

(2019) 12 DEL CK 0302

In the Delhi High Court

Case No : Civil Writ Petition No. 6347 Of 2016, Civil Miscellaneous No. 26026 Of 2016

Andhra Bank

APPELLANT

Vs

Dil Bahadur

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16
Industrial Disputes Act, 1947 — Section 2(s), 17B, 25F

Citation : (2019) 12 DEL CK 0302

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Jagat Arora, Rajat Arora, Harish Sharma

Final Decision : Allowed

Judgement

Rekha Palli, J

1. The present writ petition filed by the management/Andhra Bank assails the Award 14.12.2015 passed by the Central Government Industrial Tribunal, Karkardooma Courts, Delhi in ID No.295/2011. Under the impugned Award, the Labour Court after holding that the services of the respondent had been illegally terminated, has directed the petitioner to reinstate him with 50% back wages.

2. The respondent/workman claiming to have been appointed as a part time sweeper at the Palam Vihar branch of the petitioner Bank on 01.01.2007, raised an industrial dispute with the grievance that his services had been illegally terminated w.e.f 02.04.2010 without any notice or enquiry, simply at the verbal order of the petitioner's Branch Manager. The dispute raised by him was referred to the Labour Court, upon failure of conciliation proceedings, on 19.07.2011 in the following terms:-

"Whether the action of the management of Deputy General Manager, Andhra Bank, Chandigarh in terminating the services of Shri Dil Bahadur, Ex-Part Time

Sweeper at Palam Vihar, Gurgaon branch with effect from 02.04.2010 is just, fair and legal? What relief the workman is entitled to"

3. Before the Labour Court, the respondent filed his claim petition averring therein that he had been discharging his duties sincerely and to the utmost satisfaction of his superiors, when he was suddenly terminated on 02.04.2010, under the verbal orders of the Branch Manager and that too without any show cause notice or inquiry, which action was violative of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as

4. The petitioner filed its written statement denying that the respondent had ever been appointed by the Bank and claimed that his services were only being utilised for short periods by the Manager at its Palam Vihar branch as a casual labourer till regular appointments to the posts of sweeper were made in accordance with the Bank's regulations. It was specifically denied that there was any employer-employee relationship between the parties. The respondent's claim that he had worked continuously from 01.01.2007 till 02.04.2010 and that he had completed 240 days of service in each calendar year was also denied by the petitioner.

5. After both the parties led their respective evidence, the Labour Court vide its impugned award has allowed the respondent's claim. The Court observed that once the respondent was subject to the discipline of the Bank which was regularly engaging part time employees as per the terms of the Shastri Award, he was a workman within the meaning of Section 2(s) of the ID Act, therefore, his termination without following the procedure prescribed under Section 25F of the ID Act, was illegal and consequently directed the petitioner to reinstate him with 50% back wages.

6. Assailing the Award, Mr. Jagat Arora, learned counsel for the petitioner submits that the very premise of the impugned Award that the petitioner Bank had admitted having engaged the respondent as a part time Sweeper, is contrary to record. He submits that the petitioner had categorically averred in its written statement that the respondent was never engaged as per the recruitment Rules of the Bank and it is only the Branch Manager, who had casually utilised his services from time to time by way of a stop gap arrangement. There was never any employer-employee relationship between the parties and therefore the respondent was not a workman within the meaning of Section 2(s) of the ID Act. He thus contends that there was no obligation on the petitioner to comply with Section 25F of the ID Act which aspect the Labour Court has failed to appreciate. He, therefore, submits that the impugned Award is liable to be set aside on this ground alone.

7. Without prejudice to his submission that the respondent was not a workman within the meaning of Section 2 (s) of the ID Act, Mr. Arora submits that in any event, keeping in view the admitted position that the respondent was a casual labourer who had served the petitioner's Palam Vihar branch for only about 3

years and that too without being recruited as per the prescribed procedure, the direction to reinstate him with 50% back wages was wholly unwarranted. He submits that in holding the petitioner's action to be in violation of Section 25F of the ID Act resulting in the directions for reinstatement and back wages, the Labour Court has failed to appreciate that the respondent was only a casual workman and not a regular or permanent employee of the petitioner bank; therefore, as per the ratio of the recent decisions of the Supreme Court in *State of Uttarakhand & Anr Vs. Raj Kumar* [C.A.Nos.124-125/2019], *Deputy Executive Engineer Vs. Kuberbhai Kanjibhai* [(2019) 4 SCC 307], *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub Division, Kota Vs. Mohan Lal*, [(2013) 14 SCC 543], *Assistant Engineer Rajasthan Development Corporation Vs. Gitam Singh* [2013 (5) SCC 136] and of this Court in *Association of State Road Transport Undertaking Vs. Devender Singh* [W.P.(C)No.2354/2012], the respondent could have, at the most, been awarded monetary compensation.

