
(2012) 05 DEL CK 0067
In the Delhi High Court
Case No : Writ Petition (C) 156 of 2011

Chander Dutt

APPELLANT

Vs

Nehru Yuva Kendra Sangathan

RESPONDENT

Date of Decision : 18-05-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 05 DEL CK 0067

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : D.K. Devesh, for the Appellant; Rana Ranjit Singh, for the Respondent

Final Decision : Allowed

Judgement

P.K. Bhasin, J

1. By way of this writ petition the petitioner, who was employed as a peon with the respondent, had challenged the award dated 23-07-2010 in ID Case No. 9/2007 whereby the relief of re-instatement in service with back wages was denied to him by the Central Government Industrial Tribunal-I("the tribunal" in short) even after coming to the conclusion that his services had been illegally terminated by the respondent and only a lump-sum compensation of Rs. 25,000/- was awarded to him. The petitioner was employed as a peon on daily wages with the respondent. His services were terminated w.e.f. 01.05.2004. He had then approached the competent authorities for his re-instatement in service but since he could not get that relief the dispute between him and the respondent was referred for adjudication to the Tribunal vide Reference order dated 25th January, 2007 with the following term of reference:-

Whether the action of the management of Nehru Yuva Kendra Sanagathan, New Delhi, in terminating the services of their workman Shri Chander Dutt w.e.f. 30.4.2004 is legal and justified? If not, to what relief the applicant is entitled to?

2. The petitioner filed his statement of claim before the Tribunal and claimed the termination of his services to be illegal. The respondent filed its written statement denying the allegations of illegal termination of the services of the petitioner and pleaded that he was never appointed as a regular employee as per the relevant Rules and after following due process of law but due to increase in work load he had been employed as daily wager and he was paid also for actual working days and also that as he was appointed for nation-wide project by the name of National Reconstruction Corps., which was undertaken on the instructions of Ministry of Youth Affairs & Sports, Government of India, and his engagement was co- terminus with that Project/Scheme or till his services were required and so rendering services by him for more than 240 days did not give him a right for regularization and Section 25F of the Industrial Disputes Act was not attracted in this case. It was thus claimed that the termination of the services of the petitioner was legal.

3. The Tribunal vide its award under challenge came to the conclusion that the termination of the services of the petitioner was illegal but even after holding so the reliefs of reinstatement in service and back wages were not granted to him and instead compensation Rs.25,000/- only was awarded to him. Findings of the Tribunal given while declining the relief of re-instatement and back wages to the petitioner are re-produced below:-

29. Here in the case, Chander Dutt was engaged in violation of recruitment rules. No advertisement was made nor a test was conducted when he as engaged by the management. Reservation policy was not followed. Hence his reinstatement would amount to perpetuate a wrong engagement in service. Where a case falls in any of the exception to general rule, the industrial adjudicator has discretion to award reasonable and adequate compensation, in lieu of reinstatement. Section 11A of the Act vests the industrial adjudicator with discretionary jurisdiction to give "such other relief to the workman" in lieu of discharge or dismissal as the circumstances of the case may require, where for some valid reasons it considers that reinstatement with or without conditions will not be fair or proper. 30. Since retrenchment of Chander Dutt is held to be wrongful, this Tribunal has to award compensation to the workman in lieu of his reinstatement. No definite yardstick for measuring the quantum of compensation is available. In S.S. Shetty (1957 (II)LLJ 969) the Apex Court indicted some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement in the following words: "The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future....In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into

account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award. Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any Tribunal or Court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con." 33. In view of above propositions case of the workmen is to be considered. Claimant served the management from 18.5.2001 till 30.4.2004. He served the management for about 3 years. He was a daily wager employee, which employment does not confer a right on the post held. Taking into account all these aspects besides the fact that retrenchment compensation was not paid to him, I am of the view that an amount of Rs. 25000 would be appropriate compensation for him.....

