NEUTRAL CITATION NO. 2025:MPHC-JBP:24841

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 10th OF FEBRUARY, 2025

WRIT PETITION No. 1114 of 2014

LAKHANDON CHRISTIAN LAKHANDON CHRISTIAN HOSPITAL

Versus

SMT. MARIYAMMA

Appearance:

Shri Mohan Sausarkar – Advocate for the petitioner.

Shri Subodh Kathar – Advocate for the respondent.

WITH

WRIT PETITION No. 2244 of 2014

SMT. MARIYAMMA DAS

Versus

LAKHNADAUN CHRISTIAN HOSPITAL AND OTHERS

Appearance:

Shri Subodh Kathar – Advocate for the petitioner.

Shri Mohan Sausarkar – Advocate for the respondents.

WRIT PETITION No. 2245 of 2014

VINOD DAS

Versus

LAKHNADAUN CHRISTIAN HOSPITAL AND OTHERS

Appearance:

Shri Subodh Kathar – Advocate for the petitioner.
Shri Mohan Sausarkar – Advocate for the respondents.

ORDER

As the issue involved in these writ petitions is identical, therefore, all these petitions are being heard together and disposed of by this common order.

2. For the sake of convenience, the facts of WP No.1114/2014 are taken up. This petition has been filed seeking the following reliefs :-

> *(i) Call the entire record of case no.234/IDR/2009 before this Hon'ble Court which is in possession of Labour Court Jabalpur.*
>
> *(ii) Set aside the award dated 14.08.2013 (30.09.2013) Annexure-A/1 passed by the Labour Court Jabalpur in case no. 234/IDR/2009.*
>
> *(iii) Any other relief which this Hon'ble Court may deem fit may kindly be granted together with the cost of this writ petition.*

3. Challenge is made to an award dated 14.8.2013 passed by learned Labour Court, Jabalpur in Case No.234/IDR/2009; whereby the application filed by the respondent challenging her termination order has been allowed.

4. The facts of the case lie in narrow compass are that the respondent was engaged on the post of Multipurpose Health Worker at Chhapara Unit. In the year 1989 she was transferred from Chhapara to Lakhnadon and on 26.7.1994 she was again transferred to Chhapara and directed to join at the transferred place on 1.9.1994 but due to

accommodation problem, she sought time to join at the transferred place. She was again directed to join prior to 31.10.1994, failing which, it would be deemed that she has resigned from the job and ultimately, vide order dated 4.11.1994 her services were terminated with immediate effect. The respondent raised a dispute before the Labour Court, Jabalpur regarding her illegal retrenchment. Learned Labour Court entertained the application filed by the respondent and on notice being issued, the petitioner submitted preliminary objection stating therein that the Hospital is not coming under the purview of definition of Industry as the same is run by the registered society, therefore, learned Labour Court is not having any jurisdiction to entertain the application filed by the respondent. The petitioner had also filed an application for framing additional issue before the Labour Court to the effect that the dispute is barred by time and is not maintainable as the petitioner Hospital is not coming under the purview of the definition of Workman but the aforesaid aspect was not taken note of by learned Labour Court and the application filed by the respondent was allowed. However, looking to the fact that the respondent had raised a dispute after a long time instead of directing for reinstatement of the respondent, the authority has been directed to pay compensation of Rupees One Lakh to the respondent. Being aggrieved by the aforesaid award passed by the Labour Court, this petition has been filed.

5. Two more petitions i.e. W.P. No.2244/2014 and W.P.No.2245/2014 have also been filed by the workman seeking reinstatement in service with full back wages on the ground that they

were regular permanent employees under the respondent no.1 Hospital. It is their case that once the Labour court has found that their termination from services was wrongful, then under all the circumstance and as a normal course, the reinstatement should have been ordered. However, the same has not been done by the Labour Court; therefore, aforesaid two petitions have been filed.

6. Heard learned counsel for the parties and perused the record.

7. The employer / Management have raised two grounds for challenging the award passed by the Labour court. First ground is that petitioner Hospital is being run by the registered Society under the Madhya Pradesh Society Registration Act, 1973, therefore, the same is not falling under the purview of Industrial Disputes Act, therefore, the application filed before the Labour Court was not maintainable and the dispute should have been raised before the Registrar, Co-operative Society but that has not been done in the present case and for this, counsel for the petitioner has placed Rules and Regulations and Bye-laws of the Society. Counsel appearing for the petitioner has placed heavy reliance upon the judgment passed by the Hon'ble Supreme Court in the case of **Management of Safdarjung Hospital, New Delhi vs. Kuldip Singh Sethi,** reported in **1970 (1) SCC 735** with reference to paragraphs 24, 28 and 38 and has argued that the Hospital in question being run by the Co-operative Society does not fall under the purview of Industry, therefore, the provisions of Industrial Disputes Act will not be applicable, therefore, the Labour Court has committed an error in entertaining the application / claim filed by the workman.

