2021 INSC 509

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5810 OF 2021
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 9097 OF 2019)

RAM MANOHAR LOHIA JOINT HOSPITAL
AND OTHERS ..... APPELLANTS(S)

VERSUS

MUNNA PRASAD SAINI AND ANOTHER ..... RESPONDENT(S)

J U D G M E N T

SANJIV KHANNA, J.

Leave granted.

2. The appellants, Ram Manohar Lohia Joint Hospital and two others, have filed this appeal taking exception to the order and judgment dated 15.11.2018 whereby Lucknow Bench of the High Court of Judicature at Allahabad has upheld the order dated 20.01.2010 passed by the Labour Court, Lucknow directing reinstatement of the first respondent herein, namely, Munna Prasad Saini along with compensation of Rs.20,000/- (rupees twenty thousand only) for the period of unemployment and entitlement to full pay from the date of the said order.

3. We have heard counsel for the parties at length and are inclined to partly interfere with the impugned order.

4. The first aspect in the dispute is whether the first respondent workman was an employee of the second respondent, namely, Bombay Intelligence Security (I) Ltd. or an employee of the appellant Hospital.

5. The Presiding Officer, Labour Court, Lucknow, Uttar Pradesh, in his order dated 20.01.2010, has held that the first respondent was the employee of the appellant and not of the second respondent. In arriving at this conclusion, the Labour Court has relied upon the attendance register/duty chart and the medicine intend book of male ward from September 2003 to June 2005. The Labour Court also records that in spite of direction given to the appellant to produce the attendance register/duty chart for the period, the records were not produced. In addition, the Labour Court has referred to the affidavit filed by the workman, and a copy of the duty chart for April and May, 2005, a copy of the salary payment register of July, 2004 and a copy of joining report and certificate issued by the appellant, all enclosed with the affidavit. Photocopies of these documents were obtained from the appellant by one Suraj Ram under the Right to Information Act, 2005. The

Labour Court also took into account the ocular evidence of the first respondent that he had applied for the said post pursuant to newspaper advertisement dated 11.04.2003 and thereafter was appointed as a ward boy in the appellant hospital on a monthly salary of Rs.2,950/- on 01.09.2003.

6. Learned counsel for the appellant submitted that the first respondent had impleaded the second respondent as respondent No.3 before the Labour Court, Lucknow and in paragraph 19 of the details of the dispute, had referred to the Contract Labour (Regulation and Abolition) Act, 1970. It is asserted in the said paragraph that the appellant and the second respondent were neither registered under the aforesaid Act nor was the registration certificate issued by the Department of Labour. Our attention was drawn to Annexure P-1 to the present appeal which is a copy of Form No.6 issued by the Deputy Labour Commissioner, Lucknow, Uttar Pradesh, whereby a licence was granted under the aforesaid Act to the second respondent. The licence mentions the date of amendment, fee paid for renewal and the date of expiry.

7. We have considered these documents but would not like to interfere with the factual findings recorded by the Labour Court, which has been affirmed by the High Court with respect to the engagement of the first respondent by the appellant hospital. It

has been explained to us that the first respondent had impleaded the second respondent as a co-respondent in view of the stand taken by the appellant regarding the first respondent's engagement through the second respondent, which factum was disputed by the first respondent. No doubt, the appellant has also placed before us Annexure P-4, an agreement dated 01.04.2003 between the appellant and the second respondent for engaging contractual workers, including 12 ward boys/aya/patient helpers, but this contract states that the payment will be made by the appellant to the second respondent every month within one week from the date of receipt of bill, which if required will be rectified to meet valid objections of the appellant. The reason why we would not like to rely upon the said agreement is that the Labour Court took notice of documents like attendance register/duty chart, copy of the joining report, salary payment register, etc. and then arrived at the conclusion with respect to the employer-employee relationship. The agreement would not by itself be a determinative factor as the first respondent is not a party to the agreement. The factual finding of the Labour Court is comprehensive and requires no interference.