4. The petitioner-workman felt aggrieved by the award of the Industrial Tribunal declining him the relief of reinstatement and back wages and so he filed this writ petition. The respondent-management did not feel aggrieved with the decision of the Tribunal to the effect that it had illegally terminated the services of the petitioner-workman and obviously so because no relief of reinstatement in service with back wages was granted to him.

5. The learned counsel for the petitioner-workman contended that the award of the Tribunal is not sustainable to the extent the relief of re-instatement in service with back wages has been declined despite the fact that termination of his services had been held to be illegal. It was further contended that it has been consistently held by the Apex Court since sixties in its various decisions that if the services of an industrial workman are terminated in violation of the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 then he is entitled to be reinstated in service with full back wages as the termination is void ab-initio.

6. On the other hand, the learned counsel for the respondent-management argued that the impugned award does not suffer from any perversity as the legal position regarding grant of back wages and re-instatement is now different these days than the one which was there more than a decade ago and the recent trend of judicial pronouncements of the Apex Court is to award only monetary compensation to the those workmen who get a declaration from industrial adjudicator that termination of their services was illegal and particularly to the daily wagers and since that is what has been done by the Tribunal in the present case there is no reason for this Court to interfere with its award.

7. Since from the side of the petitioner-workman it was argued that there is no departure from the legal position which had been laid down by the Apex Court in the sixties and the same position continues today also while from the side of the respondent it was argued by its counsel that there has been considerable change

in the views of the Supreme Court during the in the last decade I deem it appropriate to notice various judgments from the sixties till date on the question of grant of re-instatement and back wages to those workmen in whose favour the industrial adjudicators have given awards declaring the termination of their services by their employers to be illegal, invalid and void ab initio.

8. Let me start with one judgment given in the sixties by a three Judge Bench of the Apex Court. In *Swadesamitran Limited, Madras Vs. Their Workmen*, it was held as under:-

13. That leaves two minor questions which were formulated for our decision by the learned Attorney-General. He contended that, even if the impugned retrenchment of the 15 workmen in question was not justified, reinstatement should not have been directed; some compensation instead should have been ordered; and in the alternative he argued that the order directing compensation to the remaining 24 retrenched workmen was also not justified. We do not see any substance in either of these two contentions. Once it is found that retrenchment is unjustified and improper it is for the tribunals below to consider to what relief the retrenchment workmen are entitled. Ordinarily, if a workman has been improperly and illegally retrenched he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workmen would not necessarily defeat the claim for reinstatement of the retrenched workmen; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This court has consistently held that in the case of wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed

(emphasis laid)

9. Sixteen years thereafter, in "*Hindustan Steel Ltd. vs. The Presiding Officer, Labour Court, Orissa & Ors.*", (1976) 4 Supreme Court Cases 222, also the question of grant of back wages to an industrial workman after the termination of his services is found to be illegal and invalid had come up for consideration and was dealt with and decided by another three Judge Bench of the Apex Court in the following para of its judgment:-

8. Another point made on behalf of the appellant was that the Presiding Officer of the Labour Court was wrong in awarding full back wages to the respondents without satisfying himself that they had been unemployed after they were released from service by the appellant and, further, that they had taken all reasonable steps to mitigate their losses consequent on their retrenchment. The Labour Court has found that it had not been proved that the respondents had any alternative employment. In the writ petition filed by the appellant in the High Court, the finding that the respondents had no alternative employment was not challenged. From the judgment of the High Court it appears that the submission on the propriety of awarding full back wages to the respondents was confined to

the ground that the respondents had not proved that they had tried to mitigate their losses during the period of unemployment. In the SLP also what has been urged is that the High Court should have held that the respondents were not entitled to full back wages unless they succeeded in proving that they tried to secure alternative employment but failed. The Labour Court awarded full back wages to the respondents on the finding that they had been illegally retrenched. It does not appear that the question of mitigation of loss for deprivation of employment had at all been raised before the Labour Court. The High Court therefore refrained from exercising its "discretionary jurisdiction in favour of the employer" and proposed not to "deprive the workmen of the benefit they had been found entitled to by the Presiding Officer". That the respondents were unemployed cannot now be disputed. In these circumstances the High Court was justified, in our opinion, in refusing to interfere on this point.