8. Second ground raised by counsel for the petitioner is with respect to delay in approaching the Labour Court and it is argued that services of the workman were terminated in the year 1994 and thereafter, the claim was raised for the first time in the year 2005 i.e. with the delay of 11 years without there being any explanation for the same. Therefore also, the Labour Court should not have entertained the application filed by the workman.

9. So far as the first ground raised by the petitioner is concerned, learned Labour Court has dealt with the aforesaid issue as Issue No.1 and placing reliance upon the judgment passed by the Hon'ble Supreme Court has held that the Hospital falls under the definition of an industry and definition of industry is defined as Section 2 (J) of the Industrial Disputes Act, therefore, the provisions of Industrial Disputes Act will be applicable to the facts and circumstances of the case. The Constitutional Bench of Hon'ble Supreme Court in the case of **Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others,** reported in **(1978) 2 SCC 213** has considered the similar proposition and has held that the hospital falls under the definition of an Industry and has covered under the provisions of Industrial Disputes Act. In para 144 of its judgment, the judgments passed in the cases of Safdarjung (supra), Solicitors' case (supra), Gymkhana (supra), Delhi University (supra), Dhanrajgirji Hospital (supra) and others were overruled.

10. Counsel appearing for the petitioner Hospital has placed reliance upon the overruled judgments in the case of Safdarjung (supra). He is not even aware of the fact that the judgment passed in the case of

Safdarjung (supra) has been overruled in the case of Bangalore Water Supply and Sewerage Board (supra) by the Constitutional Bench of the Hon'ble Supreme Court. Under these circumstances, the first ground raised by counsel for the petitioner that the provisions of ID Act are not applicable in the case in hand as the hospital does not fall under the definition of 2 (j) of the ID Act is *per se* illegal. Therefore, the aforesaid ground is not available to the petitioner in view of the specific observation made by the Constitutional Bench of the Hon'ble Supreme Court in the case of Bangalore Water Supply and Sewerage Board (supra).

11. So far as the second ground regarding the delay in approaching the Labour Court is concerned, Issue no. 2 has been framed by the Labour Court in this regard and the same has been dealt with by placing reliance upon the judgment passed by the Hon'ble Supreme Court in the cases of **Irrigation Research Institute Vs. Kripal Singh** reported in **(2008) 116 FLR 178** and **Karan Singh Vs. Executive Engineer Haryana State Marketing Board** reported in **(2008) 116 FLR Page 237**, wherein it is categorically held that there is no limitation provided for termination of the services of an employee under the Industrial Disputes Act, 1947. Therefore, the dispute can be raised at any point of time. However, there is no counter to the aforesaid proposition by the counsel appearing for the petitioner. There is nothing on record to show that the compensation as awarded by the Labour Court has been paid by the Management. Under these circumstances, the ground raised with respect to limitation is also negated. As no other ground is raised by the

petitioner employer in W.P.No.1114/2014, no relief can be extended to the petitioner. Accordingly, W.P.No.1114/2014 is **dismissed**.

12. As far as W.P.N.2244/2014 and W.P.No.2245/2014 are concerned, the relief claimed in these two writ petitions is with respect to reinstatement with full back wages. The fact remains that the services of the petitioners in these writ petitions were terminated in the year 1994. They had raised a dispute after a considerable period of 11 years as commuted by learned Labour Court. There is no explanation for raising a dispute after 11 years of their termination. However, a sympathetic view has been taken by the Labour Court and without dwelling upon the factum of delay, Labour Court entertained the claim raised by them and arrived at a conclusion that as they have performed work for a short period of approximately four years, therefore, the relief which can be granted to them is to adequately compensate them and accordingly, learned Labour Court awarded compensation of Rs.1 Lakh to each of them. There is no other document placed on record by the employees to show that they made efforts to agitate the matter at the earliest. They slept over their rights for a period of 11 years in raising the dispute. Under these circumstances, no illegality has been committed by the Labour Court in directing for payment of compensation.

