* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 8th May, 2024**

\+ W.P.(C) 8510/2007 & CM APPL. 16058/2007 & CM APPL. 29843/2022

AIRPORTS AUTHORITY OF INDIA ..... Petitioner

Through: Mr. Vaibhav Kalra and Ms. Neha Bhatnagat, Advocates

versus

RAM GOPAL & ORS. ..... Respondents

Through: Mr. Jawahar Raja, Ms. L.Gangmei and Ms. Surbhi Bagra, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition has been filed on behalf of the petitioner under Articles 226 & 227 of the Constitution of India seeking quashing of the impugned award dated 16th May, 2007 passed by the learned Presiding Officer, Central Government Industrial Tribunal–cum–Labour Court – II, New Delhi ("CGIT/Labour Court" hereinafter), in ID No. 198/1999.

2. The relevant facts leading to the filing of the instant petition are as under:

a) The petitioner ("petitioner entity" hereinafter) is a statutory body established under Airport Authority of India Act, 1994 and the respondent no. 1 to 3 are the workmen ("respondent workmen" hereinafter) represented through Airport Horticulture Karamchari Sangh and employed with the petitioner at various positions.

b) It is stated that the petitioner entered into an Agreement dated 18th October, 1995 with M/s Rainbow Landscape and Horticulture Services ("the contractor" hereinafter) for the year 1995-1996 for executing the M/O Horticulture Features at the petitioner's operational office complex at IGI Airport Terminal-II as per the 'schedule of the work' of the said agreement on unit rate basis. The contractor under the said agreement had to provide various services to the petitioner subject to the terms and conditions contained therein.

c) Thereafter, the petitioner entered into another agreement dated 11th December, 1995 with M/s Green Touch Horticulture Services for horticulture work and subsequently, other such contractors were also engaged.

d) Meanwhile, the respondent no. 1 to 3 along with 17 other workmen claiming themselves to be the employee of the petitioner raised an industrial dispute with the appropriate government for their 'reinstatement and back wages' which was referred to the learned

CGIT for adjudication *vide* case bearing ID No. 198/1999, in the following terms:

> *"Whether the demands raised by Airport Horticulture Karamchari Union and Delhi General Udyog karamchari Union as contained in their statement of claim dated 31/3/1997 filed before the Assistant Labour Commissioner (c,) New Delhi, against the management of Airports Authority of India, Indira Gandhi International Airport, Gurgaon Road, New Delhi, is justified? If so, to what relief the concerned workmen are entitled."*

e) In the above said industrial dispute, the learned CGIT passed an award dated 16th May, 2007 directing the petitioner to reinstate the respondent no. 1 to 3 with the management and further awarded 25% back wages.

f) Being aggrieved by the aforesaid impugned award, the petitioner has approached this Court seeking quashing of the same.

3. Learned counsel appearing on behalf of the petitioner entity submitted that the impugned award is bad in law and is liable to be set aside since the same has been passed without taking into consideration the entire facts and circumstances of the matter.

4. It is submitted that the learned Labour Court failed to appreciate that the petitioner's witness has specifically mentioned in his cross examination that there was no person named as Mr. Babu Lal Chaudhary in the petitioner's office whom the respondents have alleged to have signed the alleged attendance register.

5. It is submitted that the learned Labour Court failed to appreciate that the photocopies of the alleged attendance register produced on record by the respondent nos. 1 to 3 were of the contractor and not the petitioner.

6. It is submitted that the learned Labour erred by failing to consider that the respondents have neither led any evidence to corroborate their testimony, nor have they produced any other witness to establish that the respondents ever worked as causal labourers with the petitioner for 240 days or they were illegally terminated as alleged.

7. It is submitted that the learned Court below erred by not considering that there is no power of attorney in favor of the respondent no. 1, details of parentage, address of the respondents, trade union registration certificate, membership slip, resolution if any passed by the union etc.

8. It is submitted that the learned Labour Court failed to appreciate that the statement of claim dated 19th October, 1999 was filed by one Mr. Ram Pratap Sharma alleging to be Secretary of the Airport Horticulture Karamchari Sangh. However, there is not a single document on record to show that the statement of claim is filed by the competent person and he is secretary of the alleged union.

9. It is submitted that from a perusal of the records and finding of the learned Court below, no document showing employment was placed on record by the workmen, showing that they had worked for 240 continuous days before 18th December, 1996 and even the findings of the

learned Court below are for the year 1993, 1994 and 1995 and not thereafter, and hence, the impugned award is liable to be set aside.

