



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE G. S. AHLUWALIA
ON THE 20th OF SEPTEMBER, 2024
MISC. PETITION No. 1262 of 2021
PRINCIPAL
Versus
*BRIJESH BARMAN***

Appearance:

Shri Mohan Sausarkar- Government Advocate for the petitioner.

Shri Arvind Kumar Shrivastav- Advocate for respondent.

ORDER

This petition under Article 227 of Constitution of India has been filed seeking the following reliefs:-

“(i) Set aside the impugned award dated 28.11.2019 passed by the Learned Labour Court, Sagar in Case No. 102/2016/I.D.R.

(ii) Any other order or orders that this Honourable Court deems fit and proper under the facts and circumstances of the case may also kindly be passed together with cost of the petition.”

2. A solitary contention has been raised by counsel for petitioner that even if the Tribunal had come to a conclusion that the workman had worked for 240 days in a calendar year, then should not have directed for reinstatement because even according to the workman he had worked from 24.02.2014 to 09.10.2015. It is submitted that under these circumstances, the Tribunal should have directed for payment of compensation in lieu of reinstatement.



3. *Per contra*, the petition is vehemently opposed by counsel for respondent. It is submitted that once the termination was found to be illegal, then the reinstatement is the only consequence which would followed.

4. Considered the submissions made by counsel for parties.

5. 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.”

6. The Supreme Court in the case of **Jayant Vasantrao Hiwarkar Vs. Anoop Ganpatrao Bobde and others** 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.



7. The Supreme Court in the case of **Hari Nandan Prasad and another Vs. Employer I/R to Management of Food Corporation of India and another**, 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.

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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.”

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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....."

8. The 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 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.”

9. The Supreme Court in the case of **Ghaziabad Development Authority Vs. Ashok Kumar**, reported in (2008) 4 SCC 261 has held that statutory authorities are obligated to make recruitments only upon compliance of Articles 14 and 16 of the Constitution of India. Any appointment in violation of the said constitutional scheme as also the statutory recruitment rules, if any, would be void and, under these circumstances, it was held that Workman is entitled for compensation in lieu of reinstatement.

10. The Supreme Court in the case of **Mahboob Deepak Vs. Nagar Panchayat**, reported in (2008) 1 SCC 575, has held that merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were



liable to be regularized. At the most, interest of justice will be subserved if payment of sum of Rs.50,000/- by way of damages is made to the Workman.

11. Similar law has been laid down by the Supreme Court in the case of **Uttar Pradesh State Electricity Board Vs. Laxmi Kant Gupta**, reported in **2009(16) SCC 562**, **Senior Superintendent Telegraph Vs. Santosh Kumar Seal**, reported in **2010(6) SCC 773**, **Assistant Engineer Rajasthan Development Vs. Gitam Singh**, reported in **2013(5) SCC 136**.

12. Since, the respondent had worked only one and half years, therefore, award dated 28.11.2019 passed by Labour Court, Sagar in Case No. 102/2016/I.D.R. is hereby modified and instead of reinstatement, it is directed that the workman shall be entitled for a compensation of Rs.50,000/- in lieu of reinstatement.

13. With aforesaid observation, petition is **disposed of**.

(G.S. AHLUWALIA)
JUDGE

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