

(2019) 01 OHC CK 0034

In the Orissa High Court

Case No : Original jurisdiction Case No. 3398 Of 2002

General Secretary, North Orissa Workers' Union, Rourkela

APPELLANT

Vs

Superintendent, Prospecting Division And Another

RESPONDENT

Date of Decision : 29-01-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo)(bb), 10(d)(1), 10(d)(2A), 25B, 25F,
25B(2)(a)(ii), 36(1)(c)
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 160 FLR 947 : (2019) Lab IC 1342

Hon'ble Judges : Sanju Panda. J;S.K. Sahoo, J

Bench : Division Bench

Advocate : S.C. Samantaray, Sarada Prasanna Sarangi, D.K. Das, P.K. Dash

Final Decision : Disposed Of

Judgement

S.K. Sahoo, J

1. The petitioner General Secretary, North Orissa Workers' Union representing forty five workmen in this writ application has challenged the award

dated 19.12.2000 passed by the learned Presiding Officer, Industrial Tribunal, Rourkela in Industrial Dispute Case No. 51 of 1997 (C) in holding the

reference made by the Government of India in the Ministry of Labour in exercise of power under clause (d) of sub-section (1) and sub-section (2A)

of section 10 of the Industrial Disputes Act, 1947 (hereafter "1947 Act") as not maintainable and the workmen are not entitled to the relief.

2. The reference made vide no. L-26011/7/94-IR(Misc.) dated 25.11.94 was as follows:

Whether the action of the Management of Geological Services, Tata Iron & Steel Co. Ltd., At/P.O.:- Joda, in terminating the services of

Sri. Sukulal Sandil and 44 others (list enclosed) w.e.f. 1.4.93 is justified? If not, to what relief the workmen are entitled to?â??

3. In the proceeding before the Industrial Tribunal, the petitioner was the 2nd party and the opp. party no. 1 was the 1st party.

4. It is the case of the 2nd party workmen that they joined their duties in different months and years as temporary workers under the 1st party

Management with some artificial break in service for few days and lastly, they were denied work w.e.f. 01.04.1993 without any written order. On

enquiry by the 2nd party workmen as to why they were not given work, the Officer in-charge of the site informed them that their files had been sent to

the headquarter at Jamshedpur and on receipt of the order from the headquarter, they would be taken back in service permanently under the 1st party

Management and they were advised to wait. Since after waiting for some time, the workmen did not receive any order from the 1st party

Management, they approached the Union for taking up their matter with the authority for their reinstatement in service with full back wages and

accordingly, the Union raised the dispute before the authority which was referred to the Tribunal by the Central Government for adjudication. It is the

specific case of the 2nd party workmen that they had completed about twenty years of service under the 1st party Management and that the action of

the 1st party Management in terminating their services was illegal, arbitrary, violation of natural justice and also amounted to unfair labour practice and

therefore, the 2nd party workmen were entitled to be reinstated with full back wages.

5. The 1st party Management submitted its written statement stating therein that the petitioner Union did not have any locus standi to represent the

workmen. The outdoor section of Geological Services Department of the 1st party Management was undertaking the assignment related to

prospecting/drilling project job only wherever and whenever it was necessary on the requisition of the mines Management at any

location/unit/establishment of Raw Materials Division of M/s. Tata Iron & Steel Company Ltd. The very nature of work was temporary and

intermittent and not perennial. The opening and closure of any project assignment was carried out for a temporary period in any mining establishment

on the need and requirement of the Steel Company. The local person were engaged on casual/temporary basis for a specific period only and