8. Mr. Arora, thus submits that in the light of the facts that the respondent was drawing monthly wages of only Rs.2,512/- at the time of his alleged termination and that he had already received compensation amounting to the tune of Rs.1,13,040/- by way of benefits under Section 17B of the ID Act, he is neither entitled to reinstatement nor to any further compensation. He, therefore, prays that the writ petition be allowed and the impugned Award be set aside.

9. On the other hand, learned counsel for the respondent, while supporting the impugned Award, submits that the petitioner Bank is maintaining a permanent cadre of part-time Sweepers and therefore its denial of having engaged the respondent or of him being a workman under Section 2 (s) of the I.D. Act is contrary to the record and was rightly rejected by the Labour Court. He submits that since the respondent was receiving regular salary and bonus in his bank account, his status was akin to that of a permanent employee and, therefore, once the Labour Court found that he had been illegally terminated in violation of Section 25F of the ID Act, the Court was justified in directing his reinstatement with back wages. By placing reliance on the decision in *R.M. Yellatti Vs. Assistant Executive Engineer* [(2006) 1 SCC 106], he submits that the Supreme Court has time and again noted the exploitation of daily wage workmen by employers who fail to provide them with the requisite service documents, further compounded by the practice of employers maintaining muster rolls on loose sheets of paper, so that these workmen can be terminated abruptly without following any procedure whatsoever. By placing reliance on the decisions of the Supreme Court in *Bank of Baroda Vs. Ghemarbhai Harjibhai Rabari* [(2005) 10 SCC 792], the Madras High Court in *Vijaya Bank Workers Vs. Central Government Industrial Tribunal* [W.P.(C)4517/2002] and of this Court in *Municipal Corporation of Delhi Vs. Krishan Kumar* [W.P.(C)No.5513/2004], he contends that once the respondent's termination was found to be illegal, he was entitled to be placed in the same position in which he would have been, had the petitioner not illegally terminated him. He further submits that denying reinstatement and back wages to the respondent would tantamount to putting a premium on the petitioner's

illegal action and, therefore, prays that the writ petition be dismissed.

10. Having considered the submissions of the learned counsel for the parties and with their assistance perused the record, I am unable to agree with the petitioner's first contention. Once it was the petitioner's own case that the respondent had been engaged at its Palam Vihar branch as a part-time Sweeper for intermittent periods between January, 2007 to March, 2010 coupled with the petitioner's failure to produce the relevant attendance records despite directions by the Court, it cannot be said that the Labour Court's finding that there was an admission by the petitioner that the respondent had been engaged as a part time Sweeper, is in anyway erroneous or that it suffers from any infirmity. Further in view of the respondent's claim that his services were terminated under the verbal directions of the Branch Manager without any notice or enquiry which position is not being seriously disputed by the petitioner as also the admitted position that the respondent's services were terminated without following the procedure prescribed in Section 25F of the ID Act, there is no infirmity in the Labour Court's finding that the respondent was illegally terminated.

11. Now coming to the petitioner's second contention that the Labour Court was not justified in directing the respondent's reinstatement with 50% back wages merely because his termination was found to be violative of Section 25F of the ID Act. While the learned counsel for the petitioner has vehemently contended that in a case where the Court is dealing with a daily wager, even if his termination/ retrenchment is found to be in violation of Section 25F of the ID Act, an Award of reinstatement ought not be passed, learned counsel for the respondent has contended otherwise. It is the respondent's submission that, once the termination of a workman is found to be in violation of the provisions of the ID Act, the normal rule is that he should be granted reinstatement with continuity of services and full back wages.

12. In support of their respective stands both sides have sought to rely on various decisions of the Supreme Court and of various High Courts. Having considered these decisions, I find merit in the petitioner's contention that in the last few years the Supreme Court has been consistently holding that a distinction has to be drawn between a daily wager and a permanent/regular employee. In a case where the Court finds that the services of a regular workman have been illegally terminated by resorting to any unfair labour practice, the direction to reinstate him with back wages would be justified. Even in such situations, full back wages cannot be granted automatically to the workman, the quantum of back wages has to be determined by taking into consideration his length of service as also the financial condition of the employer. On the other hand, where the termination of a daily wager or a casual employee is found to be illegal merely because of a procedural defect like non-compliance of Section 25F of the ID Act, a direction for reinstatement with back wages would not be justified. While holding so the Supreme Court has observed that a daily wager or casual employee, even if reinstated can be terminated, by paying him the retrenchment

compensation and notice pay as per Section 25F of the ID Act and, therefore, the grant of the relief of reinstatement to such daily wagers would not be appropriate. Reference may also be made to Assistant Engineer Rajasthan Development Corporation and Anr. Vs. Gitam Singh [(2013) 5 SCC 136] wherein the Supreme Court after considering its earlier decision including the decision in Devinder Singh vs. Municipal Council, Sanaur [(2011) 6 SCC 584] and Harjinder Singh v. Punjab State Warehousing Corpn., [(2010) 3 SCC 192] has observed in paragraph Nos. 22, 23 & 25 to 28 as under:-

