

Jagbir Singh vs Haryana State Agr.Marketing Board & Anr on 14 July, 2009

Equivalent citations: AIR 2009 SUPREME COURT 3004, 2009 AIR SCW 4824, 2009 LAB. I. C. 3366, 2009 (15) SCC 327, 2009 (9) SCALE 611, (2009) 122 FACLR 665, (2009) 3 SCT 790, (2009) 5 SERVLR 606, (2009) 4 LAB LN 24, (2009) 9 SCALE 611, (2009) 4 ESC 686, (2009) 3 CURCC 320

Author: R.M. Lodha

Bench: R. M. Lodha, Tarun Chatterjee

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4334 OF 2009
(Arising out of SLP) No. 987/2009)

Jagbir Singh

...Appellant

Versus

Haryana State Agriculture Marketing Board
& Anr.

...Respondents

JUDGEMENT

R.M. Lodha, J.

Leave granted.

2. The appellant was engaged as a daily wager by the Respondent No. 1, Haryana State Agriculture Marketing Board on September 1, 1995. He worked with the Respondent No. 1 upto July 18, 1996. Thereafter, his services came to an end. During his employment, the appellant was paid consolidated wages @ Rs. 1,498/- per month. The appellant raised the industrial dispute contending

that his services were retrenched illegally in violation of Section 25F of Industrial Disputes Act, 1947 (for short, 'the Act, 1947'). He claimed reinstatement with continuity of service and full back wages.

3. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, after recording evidence and hearing the parties held that the appellant had worked for more than 240 days in the year preceding the date of termination and that the Respondent No. 1 violated the provisions of Section 25F of the Act 1947 by not giving him notice, pay in lieu of notice and retrenchment compensation before his termination. The Labour Court, accordingly, vide its award dated September 16, 2005 declared that the appellant was entitled to reinstatement with continuity of service and full back wages from the date of demand notice, i.e., January 27, 1997.

4. The present Respondent Nos. 1 and 2 challenged the award before the High Court for Punjab and Haryana. The High Court held that even if the appellant had completed 240 days of service in a calendar year, he was neither entitled to be reinstated nor could be granted back wages. The High Court set aside the award holding that it was not sustainable in law. It is this order of the High Court that has been challenged by the appellant in this appeal by special leave.

5. The question that falls for our consideration is whether the High Court, in a case such as this where termination of appellant was in contravention of Section 25F, was justified in upsetting the award of the Labour Court whereby the first respondent was directed to reinstate the appellant with continuity of service and full back wages.

6. The learned counsel for the appellant strenuously urged that once the termination of service of the appellant was held to be in violation of Section 25F of the Act 1947, the Labour Court rightly ordered reinstatement with continuity of service and full back wages and the High Court was not justified in interfering with the just award passed by the Labour Court. On the other hand, the learned counsel for the respondents supported the order of the High Court.

7. It is true that 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 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 to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

8. In U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey¹, the question for consideration before this Court was whether direction to pay back wages consequent upon a declaration that a workman has been retrenched in violation of the provisions of the Section 6-N of the U.P. Industrial Disputes Act, 1947 (equivalent to Section 25F of 'the Act, 1947') as a rule was proper exercise of discretion. This Court considered a large number of cases and observed thus :

"41. The Industrial Courts while adjudicating on disputes between the management and the workmen, therefore, must take such decisions which would be in consonance

with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically. Rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law.

42. A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the (2006) 1 SCC 479 functions of an Industrial Court shall lose much of their significance.

43. The changes brought about by the subsequent decisions of this Court, probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing, is evident.

44.

45. The Court, therefore, emphasised that while granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages, therefore, cannot be the natural consequence."

9. This Court in the case of Uttaranchal Forest Development Corpn. V. M.C. Joshi² held that relief of reinstatement with full back wages were not being granted automatically only because it would be lawful to do so and several factors have to be considered, few of them being as to whether appointment of the workman had been made in terms of statute/rules and the delay in raising the industrial dispute. This Court granted compensation instead of reinstatement although there was violation of Section 6-N of the U.P. Industrial Disputes Act, 1947 (equivalent to Section 25F) of the Act, 1947. This is what this Court said :

"9. Although according to the learned counsel appearing on behalf of the appellant the Labour Court and the High Court committed an error in arriving at a finding that in terminating the services of the respondent, the provisions of Section 6-N of the U.P. Industrial Disputes Act were contravened, we will proceed on the basis that the said finding is correct. The question, however, would be as to (2007) 9 SCC 353 whether in a situation of this nature, relief of reinstatement in services should have been granted.

It is now well settled by reason of a catena of decisions of this Court that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration, one of them being as to whether such an appointment had been made in terms of the statutory rules. Delay in raising an industrial dispute is also a relevant fact."

10. In the case of State of M.P. & Ors. v. Lalit Kumar Verma³, this Court substituted the award of reinstatement by compensation.

11. In yet another decision in the case of *M.P. Administration v. Tribhuwan*⁴, this Court reversed the High Court's order directing reinstatement with full back wages and instead awarded compensation. It was opined :

"12. In this case, the Industrial Court exercised its discretionary jurisdiction under Section 11-A of the Industrial Disputes Act. It merely directed the amount of compensation to which the respondent was entitled had the provisions of Section 25-F been complied with should be sufficient to meet the ends of justice. We are not suggesting that the High Court could not interfere with the said order, but the discretionary jurisdiction exercised by the Industrial Court, in our opinion, should have been taken into consideration for determination of the question as to what relief should be granted in the peculiar facts and circumstances of this case. Each case is required to be dealt with in the fact situation obtaining therein.