whenever the project work was completed/suspended, the labourers so engaged on temporary/contractual service automatically ceased to be in employment. The action of the Management was in conformity with the terms of contract and conditions of services proposed by the proposer (employer) and accepted by the promisee (workmen). The Management was offering temporary contractual engagement, depending upon its requirement. The 1st party Management relied upon memorandum of agreement dated 28.07.1980 between the Tata Iron & Steel Company Ltd. and the Tata Workers' Union, representing the outdoor staff of Geological Services Department of the Company. The workmen according to the Management fell under section 2(oo)(bb) of the 1947 Act. The cessation of contractual temporary employment of such person as per terms of contract of services did not amount to retrenchment. The relevant clauses of temporary employment issued to the workmen were relied upon to show that such employment was for a fixed period in the project job. There was no violation of the provisions of 1947 Act by the 1st party Management or principle of natural justice. Forty five workmen were engaged on temporary contractual basis from August 1992 to March 1993 and they were terminated w.e.f. 01.04.1993 as the project work came to end on 31.03.1993. It is stated that none of the workmen was in continuous service for even one year and none had completed two hundred and forty days in any calendar year and they are not entitled for any relief whatsoever and their claim petition should be rejected.

6. The learned Tribunal framed the following issues:â?

- i. Whether the reference is maintainable?
- ii. Whether the action of the Management in terminating the services of Sri. Sukulal Sandil and 44 others w.e.f. 01.04.1993 is justified?
- iii. If not, to what relief the workmen are entitled?

7. On behalf of the workmen, six witnesses were examined and twenty five documents were proved as Exts.1 to 25. On behalf of the Management, two witnesses were examined.

8. The learned Tribunal after assessing the oral as well as documentary evidence came to hold that the workmen were given work in projects which were taken up for fixed period to find out minerals for mining purpose and with closure of the project work, their work also ceased and when another

project work was taken up in that area, another appointment order was being issued and that it was not possible that different project works were taken up one after another without any gap of period between each project and therefore, the workmen must be sitting idle or doing work privately somewhere else during each break periods and it cannot be said that the work was continuous in nature. It was further held that the nature of work of the workmen was not continuous one and they were not given artificial breaks and their work was contractual in nature and therefore, the workmen are not entitled to be benefits under section 25F of 1947 Act. It was further held that there is no evidence to hold that the 2nd party workmen were members of the Union before 01.04.1993 and therefore, the Union has no locus standi to represent the workmen in the case and accordingly, the reference was held to be not maintainable.

9. Mr. S.C. Samantaray, learned counsel appearing for the petitioner contended that the findings arrived at by the learned Industrial Tribunal is perverse and it has failed to appreciate the material on record in its proper perspective. The workmen were continuously working in different projects at different places and appointment orders proved on behalf of the workmen indicated that artificial breaks were given to deprive the benefit under section 25F of 1947 Act. It was argued that the Tribunal erred in law in interpreting section 36(1)(c) of 1947 Act and therefore, the award passed should be quashed and the workmen be either reinstated with back wages or given compensation. He relied upon the decisions of the Hon'ble Supreme Court in case of Director, Fisheries Terminal Division v. Bhikubhai Meghajibhai Chavda reported in (2010) 1 SCC 47 : A.I.R. 2010 S.C. 1236, B.S.N.L. v. Bhurumal reported in (2014) 7 SCC 177 : A.I.R. 2014 S.C. 1188, Senior Superintendent v. Santosh Kumar Seal reported in (2010) 6 SCC 773 : A.I.R. 2010 S.C. 2140 and of this Court in M. Rinal Kanti Hazara v. Assistant Divisional Manager reported in 2017 (1)

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10. Per contra, Mr. Sarada Prasanna Sarangi, learned counsel appearing for the 2nd party Management on the other hand supported the impugned award and contended that the learned Tribunal assessed the evidence properly and there is no perversity in the finding. He further submitted that in view of section 2(o)(bb) of 1947 Act, retrenchment cannot be said to have been