(underlining is mine)

10. Three years later the same question again came up before the Apex Court in the case of "Hindustan Tin Works Pvt. Ltd. Vs. Employees", 1979(2) Supreme Court Cases 80(which was again a three Judge Bench judgment). The relevant portions from this decision are also re-produced below:-

3. The Labour Court, after examining the evidence led on both sides and considering various relevant circumstances, held that..... the real reason was the annoyance felt by the management consequent upon the refusal of the workmen to agree to the terms of settlement contained in the draft dated 5th April, 1974 and, therefore, the retrenchment was illegal. The Labour Court by its award directed that all the workmen shall be reinstated in service from 1st August, 1974 with full back wages, permitting the appellant to deduct any amount paid as retrenchment compensation from the amount payable to the workmen as back wages. The appellant challenged the Award in this appeal. When the SLP came up for admission, this Court rejected the SLP with regard to the relief of reinstatement but limited the leave to the grant of full back wages.

4. The question whether the workmen who were retrenched were entitled to the relief of reinstatement is no more open to challenge. In other words, it would mean that the retrenchment of workmen was invalid for the reasons found by the Labour Court and the workmen were entitled to the relief of reinstatement effective from the day on which they were sought to be retrenched. The workmen were sought to be retrenched from 1st August, 1974 and the Labour Court has directed their reinstatement effective from that date. The Labour Court has also awarded full back wages to the workmen on its finding that the retrenchment was not bona fide.....

7. The question in controversy which fairly often is raised in this Court is whether even where reinstatement is found to be an appropriate relief, what should be the guiding considerations for awarding full or partial back wages. This question is neither new nor raised for the first time. It crops up every time when the

workman questions the validity and legality of termination of his service howsoever brought about, to wit, by dismissal, removal, discharge or retrenchment, and the relief of reinstatement is granted. As a necessary corollary the question immediately is raised as to whether the workman should be awarded full back wages or some sacrifice is expected of him.

8. Let us steer clear of one controversy whether where termination of service is found to be invalid, reinstatement as a matter of course should be awarded or compensation would be an adequate relief...

9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service.....The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of "which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigating activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workman's demand for revision of wages the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages.....If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.....

11. In the very nature of things there cannot be a straight jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstance.....

12.....If the normal rule in a case like this is to award full back wages, the burden will be on the appellant employer to establish circumstances which would permit a departure from the normal rule.....

(emphasis laid)

11. Now I come to the views of the Supreme Court in eighties. In the case of "Surendra Kumar Verma & Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi & Another", (1980) 4 Supreme Court Cases 443 wherein it was held by the three Judge Bench as follows:-

5. In The State Bank of India Vs. Shri N. Sundara Money, , a Division Bench of this Court consisting of Chandrachud, Krishna Iyer and Gupta JJ held that a certain order of retrenchment was in violation of the provisions of Section 25F and was, therefore, invalid and inoperative. After so holding, they proceeded to consider the question of the relief to be awarded. They observed:

What follows? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Re-instatement is the necessary relief that follows. At what point? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw were he to be appointed in the same post today de novo. As for benefits if any, flowing from service he will be ranked below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.

6. Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen

concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The Court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the Court may award the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted

(emphasis supplied)

12. Then in the case of "Mohan Lal Vs. Management of Bharat Electronics Ltd." (1981) 3 Supreme Court Cases 225 same view was maintained as taken in the earlier judgments referred to above. The relevant portions from this judgment are reproduced below:-

19. The last submission was that looking to the record of the appellant this Court should not grant reinstatement but award compensation. If the termination of service is ab initio void and inoperative, there is no question of granting reinstatement because there is no cessation of service and a mere declaration follows that he continues to be in service with all consequential benefits. Undoubtedly, in some decisions of this Court such as Ruby General Insurance Co. Ltd v. Chopra (P.P.) [1970] 1 L.L.J. 63 and Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, it was held that the Court before granting reinstatement must weigh all the facts and exercise discretion properly whether to grant reinstatement or to award compensation. But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the Courts in the field of social justice and we do not propose to depart in the case. 20. Accordingly, this appeal is allowed and the Award of the Labour Court dated May 31, 1980, is set aside. We hold that the termination of service of the appellant was ab initio void and inoperative and a declaration is made that he continues to be in service with all consequential benefits, namely, back wages in full and other benefits.....

(emphasis laid)

13. It was not submitted by learned counsel for the management that thereafter also the Supreme Court has been maintaining the same views. Now I come to those judgments delivered by two Judge Benches of the Supreme Court, which

according to the learned counsel for the management, have brought about the change in the trend from the year 2000 onwards. In "Hindustan Motors vs Tapan Kumar Bhattacharya & anr.", (2002) 6 Supreme Court Cases 41 it was held by the Supreme Court as follows:-

13. From the award passed by the Industrial Tribunal which has been confirmed by the Division Bench of the High Court it is clear that the order for payment of full back wages to the workman was passed without any discussion and without stating any reason. It appears that the Tribunal and the Division Bench had proceeded on the footing that since the order of dismissal passed by the Management was set aside, the order of reinstatement with full back wages was to follow as a matter of course.

15. The Court, on taking into account the financial position of the employer-Company, thought it fit to modify the award by allowing 75% of the back wages instead of full back wages.

16. In P.G.I. of M.E. and Research, Chandigarh Vs. Raj Kumar, this Court found fault with the High Court in setting aside the award of the Labour Court which restricted the back wages to 60% and directing payment of full back wages. It was observed thus:

"The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect."

17. Again at paragraph 12, this Court observed: "Payment of back wages having a discretionary element involved in it has to be delta with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety.

18. As already noted, there was no application of mind to the question of back wages by the Labour Court. There was no pleading or evidence whatsoever on the whether the respondent was employed elsewhere during this long interregnum. Instead of remitting the matter to the Labour Court or High Court for fresh consideration at this distance of time, we feel that the issue relating to payment of back wages should be settled finally. On consideration of the entire matter in the light of the observation referred to supra in the matter of awarding back wages, we are of the view that in the context of the facts of this particular case including the vicissitudes of long drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement.....

14. Then in "General Manager, Haryana Roadways vs Rudhan Singh", 2005

Judgments Today (6) 137 it was held by the Supreme Court as under:-

13. The residual question relates to direction for back wages.

15. When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard.

15. In "Kendriya Vidyalaya Sanghathan vs S.C.Sharma", 2005 Judgments Today (1) 336 it was held as under:-

6. The next question, which requires consideration is whether the respondent is entitled to any back wages. The Industrial Tribunal-cum-Labour Court awarded 50% back wages on the ground that in Rohtak District of State of Haryana work of the nature, which was being done by the respondent, is available in plenty as a large work force comes from Eastern UP and Bihar for doing such kind of work. However, a general observation has been made that keeping in view the facts and circumstances of the case it will be proper to award 50% back wages. The High Court has also not given any reason for upholding this part of the award.