10. It is submitted that the findings arrived at by the learned Labour Court is erroneous since the respondents were not the petitioner's employees rather they were engaged through contractor M/s Rainbow Landscape And Horticulture Services Pvt. Ltd. vide Agreement dated 5th October, 1995 and as per the terms of the said agreement, the contractor was incharge and in direct control of the workmen/respondents. Therefore, there is no employer-employee relationship between the petitioner and the respondent workmen.

11. It is submitted that the Hon'ble Supreme Court in the matter of ***Steel Authority of India v UOI & Ors., (2007)1 SCC (LS) 630,*** held that when a workman in his pleadings admit that he was employed through the contractor. The learned Labour Court cannot take a contrary stand that the respondents were directly employed through the principal employer, i.e., the petitioner herein.

12. It is submitted that the respondents have already taken more than Rs. 20 Lakhs each under Section 17B of the Industrial Disputes Act, 1947 (hereinafter "the Act") and therefore, the relief of reinstatement with back wages may be set aside.

13. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs be granted as prayed for.

14. *Per Contra*, the learned counsel appearing on behalf of the respondent workmen vehemently opposed the instant petition submitting to the effect that the same being devoid of any merit is liable to be dismissed.

15. It is submitted that the workmen had filed an application under Section 11 (3)(b) of the Act, thereby, seeking direction to be issued the petitioner management to place on record the original attendance register and list of employees for the period of 1993 to 1996, however, despite various opportunities, the petitioner failed to produce the same.

16. It is submitted that the petitioner had not filed any attendance register to show that the respondent no. 1 to 3 were not employed during the aforementioned period. The management witness during cross examination admitted that the attendance register has been destroyed being more than five years old. It is further submitted that the petitioner deliberately weeded it out in the year 2004 despite the pendency of the instant dispute since the year 1999.

17. It is submitted that the learned Court below rightly drew adverse inference against the petitioner as the petitioner deliberately weeded out the attendance register pertaining to the year 1993, 1994 and 1995. The production of the said documents was necessary to prove that the name of the workmen appears in the attendance register which was maintained by the petitioner.

18. It is submitted that the petitioner's case is wrong and misplaced because the workmen were employed in the horticulture department of

the petitioner-employer and the impugned award observed that the photocopies of the attendance register contains the name of the respondent workmen and it is also established that they had worked for 240 days prior to the year 1995.

19. It is submitted that there is no error of jurisdiction which is apparent on the face of the record and the petitioner has failed to make out any case to show any illegality in the impugned award. It is further submitted that being a writ Court, this Court cannot sit in appeal to re-appreciate any evidence.

20. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

21. Heard the learned counsel appearing on behalf of the parties and perused the record.

22. It is the case of the petitioner entity that the impugned Award is bad in law as the learned Labour Court had failed to appreciate the settled position of law with regard to the issues raised before it. It has been submitted that there was nothing on record of the learned Court below to observe that the respondent workmen were in continuous employment for 240 days before 18th December, 1996. Moreover, the learned Court below erred in failing to consider that the respondent workmen were not the petitioner's employees rather they were engaged through contractor M/s Rainbow Landscape and Horticulture Services Pvt. Ltd. *vide* Agreement dated 5th October, 1995 and as per the terms of the said agreement, the contractor was in direct control and in-charge of the

workmen/respondents. Therefore, there is no employer-employee relationship between the petitioner and the respondent workmen.

23. In rival contentions, it has been submitted on behalf of the respondent workmen that there is no illegality in the impugned Award and the same has been passed after taking into consideration the entire facts and circumstances of the case. It has been submitted that multiple opportunities were granted to the petitioner to produce the attendance register and list of employees of the period of 1993 to 1996, however, the petitioner failed to produce the same and at this stage, is disputing the photocopies of the attendance register produced by the workmen before the learned Court below, and the same is a misuse of the process of law which makes the instant petition liable to be dismissed.

24. Therefore, the issue before this Court is to decide whether the impugned Award merits interference of this Court under Articles 226 and 227 of the Constitution of India.