done in the termination of service of workmen as a result of non-renewal of contract of employment between the employer and the workmen. The workmen in the present case were offered with appointments for a definite period with the condition that it might be terminated earlier due to suspension/completion of work or for any other reason on seventy two hours advanced written intimation by the officer or officer in-charge. The nature of appointment was in fixed tenure which the workmen knew well and after accepting the terms and conditions, they resumed their duties on each and every offer of appointment. According to Mr. Sarangi, section 25F of 1947 Act would not be applicable in view of the specific condition mentioned in the offer of appointment. He emphasized that since the scope of interference in the findings of fact arrived at by the Tribunal by way of appreciation of evidence is limited and no such grave error has been committed while passing the impugned award, the writ petition should be dismissed. Reliance was placed upon the decisions of the Hon'ble Supreme Court in case of Syed Yakoob v. K.S. Radhakrishnan reported in 1964 S.C. 477, Chandavarkar Sita Ratna Rao v. Ashalata S. Guram reported in (1986) 4 SCC 447 and Pepsico India Holding Pvt. Ltd. v. Krishna Kant reported in (2015) 4 SCC 270.

11. Adverting to the contentions raised at the bar regarding the scope of interference of this Court in exercise of powers under Articles 226 and 227 of the Constitution of India with an award passed by the Industrial Tribunal, a five-Judge Constitution Bench of the Hon'ble Supreme Court in case of Syed Yakoob (supra) held as follows:â?

â??7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or tribunals: these are cases where orders are passed by inferior Courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of

natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiencies of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may

also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened.â??

12. In case of Chandavarkar Sita Ratna Rao (supra), it is held as follows:

â??21. It is true that in exercise of jurisdiction under Article 227 of the Constitution, the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings were perverse and not based on any material evidence or it resulted in manifest of injustice.â??

13. In case of Pepsico India Holding Pvt. Ltd .(supra), it is held that the High Court in the guise of exercising its jurisdiction normally should not interfere under Article 227 of the Constitution and convert itself into a Court of appeal.

14. In case of B.S.N.L. (supra), it is held that the findings of fact by the Central Government Industrial Disputes-cum-Labour Court (CGIT) are not be interfered with by the High Court under Article 226 of the Constitution. Interference is permissible only in cases where the findings are totally

perverse or based on no evidence. Insufficiency of evidence cannot be a ground to interdict the findings as it is not the function of the High Court to reappreciate the evidence.

15. In case of *Mrinal Kanti Hazara* (supra), the same principle relating to scope of interference in the award of Industrial Tribunal has been reiterated.

16. Therefore, this Court, in exercise of its power under Articles 226 and 227 of the Constitution of India should not interfere with the findings of fact

recorded by the Tribunal unless there is an apparent error on the face of the award and the findings given in the award are perverse or unreasonable

either based on no evidence or based on illegal/unacceptable evidence or against the weight of evidence or outrageously defies logic so as to suffer

from irrationality. If the Tribunal erroneously refused to admit admissible evidence, or had erroneously admitted inadmissible evidence which had

influenced a finding, the same can be interfered by a writ of certiorari. Adequacy of evidence cannot be looked into in the writ jurisdiction but

consideration of extraneous materials and non-consideration of relevant materials can certainly be taken into account. Findings of fact of the Tribunal

should not be disturbed on the ground that a different view might possibly be taken on the said facts. Inadequacy of evidence or the possibility of

reading the evidence in a different manner, would not amount to perversity.

17. Keeping in view the above principles, if the nature of dispute is analysed, we find that the crux of the matter is the applicability of section 25F of

1947 Act which deals with conditions precedent to retrenchment of workmen. The qualification for relief under section 25F is that one should be a

workman employed in an industry and has been in continuous service for not less than one year under an employer. What is “continuous

service” has been defined and explained in section 25B of the 1947 Act. The provision which is of relevance in the present case is section 25B(2)

(a)(ii) which provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a

period of one year if he, during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has

actually worked under the employer for not less than two hundred and forty days. The expression which we are required to construe is “actually

worked under the employerâ???. This expression, must necessarily comprehend all those days during which the workman was in the employment of

the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders

etc. The construction of the expression â??actually worked under the employerâ?? as given under the explanation to section 25B of 1947 Act is only

clarificatory as all explanations are, and cannot be used to limit the expanse of the main provision. The welfare legislation introduced in the statute

book is for the purposes of eradication of social malady and therefore, it is the duty incumbent on the Court to offer a much broader interpretation.

