

**(2012) 11 DEL CK 0248**

**In the Delhi High Court**

**Case No : Writ Petition (C) 1672 of 1998**

Krishan Chander Gopal Singh and Another

APPELLANT

Vs

P.O., Labour Court No. 1 Delhi and Another

RESPONDENT

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**Date of Decision : 26-11-2012**

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 25F

**Citation : (2012) 11 DEL CK 0248**

**Hon'ble Judges : Mukta Gupta, J**

**Bench : Single Bench**

**Advocate : Vikram Saini, for the Appellant; Kamal Mehta, for R-2, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Mukta Gupta, J.—By the present petition the Petitioners impugned the award dated 7th January, 1998 whereby despite their termination being held to be illegal and unjustified, the learned Trial Court did not direct reinstatement with back wages and only held that the Petitioners were entitled to a compensation from the Respondent considering their services, wages and their intention not to join the services offered by the management vide Ex. WW1/X-1. Learned counsel for the Petitioner contends that having held that the termination was illegal and unjustified the only relief the learned Trial Court could have granted to the Petitioners was of reinstatement with back wages. Reliance is placed on The Sindhu Resettlement Corporation Ltd. Vs. The Industrial Tribunal of Gujarat and Others, ; Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, ; Mohan Lal Vs. Management of Bharat Electronics Ltd., and Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, . It is also stated in the petition which has been urged before this Court that four persons junior to the Petitioners were re-employed and no such employment were given to the Petitioners.

2. Learned counsel for the Respondent contends that admittedly even as per the

Petitioners they were daily wagers and has worked for less than 2 years with the Respondent. Thus, the only question was of payment of retrenchment compensation u/s 25F of the Industrial Disputes Act (in short the ID Act). Thus the Petitioners were entitled to one month's notice or one month's pay in lieu of notice and 15 days average pay for the two years i.e. total of wages for two months whereas they have been awarded compensation which is highly escalated. Further the re-appointment of persons junior to the Petitioners has been denied in the counter affidavit. The Petitioners were admittedly daily wagers and in view of the decision in Secretary, State of Karnataka and Others Vs. Umadevi and Others, no regularization could have been ordered and what could not have been done directly could not have been achieved indirectly by way of granting the Petitioners reinstatement. It is contended that there is no illegality in the impugned award and hence no interference is required by this Court.

3. I have heard learned counsel for the parties. Briefly the facts leading to the filing of the present petition are that the Petitioner No. 1 herein i.e. Krishan Chander Gopal Singh was appointed as record keeper-cum-helper peon and the Petitioner No. 2 Dinesh Singh was appointed as record attendant on 5th November, 1983. By an office order dated 23rd July, 1985 the services of all daily wagers/contract employees were terminated with effect from 31st July, 1985. The Petitioners raised a dispute on which the following terms of reference were sent for adjudication:

whether the termination of services of Shri Krishan Chander Gopal Singh, Ram Naresh and Dinesh Singh is illegal and/or unjustified and if so, to what relief are they entitled and what directions are necessary in this respect?

4. The claim of the Petitioners was that they were appointed as daily-wagers from 5th November, 1983 and there was nothing adverse against them during this period. The wages were paid as per their attendance and they were also subscribers towards the contributory provident fund. The Petitioners had completed 1 year and 269 days of continuous service without any break. Thus, the termination was illegal, unjustified, arbitrary and mala fide.

5. The case of the management before the Trial Court was that the Central Government was the appropriate Government for the purposes of making the reference. Since the Petitioners were not sponsored by the Employment Exchange and were employed as daily-wagers for the specific period in view of the holding of the Festival of India by the management, their services were terminated as they became surplus. It is further stated that no post was vacant against which the claimants could be employed. During the pendency of the proceedings the Respondent was proceeded ex-parte vide order dated 22nd July, 1994 and failed to adduce any evidence. Thereafter, the Petitioners also failed to appear on 24th October, 1977 and hence the reference was reserved for award.

6. The un rebutted and unchallenged evidence of the Petitioners on record was

that they were appointed on daily wages from 5th November, 1983 and their services were terminated by a letter dated 23rd July, 1985 with effect from 31st July, 1985. The learned Tribunal held that the said termination amounted to retrenchment as the same was in non-compliance of Section 25F of the ID Act, 1947. Since there is no challenge to the impugned award by the Respondent, the said finding has become final. Thus, the only issue before this Court is whether on the termination being held illegal, the Petitioners are entitled to reinstatement with back wages and whether the learned Trial Court committed any error in granting compensation in lieu of reinstatement with back wages.

7. In *Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another*, their Lordships held that there is no doubt that the earlier view of Supreme 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 the recent past there has been a shift in the legal position and in a long line of cases the Supreme 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. An order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not be automatically passed. Compensation instead of reinstatement would meet the ends of justice. The Supreme Court clearly laid down the distinction between a daily wager who does not hold the post and a permanent employee.

8. In the present case, admittedly the Petitioners were not holding any permanent post. They were daily wagers and had not even completed two years of service. Further there is no post available for regular employment with the Respondent and the Petitioners were employed for holding the programmes of festivals. It may be noted that during the pendency of the proceedings, the Respondent even offered appointment to the Petitioners on 4th April, 1988 with Hal Marking Council, an autonomous independent body. The terms of appointment were as per the routine terms by any Government authority, however the Petitioners failed to give their acceptance. In view thereof and in view of the Petitioners being daily wagers, length of service and the last wages earned, the learned Trial Court in respect of Dinesh Singh directed payment of full back wages to the workman from the date of termination i.e. 1st August, 1985 till 4th April, 1988 when the offer for an alternate appointment was made to them. As regards Krishan Chand Gopal Singh it was directed that the Petitioner was entitled to compensation of Rs. 40,000/- considering his services, wages and intention not to join the services. I find no infirmity in the impugned award. The petition is dismissed.