25. The petitioner entity has approached this Court seeking to set aside the findings of the learned Labour Court as passed *vide* the impugned Award dated 16th May, 2007, therefore, before delving into the averments advanced by the learned counsel appearing on behalf of the parties, in order to adjudicate upon the present matter, this Court deems it imperative to analyse the findings of the impugned Award dated 16th May, 2007, and ascertain the reasoning afforded by the learned Labour Court. The relevant paragraphs of the impugned Award are reproduced herein below for reference:

*".....**ISSUE No.1***

It was submitted from the side of the workmen that all the 20 workmen worked continuously till 18.12.1996 to the full satisfaction of the management. It was further submitted that the workman were not given legal facilities just as appointment letter, casual leave, leave wages and the workmen were not given legal facilities just as appointment letter, casual leave, leave wages and other benefits under the ID Act. They are not the members of ESI and EPF though they have discharged their duties as casual labours in the year 1993, 1994 & 1995. Their services have been terminated without payment of retrenchment compensation and one month's pay in lieu of notice.

It was submitted from the side of the management that there was no employer employee relationship between the management and the workmen. The workmen may be the contractor's men. The workmen are not the direct casual labour of the management, so there is no question of payment of legal benefits to them.

It was further submitted that the work was awarded to M/s Rainbow Land Scape & Horticulture Services vide agreement dated 05.10.1995 and to the other contractors for executing the work as per schedule of the work of the contract for the Horticulture work to maintain on unit rate basis. The contractor l had to execute the work and the contractors employed their own men. There is no direct engagement of the workmen even as casual labours.

It was submitted from the side of the workmen that the workmen have annexed with the records paper B - 37 to B - 63.These are the photocopies of attendance register maintained by the management. The names of S/Shri Rajinder, Ram Gopal and Shri Ram Chander Paswan have been mentioned on all the photocopies of the attendance register. It was submitted that

this register has been maintained by the management for the attendance of casual labours engaged by the management for the work of gardening. These photocopies of attendance sheets pertain to the year 1993, 1994 & 1995. The management has denied the authenticity of these photosheets of attendance taken by the workmen.

The admitted case of the management is that M/s. Rainbow Land Scape & Horticulture was assigned the contract work from 19.10.1995. Prior to 19.10.1995 the work of gardening was being discharged by the casual labours. No document regarding engagement of contract prior to. 19.10.1995 has been filed on the record by the management. It is sufficient to prove that the work of gardening was performed by the casual labours in 1993, 1994 & upto October, 1995. The last photosheet B - 62 pertains to October, 1995. Thus, it stands proved that up to October, 1995. gardening work was done by the casual labours and their attendance was taken for the purpose of making payment and attendance register was maintained.

It was further submitted from the side of the workmen that the management has concealed the relevant attendance register. This ID case was filed in 1999 whereas the attendance registers of 1992, 1993, 1994 & 1995 were weeded out in. February, 2004 as being 5 (five) years old. The management should have retained the original attendance register in view of the pendency of the case. The names of the, workmen atleast Shri Ram Gopal, Rajinder and Shri Ram Chander Paswan appear in the attendance register in the year 1993, 1994 and 1995 so, the management deliberately weeded it out in 2004 to conceal the original attendance register from the Court and it has been stated by the witness that the attendance register has been destroyed being more than 5 (five) years old, In the circumstances an adverse inference is to be drawn that the

management deliberately weeded out the attendance register pertaining to 1993, 1994 & 1995 in February, 2004 so that the same may not be placed before the Court for its perusal.

It is not the case of the management that contract labours were engaged prior to October, 1995 so, it becomes quite obvious that prior to 1995 casual labours were engaged for performing the gardening work. The management has not filed any attendance register to show that these workmen were not employed during the year 1993, 1994 and 1995.

It was submitted that all the workmen have not filed photocopies of attendance sheets pertaining to them. In all the sheets filed by the workmen the name of Shri Ram Gopal, Rajinder and Ram Chander. Paswan appear. The other workmen have not filed any proof to substantiate their claim.

It is true that the photocopy sheets of attendance register contain the names of Ram Gopal, Rajinder and Ram Chander Paswan on all the pages and its found established that these 3 (three workmen have worked atleast for 240 days in the year 1993, 1994 & 1995 as casual labours. The contract workers have been engaged till November, 1995. Prior to November, 1995 work was being done by these workmen.

The workmen have completed 240 days work in the year 1993, 1994 & 1995. The other workmen have filed no proof to substantiate their claim statement and they are not found to. have worked for 240-days in the year 1993, 1994 & 1995. This issue is decided accordingly.

ISSUE No.2

It was submitted from the side of the management that reinstatement is not the only relief in all the cases of illegal

termination. Section 11 A of the ID Act, 1947 provides for payment of compensation also.

It was submitted from the side of the workmen that compensation is payable in cases where an undertaking has become sick or it has been closed or it is in economic loss. It has not been established that the management is in economic toss and it is a sick industry.