18. Adverting to the factual aspect, it is the case of the petitioner that the workmen were continuously working in different projects at different places.

Appointment orders were proved on behalf of the workmen to indicate that artificial breaks were given. There is no dispute that the burden of proof is

on the petitioner to show that the workmen had worked for two hundred and forty days in preceding twelve months prior to their alleged

retrenchment. The burden can be discharged by adducing cogent evidence, both oral and documentary. If the workman discharges his burden that he

had worked for two hundred and forty days in preceding twelve months period prior to his termination without following section 25F of 1947 Act, the

termination would be illegal. In case of R.M. Yellatty v. Assistant Executive Engineer reported in (2006) 1 SCC 106, it is held that in case of

termination of service of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt of proof of payment.

In most cases, the workman can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of

appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on

the facts of each case. In case of Director, Fisheries Terminal Division (supra), it is held the workman would have difficulty in having access to all

the official documents, muster rolls etc. in connection with his service. When the workman has come forward and deposed, the burden of proof shifts

to the employer to prove that he did not complete two hundred and forty days of service in the requisite period to constitute continuous service.

19. The learned counsel appearing for the petitioner while arguing that material evidence adduced on behalf of the workmen has been overlooked by

the Tribunal resulting perversity in the finding, placed the relevant evidence. W.W.2 Bhagaban Majhi stated that he joined in TATA Company as a

worker in 1973 March and all the forty five workers were working in TATA Company and they all worked till 31.03.1993 continuously with a break

up of six to seven days each time after working for three to four months and on 01.04.1993 they were stopped from doing their work without any

termination notice and no compensation was paid to any of them. He proved his own bonus slip vide Ext.4 as well as the bonus slips of other workmen

as Exts.5 to 18. In the cross-examination, he has stated that they were all local persons and given employment as local persons.

20. W.W.3 Sukalal Saudil stated that all the workers joined the service in the year March 1973 and they worked till 1980. After working for three

months, they were disengaged from service for four to six days and again they were given appointment for three months and again there was

interruption and in that way, they continued till 1980 and in 1981, they were given regular appointment and they continued to work till 31.03.1985 and

after 31st, they were disengaged from service for one month and again given appointment in May 1985 and worked till December 1985 and then they

were disengaged from service for a long period till 19.07.1992 and given appointment from 20.07.1992 and again from 01.04.1993, they were not

allowed to work. They were not given any termination order or paid any compensation and they were being supplied with bonus payment slips each

year. In his cross-examination, the Management proved the appointment orders of some workmen. He stated that they were working in prospecting

project and doing drilling job and that the workmen received the appointment orders several times having terms and conditions.

21. W.W.4 Padma Kishor Patra stated that he and the other 2nd party workmen joined in work in different years between 1972 to 1975 and they

worked till 31.03.1991 and from 01.04.1991, they were denied work and again they were allowed to work from 20.07.1992 and continued till

31.03.1993 and from 01.04.1993 they were denied work. He proved the list of 2nd party workmen with their designation, date of appointment and date

of termination marked as Ext.25 and the data was supplied to them by the conciliation officer. He specifically stated that they were not issued with

any termination order nor paid any compensation and whenever they were joining work, they were being issued with appointment orders. In the cross-

examination, he has stated that he was local person of Joda and he was working in prospecting division.

22. W.W.5 Amar Kumar Mohanty has also stated like other workmen that since 01.04.1993 they were not given any further appointment and no

termination notice was served on any of them and no termination benefit was given to them and every year they have worked for more than two

hundred and forty days. In the cross-examination, he stated that he joined in 1973 and denied the suggestion of the Management that he never worked

as temporary from 1981 to 1990.

