NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPL No. 7745 of 2007

State of Chhattisgarh, through: the District Aryurvedic Officer-cum-Superintendent, Jagdalpur, District Jagdalpur, Chhattisgarh

---- Petitioner

Versus

1. Maheshwar Kaushik, S/o. Shri Arjun Kaushik, Aged about 44 years, R/o. Purana Raipur Road, Behind Mata Mandir, Vijay Ward, Jagdalpur, Chhattisgarh
2. Presiding Officer, Labour Court, Jagdalpur, Chhattisgarh

----Respondents

For State	:	Mr. R.N. Pusty, Govt. Advocate
For Respondent No.1	:	Mr. Sudeep Johri, Advocate

AND

WPL No. 2418 of 2011

Maheshwar Kaushik, S/o. Shri Arjun Kaushik, Aged about 44 years, R/o. Old Raipur Road, Behind Mata Mandir, Vijay Ward, Jagdalpur, District Bastar Chhattisgarh

---- Petitioner

Versus

1. District Ayurvedic Officer-cum-Superintendent, Jagdalpur, District Bastar, Chhattisgarh
2. Labour Court, Bailabazar, Jagdalpur, Chhattisgarh
3. Deputy Labour Commissioner and the Appropriate Government C/I Office of the Labour Commissioner, Near Bottle House, Raipur, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Sudeep Johri, Advocate
For State	:	Mr. R.N. Pusty, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

C.A.V. ORDER

Delivered on 27/10/2018

1. The challenge in these writ petitions is the award of the Labour Court dated 16.05.2007, passed in Civil Case No.40/I.D.(Ref)/2004. Vide the

said award, the Labour Court has granted the relief of reinstatement in service without back wages to the worker involved in the present case.

2. WPL No. 7745/2007 is the writ petition filed by the State Government challenging the said award granting reinstatement. At the same time, WPL No. 2418/2011 is the petition preferred by the worker involved in the dispute assailing the award to the extent of non-granting the back wages.

3. The facts relevant for the adjudication of the present dispute is that the worker involved in the instant case namely Maheshwar Kaushik was initially appointed in the year 1990 as a daily wage employee at the office of the District Ayurvedic Officer-cum-Superintendent at Jagdalpur. The petitioner was made to discharge the duties of a Driver. Later on the services of the said worker stood discontinued on 16.02.1994. The said discontinuance of the petitioner was challenged by the worker before the State Administrative Tribunal vide O.A. No. 1294/1994 and the Administrative Tribunal vide its order dated 21.07.1994 disposed off the O.A. directing the respondents to consider the case of the petitioner in the light of the subsequent developments and for which the petitioner had already made an application with the department. Reserving the right of the worker to approach the Tribunal again if he is aggrieved by the decision of the department so far as discontinuance from service is concerned. Though the O.A. was disposed off to take a decision on the pending application of the petitioner for re-engagement as a daily wage worker, the department did not take a decision.

4. Finally the worker after about 10 years of time raised a dispute under Section 10 of the Industrial Disputes Act, 1947 and the matter was

thereafter referred to the Labour Court, Jagdalpur vide order of reference dated 22.09.2004 (Annexure P/3) with the following terms of reference:

Schedule

"1. Whether, the application is worth entertaining having being raised 9 years after the termination from service?

2. If yes, whether the termination of service of Shri Maheshwar Kaushik is valid or justified? If not, what relief the applicant would be entitled for? "

5. During the course of the proceedings before the Labour Court the worker examined himself and so far as management is concerned one Dr. K.K. Shukla was examined. After considering the evidence, the Labour Court vide the impugned award dated 16.05.2007 held that the discontinuance from service was bad in law for the reason of non-compliance of the provisions of Section 25 of the Industrial Disputes Act and therefore, it was held to be illegal and awarded the relief of reinstatement without back wages. It is this award, which is under challenge by either side as enumerated in the initial part of this judgment.

6. Counsel for the State challenging the award of reinstatement submitted that the finding is bad in law for more than one reasons, firstly the Labour Court failed to appreciate the fact that the substantive status of the petitioner was that of a daily wage employee and whose services get discontinued on the culmination of each days of work. It was also contended that the Court below failed to appreciate the fact that the petitioner as such was admittedly a daily wage employee he did not

have an indefeasible right created in his favour. Further the State counsel referred to the order passed by the State Administrative Tribunal while considering the claim of the worker in O.A. No. 1294/1994, which reveals that the discontinuance of the petitioner was on account of the driving license which the worker had having got expired. According to the State counsel, it is not a case, where the discontinuance of the worker was with any malafides nor was there any arbitrariness on the part of the respondents in discontinuing the services.

