IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 30th OF JANUARY, 2023

MISC. PETITION No. 204 of 2020

BETWEEN:-

NAGAR PALIK NIGAM SAGAR THROUGH COMMISSIONER NAGAR NIGAM SAGAR OFFICE KACHEHARI ROAD SAGAR, DISTRICT SAGAR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ABHIMANYU SINGH - ADVOCATE)

AND

SACHIN SHARMA S/O SHRI KAILASH SHARMA INFRONT OF MEDICAL COLLEGE TILI ROAD SAGAR (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI UTTAM MAHESHWARI - ADVOCATE)

……………………………………………………………………………………………

This petition coming on for admission this day, the court passed the following:

ORDER

This misc. petition, under Article 227 of the Constitution of India, has been filed against the order dated 27.02.2019 passed by Labour Court, Sagar in Coc-A 13/ID Act/2015/reference, by which the termination of the services of the respondent has been held to be bad in law on account of non-payment of retrenchment compensation and has directed for the reinstatement and payment of 10% of the arrears of

salary by way of compensation.

2. Challenging the order passed by the court below, it is submitted by the counsel for petitioner that the respondent had not completed 240 days of his service in a calendar year. Furthermore, it is submitted that in case of termination of a daily wage employee, the reinstatement with back wages is not automatic and instead the worker should be given monetary compensation, which will meet the ends of justice. It is submitted that since the Court below has come to a conclusion that the termination of the respondent is bad in law on account of non-payment of retrenchment compensation, therefore, it should not have directed for reinstatement, and could have awarded monetary compensation in lieu of reinstatement.

3. Per contra, the petition is vehemently opposed by the counsel for the respondent. It is submitted that the petitioner did not file any document to prove that the respondent has not worked for more than 240 days in a calendar year. The petitioner was in possession of every document and he could have proved that the petitioner has not worked for the statutory period. It is well established principle of law that if a party, who is in possession of best evidence, fails to produce the same then, an adverse inference can be drawn. Furthermore, the finding recorded by the lower court is a finding of fact and in absence of any perversity, the same may not be interfered with.

4. So far as the compensation in lieu of reinstatement is concerned, the counsel for the petitioner has relied upon the judgment of Supreme Court in the case of ***Jeetubha Khansangji Jadeja Vs. Kutchh District Panchayat, decided on 23.09.2022 in Civil Appeal No.6890/2022***.

5. Heard the learned counsel for the parties.

6. So far as the finding given by the Court below that the termination of the respondent was illegal on account of non-payment of retrenchment compensation is concerned, the petitioner being the employer was in possession of every document to show that the respondent had not worked for more than 240 days. Admittedly, the petitioner did not bring any evidence on record to rebut the claim of the respondent that he has worked for more than 240 days. It is well established principle of law that if a party is in possession of best evidence and fails to produce the same, then an adverse inference can be drawn. Under these circumstances, this Court is of the considered opinion that the Court below did not commit any mistake by holding that the respondent has worked for more than 240 days.

7. So far as the question of reinstatement with back wages with compensation of 10% amount is concerned, the 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."

8. 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.

9. The 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 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, 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: (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.'"

* * * *

***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.........."*

10. The Supreme Court in the case of ***O.P.Bhandari Vs. Indian Tourism Development Corporation Limited and others (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 fulfil 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."*

11. So far as the judgment relied upon by the counsel for the respondent in the case of ***Jeetubha Khansangji Jadeja (supra)*** is concerned, in the said case the juniors were retained. However in the present case, it is not the case of the respondent that any junior was retained. Therefore, the law laid down by the Supreme Court in the case of ***Bhurumal (supra)*** would apply. Even otherwise, the termination of the respondent was held to be illegal on account of non-payment of retrenchment compensation. Even after reinstatement of the respondent, the petitioner can again terminate his services after making payment of retrenchment compensation. Therefore, this Court is of the considered opinion that the Court below should have directed for payment of monetary compensation in lieu of reinstatement.

18. Furthermore, it is clear that the respondent is not in service from 02.02.2014 i.e. more than 9 years, therefore, reinstatement of the respondent at this stage would not be proper.

19. Accordingly, the impugned order dated 27.02.2019 passed by Labour Court, Sagar in Coc-A 13/ID Act/2015/reference is **modified** and in place of reinstatement it is directed that the respondent shall be entitled for monetary compensation of Rs.2,50,000/- as he has worked from 2009-2014.

20. Accordingly, the petition stands **allowed to the extent indicated hereinabove.**

(G.S. AHLUWALIA)
JUDGE

TG/-