My attention was drawn by the ld. Counsel of the workman to 2000 LLR 523 State of UP and Rajender Singh. The Hon'ble Apex Court ordered for reinstatement with full back wages as the services of the daily wager cleaner who worked for 4 years was dispensed with without following the procedure for retrenchment. In the instant case also no retrenchment compensation has been paid. This case law squarely covers the instant case.

It has been held in 1978 Lab Id 1668 that in case service of a workman is terminated illegally the normal rule is to reinstate him with full back wages.

My attention was further drawn to AIR 2002 SC 1313. The Hon'ble Supreme Court has held that daily wager even if serving for a short period should be reinstated.

It was submitted from the side of the workmen that in the instant case Sections 25 F, G of the ID Act are attracted. In section 25 of the ID Act it has been provided that if a workman has performed 240 days work land if the work is of continuous and regular nature he should be given pay in lieu of notice and retrenchment compensation.

It has been held by the, Hon'ble Apex Court that there is no cessation of service in case provisions of section 25 F are not

complied. In the instant case no compensation has been paid to the workmen.

In case a workman has worked for 240 days in a year and the work is of continuous and regular nature he should be paid retrenchment compensation. In case retrenchment compensation is not paid section 25 F of the ID Act is attracted. There is no cessation of his services. He is deemed continued in service in the eye of law. In case there is breach of section 25 F the service is continued and reinstatement follows as a natural consequence.

ID Act, 1947 has been enacted to safeguard the interest of the workmen belonging to poor segment of society. It appears that legislature wanted that such workmen should not be harassed un-necessarily, so section 25 F, U, T and Clause 10 of Vth Schedule have been enacted. The objects and reasons of ID Act, 1947 show that the respondent management should not be permitted to indulge in any unfair labour practice. The workmen should not be engaged for years and then they should be removed all of a sudden. There is provision of retrenchment compensation for his removal. Retrenchment compensation is for compensating him otherwise so that he can survive long interregnum of unemployment. In the instant case no retrenchment compensation has been paid.

It was submitted from the side of the management that the Hon'ble Apex Court in 2006 (4) Scale has put down a complete ban on regularization and reinstatement. The Hon'ble Apex Court has held that employment can only be made on the basis of procedure established in that behalf envisaged by the Constitution. Equality of opportunity is the hallmark and the Constitution enshrines affirmative action to ensure that unequals are not treated equals. So public employment should be in terms of constitutional scheme.

It was further submitted that the Constitution Bench Judgment has afforded a right according to which the government is not precluded from making temporary appointments or engaging workers on daily wages.

The Hon'ble Apex Court has not declared the provisions of ID Act un-constitutional. The Government has got no. license to make always appointment of daily wagers and to continue them for life time. Fixed term tenure appointments and temporary appointments cannot be the rule of public employment. At the time of making temporary appointments Articles 14, 16, 21, 23, 226 & 309 are infringed: here is no constitutional mandate that the government is at. liberty to go on giving fixed term appointments for the entire tenure of service of an employee.

No such Article of the Constitution has been pointed out under which the Government or Public Sector units can continue incessantly to give temporary and fixed term appointments again and again. Since fixed term appointments and temporary appointments are not governed by any constitutional scheme, such discrimination will amount to vicious discretion. The Government of Public Sector unit will go on resorting to the method of pick and choose policy and give temporary and adhoc appointments to their favourites and thus the principles of equality enshrined in the constitution will-be given a go bye. Such is not the intent of the Hon'ble Apex Court. However, in this judgment the provisions of the ID Act governing. the services of the workman have .not been declared un-constitutional. Reinstatement is the remedy provided in the ID Act for breach of several provisions enumerated therein or for breach of service rules provided in. various labour welfare legislations.

Section 11 A of the ID Act stipulates that in case the Tribunal is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstance of the case may require. According to this benign provision this Tribunal has the authority to set aside the order of discharge or dismissal and reinstate the workman on the terms and conditions as it thinks fit.

The Hon'ble Apex Court in 2006 (4) Scale has not annulled section 11 A of the ID Act and the legislature has authorized this, Tribunal to set aside dismissal or discharge on its consideration and direct reinstatement. The judgment cited by the management is not applicable in the facts and circumstances of the case.

A three Judges bench of the Hon'ble Apex Court has held in 1993 - II - LLJ that termination of services affects the livelihood of not only of the employee but also, of the dependents. So in case of illegal termination of service the workman should be reinstated. Reinstatement should not be misconceived as regularization.

