reinstatement with full back wages and continuity in service has been denied by the Labour Court. Since both the challenges pertain to the same award, they are being heard and decided together.

3. The facts of the case in a nutshell are that workman was working as a peon with the management since 10.09.2003 and was drawing salary of Rs.5,764/- per month. It was his case before the Labour Court that he was in continuous service till 06.02.2006, when he was removed by the management from duties on allegations of theft. Subsequently, vide letter dated 16.02.2006, the management informed the workman that he was accused of committing a theft of Rs. 33,000/- from the strong room of the management/bank. The workman sent a demand notice dated 29.12.2006 which went unanswered. The Conciliation proceedings were also unsuccessful. Thereafter, the appropriate government referred the dispute for adjudication vide order dated 15.05.2008 to the Labour Court consequent to which the impugned award came to be passed.

4. Learned counsel for the management, while assailing the award, submits that the workman was engaged as a temporary staff w.e.f. 17.06.2005 and had worked intermittently till 06.02.2006, when he quit voluntarily after admitting his guilt. It is submitted that the engagement of workman was purely temporary in nature and on an ad hoc basis and that the mandatory requirement of 240 days of continuous service within the 12 month period prior to termination of his services as stated in Section 25-F of the Industrial Disputes Act ("ID Act") has not been complied with.



Moreover, the learned counsel submits that the confessional letter written by the workman was duly exhibited as Ex.WW1/M/1 before the Labour Court and the workman accepted to writing the letter in his cross examination but contrary finding has been given by the Labour Court by awarding Rs. 1,00,000/- as compensation to the workman.

5. *Per contra*, the learned counsel for the workman submits that the workman was illegally terminated and has not been gainfully employed elsewhere post the termination. Reliance is placed on Devinder Singh v. Municipal Council¹ to submit that the temporary nature of the workman's employment would have no bearing on the applicability of Section 25F of the ID Act. It is contended that the management failed to produce attendance register and the confessional statement was forced. Moreover, he submits that reinstatement can only be denied in exceptional circumstances which have not been made out in the present case and thus the impugned award is erroneous and needs to be set aside on this aspect.

6. I have heard learned counsel for the parties and gone through the records.

7. Dealing with the management's challenge first, a perusal of the proceedings would show that the management challenged the version of the workman being continuously engaged in services with the management w.e.f. 10.09.2003 by stating in their written statement that the workman was engaged on a temporary basis w.e.f. 17.06.2005. However, Shri V.K. Gupta, who was examined on behalf of the management as MW-1, admitted to the engagement of the workman as a peon from 10.09.2003. MW-1 further admitted to the existence of an attendance register, however failed to

¹ AIR 2011 SC 2532



produce the same, despite multiple opportunities being granted. The workman had exhibited as Ex.WW1/12 to Ex.WW1/18 the salary receipt vouchers to prove continuity in employment.

8. Now coming to the allegation of theft, MW-1 could not attest to the same since he joined the office on 16.02.2006 whereas the workman had already been removed on 06.02.2006. MW-1 also conceded that no notice, notice pay or service compensation was given to the workman. In fact, the show cause notice regarding the allegation of theft was given to the workman on 16.02.2006, i.e., after termination of his services. Admittedly, no domestic enquiry was conducted against the workman. The reliance placed on the alleged confessional letter exhibited as Ex. WW1/M1 is misplaced for the simple reason that neither the Bank Manager it was addressed to, nor the witness whose signature it bears, was examined by the management to prove the contents of the same. Moreover, if the letter is taken on its face value and the workman had indeed resigned on 06.02.2006, the Labour Court was correct in pointing out that the existence of the subsequent show cause notice dated 16.02.2006 could not be explained.

9. It is not the case of management that any domestic inquiry was conducted against the workman or one-month notice was served upon him in compliance with Section 25F of the Act. Considering the same, the Labour Court has rightly held the termination to be illegal and the management acted in violation of the provision laid down in the Act. Thus, the challenge of the management to the award falls.

10. Insofar as the question with respect to the reinstatement is concerned, it is a well-settled legal proposition that wrongful termination in itself would not automatically entitle the workman to seek reinstatement as an inherent



right. The Supreme Court in BSNL v. Bhurumal² while discussing the law governing reinstatement and retrenchment compensation has held that in cases where the termination is found illegal on account of violation of Section 25-F of ID Act, reinstatement is not a given and the workman should be given monetary compensation. The relevant extract is reproduced hereunder:-

*“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

² (2014) 7 SCC 177



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.”

11. The factors which the Labour Court should take into account before exercising judicial discretion and granting relief in an industrial dispute have been neatly carved out by the Supreme Court in Rajasthan State Agriculture Mktg. Board v. Mohan Lal,³ in the following manner:-

19...The legal position laid down by this Court in Gitam Singh [Rajasthan Development Corpn. v. Gitam Singh, (2013) 5 SCC 136 : (2013) 2 SCC (L&S) 369] that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.

12. It is an admitted position that the petitioner was terminated on 06.02.2006 and since then, he has not rendered his services to the management. Moreover, the workman was not employed with the management in a permanent position. After considering the catena of decisions discussed above and the facts and circumstances of the present case, this Court is of the opinion is that the Labour Court has rightly granted the compensation of Rs.1,00,000/- along with interest at the rate of 9% per annum from the date of publication of the award. Therefore, the challenge to the award by the workman must also fall.

³ (2013) 14 SCC 543



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13. Accordingly, I find no merit in the present petitions and the same are dismissed along with the pending applications.

MANOJ KUMAR OHRI
(JUDGE)

JULY 8, 2025/rd