23. W.W.6 Rasananda Patra stated that he joined as a casual mazdoor in 1973 under the Management in prospecting division at Malda and they

became temporary worker in 1981 and they were getting bonus and they were disengaged in 1986 for two months and again given work as temporary

worker and again after one year, they were disengaged and again in July 1992, they were given work and they worked continuously till 31.03.1993 and

from 01.04.1993, they were not given any work. He further stated that no termination notice was given and no compensation was paid. In the cross-

examination, he stated that he worked as a local man and after completing two hundred and forty days of work as a casual mazdoor, they were made

temporary. He denied the suggestion of the Management that he had not worked in project division before 1982.

24. It appears from the impugned award that the learned Tribunal has not discussed the evidence of the workmen carefully as to whether during a

period of twelve calendar months preceding the date with reference to which the calculation is to be made, they had actually worked under the

employer for not less than two hundred and forty days which shall be deemed to be in continuous service for a period of one year as envisaged under

section 25F read with section 25B(2)(a)(ii) of 1947 Act. The bonus slips which were proved by the workmen have not been challenged by the

Management. The materials on record indicate different project works of the employer were continuing during the relevant period and the workmen

were engaged in such projects but artificial breaks were given in their appointment for some period. The Management witness no. 1 has stated that all

the workmen might have worked for two hundred and forty days in a year but not continuously and they had worked with intermittent breaks. The

observation made by the learned Tribunal that it was not possible that different project work were taken up one after another without any gap of period between each project and that after closure of one project work, the Management must be taking some days or months to decide to take up the next project and that the workmen must be sitting idle or doing work privately elsewhere during break periods, are based on assumption without any clinching evidence in that respect. There are enough material on record that when the workmen were finally disengaged by the Management from their work since 01.04.1993, they had actually worked under the employer for not less than two hundred and forty days during a period of twelve calendar months preceding the date with reference to which the calculation is to be made. Law is well settled that by creating artificial breaks in the employment, protection under section 25F of 1947 Act cannot be frustrated. Being conscious of scope of interference in a writ of certiorari, we find that the Tribunal has ignored the relevancy of the admissible evidence adduced on behalf the workmen which has influenced his finding in the award. It appears that the workmen had worked for more than two hundred and forty days continuously during a period of twelve calendar months preceding their disengagement/termination on 01.04.1993. At the time of their disengagement, even when they had continuous service for such period, they were not given any notice or pay in lieu of notice as well as retrenchment compensation. Thus, mandatory precondition of retrenchment in paying the aforesaid dues in accordance with section 25F of the 1947 Act was not complied with. That is sufficient to render the termination as illegal. Therefore, we are of the view that the observation of the learned Tribunal that the work was contractual in nature and it was not continuous and therefore, the benefits under section 25F is not applicable, is perverse and contrary to the evidence on record.

25. Adverting to the observation made by the learned Tribunal that the petitioner Union has no locus standi to represent the workmen in the case, it is seen that W.W.1 Bhabani Sankar Pati who was the General Secretary of North Orissa Workers' Union has stated that as per clause 3 of the byelaw of the Union, the General Secretary is authorized to raise the dispute and also to represent any workman who is a member of the Union and clause 4 of the bye-law authorizes the office bearers to represent a worker who is not a

member of the Union if approached by him. He proved Exts.1 to 3 which lend support to his oral evidence. W.W.3 has stated that they became members of North Orissa Workers' Union before termination of their service. W.W.5 stated that they authorized North Orissa Workers' Union to fight their case and they were the members of the said Union since 1991. W.W.6 stated that they became the members of North Orissa Workers' Union in 1992. Section 36(1)(c) of 1947 Act states, inter alia, that a workman who is a party to a dispute shall be entitled to be represented in any proceeding under the Act by any member of the executive or other office bearer of any trade union connected with the industry in which the worker is employed even if the worker is not a member of any trade union. In view of the evidence of P.W.1, the General Secretary of North Orissa Workers' Union and the documents exhibited by the said witness, there cannot be any dispute that North Orissa Workers' Union is connected with the industry of opposite party no. 1. Even if some of the workers have given prevaricating statements relating to their year of joining of North Orissa Workers' Union but that by itself would not debar such Union to represent the workmen in view of the provision under section 36(1)(c) of 1947 Act. Therefore, the observation made by the Tribunal regarding the locus standi of the petitioner Union to represent the workmen is not sustainable in the eye of law. We are of the view that there is no illegality on the part of the petitioner Union in representing the workmen.