7. In our opinion certain factors, which are relevant for forming an opinion regarding award of back wages, have been completely ignored and, therefore, the award on this point is vitiated. The list of dates given in the Special Leave Petition, which have not been controverted, show that though according to the own case of the respondent his services had been terminated on 18.2.1989, yet he served a demand notice, praying for reinstatement in service after two and half years on 24.8.1991. The State Government made reference to the Industrial Tribunal-cum-Labour Court in the year 1997, which means eight years after the termination of service. Normally, a reference should not be made after lapse of a long period. A labour dispute should be resolved expeditiously and there is no justification for the State Government to sleep over the matter and make a reference after a long period of time at its sweet will. It causes prejudice both to the workman and also to the employer. It is not possible for an employer to retain all the documents for a long period and then to produce evidence, whether oral or documentary, after years as the officers, who may have dealt with the matter, might have left the establishment on account of superannuation or any other reason. The employer is not at fault if the reference is not made expeditiously by the State Government, but it is saddled with an award directing payment of back wages without having taken any work from the concerned workman. The plight of the workman who is thrown out of employment is equally bad as it is a question of survival for his family and he should not be left in a state of uncertainty for a long period.

8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25F of the Act, entire back wages should be awarded. A host of factors like the manner

and method of selection and appointment, i.e., whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i.e., from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year

9..... A person appointed on daily wage basis gets wages only for days on which he has performed work.

10. In *Saran Kumar Gaur (Smt) and Others Vs. State of U.P. and Others*, , this Court observed that when work is not done remuneration is not to be paid and accordingly did not make any direction for award of past salary. In *State of Uttar Pradesh and Another Vs. Atal Behari Shastri and Another*, , a termination order passed on 15.7.1970 terminating the services of a Licence. Inspector was finally quashed by the High Court in a writ petition on 27.11.1991 and a direction was issued to pay the entire back salary from the date of termination till the date of his attaining superannuation. This Court, in absence of a clear finding that the employee was not gainfully employed during the relevant period, set aside the order of the High Court directing payment of entire back salary and substituted it by payment of a lumpsum amount of Rs. 25,000/-..... In *Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others*, , the appellant (Assistant Manager in the Bank) was dismissed from service on 28.5.1985, but his appeal was allowed by this Court on 6.2.1995 as his dismissal order was found to be suffering from an inherent defect. His claim for arrears of salary for the past period came to about Rs. 20 lakhs but this Court observed that a huge amount cannot be paid to anyone for doing no work and accordingly directed that a compensation amount of Rs. 50,000/- be paid to him in lieu of his claim for arrears of salary. In *Anil Kumar Gupta v. State of Bihar*, 1996 (7) SCC 83 , the appellants were employed as daily wage employees in Water and Land Management Institute of the Irrigation Department of Government of Bihar and they were working on the posts of steno-typists, typists, machine operators and peons, etc. This Court allowed the appeal of the workmen and directed reinstatement but specifically held that they would not be entitled to any past

salary. These authorities show that an order for payment of back wages should not be passed in a mechanical manner but host of factors are to be taken into consideration before passing any order for award of back wages.

11. In the case in hand the respondent had worked for a very short period with the appellant, which was less than one year. Even during this period there were breaks in service and he had been given short term appointments on daily wage basis in different capacities. The respondent is not a technically trained person, but was working on a class IV post. According to the finding of the Industrial Tribunal-cum-Labour Court plenty of work of the same nature, which the respondent was doing, was available in the District of Rohtak. In such circumstances we are of the opinion that the respondent is not entitled to payment of any back wages.....

(emphasis supplied)

16. In "Sonepat Cooperative Sugar Mills Ltd. v. Rakesh Kumar"; JT 2005 (10) SC 6299, which has been relied upon by the counsel for the petitioner herein, the concerned workman was a daily w ager and since had put in 240 days service he was awarded re-instatement in service by the Labour Court and that award was upheld by the Apex Court. Relevant observations are as under:-

"6. The contention of the appellant that the respondent was appointed for a specific period, namely, 1.7.1998 to 31.8.1999 and the termination of his service is on account of non-renewal of contract of employment is not borne out either by the pleadings or the evidence.....