"22. From the long line of cases indicated above, it can be said without any fear of contradiction that this Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations. It has always been the view of this Court that there could be circumstance(s) in a case which may make it inexpedient to order reinstatement. Therefore, the normal rule that the dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception. Insofar as wrongful termination of daily-rated workers is concerned, this Court has laid down that consequential relief would depend on host of factors, namely, manner and method of appointment, nature of employment and length of service. Where the length of engagement as daily wager has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid. A distinction has been drawn between a daily wager and an employee holding the regular post for the purposes of consequential relief.

23. We shall now consider two decisions of this Court in Harjinder Singh [Harjinder Singh v. Punjab State Warehousing Corpn., (2010) 3 SCC 192 : (2010) 1 SCC (L&S) 1146] and Devinder Singh [Devinder Singh v. Municipal Council, Sanaur, (2011) 6 SCC 584 : (2011) 2 SCC (L&S) 153] upon which heavy reliance has been placed by the learned counsel for the respondent.

25. In Devinder Singh [Devinder Singh v. Municipal Council, Sanaur, (2011) 6 SCC 584 : (2011) 2 SCC (L&S) 153] the workman was engaged by Municipal Council, Sanaur on 1-8-1994 for doing the work of clerical nature. He continued in service till 29-9-1996. His service was discontinued with effect from 30-9-1996 in violation of Section 25-F of the ID Act. On industrial dispute being referred for adjudication, the Labour Court held that the workman had worked for more than 240 days in a calendar year preceding the termination of his service and his service was terminated without complying with the provisions of Section 25-F. Accordingly, the Labour Court passed an award for reinstatement of the workman but without back wages. Upon challenge being laid to the award of the Labour Court, the Division Bench set aside the order of the Labour Court by holding that the Labour Court should not have ordered reinstatement of the workman because his appointment was contrary to the Recruitment Rules and Articles 14 and 16 of the Constitution.

26. In the appeal before this Court from the order of the Division Bench, this Court in Devinder Singh [Devinder Singh v. Municipal Council, Sanaur, (2011) 6

SCC 584 : (2011) 2 SCC (L&S) 153] held that the High Court had neither found any jurisdictional infirmity in the award of the Labour Court nor it came to the conclusion that the award was vitiated by an error of law apparent on the face of the record and notwithstanding these the High Court set aside the direction given by the Labour Court for reinstatement of the workman by assuming that his initial appointment was contrary to law. The approach of the High Court was found to be erroneous by this Court. This Court, accordingly, set aside the order of the High Court and restored the award of the Labour Court. In *Devinder Singh* [*Devinder Singh v. Municipal Council, Sanaur*, (2011) 6 SCC 584 : (2011) 2 SCC (L&S) 153] , the Court had not dealt with the question about the consequential relief to be granted to the workman whose termination was held to be illegal being in violation of Section 25-F.

27. In our view, *Harjinder Singh* [*Harjinder Singh v. Punjab State Warehousing Corpn.*, (2010) 3 SCC 192 : (2010) 1 SCC (L&S) 1146] and *Devinder Singh* [*Devinder Singh v. Municipal Council, Sanaur*, (2011) 6 SCC 584 : (2011) 2 SCC (L&S) 153] do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This Court found in those cases that judicial discretion exercised by the Labour Court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this Court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors, including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute before grant of relief in an industrial dispute.

28. We may also refer to a recent decision of this Court in *BSNL v. Man Singh* [(2012) 1 SCC 558 : (2012) 1 SCC (L&S) 207] . That was a case where the workmen, who were daily wagers during the year 1984-1985, were terminated without following Section 25-F. The industrial dispute was raised after five years and although the Labour Court had awarded reinstatement of the workmen which was not interfered by the High Court, this Court set aside the award of reinstatement and ordered payment of compensation. In paras 4 and 5 of the Report this Court held as under:

"4. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of Section 25-F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be passed. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

5. In view of the aforementioned legal position and the fact that the respondent workmen were engaged as "daily wagers" and they had merely worked for more

than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice."

13. In this regard, reference may be made to the observations of the Supreme Court in its decision in *Bharat Sanchar Nigam Limited Vs. Bhurumal* [(2014) 7 SCC 177], paragraph no.33 to 35 whereof reads as under:-

"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."

14. I have also considered the decisions relied upon by learned counsel for the respondent and find that none of these decisions deal with the specific issue arising in the present case as to the relief to be granted to a daily wager, whose termination is found to be in violation of Section 25F of the ID Act.