By the order of reinstatement the status quo ante of the workman is restored. He is given back wages in order to compensate him for his legal dis-engagement. This is a special remedy provided in I.D Act and it has not been annulled and set aside by any judgment of the Hon'ble Apex Court, The provisions of the ID Act are still constitutional and they are-to.be given effect too.

In case the workmen are reinstated with back wages the respondents have every right, after payment of back wages and reinstatement, to retrench them validly following the principles of first come last go so that section 25, G & H of the ID Act are not violated.

In view of the law cited above and the facts pertaining in this case, the workmen S/Shri Ram Gopal, Rajinder and Ram Ohander Paswan are entitled to reinstatement. This issue is. decided accordingly.

ISSUE No.3

It was submitted by the management that payment of full back wages is not the natural consequence of the order, of discharge or dismissal being set aside. It has been held in (2003) 6 SC 141 that it is incumbent upon the labour court to decide the quantum of back wages.

It has been further held in this case that payment of back wages having discretionary element involved it is to be dealt with the facts and circumstances of the case. No definite formula can be evolved.

It has been further held in this case that payment of back wages in its entirety is the statutory sanction. In (2003) 4 SCC 27 the Hon'ble Apex Court held that in view of delay in raising the dispute and initiating the proceedings back wags need not be allowed. In the instant case there is no delay at least on the part of the workman in raising the dispute.

In 1978 Lab IC 1968 - three Judges Bench of the Hon'ble Apex Court held that payment of full back wages is the normal rule. In case services have been illegally terminated either by dismissal or discharge or retrenchment, in such circumstance the workman is entitled to full back wages except to the extent

he was gainfully employed during the enforced idleness. In the instant case the workmen were always ready to work but they were not permitted on account of invalid act of the employer In 2005 IV AD SC 39 - three Judges Bench of the Hon'ble Apex Court held that reinstatement with full back wages is justified. In this case the workmen have performed more than days work and he has been retrenched without payment of compensation and pay in lieu of notice.

It was submitted from the side of the management that reinstatement is not the only remedy. In such cases the workman may be given compensation. Section 11 A of the ID. Act, 1947 provides that in case of dismissal or discharge is found illegal reinstatement should be ordered. It has been held in a catena of cases by the Hon'ble Apex Court that reinstatement with full back wages is the normal rule. The statute provides for reinstatement. In certain exceptional cases where the undertaking has been closed down or it has become sick there may be order for payment of compensation.

In the facts and circumstances of the case the workman S/Shri Ram Gopal, Rajinder and Shri Ram Chander Paswan are entitled to 25% back wages.

The reference is replied thus: -
The demands raised by Airport Horticulture Karamchari Union and Delhi General Udyog Karamchari Union as contained in their statement of claim dated 31/3/1997 filed before the Assistant Labour Commissioner (c), New Delhi, against the management of Airports Authority of India, Indira Gandhi International Airport, Gurgaon Road, New Delhi is justified. The workmen, S/Shri Ram Gopal, Rajinder and Shri Ram Chander Paswan are entitled to be reinstated w.e.f. the date of their termination from service. The management should reinstate the above named workmen alongwith 25% back wages

within two months from the date of publication of the award. The other 7 workmen are not entitled to any relief. The award is given accordingly….."

26. Upon perusal of the aforementioned Award, it can be summarily stated that the learned Labour Court upon completion of pleading framed three issues *firstly*, whether the workmen have performed 240 days work in the year 1993, 1994 & 1995, *secondly*, whether the workmen are entitled to reinstatement, and *thirdly*, to what amount of wages the workmen are entitled.

27. *Qua* issue no.1 it was contended by the respondent workmen that they discharged their duties as casual labour in the year 1993, 1994 & 1995, however they were not subject to legal entitlements as provided under the I.D Act such as appointment letter, casual leave, leave wages and were not the members of ESI and EPF and were terminated without payment of retrenchment compensation. On the contrary, it was asserted by the petitioner entity that there is no employer-employee relationship between the respondent workmen and the petitioner entity as the workmen are not the directly employed casual labour of the management.

28. The learned Labour Court further took into consideration the photocopy of the attendance register produced by the respondent workmen and the admitted case of the petitioner management i.e., prior to 19th October, 1995, the work of gardening was being discharged by the casual labours and it was only from 19th October, 1995, that M/s. Rainbow Land Scape & Horticulture was assigned the contract work.

