HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

W.A. No.785/2020

Dileep Kumar Sharma
-Versus-
The Assistant General Manager, UCO Bank, Bhopal & anr.

Shri Akash Choudhury, Advocate for the appellant.
Smt. Smita Verma Arora, Advocate for the respondents.

CORAM :

Hon'ble Shri Justice Mohammad Rafiq, Chief Justice.
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

Whether approved for reporting ?	Yes.
Law laid down	*Where termination is found to be in contravention of Sections 25-F and 25-G of the Industrial Disputes Act, reinstatement is not the rule but an exception, and ordinarily grant of compensation would meet the ends of justice.*
Significant paragraph No.	13.

J U D G M E N T
(Jabalpur, dtd.08.02.2021)

Per : Vijay Kumar Shukla, J.-

Hearing convened through video conferencing mode.

The present intra-court appeal has been preferred under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth ko Appeal) Adhiniyam, 2005, being dissatisfied with and aggrieved by the order dated 8-05-2020 passed by the learned Single Judge in *WP-2805-2016 [Dilip Kumar Sharma vs. Assistant*

General Manager, UCO Bank & anr.], whereby the petition filed by the present appellant has been dismissed.

2. The factual expose' adumbrated in a nutshell, are that the appellant/petitioner challenged the award dated 7-7-2015 passed by the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur [hereinafter referred to as "the CGIT"]. By the impugned award the CGIT has answered the reference made to it under Section 10 of the Industrial Disputes Act, 1947 [for short, "the ID Act"]. The reference was as under:

> *"(i). Whether the action of the Management of UCO Bank in terminating the services of Shri Dilip Kumar Sharma w.e.f. 15-5-1997 is justified ?*
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> *(ii) If not, what relief the workman is entitled to ?"*

3. As per the impugned award, the termination of services of the appellant was held improper and illegal. Consequently, the CGIT directed payment of compensation of Rs.2 lacs to the appellant.

4. It is put forth that the CGIT has committed mistake while passing the impugned award, not directing reinstatement of the appellant in service, but awarded him compensation to the tune

of Rs.2 lacs. Therefore, the appellant is claiming that the impugned award be modified to the extent, that instead of granting him compensation a direction be issued to the respondents to reinstatement him in service with all consequential benefits. The appellant has also claimed compensation for a sum of Rs.5 lacs, because during termination he was not engaged in any other service. To substantiate his submission the appellant placed reliance on the decisions reported in **(1979) 2 SCC 80 – Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and others, (2013) 10 SCC 324 – Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, (2014) 4 SCR 875 – Tapas Kumar Paul vs. BSNL, 2017 (4) MPLJ 141 – Shamim Bano Vs. Manager, WP No. 6502/2010 – Bhajanlal vs. Conservator of Forest and others**, **(1993) MPLJ 133 – Rajesh Kumar and others vs. State of M.P. and others and (2019) 4 SCC 307 – Deputy Executive Engineer vs. Kuberbhai Kanjibhai.**

5. The respondents/Bank submitted that the appellant was only a daily-wager. He failed to establish the fact that he worked for 240 days. He was not engaged against any vacant post and being a casual worker he was assigned the duties as per exigency. The alleged violation of Section 25-F, G, H of the ID Act is also denied

by the respondents. It is also submitted by the respondents that the Government of India, Department of Finance and the Reserve Bank of India have imposed a complete ban on recruitment of staff. The respondent-Bank is, therefore, authorized to curtail the staff for avoiding the loss and, therefore, the appellant was asked to stop the work. It is put forth that the respondents have also preferred a petition challenging the award, whereby the compensation has been awarded to the appellant. Further, in view of the facts and circumstances of the case, the appellant is not entitled to get any compensation. Learned counsel appearing for the respondents placed reliance upon the judgements of the Apex Court rendered in the cases of **Rashtrasant Tukdoji Maharaj Technical Education, Sanstha, Nagpur vs. Prashant Manikrao Kubitkar, (2018) 12 SCC 294; District Development Officer and another vs. Satish Kantilal Amrelia, (2018) 12 SCC 298; Dharamraj Nivrutti Kasture vs. Chief Executive Officer and another, (2019) 11 SCC 289;** and **State of Uttarakhand and another vs. Rajkumar, (2019) 14 SCC 353.**

6. To appreciate the rival submissions raised at the Bar, the relevant facts of the case are briefly stated hereunder.

7. On 25.10.1989, the appellant was engaged as a daily-wager employee with the respondents and was allotted the work of sweeping and cleaning. He was being paid wages at the rate of Rs.18/- per day, which were subsequently increased to Rs. 25/- and Rs. 65/- per day. Thereafter, the appellant was orally asked not to come on duty w.e.f. 10.05.1997. The appellant has claimed that his engagement was against the vacant post. He has further claimed that right from his initial date of appointment he was working with the respondents and completed more than 240 days continuously in service and, therefore, he was entitled to be regularized as he worked for more than seven years. It is strenuously urged that oral termination of the appellant from service without complying the provision of Section 25-F of the ID Act, is illegal and, therefore, he deserves to be reinstated. It is argued that since there was some dispute raised by him in regard to payment of bonus and having annoyed with the same the respondents have removed him from the service. The Conciliation Officer sent the final report to the Central Ministry, Labour Department and the Central Government exercising the power provided under Section 10 of the ID Act referred the dispute before the CGIT on 09.02.2004. The CGIT, after recording the evidence of the parties finally passed the impugned award holding that the termination of the appellant was illegal and

he was entitled to get compensation to the tune of Rs.2 lakhs, but, not directed his reinstatement as claimed by him.