7. Since the worker himself admits of having being engaged as a daily wage employee for discharging the duties of a Driver, it is incumbent for the worker to have ensured that he has a valid license for driving the vehicle, which he was entrusted, particularly when he was driving the government vehicle. He further contended that since the license of the worker had lapsed, the worker was not thereafter engaged and therefore he cannot have a grievance for the same, neither can he have a claim later on, on his renewal of his license for the reason that neither was the discontinuance conditional, nor was his engagement after following the due process of selection or under any of the constitutional scheme framed for recruitment.

8. Another aspect, which the State has raised, is the fact that there has been a deliberate inordinate, unexplained delay on the part of the worker in raising the dispute before the Labour Court. According to the State counsel the services of the employee stood discontinued in 1994, and the worker raised a dispute after 9-10 years and that no explanation whatsoever has been assigned by the worker for not promptly raising a dispute at the time of his discontinuance.

9. For all these reasons, the counsel for the State submits that the impugned award so far as the reinstatement is concerned is not sustainable and deserves to be set-aside.

10. Per contra, the counsel for the worker opposing the petition of the State and at the same time challenging the award of the Labour Court to the extent of non-granting of back wages submitted that the State does not have any justification to the finding of the Labour Court so far as non-compliance of Chapter-V particularly Section 25 of the Industrial Disputes Act. According to the counsel for the worker, this itself is sufficient to uphold the finding of the Labour Court so far as reinstatement is concerned. He further submitted that since there is no material to show that the finding of the Labour Court so far as the termination of the worker being bad in law for non-compliance of the mandatory requirements under different provisions of Section 25 of the Industrial Disputes Act and once when there is a clear finding of the termination being bad in law as a automatic consequence, the worker should had been granted the relief of reinstatement with full back wages. According to the worker once when there is a finding of an illegal termination, the consequential effect would be as if the order of termination never existed and for all practical purposes, the worker has to be treated as having remained in employment uninterruptedly.

11. So far as the delay part is concerned, the contention of the counsel for the worker is that since the Act itself does not prescribe any period of limitation, there is no embargo or a restriction in any manner not permitting the dispute to be raised at a later stage or belatedly. Thus the petitioner's relief cannot be curtailed or denied only on account of the worker having raised a dispute after about 10 years of time.

12. It was also the contention of the counsel for the worker that the finding of the Labour Court to the extent of there being a specific violation of Section 25F, 25G and 25H of the Industrial Disputes Act stands proved and admitted from the deposition of management witness itself. So far as the discontinuance on account of the expiry of the driving license is concerned, the counsel for the worker referring to the observations made by the State Administrative Tribunal in its award dated 21.07.1994 in O.A. No. 1294/94 submitted that there is a clear finding that the worker had taken necessary steps for ensuring that the license is renewed immediately on its expiry, but it was the delay at the hands of the Transport authority in not promptly renewing the same and for which the worker cannot be either blamed or punished or victimized. According to the counsel for the worker, it is a case where the worker in fact had discharged the burden, so far as the discontinuance being bad, as also the fact that he is out of employment after discontinuance and further that he had continuously worked between 1990 to 1994, which would prove that he had worked for a period of more than 240 days. He further submits that in fact it is the employer's responsibility to have cogently led evidence to disprove the statement of the worker as also establish from the records so far as compliance of the mandatory provisions of law before discontinuing the services of the worker. The department having failed to lead evidence in this regard, the worker should had been granted the relief of reinstatement with all consequential benefits including back wages and prayed for the writ petition filed by the worker i.e. WPL No. 2418/2011 be allowed.

13. Having heard the contentions put forth on either side and on perusal of the record, what stands established is the undisputed factual matrix of

the case i.e. the worker initially being engaged in the year 1990 and it appears that he was continued till 1994. From the pleadings and the order of the State Administrative Tribunal in O.A. No. 1294/94 decided on 21.07.1994, it appears that the services of the worker stood discontinued on the ground of his not having an effective driving license as the validity of the license stood expired. What again is not disputed from the pleadings and contentions is that after the order of the State Administrative Tribunal, the worker was still not taken back in service and the worker also did not re-agitate the matter before the Tribunal, though he was granted the liberty for approaching the Tribunal in case if his grievance is not redressed. Inspite of such liberty being available to the worker, it took another about 10 years of time for the worker to raise a dispute under the Industrial Disputes Act i.e. in the year 2004, no justified or plausible reason or explanation has been made available for the belated raising of dispute. There also does not appear to be any substantive finding by the Labour Court on the aspect of delay and which was also one of the terms of reference. Though admittedly there was no period of limitation prescribed under the Industrial Disputes Act for raising a dispute, but it has been raised beyond a reasonable period.