From the evidence led before the Labour Court, the finding recorded by the Labour Court that the respondent was employed on daily wage basis and had worked for more than 240 days during the period of 12 months before the date of termination, did not call for interference. The appellant had examined one Randhir Singh, Time Keeper as MW-2 who had produced the Attendance Register for the period 1.7.1998 to 31.8.1999 and specifically admitted that as per the Attendance Register, the respondent had worked continuously between the said period and further admitted that the respondent had worked for more than 240 days in a period of one year prior to respondent's termination. In view of it there was a clear violation of Section 25F and we find no error in the direction for reinstatement.

17. In Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. and Others, , it was held by the Apex Court:-

8. It was furthermore urged that in any event, the said Respondents having been appointed only on an adhoc basis and not in terms of the provisions of the said Adhiniyam and the rules framed thereunder, had no legal right to continue in service. Moreover, they having been appointed on daily wages, their disengagement from services cannot be construed to be "retrenchment" under

the provisions of the U.P. Industrial Disputes Act.

9. The High Court, however, did not go into the aforementioned questions at all. The High Court dismissed the said writ petition only on the premise that the workmen having completed 240 days of continuous service and as they had been reinstated in service pursuant to the interim order passed by the High Court, it would not be appropriate to displace the workmen from employment and to offer other reliefs, particularly, when a relief of reinstatement can be granted for violation of the provisions of Section 6N of the Act in view of the decision of this Court in Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, . However, they were directed to be paid 50% of the backwages.

10. The learned Counsel appearing on behalf of the Appellant would contend that having regard to the nature of appointment, the impugned award could not have been passed. The learned Counsel appearing on behalf of the Respondent, on the other hand, would support the impugned award.

11. This is one of those cases which clearly depict as to how the officers of the local-self government at their own whims and caprice have been making appointments without following the procedures laid down under the Adhiniyam. The Administrator of a Municipal Corporation is a public servant. He was bound to follow the provisions of the Adhiniyam and the Rules. It is surprising how the Respondents could be appointed even prior to creation of the temporary posts by the State..... Evidently, the provisions of the Apprentice Act, 1961 have also not been followed.....

12. This Court in a large number of decisions has expressed its concern on how and in what manner appointments on daily basis or by way of ad hoc arrangement are made in flagrant violations of constitutional provisions enshrined under Articles 14 and 16 of the Constitution of India and/ or the statutory recruitment rules. This Court has also been noticing that the State or the public sector undertakings or the local self governments themselves are making all endeavours to regularise the services of such employees who have entered the services through the backdoor. The Industrial Tribunals, in some cases the High Courts also, had been generous enough to direct regularisation for the services of such workmen without proper application of mind.

13. Recently, a Constitution Bench of this Court has held that such appointments being contrary to the provisions of Articles 14 and 16 of the Constitution of India are illegal. [See Secy., State of Karnataka and Ors. v. Umadevi and Ors.: (2006)IILLJ722SC]

14..... It is unfortunate that the writ petition filed in the year 1989 has been disposed of in 2004 but the Appellants cannot be blamed therefor.....

15. In our opinion, the High Court did not adopt a correct approach in the matter.

Non-compliance of the provisions of Section 6N of the U.P. Industrial Disputes Act, although, may lead to the grant of a relief of reinstatement with full backwages and continuity of service in favour of the retrenched workmen, the same would not mean that such a relief is to be granted automatically or as a matter of course.

16. The Labour Court in its award did not take into consideration the relevant facts for exercise of its discretion in granting the relief. It is now well-settled, by reason of a catena of decisions of this Court, that only because the Labour Court may grant the relief of reinstatement with full backwages, the same should be granted as a matter of course. The Appellant herein has clearly stated that the appointments of the Respondents have been made in violation of the provisions of the Adhiniyam. An appointment made in violation of the provisions of Adhiniyam is void. The same, however, although would not mean that the provisions of the Industrial Disputes Act are not required to be taken into consideration for the purpose of determination of the question as to whether the termination of workmen from services is legal or not but the same should have to be considered to be an important factor in the matter of grant of relief. The Municipal Corporation deals with public money Appointments of the Respondents were made for carrying out the work of assessment. Such assessments are done periodically. Their services, thus, should not have been directed to be continued despite the requirements therefore having come to an end. It is, therefore, in our considered view, not a case where the relief of reinstatement should have been granted."