8. Relying upon the decisions, as quoted hereinabove, the appellant has claimed that once it is held by the CGIT that the termination of the appellant is improper and illegal, an order of reinstatement ought to have been passed in stead of granting compensation. The Supreme Court in the case of ***Kuberbhai Kanjibhai*** *(supra)* has dealt with the issue of termination of a workman in violation of provision of Section 25-F of the ID Act and taking note of some earlier decisions on this issue has observed as under :

> "7. In our opinion, the case at hand is covered by the two decisions of this Court rendered in *BSNL* vs *Bhurumal (2014) 7 SCC 177* and *Distt. Development Officer vs. Satish Kantilal Amerelia (2018) 12 SCC 298*.
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> 8. It is apposite to reproduce what this Court has held in *BSNL: (SCC p. 189, paras 33-35)*:
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> > "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*]. 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 dailywage 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."

9. Here is also a case where the respondent was held to have worked as daily wager or muster role employee hardly for a few years in R & B of the State; Secondly, he had no right to claim regularization; Thirdly, he had no right to continue as daily wager; and lastly, the dispute was raised by the respondent (workman) before the Labour Court almost after 15 years of his alleged termination.

10. 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 case*.

11. In view of the foregoing 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 Industrial Disputes Act, 1947 and the law laid down by this Court in *BSNL case*."

9. A Co-ordinate Bench Court has in **W.A. No. 11/2017-Project Officer ICDS, Nrsinghpur vs. Mohanlal Kumhar (Prajapati)** and other connected writ appeals, decided on 11.10.2017, dealt with similar issue and taking note of the judgments rendered by the Apex Court in earlier occasion has observed as under:

> "20. In all the legal authorities which have been referred hereinabove on behalf of the employer, it is to be noted that payment of compensation has been awarded in lieu of reinstatement taking into consideration the facts of the particular case and it has not been held that invariably only compensation has to be awarded irrespective of facts of case.

21. Regard being had to the rival submissions raised at the bar, it is seemly to bring up the principles culled out by the Apex Court in the cases cited above. In the case of **Hindustan Tin works (P) Ltd. (supra)** the three-judge Bench held that there cannot be a straitjacket formula for awarding the relief of backwages. The full backwages would be a normal rule and the party objecting to it must establish the circumstances necessitating departure. The tribunal will exercise its discretion keeping in view all the relevant circumstances, but the discretion must be exercised in a judicial and judicious manner. The reason in exercising discretion must be cogent and convincing and must appear on the face of record.

22. The Full Bench of this Court in the case of **Munshi Singh son of Balwant Singh Kushwah (supra)** held that the normal rule is that once it is found that termination order is contravention of Section 25-F of the Act, then the said order is void *ab initio* and the employee is entitled to be reinstated with full backwages. However, in a particular case the Court can refuse to grant relief of reinstatement for a particular reason which will depend in the facts and circumstances of each case. Thus, there is no hard and fast rule that a Court should grant relief of reinstatement with full backwages in each and every case. The same relief shall depend on facts and circumstances of each case.

23. In the case of **Tapash Kumar Paul (supra)** the Apex Court held that the Court may pass an order substituting the order of reinstatement by awarding compensation, but the same has to be based on justifiable grounds viz. (i) where the industry is closed; (ii) where the employee has superannuated or is going to retire shortly and no period of service is left to his credit; (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated; and/or (iv) when he has lost confidence of the Management to discharge duties.

24. In the case of **Vice Chancellor, Lucknow University vs. Akhilesh Kumar Khare (supra)** and all other judgments cited on behalf of the employer, compensation has been awarded in lieu of reinstatement, with or without backwages, taking into

> consideration the facts of each cases. In none of the case it has been held that in case of termination of a daily-wager employee found to be in breach of the provisions envisaged in Section 25-F of the Act, the Labour Court or the Court cannot direct for reinstatement with or without backwages.
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> 25. In view of the above enunciation of law, we hold that there cannot be a straitjacket for awarding reinstatement with backwages or without backwages or compensation in lieu of reinstatement. There is no hard and fast rule that the Court should grant relief of reinstatement in each and every case. The same shall depend on facts and circumstances of each case. The Court may also pass an order substituting the order of reinstatement by awarding compensation but the same has to be based on justifiable grounds."

10. In view of the aforesaid enunciation of law, we are of the considered opinion that the view expressed by the Co-ordinate Bench in the case of **Mohanlal Kumhar Prajapati (supra)** that there cannot be a straitjacket formula for awarding reinstatement with back-wages or without compensation, in lieu of reinstatement.