Thus, we are unable to accept the first contention of the appellant on the question of employer-employee relationship.

8. However, on the question of reinstatement and compensation payable, we are inclined to accept the alternative submissions made by the appellant. The appellant is a hospital run by the State Government which requires approval of the State Government for creation of regular posts and for recruitment and appointment. The procedure as prescribed under the relevant extant rules has to be followed. The first respondent has not asserted or claimed that the procedure prescribed was followed for his selection and appointment. On the other hand, the appellant is right in relying upon letter dated 30.03.1999 issued by the Special Secretary, Government of Uttar Pradesh granting permission to appoint 28 workers on contractual basis at the appellant hospital. Thereafter, by another letter dated 29.03.2003, the Assistant Secretary, Government of Uttar Pradesh, had granted approval for 106 posts to be held on contract and creation of 111 posts in the regular pay-scale. With regard to the posts to be filled on contract, fixed salary was payable and no other facility was to be provided to such employees. Before granting further benefits or facilities, approval of the Government was necessary. It is the case of the first respondent that he was appointed on a fixed salary and was neither entitled to nor granted any perks or other facilities. The appellant has placed before us the list of 111 regular posts, which does not include ward boys. On the other hand, the list of 106

contractual posts states that 35 ward boys/maids had to be appointed.

9. Therefore, the appointment of the first respondent was on contractual basis and not to a regular post on proper selection in terms of the rules. Pertinently, the respondent has not indicated his educational qualifications and whether he has necessary qualifications to work as a nurse or a ward boy. It is also obvious that the contractual term was over. In other words, the first respondent had worked with the appellant during the period September, 2003 to June, 2005. He has not worked thereafter. There is nothing on record to show and establish the appellant had not followed the rule 'last to come, first to go'. This is neither alleged nor proved.

10. In ***Deputy Executive Engineer*** v. ***Kuberbhai Kanjibhai***,[1] this Court had referred to several earlier judgments and had quoted with approval the ratio as expounded in ***Bharat Sanchar Nigam Limited*** v. ***Bhurumal***,[2] to the following effect:

> "*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

[1] (2019) 4 SCC 307
[2] (2014) 7 SCC 177

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)*]. 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."

11. This dictum was again followed in ***State of Uttarakhand and Another*** v. ***Raj Kumar***[3] and ***Ranbir Singh*** v. ***Executive Eng. P.W.D***.[4]

12. In view of the facts stated above, it is clear that the first respondent was not a permanent employee but a contractual employee. There is no evidence to establish that the appellant had retained junior workers; such unfair trade practice is not alleged or even argued before us. The first respondent having worked for more than 240 days, termination of his services violated the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947. Therefore, in the facts of the present case, we modify the order of the Labour Court by setting aside the direction for reinstatement and would enhance the compensation by awarding a lump sum amount.

13. The High Court had stayed reinstatement of the first respondent but no order under Section 17B of the Industrial Disputes Act was passed. The first respondent has, however, filed an application before this Court under Section 17B to direct the appellant to pay the “last drawn wages”.

[3] (2019) 14 SCC 353
[4] 2021 SCC OnLine SC 670

14. In view of the aforesaid factual position, we are inclined to award a lump sum compensation of Rs.10,00,000/- (rupees ten lakhs only) to the first respondent.

15. The appeal is, accordingly, partly allowed setting aside the direction for reinstatement, which is substituted with the direction of award of lump sum compensation of Rs.10,00,000/- (rupees ten lakhs only). The said amount would be paid within a period of ten weeks from the date of this order. In case payment is not made within the said period, the appellant would be liable to pay simple interest @ 0.5% per month from the date of this order till payment is made.

.....J.
(R. SUBHASH REDDY)

.....J.
(SANJIV KHANNA)

NEW DELHI;
SEPTEMBER 20, 2021.