(underlining is mine)

18. In Sh. Narendra Kumar Vs. The Regional Manager Punjab National Bank and Others, it was held as under:-

4. The Labour Court vide its order dated 31-12-2007, while allowing the claim in part, has directed the respondents to pay a sum of rupees fifty thousand only (Rs 50,000) by way of compensation in lieu of reinstatement into service. The award passed by the Labour Court was the subject-matter of the writ petition before the High Court at the instance of the workman. The High Court has dismissed the writ petition in limine and thereby has affirmed the award passed by the Labour Court.

5. The learned counsel for the appellant submits that the amount of compensation awarded by the Labour Court in lieu of reinstatement into service vide its order dated 31-12-2007 is meagre and therefore, this Court may exercise its discretion and enhance the compensation awarded by the Labour Court.

6. Ordinarily, we would not have interfered with the concurrent findings of the Labour Court and the High Court. At the same time, we cannot be obdurate to the hard realities of life. In matters of this nature, a humane and pragmatic approach to the various factors, including the steep escalation in prices in the

commodity market, the cost of living, the cost of education of children, etc. is required.

7. Therefore, keeping in view the peculiar facts and circumstances of this case, in our view, it would be in the interest of justice to enhance the compensation from rupees fifty thousand (50,000) to rupees one lakh (1,00,000) only. Accordingly, the appeal is allowed in part. The award passed by the Labour Court in ID No. 52 of 1996 is modified by enhancing the compensation awarded from Rs 50,000 (Rupees fifty thousand only) to Rs 1,00,000 (Rupees one lakh only)

(emphasis supplied)

19. In "Jagbir Singh vs. Haryana State Agriculture Marketing Board and Anr; (2009) 15 Supreme Court Cases 327, which was a case of termination of the services of a daily wager who had worked from 01.09.1995 to 18.07.1996 and in which judgment the Supreme Court took note of its various judgments rendered after 2000 and held as follows:-

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. and Another Vs. Udai Narain Pandey, , 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 6N 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 functions of an Industrial Court shall lose much of their significance.

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 Corporation Vs. M.C. Joshi, 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 6N 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 6N 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 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. and Others Vs. Lalit Kumar Verma, , this Court substituted the award of reinstatement by compensation.

11. In yet another decision in the case of Madhya Pradesh Administration Vs. Tribhuban, , 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 u/s 11A of the Industrial Disputes Act. It merely directed the amount of compensation to which the respondent was entitled had the provisions of Section 25F 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.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefore 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.....

13. In Ghaziabad Development Authority and Another Vs. Ashok Kumar and Another, , 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..... 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.

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.

14. In Mahboob Deepak Vs. Nagar Panchayat Gajraula and Another, , 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 6N 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.

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.....

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..... This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

(emphasis laid)

20. In "P.V.K. Distillery vs. Mahendra Ram"; (2009) 5 Supreme Court Cases 705 it was held as under:-

11. In the case of P.G.I. of M.E. and Research, Chandigarh Vs. Raj Kumar, , this Court has held that the payment of back wages having a discretionary element involved in it, has to be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety.

12. In the case of Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, , this Court has stated that Section 11A as amended in 1971, is couched in wide and comprehensive terms. It vests a wide discretion in the Tribunal in the matter of awarding proper punishment and also in the matter of the terms and conditions on which reinstatement of the workman should be ordered. It necessarily follows, that, the Tribunal is duty-bound to consider whether in the circumstances of the case, back wages have to be awarded and if so, to what extent..... we are of the view that in the context of the facts of this particular case including the vicissitudes of long-drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement.

13. In U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, , it is observed that the person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance. Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the court realizing that an industry may not be compelled to pay

to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.