15. Thus, what emerges from the aforesaid discussion is that even if the termination of a daily wager or casual labourer is found to be illegal, being in violation of Section 25F or any other provision of the ID Act, automatic reinstatement has neither been granted nor has it been approved by the Supreme Court.

16. When the facts of the present case are considered in the light of the decisions noted hereinabove, I have no hesitation in coming to the conclusion that the Labour Court had failed to exercise its discretion appropriately and consequently the directions under the impugned Award to reinstate the respondent with 50% back wages were wholly unwarranted and cannot be sustained. The respondent was not a regular or permanent employee and had served for just over 3 years as a casual labour in the post of a part time sweeper at monthly wages of Rs.2512/-. His very appointment under the Branch Manager's direction was dehors the bank's regulation and in these circumstances, the respondent would only be entitled to receive monetary compensation.

17. The only issue which now survives for my consideration is as to the quantum of lump sum compensation that should be granted to the respondent especially in the light of the petitioner's contention that the respondent had already received an amount of Rs.1,13,040/- as benefits under Section 17B and, therefore, should not be granted any further compensation.

18. To determine as to what would be a reasonable amount, which should be granted to the respondent as compensation, reference may be made to the decision of the Supreme Court in O.P. Bhandari vs. Indian Tourism Development [(1986) 4 SCC 337], wherein the Apex Court held that compensation equivalent to 3.33 years salary, on the basis of last drawn wages, would be a reasonable amount to award in lieu of reinstatement. The relevant observation of the Supreme Court in paragraph 10 reads as under:-

"10. In our considered opinion, compensation equivalent to 3.33 years' salary (including allowances as admissible) on the basis of the last pay and allowances drawn by the appellant would be a reasonable amount to award in lieu of reinstatement taking into account the following factors viz.:

1. The corpus if invested at the prevailing rate of interest (15%) will yield 50% of the annual salary and allowances. In other words every year he will get 50% of what he would have earned by way of salary and allowances with four additional advantages:

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- (i) He will be getting this amount without working.
- (ii) He can work somewhere else and can earn annually whatever he is worth over and above, getting 50% of the salary he would have earned.
- (iii) If he had been reinstated he would have earned the salary only up to the date of superannuation (up to 55, 58 or 60 as the case may be) unless he died earlier. As against this 50% he would be getting annually he would get not only beyond the date of superannuation for his lifetime (if he lives longer), but even his heirs would get it in perpetuity after his demise.
- (iv) The corpus of lump sum compensation would remain intact, in any event"

19. Reference may also be made to the decision of this Court in Delhi Stock Exchange & Anr. v. K.C Sharma & Ors. [LPA No.331/1999], wherein this Court while dealing with the same issue of compensation in lieu of reinstatement observed that it may not be possible to lay down any fixed formula for this purpose and a certain amount of guess work is always required to determine the fair and adequate compensation that has to be awarded to the employee. While determining the compensation, the Court must, however, keep in mind not only the nature of employment, age of the workman, length of his employment, his last drawn wages but also the prospects of him getting an alternate employment.

20. At this stage, it may also be apposite to notice some recent decisions of the Supreme Court in State of Uttarakhand Vs. Raj Kumar (supra), Regional Manager Vs. Dinesh Singh [C.A.No.3197/2019] and Deputy Executive Engineer Vs. Kuberbhai Kanjibhai (supra). The Apex Court, while dealing with the case of daily wagers or muster roll employees, who were terminated in violation of Section 25F of the ID Act had awarded a lump sum compensation of Rs.1,00,000/- to each of the workman.

21. Having considered the facts of the present case in light of the principles laid down in O.P. Bhandari(supra)and K.C Sharma & Ors.(supra), I am of the considered view that it would be just and reasonable to award a lumpsum compensation of Rs. 2,00,000/- to the respondent in lieu of reinstatement.

22. For the aforesaid reasons, the writ petition is allowed by modifying the impugned Award and directing that the petitioner would be entitled to receive a lumpsum compensation of Rs.2,00,000/-, in place of reinstatement with 50% backwages as awarded by the Labour Court. This amount would be in addition to the amount received by him under Section 17 B of the I.D Act. Even though the respondents had filed affidavits before this Court undertaking to refund the differential amount between the last drawn wages and minimum wages in case the writ petition were to be allowed, it is directed that no recovery on this count shall be made by the petitioner from the respondent-workman. The amount of Rs.2,00,000/- as directed would be released to the respondent within four weeks.

23. The writ petition is allowed and disposed of in the aforesaid terms.

24. In view of the writ petition being allowed, the application being CM No.26026/2016 seeking stay of the impugned award does not survive for adjudication and the same is dismissed as infructuous.