29. With regard to the aforesaid discussion, the learned Labour Court, opined that the name of all three workmen (Ram Gopal, Rajinder and Ram Chander Paswan) can be observed on the photocopy sheets of attendance register for the year 1993, 1994 and 1995 on all the pages thus, its established that respondent workmen have worked at least for 240 days in the year 1993, 1994 & 1995 as casual labours. Thus, the issue no.1 was decided in favour of the respondent workmen and against the petitioner entity.

30. *Qua* issue no.2 it was contended by the petitioner entity that as per Section 11A of the Act, reinstatement is not the only relief that can be granted in all the cases involving illegal termination rather, a one-time compensation can be granted. On the contrary, it was asserted by the respondent workmen that the relief of compensation is payable in cases where the undertaking has become sick or has been closed or is in economic loss, since none of the above stated reasons are established by the petitioner entity reinstatement with back wages is the appropriate relief that shall be granted.

31. With regard to the above, the learned Labour Court observed as per Section 11A of the Act, when it is established that the removal/dismissal of a workman is found to be illegal, it empowers the Labour Courts/Tribunals to set aside the order of dismissal and direct reinstatement on such terms and conditions as it deems appropriate. The Labour Courts/Tribunals, depending on the facts and circumstances of the case, is also empowered to grant such other relief to the workman

including the award of a lesser punishment in lieu of the illegal removal/dismissal.

32. The learned Labour Court taking note of various judgments and the legislative intent provided under the statute of the I.D Act opined that the respondent workmen are entitled to reinstatement thus, deciding the case in favor of the respondent workmen and against the petitioner entity.

33. *Qua* issue no.3 it was strongly contended by the petitioner entity that payment of full back wages is not the natural consequence of the order where the order of discharge/dismissal is being set aside and the same is discretionary in nature and has to be dealt with taking into consideration the entire facts and circumstances of the case. The learned Labour Court therefore, considering the facts and circumstances of the case, held that the respondent workmen are entitled to 25% back wages thus, deciding the issue in favor of the respondent workmen and against the petitioner entity.

34. The learned Labour Court thus, decided the reference in favor of the respondent workmen and against the petitioner entity by holding that the services of the respondent workmen herein was illegally terminated and thus, they are entitled to reinstatement in service along with 25% back wages.

35. At this juncture, bearing in mind the reasoning afforded by the learned Labour Court, this Court deems it imperative to briefly state the settled position of law regarding in what circumstances the Court may

grant the reliefs of reinstatement with back wages or compensation in lieu of reinstatement.

36. The Hon'ble Supreme Court in ***Incharge Officer v. Shankar Shetty,*** **(2010) 9 SCC 126,** observed as to how and when the Labour Court/Tribunal must grant the relief of compensation in lieu of reinstatement along with back wages. The relevant paragraphs are reproduced herein below:

> *".....**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 Mktg. Board [(2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] , 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 : 2006 SCC (L&S) 250] , Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353 : (2007) 2 SCC (L&S) 813] , State of M.P. v. Lalit Kumar Verma [(2007) 1 SCC 575 : (2007) 1 SCC (L&S) 405] , M.P. Admn. v. Tribhuban [(2007) 9 SCC 748 : (2008) 1 SCC (L&S) 264] , Sita Ram v. Moti Lal Nehru Farmers Training Institute[(2008) 5 SCC 75 : (2008) 2 SCC (L&S) 71] , Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684 : (2007) 1 SCC (L&S) 518] , GDA v. Ashok Kumar [(2008) 4 SCC 261 : (2008) 1 SCC (L&S) 1016] , and Mahboob Deepak v. Nagar Panchayat, Gajraula [(2008) 1 SCC 575 : (2008) 1 SCC (L&S) 239] and stated as follows: (Jagbir Singh*

case [(2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] , 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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> ***
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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 [(2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal [(2010) 6 SCC 773 : (2010) 2 SCC (L&S) 309] , 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."....."

37. The afore stated judgment has been recently relied upon by the Hon'ble Supreme Court in one of its recent judgment titled ***Lucknow University v. Akhilesh Kumar Khare*, (2016) 1 SCC 521** wherein the consideration of the Hon'ble Court was based upon *inter alia* the principles discussed in the aforesaid judgment.