13. We, therefore, are of the opinion that keeping in view the peculiar facts and circumstances of this case and particularly (2007) 1 SCC 575 (2207) 9 SCC 748 in view of the fact that the High Court had directed reinstatement with full back wages, we are of the opinion that interest of justice would be subserved if the appellant herein be directed to pay a sum of Rs. 75,000 by way of compensation to the respondent. This appeal is allowed to the aforementioned extent."

12. In the case of *Sita Ram v. Moti Lal Nehru Farmers Training Institute*⁵, this Court considered the question as to whether the Labour Court was justified in awarding reinstatement of the appellants therein:

"21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.

22. Keeping in view the period during which the services were rendered by the respondent (sic appellants); the fact that the respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.

24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice. (See *Jaipur Development Authority v. Ramsahai* [(2006) 11 SCC 684], *M.P. Admn. v. Tribhuban* [(2007) 9 SCC 748] and *Uttaranchal Forest Development Corpn. v. M.C. Joshi* [(2007) 9 SCC 353])

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs."

(2008) 5 SCC 75

13. In Ghaziabad Development Authority & Anr. v. Ashok Kumar & Anr.⁶, this Court again considered the question whether the Labour Court was justified in awarding the relief of reinstatement with full back wages in favour of the workman and held :

"18. The first respondent was admittedly appointed on a daily wage of Rs. 17 per day. He worked for a bit more than two years. It has not been disputed before us that sanction of the State of U.P. was necessary for creation of posts. The contention of the appellant before the Labour Court that the post was not sanctioned after 31-3-1990 by the State was not denied or disputed. If there did not exist any post, in our opinion, the Labour Court should not have directed reinstatement of the first respondent in service.

19. A statutory authority is obligated to make recruitments only upon compliance with the equality clause contained in Articles 14 and 16 of the Constitution of India. Any appointment in violation of the said constitutional scheme as also the statutory recruitment rules, if any, would be void. These facts were required to be kept in mind by the Labour Court before passing an award of reinstatement.

20. Furthermore, public interest would not be subserved if after such a long lapse of time, the first respondent is directed to be reinstated in service.

21. We are, therefore, of the opinion that the appellant should be directed to pay compensation to the first respondent in stead and in place of the relief of reinstatement in service.

22. Keeping in view the fact that the respondent worked for about six years as also the amount of daily wages which he had been getting, we are of the opinion that the interest of justice would be subserved if the appellant is directed to pay a sum of Rs 50,000 to the first respondent. The said sum should be paid to the respondent within eight weeks from date, failing which the same shall carry interest at the rate of 12% per annum. The appeal is allowed to the aforesaid (2008) 4 SCC 261 extent. However, in the facts and circumstances of this case, there shall be no order as to costs."

14. In Mahboob Deepak v. Nagar Panchayat, Gajraula⁷, it was observed :

"6. Such termination of service, having regard to the fact that he had completed 240 days of work during a period of 12 months preceding the said date, required

compliance with the provisions of Section 6-N of the U.P. Industrial Disputes Act. An order of retrenchment passed in violation of the said provision although can be set aside but as has been noticed by this Court in a large number of decisions, an award of reinstatement should not, however, be automatically passed.

7. The factors which are relevant for determining the same, inter alia, are:

(i) whether in making the appointment, the statutory rules, if any, had been complied with;

(ii) the period he had worked;

(iii) whether there existed any vacancy; and

(iv) whether he obtained some other employment on the date of termination or passing of the award.

8. The respondent is a local authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a local authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularised.

10. Applying the legal principles, as noticed hereinbefore, the relief granted in favour of the appellant by the Labour Court is wholly unsustainable. The same also appears to be somewhat unintelligible.

11. The High Court, on the other hand, did not consider the effect of non-compliance with the provisions of Section 6-N (2008) 1 SCC 575 of the U.P. Industrial Disputes Act, 1947. The appellant was entitled to compensation, notice and notice pay.

12. It is now well settled by a catena of decisions of this Court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation. (See M.P. Admn. v. Tribhuban [(2007) 9 SCC 748].)

13. In this view of the matter, we are of the opinion that as the appellant had worked only for a short period, the interest of justice will be subserved if the High Court's judgment is modified by directing payment of a sum of Rs 50,000 (Rupees fifty thousand only) by way of damages to the appellant by

the respondent. Such payment should be made within eight weeks from this date, failing which the same will carry interest at the rate of 9% per annum."

15. It would be, thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F 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. Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages. As a matter of fact, in all the judgments of this Court referred to and relied upon by the High Court while upsetting the award of reinstatement and back wages, this Court has awarded compensation.

16. While awarding compensation, the host of factors, inter- alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances. In a case such as this where the total length of service rendered by the appellant was short and intermittent from September 1, 1995 to July 18, 1996 and that he was engaged as a daily wager, in our considered view, a compensation of Rs. 50,000/- to the Appellant by Respondent No. 1 shall meet the ends of justice. We order accordingly. Such payment should be made within six weeks from today failing which the same will carry interest @ 9% per annum.

17. Appeal is partly allowed to the aforementioned extent with no order as costs.

.....J (Tarun Chatterjee)J (R. M. Lodha) New Delhi July 14, 2009.