

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**W.P. (L) No. 521 of 2008**

Ishwar Dayal Singh, son of late Ram Bachan Singh, Peon of Baranagpur Agurbed Dispensary Compound District Board, Dhanbad at present Purandih, P.O.-Purandih, P.S.- Tundi, Dist. Dhanbad (Jharkhand)

.... Petitioner

Versus

Management of District Board, Dhanbad through Deputy Development Commissioner-cum-Chief Executive Officer, District Board, Dhanbad, District- Dhanbad

.... Respondent

**P R E S E N T**

**HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY**

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 For the Petitioner : Mr. Ashok Kumar Singh, Advocate

For the Respondent : None

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***By the Court:-***

1. Heard the parties.
2. No one turns up on behalf of the respondent in-spite of repeated calls.
3. This Writ Petition has been filed under Article 226 of the Constitution of India with the prayer to modify the order dated 02.08.2007 passed by the Labour Court, Dhanbad in Reference Case No.3 of 2001 by which though the Labour Court answered the reference by holding that dismissal of the services of the writ petitioner who was a peon of Baranagpur Ayurved Dispensary compound by D.D.C. District Board, Dhanbad was not justified

but denied the reinstatement on the ground that he was a temporary employee or a casual wage worker and instead allowed compensation of equivalent to three months wages of the last payment.

4. The brief facts of the case is that the appropriate government referred the following dispute to Labour Court, Dhanbad for adjudication:-

*Whether the dismissal of the services of Shri Ishwas Dayal Singh Peon of Bara Nagpur Ayurved Dispensary Compound, District Board Dhanbad, P.O.-Purandih, P.S.-Tundi by Deputy Development Commissioner-cum-Chief Executive Officer, District Board Dhanbad is justified? If not from which date peon Shri Ishwar Dayal Singh is entitled to reinstatement and other reliefs?"*

5. The case of the writ petitioner-workman is that he was appointed by the respondent-Management on compassionate ground in place of Tupan Mahto as a temporary employee. His daily wages were Rs.6.15 only. Later he was appointed as a casual General Majdoor in the pay scale of 350-3-380-5-400-5-425 only for six months. On 14.10.1985 he was transferred to Bara Nagpur Ayurvedic Asuhdhalaya and joined there on 28.04.1986. After his transfer, no payment was made to the petitioner for his work from August 1986 to June 1991. The writ petitioner-workman filed M.J. Case No.16/1991 under Section 33C (2) of the Industrial Dispute Act, 1947. By the order of the Labour Court Rs.44,433.80/- was paid to the writ petitioner. It was contended by the Management that as the writ petitioner-workman was appointed only for the period for six months from 12.04.1982; so his services automatically terminated on 11.04.1983 but the writ petitioner-workman continued his services irregularly. The writ petitioner

filed C.W.J.C. No.513 of 1987 (R) in the High Court of Patna Ranchi Bench and the High Court quashed the notice/memo by which the petitioner was asked to explain as to why steps be not taken against him for recovery of payment made after 11.04.1983. It is the further the case of the writ petitioner-workman that the respondent-Management violated the principle of natural justice and the provisions of Section 25- F of Industrial Dispute Act and terminated the services of the appellant from 09.06.1992 without issuing any charge sheet or paying any notice-pay or retrenchment compensation. The writ petitioner filed C.W.J.C. No. 3468 of 1999 (R) in the High Court of Patna Ranchi Bench and the matter was referred to Labour Court, Dhanbad for adjudication.

6. The respondent-Management pleaded that C.W.J.C. No. 877 of 1990 (R) filed by the writ petitioner-workman for payment of salary since August 1986 was dismissed by the High Court and the Special Leave Petition filed against the same has also been dismissed. The respondent-Management pleaded that the writ petitioner-workman worked till 03.10.1986 and thereafter he never worked.
7. In support of its case, the writ petitioner examined himself as sole witness besides proving the documents which has been marked Ext. W-1 to W-5/1. From the side of the Management, two witnesses were examined besides proving the documents which has been marked Ext. M-1 and M-2.
8. The Labour Court, Dhanbad considering the materials in the record concluded on the basis of Ext. W-1 to W-4 that the writ

petitioner was in continued service for more than one year hence, fulfillment of the condition precedent required for applicability of Section 25 F of the Industrial Dispute Act was existing. The Labour Court, Dhanbad also considered that the order of the Secretary of Zila Parishad, Dhanbad dated 14.10.1985 establishes that the services of the writ petitioner-workman have been extended for unlimited period. The Labour Court, Dhanbad did not accept the contention of the respondent-Management that the services of the writ petitioner-workman has actually been terminated on 11.04.1983 by posing the question had that been true, how the writ petitioner could have been transferred on 14.10.1985 and concluded that the termination of services of the writ petitioner- Ishwar Dayal Singh is not justified but denied his reinstatement as already indicated above.