11. In the present case, the appellant was engaged as daily-wager in the year 1989 and he was removed from service w.e.f. 10.05.1997. Thus, he had rendered service for almost seven years with the respondents. The reference was made to the CGIT in the year 1999 which was decided by the impugned award dated 07.07.2015. The CGIT, after recording the evidence adduced by the parties, has recorded finding that termination of the appellant was in violation of Section 25-F and G of the ID Act and further considered

the fact whether the appellant was entitled to be reinstated with back-wages or compensation, in lieu of reinstatement. The Supreme Court in the case of **Kuberbhai Kanjibhai** (supra), almost in similar circumstances, has held that since the workman was working with the respondent-institution for few years, therefore, it is appropriate to grant him lump-sum monetary compensation. However, the learned counsel for the appellant has placed reliance on the decision of the Apex Court in the **Kuberbhai Kanjibhai** (supra) reproducing the view taken by the Supreme Court in the case of ***BSNL v. Bhurumal-(2014) 7 SCC 177,*** wherein it is ruled thus :-

> "35. We would, however, like to add a caveat here. There may be cases where termination of a dailywage 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 be a situation that persons junior to him were regularized 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."

12. Learned counsel for the appellant vehemently argued that the Supreme Court has observed that reinstatement should be the rule and only in exceptional cases, for the reasons stated to be in writing, such a relief can be denied. However, we are not

convinced with the contention raised by the learned counsel for the appellant, for the reason, he has not construed the view expressed by the Apex Court in proper perspective. The Supreme Court in the case of **BSNL vs. Bhurumal** (supra), taking note of the facts and situation, has laid down that an order of reinstatement in normal course of termination, is not proper and reinstatement in every case cannot be ordered mechanically, but, in case when the workman providing service of regular/permanent nature is terminated illegally, malafidely or by way of victimization, unfair labour practice etc. But, in the case in hand, no such circumstances are existing. The appellant admittedly is a daily wager, who failed to prove that his engagement was against the vacant post and further he served with the respondents for few years. Thus, the view taken by the Supreme Court in the case of **Kuberbhai Kanjibhai** (supra) governs the field, and is squarely applicable in the present case.

13. In the case of **Rashtrasant Tukdoji Maharaj Technical Education, Sanstha, Nagpur** (supra), it has been reiterated that where termination is found to be in contravention of Sections 25-F and 25-G of the ID Act, reinstatement is not the rule, but an exception and ordinarily grant of compensation would meet the ends of justice.

14. In **Dharamraj Nivrutti Kasture (supra)** compensation in lieu of reinstatement has been upheld. In the said case the employee was a daily-wager and was out of service for more than three decades and was paid 75% of last drawn wages for about 12 years without work, pursuant to the order passed by the Labour Court.

15. In the case of **State of Uttarakhand and another vs. Rajkumar (supra)** it has again been reiterated that in case of illegal termination of daily-wager for procedural defect, reinstatement with back-wages is not automatic but instead of reinstatement, grant of monetary compensation would meet the ends of justice.

16. In a recent judgment rendered in the case of **Anjana Mittal vs. Oil and Natural Gas Corporation Limited, (2020) 11 SCC 710,** it is ruled that where the employee, who remained absent for a long period of 4-5 years, would not be entitled to any substantial back-wages. He was granted 10% back-wages.

17. In another case reported in **(2020) 12 SCC 656 – Regional Manager, Life Insurance Corporation of India vs. Dinesh Singh**, the Apex Court again reiterated that compensation in

lieu of reinstatement. In the said case the employee was appointed on temporary basis as Caretaker of Guest House on fixed salary of Rs.1000/- per month and the appellant – Life Insurance Corporation of India after the respondent-employee putting in 7 years of service. It was held that considering the several complaints which were regularly received by the employer, the employer has lost the faith in the respondent, and since his appointment was only temporary and for almost 19 years he was out of appellant's service, it was held that the interest of justice would be served, if he is awarded compensation amounting to Rs.1 lac in full and final settlement of all his claims.

18. In the present case, the appellant was engaged as a daily-wager in the year 1989 and he was removed from service by the respondents w.e.f. 10-5-1997. Thus, he had served for almost 7 years with the respondents. The reference was made to the CGIT in the year 1999, which was decided by the impugned award dated 7-7-2015. The CGIT after recording the evidence adduced by the parties, has recorded the finding that the termination of the appellant was in violation of Sections 25-F and 25-G of the ID Act and further held that the appellant was entitled for compensation in lieu of reinstatement.

19. We do not perceive any error in the order passed by the CGIT and the impugned order passed by the learned Single Judge. However, taking into consideration the fact that the appellant had worked with the respondents from the year 1989 to 1997, interest of justice would be served if the awarded compensation amount is enhanced from Rs.2 lacs to Rs.3 lacs.

20. In view of our preceding analysis, the **writ appeal is allowed in part**, to the extent indicated hereinabove. There shall be no order as to costs.

(Mohammad Rafiq)
Chief Justice

(Vijay Kumar Shukla)
Judge

ac.