13. The law with respect to the direction for reinstatement in service is settled by the Hon'ble Supreme Court in catena of judgments. The Hon'ble Supreme Court in the case of **Bharat Sanchar Nigam Limited Vs. Bhurumal,** reported in **(2014) 7 SCC 177** has held as under:-

> *"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."*

14. The Supreme Court in the case of **Jayant Vasantrao Hiwarkar Vs. Anoop Ganaptrao Bobde** reported in **(2017)11 SCC 244** has upheld the grant of compensation in lieu of reinstatement as the respondent had merely worked for a period of one year.

15. The Hon'ble Supreme Court in the case of Hari Nandan Prasad Vs. Food Corporation of India reported in (2014) 7 SCC 190 has held as under :-

> *"19. The following passages from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement: (BSNL case, SCC pp. 187-88, paras 29-30).*
> *"29. The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In BSNL v. Man Singh, 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, 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, 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 dailywager 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, 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, Uttaranchal Forest Development Corpn. v. M.C. Joshi, State of M.P. v. Lalit Kumar Verma, M.P. Admn. v. Tribhuban, Sita Ram v. Moti Lal Nehru Farmers Training Institute, Jaipur Development Authority v. Ramsahai, GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchayat, Gajraula and stated as follows: (Jagbir Singh case, 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 has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal, wherein this Court stated:

11. In view of the aforesaid legal position and the fact that the workmen were engaged as dailywagers 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."

21. We make it clear that reference to Umadevi, in the aforesaid discussion is in a situation where the dispute referred pertained to termination alone. Going by the principles carved out above, had it been a case where the issue is limited only to the validity of termination, Appellant 1 would not be entitled to reinstatement....."

16. The Hon'ble Supreme Court in the case of **O.P. Bhandari Vs. Indian Tourism Development Corporation Limited and others** reported in **(1986) 4 SCC 337** has held as under :-

> *"6. Time is now ripe to turn to the next question as to whether it is obligatory to direct reinstatement when the concerned regulation is found to be void. In the sphere of employer employee relations in public sector undertakings, to which Article 12 of the Constitution of India is attracted, it cannot be posited that reinstatement must invariably follow as a consequence of holding that an order of termination of service of an employee is void. No doubt in regard to "blue collar" workmen and "white collar" employees other than those belonging to the managerial or similar high level cadre, reinstatement would be a rule, and compensation in lieu thereof a rare exception. Insofar as the high level managerial cadre is concerned, the matter deserves to be viewed from an altogether different perspective — a larger perspective which must take into account the demands of National Interest and the resultant compulsion to ensure the success of the public sector in its competitive co-existence with the private sector. The public sector can never fulfill its life aim or successfully vie with the private sector if it is not managed by capable and efficient personnel with unimpeachable integrity and the requisite vision, who enjoy the fullest confidence of the "policy-makers" of such undertakings. Then and then only can the public sector undertaking achieve the goals of*
> *(1) maximum production for the benefit of the community,*
> *(2) social justice for workers, consumers and the people, and*
> *(3) reasonable return on the public funds invested in the undertaking.*

> *7. It is in public interest that such undertakings or their Boards of Directors are not compelled and obliged to entrust their managements to personnel in whom, on reasonable grounds, they have no trust or faith and with whom they are in a bona fide manner unable to function harmoniously as a team working arm-in-arm with success in the aforesaid three-dimensional sense as their common goal. These factors have to be taken into account by the court at the time of passing the consequential order, for the court has full discretion in the matter of granting relief, and the court can sculpture the relief to suit the needs of the matter at hand. The court, if satisfied that ends of justice so demand, can certainly direct that the employer shall have the option not to reinstate provided the employer pays reasonable compensation as indicated by the court."*

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7. It is in public interest that such undertakings or their Boards of Directors are not compelled and obliged to entrust their managements to personnel in whom, on reasonable grounds, they have no trust or faith and with whom they are in a bona fide manner unable to function harmoniously as a team working arm-in-arm with success in the aforesaid three dimensional sense as their common goal. These factors have to be taken into account by the court at the time of passing the consequential order, for the court has full discretion in the matter of granting relief, and the court can

> *sculpture the relief to suit the needs of the matter at hand. The court, if satisfied that ends of justice so demand, can certainly direct that the employer shall have the option not to reinstate provided the employer pays reasonable compensation as indicated by the court*."

15. Accordingly, in view of the aforesaid, finding no error apparent in the award passed by the Labour Court, no relief can be extended to the petitioners. Hence, the petitions i.e. W.P.N.2244/2014 and W.P.No.2245/2014 being sans merits are also **dismissed**.

(VISHAL MISHRA)
JUDGE

JP