9. It is submitted by the learned counsel for the petitioner by relying upon the judgment of Hon'ble Supreme Court of India in the case of **Vikramaditya Pandey vs. Industrial Tribunal & Anr.** reported in **2001 (1) Supreme 319**, paragraph no.6 and 7 of which reads as under:-

"6. Xxx

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*The Tribunal felt difficulty in ordering reinstatement as the appellant was not a regular employee. The appellant ought to have been ordered to be reinstated in service once it was found that his services were illegally terminated in the post he was holding including its nature. Thus in our opinion both the Tribunal as well as the High Court were not right and justified on facts and in law in refusing the relief of reinstatement of the appellant in service with back wages. But, however, having regard to the facts and circumstances of the case and taking note of the fact that the order of termination dates back to 19.7.1985 we think it just and*

*appropriate in the interest of justice to grant back wages only to the extent of 50%.*

*7. In the result for what is stated above, we set aside the Award of the Tribunal and order of the High Court in regard to denial of relief of reinstatement of the appellant with back wages and direct his reinstatement in service as he then was on the date of termination of his services, with 50% back wages. This appeal is allowed accordingly in the terms stated above. The parties to bear their own costs.” (Emphasis supplied)*

that even if the petitioner was not a regular employee, once, it was found that his services were illegally terminated, the Labour Court ought to have ordered for his reinstatement in services in the post he was holding at the time of his termination and ought to have ordered for payment of back wages from the date of his illegal termination of his employment.

10. Hence, it is submitted that the order for reinstatement of the writ petitioner with back wages be passed.
11. Though no one turns up on behalf of the respondent in spite of repeated calls but perusal of the record reveals that a counter affidavit on behalf of the respondent has been filed and perusal of the same reveals that therein it has been contended by the respondent-Management that it being the admitted case of the writ petitioner that he was a daily wage employee in Zila Parishad, he has no right to the post hence, termination of the services of the petitioner does not amount to retrenchment.
12. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that the Labour Court, Dhanbad has answered the reference by the impugned judgment by holding that the dismissal from service of the writ petitioner- Ishwar Dayal Singh

peon of Bara Nagpur Ayurved Dispensary Compound, District Board, Dhanbad was not justified. The said portion of the award by the Labour Court, Dhanbad has not been challenged and has attained finality.

13. The only question to be considered by this Court in this writ petition is whether after the Labour Court held that dismissal of petitioner from his services was not justified; the Labour Court committed a perversity by not passing an order of reinstatement and payment of full back wages on the ground that he was a temporary employee.
14. As has been held by the Hon'ble Supreme Court of India in the case of **Vikramaditya Pandey vs. Industrial Tribunal & Anr.** (supra), the law is well settled that in case, of any illegal retrenchment, the remedy is reinstatement in the services in which the workman concerned was at the time of his illegal termination of service and not necessarily, he is to be reinstated in the regular cadre.
15. Considering this settled principle of law, this Court has no hesitation in holding that the Labour Court, Dhanbad has committed a grave error and perversity by not passing an order of reinstatement of the writ petitioner in the post he was holding on the date of his dismissal from service on 09.06.1992.
16. Accordingly, this Court set aside the portion of the award of the Labour Court dated 02.08.2007 in Reference Case No. 3 of 2001 so far as it relates to denial of reinstatement and payment of the petitioner. The respondent Management is directed to reinstate of

the writ petitioner in service and in case he has in the meanwhile attained the age of superannuation such a reinstatement will be made notionally on the post the petitioner was holding on 09.06.1992 and for that the respondent Management is directed to pay the petitioner 50% back wages starting from 09.06.1992 to till the date of his reaching the age of superannuation.

17. This writ petition is allowed to the aforesaid extent.

**(Anil Kumar Choudhary, J.)**

High Court of Jharkhand, Ranchi  
Dated the 8<sup>th</sup> February, 2024  
AFR/Sonu-Gunjan/-