14. It is also pertinent to note that even after the award of the Labour Court dated 16.05.2007 the worker involved in the dispute has not been reinstated by the State, neither they are complying with the provisions of Section 17B to the extent of providing the last wage drawn. The fact that the management is paying last wage drawn establishes the fact that the right from 1994 till date, the worker is out of employment i.e. on one hand the worker as per the finding of the Labour Court has worked

for a period of 4 years, on the contrary he has remained out of employment for a period of 13 years from the date of discontinuance till the date of award and for a period of 24 years by now.

15. Given the aforesaid factual matrix of the case what requires consideration at this juncture is whether it would be advisable, fruitful and practical directing the State Government to now after a period of more than 28 years take the employee back in service. True it is that the Hon'ble Supreme Court in the past has been holding that once when the termination is held to be bad in law, the automatic consequence of that is the entitlement of reinstatement with all consequential benefits. But of late, the Hon'ble Supreme Court has been of the view that the granting of reinstatement should be only after taking into consideration the entire factual matrix of the case and in a given factual scenario, if the Court finds the reinstatement part to be not very advisable, it can mold the relief to the extent of granting compensation in lieu of reinstatement. At this juncture, it would be relevant to refer to the judgment of the Hon'ble Supreme Court recently decided in the case of "***District Development Officer & Anr. v. Satish Kantilal Amrelia"*** decided on 28.11.2017 in Civil Appeal Nos. 19857 and 19858 of 2017 in paragraphs No. 13 to 16 has held as under:

> ***"13. Having gone through the entire record of the case and further keeping in view the nature of factual controversy, findings of the Labour Court, the manner in which the respondent fought this litigation on two fronts simultaneously, namely, one in Civil Court and the other in Labour Court in challenging his termination order and seeking regularization in service, which resulted in passing the two conflicting orders - one in respondent's favour (Labour Court) and the other against him (Civil***

Court) and lastly, it being an admitted fact that the respondent was a daily wager during his short tenure, which lasted hardly two and half years approximately and coupled with the fact that 25 years has since been passed from the date of his alleged termination, we are of the considered opinion that the law laid down by this Court in the case of Bharat Sanchar Nigam Limited vs. Bhurumal [(2014) 7 SCC 177] would aptly apply to the facts of this case and we prefer to apply the same for disposal of these appeals.

14. It is apposite to reproduce what this Court has held in the case of Bharat Sanchar Nigam Limited (supra):

"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)17]. 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 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."

15. We have taken note of one fact here that the Labour Court has also found that the termination is bad due to violation of Section 25-G of the Act. In our opinion, taking note of overall factual scenario emerging from the record of the case and having regard to the nature of the findings rendered and further the averments made in the SLP justifying the need to pass the termination order, this case does not fall in exceptional cases as observed by this Court in Para 35 of Bharat Sanchar Nigam Limited case (supra) due to finding of Section 25-G of the Act recorded against the appellant. In other words, there are reasons to take out the case from exceptional cases contained in Para 35 because we find that the appellant did not resort to any kind of unfair practice while terminating the services of the respondent.

16. In view of forgoing 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 re-instatement and other consequential benefits by taking recourse to the powers under Section 11-A of the Act and the law laid down by this Court in Bharat Sanchar Nigam Limited case (supra).”

16. It would also be relevant at this juncture to refer to the judgment of the Hon’ble Supreme Court in the case of “***Hari Nandan Prasad & Anr. v. Employer I/R to Management of Food Corporation of India & Anr.” 2014(7) SCC 190*** wherein in paragraphs No. 19 & 20 dealing on the issue, the Hon’ble Supreme Court has held as under:-

19. Following passage from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement:

> ***“29. The learned Counsel for the Appellant referred to two judgments wherein this Court***

granted compensation instead of reinstatement. In the case of BSNL v. Man Singh (2012) 1 SCC 558, 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 the case of Incharge Officer and Anr. v. Shankar Shetty (2010) 9 SCC 126, 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 2-3 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:

> ***2. Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to 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.***
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> ***3. In Jagbir Singh v. Haryana State Agriculture Mktd. Board (2009) 15 SCC 327 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 (2006) 1 SCC 479, Uttaranchal Forest Department Corpn. v. M.C. Joshi (2007) 9 SCC 353, State of M.P. v. Lalit Kumar Verma (2007) 1 SCC 575, M.P. Admn. v. Tribhuban (2007) 9 SCC 748, Sita Ram v. Moti Lal Nehru Farmers Training Institute (2008) 5***

SCC 75, Jaipur Development Authority v. Ramsahai (2006) 11 SCC 684, GDA v. Ashok Kumar (2008) 4 SCC 261 and Mahboob Deepak v. Nagar Panchayat, Gajraula (2008) 1 SCC 575 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 decision 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, 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 (2010) 6 SCC 773, 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.

20. Taking note of the judgments referred to in the aforesaid paragraphs and also few more cases in other portion of the said judgment, the legal position was summed up in the following manner:

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 malafide and/or by way of victimization, 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 procedural defect, namely in violation of Section 25-F of the

Industrial Disputes Act, this Court is consistent in taking the view 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 regularization (See: State of Karnataka v. Uma Devi (2006) 4 SCC 1). Thus when he cannot claim regularization 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 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 wee regularized under some policy but the concerned workman 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."***

17. A similar view has also been taken by the Hon'ble Supreme Court in the case of "***Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited" 2014 (11) SCC 85.***

18. Coming to the various judgments which have been relied upon by the counsel for the worker, if we go through the contents of these judgments, there is no quarrel so far as the ratio or the principles that have been laid down in all these judgments and which still hold good. However what cannot be brushed aside is the fact that there has been a slight shift from the earlier position that was taken by the Hon'ble Supreme Court and that is the power which has now been given to the Labour Courts and even to the High Courts to see whether it would be equitable at this juncture to order for a reinstatement in service in the factual backdrop of each case. Particularly, the judgments, which have been laid down by the Hon'ble Supreme Court after the decision rendered by it in ***"Bharat Sanchar Nigam Limited v. Bhurumal" 2014(7) SCC 177*** and which has further been reiterated time and again, which recently now stands also reiterated in the case of "***Satish Kantilal Amrelia***" (supra).

19. Under the aforesaid factual matrix of the present case and also taking note of the judgments discussed in the preceding paragraphs, this Court is of the opinion that since as enumerated earlier, the worker has in fact physically worked with the department only for a period of about 4 years between 1990 to 1994 and from 1994 till date i.e. 2018 he has not physically worked with the department, as he has been paid the last wage drawn without reinstatement after the award of the Labour Court till date. This Court has no hesitation in reaching to the conclusion that so far as the finding of the Labour Court holding the termination to be bad in law on account of non-compliance of mandatory provisions of Section 25 of the Industrial Disputes Act does not warrant interference and the same stands affirmed. However for the reasons, which emerged from the discussions made in the preceding paragraphs and the fact that the worker is out of employment for a period of now over 24 years, it is a fit case where the order of reinstatement would not be equitable or justified at this point of time and this Court also does not have any hesitation in holding that in the given facts it would not fall under any of those exceptional circumstances entailing reinstatement considering it to be an exceptional circumstances, which were envisaged by the Hon'ble Supreme Court while deciding in the case of "Bharat Sanchar Nigam Limited" (supra).

20. Thus, this Court finds that it is a fit case, where the worker could be awarded compensation in lieu of reinstatement as full and final settlement of his claim, keeping in line with the ratio laid down by the Hon'ble Supreme Court in its judgment starting from "Bharat Sanchar Nigam Limited" (supra) and which stood reiterated right up till the judgment in the case of "Satish Kantilal Amrelia" (supra). This Court

considering the entire facts and circumstances of the case orders that the worker would be entitled for an amount of Rs.50,000/- for each years of service that he has rendered with the State Government i.e. for 4 years and for which, the worker would be entitled for a total amount of Rs.2,00,000/- as compensation in lieu of reinstatement as full and final settlement of the award.

21. Accordingly the writ petition filed by the State Government i.e. WPL No. 7745/2007 stands partly allowed to the extent that the award of the Labour Court stands modified in terms of the observations made in the previous paragraph and the writ petition of the worker i.e. WPL No. 2418/2011 being devoid of merit deserves to be and is accordingly rejected.

22. The State is directed to ensure that the compensation part is paid to the worker without any further delay within a period of 60 days from the date of receipt of the certified copy of this order.

Sd/-
(P. Sam Koshy)
Judge

Ved