

State Of Uttarakhand vs Raj Kumar on 7 January, 2019

Equivalent citations: AIR 2019 SUPREME COURT 310, 2019 (14) SCC 353, AIR ONLINE 2019 SC 7, 2019 LAB IC 780, (2019) 160 FACLR 791, (2019) 1 CURLR 503, (2019) 1 ESC 51, (2019) 1 LAB LN 5, (2019) 1 SCALE 206, (2019) 1 SCT 497, 2019 (2) KCCR SN 72 (SC), 2019 (4) ADJ 18 NOC, (2019) 5 MAH LJ 10, AIR 2019 SC (CIV) 1022

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Bench: Indu Malhotra, Abhay Manohar Sapre

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.124-125 OF 2019
(Arising out of S.L.P.(C) Nos. 10815-10816 of 2017)

State of Uttarakhand & Anr.

....Appellant(s)

VERSUS

Raj Kumar

....Respondent(s)

JUDGMENT

Abhay Manohar Sapre, J.

1. Leave granted.

2. These appeals are directed against the final judgment and order dated 24.11.2015 in W.P. No. 333 of 2016 passed by the High Court of Uttarakhand at Nainital.

3. By impugned order dated 24.11.2015 passed in writ petition, the High Court modified the award dated 25.02.2015 in Workman Disputes Case No.45 of 2014 by which the Labour Court, Haridwar had awarded compensation of Rs.30,000/□to the respondent in lieu of reinstatement and instead directed the State (appellant herein) to reinstate the respondent (worker) without awarding to him any back wages. The High Court also granted liberty to the State to proceed against the respondent

(worker) in accordance with the provisions of the Uttar Pradesh Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”). Against this order, the State filed review application before the High Court. The review was dismissed vide order dated 27.06.2016 which has now given rise to two special leave to appeals by State questioning the legality and correctness of the main order dated 24.11.2015 and review order dated 27.06.2016 by way of special leave before this Court.

4. It is the case of the respondent (worker) that he worked as Beldar in the State PWD Department (Haridwar) as a daily wager for about a year from June 1986 to May 1987 and thereafter his services were brought to an end by the State without following the due procedure prescribed in law.

5. After almost 25 years of his alleged termination, the respondent filed a petition in the Labour Court, Haridwar (45/2014) questioning the legality and correctness of his termination.

6. By award 25.02.2015, the Labour Court awarded monetary compensation of Rs.30,000/- in full and final satisfaction to the respondent (workman) against his claim of reinstatement and all consequential benefits arising therefrom.

7. The respondent, therefore, felt aggrieved and filed writ petition in the High Court of Uttarakhand at Nainital. By impugned order, the High Court modified the award of the Labour Court and instead directed reinstatement of the respondent in the State services but without payment of any back wages to him which has given rise to filing of the present appeals by way of special leave by the State before this Court.

8. Heard Mr. Vishwa Pal Singh, learned counsel for the appellants and Mr. Pankaj Miglani, learned counsel for the respondent.

9. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals in part and modify the impugned order to the extent indicated infra.

10. In our opinion, the case at hand is covered by the two decisions of this Court rendered in the case of Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177 and District Development Officer and Anr. vs. Satish Kantilal Amerelia (2018) 12 SCC 298.

11. 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 25F 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.”

12. Here is also a case where the respondent claimed to have worked as daily wager hardly for a period of one year or so in PWD of the State; Secondly, he had no right to claim regularization; Thirdly, he had no right to continue as daily wager and lastly, the dispute was raised by the respondent (workman) almost after 25 years of the alleged termination before the Labour Court.

13. It is for these reasons, we are of the view that the case of the respondent would squarely fall in the category of cases discussed by this Court in Para 34 of the judgment rendered in *Bharat Sanchar Nigam Ltd.* (supra).

14. In view of the 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 reinstatement 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's case (supra).

15. Having regard to the totality of the facts taken note of supra, we consider it just and reasonable to award a sum of Rs.1,00,000/- (Rs. One lakh) to the respondent in lieu of his right to claim reinstatement and back wages in full and final satisfaction of this dispute in place of Rs.30,000/- awarded by the Labour Court. Only to this extent we modify the award of the Labour Court in quantum of award of compensation by enhancing it from Rs.30,000/- to Rs.1,00,000 (one lakh).

16. Let the payment of Rs.1,00,000/- be paid by the appellant(State) to the respondent within three months from the date of receipt of this judgment.

17. In view of the foregoing discussion, the appeals succeed and are allowed in part. The impugned orders of the High Court in the writ petition and the review application are set aside. The Award of the Labour Court dated 25.02.2015 is accordingly modified to the extent indicated above.

.....J. [ABHAY MANOHAR SAPRE]J. [INDU MALHOTRA] New Delhi;

January 07, 2019.