38. The Hon'ble Supreme Court in ***BSNL v. Bhurumal*, (2014) 7 SCC 177,** observed the following with respect to the shift in jurisprudence regarding the grant of relief in the form of compensation in lieu of reinstatement. The relevant paragraphs are reproduced herein below:

*".....**28.** The only question that survives for consideration is as to whether the relief of reinstatement with full back wages was rightly granted by CGIT.*

***29.** The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In BSNL v. Man Singh [BSNL v. Man Singh, (2012) 1 SCC 558 : (2012) 1 SCC (L&S) 207] , 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 [(2010) 9 SCC 126 : (2010) 2 SCC (L&S) 733] , 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 [(2010) 9 SCC 126 : (2010) 2 SCC (L&S) 733] , 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.*
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> *3. In Jagbir Singh v. Haryana State Agriculture Mktg. Board [Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] , 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 : 2006 SCC (L&S) 250] , Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353 : (2007) 2 SCC (L&S) 813] , State of M.P. v. Lalit Kumar Verma [(2007) 1 SCC 575 : (2007) 1 SCC (L&S) 405] , M.P. Admn. v. Tribhuban [(2007) 9 SCC 748 : (2008) 1 SCC (L&S) 264] , Sita Ram v. Moti Lal Nehru Farmers Training Institute [(2008) 5 SCC 75 : (2008) 2 SCC (L&S) 71] , Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684 : (2007) 1 SCC (L&S) 518] , GDA v. Ashok Kumar [(2008) 4 SCC 261 : (2008) 1 SCC (L&S) 1016] and Mahboob Deepak v. Nagar Panchayat, Gajraula [(2008) 1 SCC 575 : (2008) 1 SCC (L&S) 239] and stated as follows: (Jagbir Singh case [Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] , SCC pp. 330 & 335, paras 7 & 14)*
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> *'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 [Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal [(2010) 6 SCC 773 : (2010) 2 SCC (L&S) 309] , 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.'"

31. *In Deptt. of Telecommunications v. Keshab Deb [(2008) 8 SCC 402 : (2008) 2 SCC (L&S) 709] the Court emphasised that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one month's pay in lieu of one month's notice and wages of 15 days of each completed year of service as envisaged under Section 25-F of the Industrial Disputes Act. He could not have been directed to be regularised in service or granted/given a temporary status. Such a scheme has been held to be unconstitutional by this Court in A. Umarani v. Registrar, Coop. Societies [(2004) 7 SCC 112 : 2004 SCC (L&S) 918] and State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] .*

32. *It was further submitted by the learned counsel for the appellant that likewise, even when reinstatement was ordered, it does not automatically follow that full back wages should be directed to be paid to the workman. He drew the attention of this Court to Coal India Ltd. v. Ananta Saha [(2011) 5 SCC 142 : (2011) 1 SCC (L&S) 750] and Metropolitan Transport Corpn. v. V. Venkatesan [(2009) 9 SCC 601 : (2009) 2 SCC (L&S) 719] .*

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 : 2006 SCC (L&S) 753]]. 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….."*

39. The aforesaid judgment has been relied upon by the Hon'ble Supreme Court in one of its recent judgment titled ***K.V. Anil Mithra v. Sree Sankaracharya University of Sanskrit,*** **2021 SCC OnLine SC 982** wherein the consideration of the Hon'ble Court was based upon *inter alia* the principles discussed in the aforesaid judgment.

40. Upon perusal of the aforementioned judicial dictum, it is inferred that ordinarily when the termination is found to be illegal, the principle of grant of reinstatement with full back wages has to be applied as per the facts and circumstances of each case and shall not be awarded mechanically. It is further observed that termination of a daily-wage worker when, found illegal on account of procedural defects, reinstatement with back wages is not to be construed automatically rather, in the interest of justice, the Court may grant the workman a relief in the form of a lump sum monetary compensation if Courts deem it to be more appropriate relief.

41. The Hon'ble Court observed that although the earlier position of law articulated by this Court in various decisions reflected that ordinarily a workman is entitled to the relief of reinstatement with full back wages if the termination of an employee was found to be illegal. However, there has been a paradigm shift in the above stated legal position and this Court

in a catena of judgments, has consistently taken a different view wherein even though the termination of an employee might be in contravention of the procedural defects, relief by way of reinstatement with back wages is not to be construed as automatic and rather monetary compensation in lieu of reinstatement may be granted in the cases as it subserve the ends of justice.

42. The Hon'ble Court has also observed that despite holding the termination of a workman illegal, reinstatement with back wages is not a vested right. Furthermore, where the workman has discharged his services as a 'daily wager' and has worked for a very short period, in such instance, the Courts have found that grant of compensation in lieu of reinstatement is a more appropriate relief. The premise of the same is that the workman at best would have been entitled to merely a month's pay in lieu of one month's notice and wages of 15 days of each completed year of service, as envisaged under Section 25-F of the Industrial Disputes Act, 1947.