14. In the case of Haryana Urban Development Authority Vs. Om Pal, , it is stated that, it is now also well-settled that despite a wide discretionary power conferred upon the Industrial Courts u/s 11A of the 1947 Act, the relief of reinstatement with full back- wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. It will depend upon several factors; one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any.

15. In deciding the question, as to whether the employee should be recompensed with full back wages and other benefits until the date of reinstatement, the tribunals and the courts have to be realistic albeit the ordinary rule of full back wages on reinstatement.....

18. In Allahabad Jal Sansthan v. Daya Shankar Rai : (2005) IILLJ847SC, this Court has observed: A law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration.

19. In Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan: (2005) II LLJ SC, the quantum of back wages was confined to 50%,....."

20..... The point that his services were terminated in the year 1985 and since then the case is pending for the last two decades in different courts also has no relevance, since he had approached the court within a reasonable time. It is not his fault that the case is still pending before the court. These grounds could not be held against him for denying the relief of back wages otherwise he would suffer double jeopardy of losing back wages and delay in getting the reinstatement for no fault of his. Therefore, it would have been more enlightening, had the High Court reasoned out as to why the appellant should reinstate the respondent with full employment benefits and should pay full back wages to him for nothing in return from him in terms of work, production etc.

21. Giving a realistic approach to the matter and in spite of all these circumstances we are restricting ourselves to the question of 50% of the total back wages. Although services of the respondent have been terminated unjustifiably and illegally, it itself does not create a right of reinstatement with full employment benefits and full back wages. The notice was issued with a view that the appellant's factory has been taken over by a new management

altogether and by asking the appellant to pay full back wages for the long interregnum would be unfair and unjust. it would be unreasonable to put a huge burden on the appellant by directing them to reinstate respondent with continuity of service and with full back wages.....

(underlining is mine)

21. In "Anoop Sharma vs. Executive Engineer, Public Health Division no. 1, Panipat (Haryana)", (2010) 5 Supreme Court Cases 497 the Apex Court held as follows:-

17. This Court has repeatedly held that Sections 25F(a) and (b) of the Act are mandatory and non-compliance therewith renders the retrenchment of an employee nullity.....

(emphasis supplied)

22. From these judgments of the Supreme Court it is quite clear that till date it has not been held so far in any of the decisions by the Supreme Court that in no case the relief of re-instatement and back wages should be granted to the workmen who succeed in getting a declaration from the industrial adjudicators that the termination of their services by their employers was illegal and unjustified. The crux of these decisions is that these reliefs should not be granted by the Courts mechanically after holding the termination of services of the concerned workmen to be illegal and by ignoring special and peculiar facts and circumstances in each case which justify refusal of these reliefs and grant of lump sum monetary compensation in lieu thereof. It is however significant to notice, and as was pointed out even by the learned counsel for the respondent also, that as far as daily wagers are concerned the Supreme Court is now taking the view that they should not be re-instated and instead monetary compensation should be awarded to them.

23. In the present case the petitioner-workman was a daily wager. He had not been appointed in accordance with the Rules of Recruitment. The Tribunal has while denying him the reliefs of reinstatement and back wages had relied upon those decisions of the Supreme Court wherein the relief of re-instatement and back wages was denied to the daily wagers and so its decision cannot be said to be suffering from any infirmity as far as the denial of relief of reinstatement and back wages is concerned. However, considering the fact that the petitioner had worked for over three years with the respondent the compensation amount of Rs.25,000/- awarded to him appears to be not reasonable compensation. As noticed already, the Supreme Court in Narendra Kumar's case (supra) had taken note of inflation and increase in cost of living etc. while enhancing the amount of compensation payable to the workman involved in that case. Thus, the amount of compensation in the present case needs to be enhanced. This writ petition, therefore, succeeds partly and while maintaining the award of the Tribunal to the extent the relief of re-instatement and back wages has been denied to the petitioner-workman the amount of compensation payable to him is enhanced

from Rs. 25,000/- to Rs. 75,000