26. In view of the foregoing discussions, after holding the termination of the workmen to be illegal in view of non-compliance of section 25F of 1947 Act, now it is to be seen what relief can be granted to the workmen in the facts and circumstances of the case. The workmen were disengaged in a distant past i.e. on 01.04.1993. The termination is held to be illegal only on a technical ground of not adhering to the provisions of section 25F of the Act. It is stated at the bar that most of workmen have crossed the age of sixty years and some of them are dead. On these facts, it would be difficult to give the relief of reinstatement to the workmen. In case of Senior Superintendent (*supra*), it is held by the Hon'ble Supreme Court that in last few years, it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic, even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure

and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate:

In the case of BSNL (supra), it is held as follows:â?

â??20. The learned Counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In the

case of BSNL v. Man Singh, (2012) 1 SCC 558, this Court has held that when the termination is set aside because of violation of Section 25-F of the

Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In the case of Incharge Officer v. Shankar

Shetty, (2010) 9 SCC 126, it was held that those cases where the workman had worked on daily wage basis, and worked merely for a period of 240

days or 2-3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement. In

this judgment of Shankar Shetty (supra), this trend was reiterated by referring to various judgments, as is clear from the following discussion.

â??Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of

Section 25-F of the Industrial Disputes Act, 1947 (for short â??the ID Actâ?)? The course of the decisions of this Court in recent years has been

uniform on the above question.

In Jagbir Singh v. Haryana State Agriculture Mktd. Board, (2009) 15 SCC 327, delivering the judgment of this Court, one of us (R.M. Lodha, J.)

noticed some of the recent decisions of this Court, namely, U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, (2006) 1 SCC

479, Uttaranchal Forest Department Corpn. v. M.C. Joshi, (2007) 9 SCC 353, State of M.P. v. Lalit Kumar Verma, (2007) 1 SCC 575, M.P.

Admn. v. Tribhuban, (2007) 9 SCC 748, Sita Ram v. Moti Lal Nehru Farmers Training Institute, (2008) 5 SCC 75, Jaipur Development

Authority v. Ramsahai, (2006) 11 SCC 684, GDA v. Ashok Kumar, (2008) 4 SCC 261 and Mahboob Deepak v. Nagar Panchayat,

Gajraula, (2008) 1 SCC 575 and stated as follows: (Jagbir Singh case, SCC pp. 330 & 335 paras 7 & 14)

â??It is true that the earlier view of this Court articulated in many decision 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 a 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 of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.â??

Jagbir Singh has been applied very recently in *Telegraph Deptt. v. Santosh Kumar Seal*, (2010) 6 SCC 773, wherein this Court stated: (SCC p. 777, para 11)

â??In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justiceâ??.

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23. 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 malafide and/or by way of victimization, 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 procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view 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.

24. 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 regularization (See: State of

Karnataka v. Uma Devi, (2006) 4 SCC 1). Thus when he cannot claim regularization 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 purposeâ??.

27. Applying the aforesaid principles, taking into account the period of work of the workmen under the employer, the nature of work assigned to the

workmen, the amount of wages paid to them during the relevant period, the age of the workmen at present, the purpose behind the enactment of a

welfare legislation like 1947 Act, we are of the view that ends of justice would be best served by granting compensation of Rs. 1,00,000/- (rupees one

lakh) to each of the workmen which is to be paid by the opposite party no. 1 within a period of eight weeks from today, failing which the workmen

would be entitled to additional interest @ 12% per annum on such amount from such date till the date of actual payment. In case any of the workmen

is found dead, the legal heirs shall be given such monetary compensation in equal share.

28. Accordingly, the writ petition is disposed of. No costs.