43. Adverting to the facts of the present case, the respondent workmen had served at the post of a 'gardener', as a daily wager with the petitioner entity in the years 1993, 1994 and 1995 and their services were illegally terminated on 18th December, 1996.

44. The learned Labour Court in the instant case *vide* the impugned Award observed that the respondent workman by way of photocopies of the attendance register of the years 1993, 1994 and 1995, has been able to satisfy the learned Labour Court and establish an employee–employer

relationship with the petitioner entity. On the contrary the petitioner entity could not prove any shred of evidence to substantiate their claim and prove otherwise. Bearing in mind the settled position of law at the time i.e., termination if found illegal, reinstatement is a norm and shall be construed automatically, the learned Labour Court directed reinstatement of the respondent workman along with 25% back wages.

45. The petitioner entity being aggrieved by the findings of the learned Labour Court approached this Court by way of the instant writ petition wherein the Predecessor Bench of this Court while adjudicating upon three applications for grant of benefit under Section 17-B of the I.D Act *vide* order dated 14th March, 2012, directed the petitioner to pay the of arrears up to March 2012 and thereafter future payments to be made on or before every 10th day of each month.

46. In this backdrop, this Court is of the view that the jurisprudence pertaining to the grant of reinstatement with back-wages has witnessed a pivotal shift wherein, earlier the Hon'ble Supreme Court construed reinstatement along with back-wages as a general rule in instances where the it was found that the services of the workman was terminated illegally whereas, the contemporary approach is different and it is no more a general norm to reinstate a workman and rather it has been observed that one time lump-sum monetary compensation is a rather appropriate relief.

47. This Court is further of the view that while construing what is the most appropriate relief that may be granted to a workman, it must be

mindful of all relevant factors such as the manner of appointment, length of service, grounds for termination, etc. to arrive at a considered holding.

48. At this juncture, it is apposite to state the contention made by the learned counsel for the petitioner entity that the respondent workmen have, individually, availed the benefit of Rs. 20,00,000/- approximately thus, the question that falls for consideration before this Court is whether the respondent workman is entitled to be reinstated as awarded by the learned Labour Court or a lump-sum monetary compensation in lieu of reinstatement would serve justice considering the fact that the respondent workmen were terminated in the year 1996 and a considerable amount of time has lapsed since the award was passed in the year 2007. Hence, in the instant petitioner compensation in lieu of reinstatement is a more appropriate solution.

49. Another important aspect that needs to be catered to is with regard to the fact that the respondent workmen have availed the benefit of interim monetary relief under Section 17-B of the I.D Act which as per the computation made out by the learned counsel for the petitioner entity comes to be Rs.20,00,000/- approximately for each of the workman.

50. In view of the above fact i.e., the respondent workmen has waited for more than 28 years to be granted the reliefs sought by them from the petitioner entity, and are not working with the petitioner entity since December, 1996, this Court does not find it equitable to uphold the order to reinstate the respondent workmen.

51. Furthermore, bearing in mind the settled position of law discussed above, the nature of service rendered by the respondent workmen as daily wager for a short period, while upholding the findings rendered by the learned Labour Court i.e., the services of the respondent workmen were terminated illegally, this Court is of the view that it is just, fair and reasonable to award a lump-sum monetary compensation of Rs.1,50,000/- (Rupees one lakh fifty thousand) to each of the respondent workman in full and final settlement of the instant dispute in lieu of reinstatement as awarded by the learned Labour Court *vide* the impugned Award dated 16th May, 2007.

52. This Court further opines that the respondent workmen have filed affidavits before this Court undertaking to refund the amount received under Section 17-B of the I.D Act, it is directed that no recovery on this amount shall be made by the petitioner entity from the respondent workmen.

53. In view of the foregoing discussion, the impugned Award dated 16th May, 2007, passed by the learned Labour Court is modified to the extent that in lieu of the relief of reinstatement, a lump-sum monetary compensation of Rs.1,50,000/- (Rupees one lakh fifty thousand) is being awarded to each of the respondents and the relief of reinstatement is set aside. The monetary compensation stated above is in addition to the amount received i.e., Rs.20,00,000/- approximately by each respondent workmen under Section 17-B of the I.D Act.

54. It is directed that the petitioner entity shall pay the aforementioned monetary compensation to each of the respondent workman within a period of four weeks from the date of this order.

55. Accordingly, the instant writ petition stands disposed of along with pending applications, if any.

56. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 8, 2024
gs/da/ryp/db

Click here to check corrigendum, if any