
(2014) 07 P&H CK 0397
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 22369 of 2011

Natha Singh

APPELLANT

Vs

Presiding Officer

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 2(oo), 2(oo)(bb), 2(ra), 2(s)
Punjab Municipal Act, 1911 — Section 39

Citation : (2014) LabIC 3463 : (2014) 4 SCT 51

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : R.S. Ahluwalia, Advocate for the Appellant; Anil Sharma, Addl. A.G.,
Urmil Gupta and K.V. Aggarwal, Advocate for the Respondent

Judgement

Gurmeet Singh Sandhawalia, J.—This order shall dispose of 8 writ petitions, bearing C.W.P. Nos. 22369 of 2011, 13307, 13346, 13373, 16595, 16677, 16756 & 16788 of 2012, involving common questions of law and facts and the award dated 25.08.2011 (Annexure P6) is also common. However, to dictate orders, facts have been taken from CWP No. 22369 of 2011 titled Natha Singh v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurdaspur & others. Vide the award dated 25.08.2011, the Labour Court, Gurdaspur answered the references against the workmen and in favour of the respondents under the provisions of the Industrial Disputes Act, 1947 (for short, the "Act"). The plea of the Municipal Council that the workmen were covered under Section 2(oo)(bb) and it was a contractual appointment, was accepted and they were held not entitled to the relief of reinstatement.

2. A perusal of the record would go on to show that the workman pleaded that he was employed on 01.09.1993 as a Keyman (controlling the flow of water) which was regular and perennial nature of and he was drawing salary of Rs. 2500/- per month and the remained in employment till 31.03.2002. The respondent-Municipal Council, Pathankot had resorted to unfair labour practice

and engaged him on contract basis. There was no break in his service and in spite of a policy of regularisation dated 23.01.2001, which provided that persons having 3 years of service were entitled to be regularised, his services were terminated without issuing any notice, show-cause notice, enquiry or without making the payment of retrenchment compensation and this act of respondent No. 3 amounted to unfair labour practice and in violation of the terms of Section 25-F of the Act and that new appointments were also made through backdoor entry and juniors were also working and accordingly, violation of Sections 25-G & 25-H of the Act were also alleged. It was further submitted that the workman was unemployed.

3. The claim was resisted by taking the plea that the case of the workman was covered by Clause 2(oo)(bb) of the Act and that he was a contractual employee for a specific job and specific period and the wages were fixed by the Local Government, Punjab. No proper selection of the workman had been made and there existed no such post of permanent vacancy and no interview was held nor any selection was made. The workman was engaged on contractual basis on stop gap arrangement due to exigency of work. The policy dated 23.01.2001 was not applicable upon the concerned workman whose contract expired on 31.03.2002. Reliance was placed upon letter dated 24.08.2001 by the Deputy Director, whereby it had been clarified that the employees engaged on contractual basis cannot be considered for regularisation. It was pleaded that there was no junior retained nor any person appointed in his place.

4. In the replication filed by the workman, the plea taken was that the act of the respondents was contrary to spirit of law of industrial jurisprudence to cheat the law by camouflage or fraud and amounted to unfair labour practice and there was victimization and the shelter of Section 2(oo)(bb) could not be taken. It was submitted that the job was perennial in nature and did not cease to exist and because of non-compliance of selection process due to the fault of respondent No. 2, the petitioner's rights had been affected and the workman could continue working in future and therefore, there was violation of Section 25-F of the Act.

5. In the evidence submitted by the workman by way of affidavit, he took the plea that he was in continuous employment from 01.09.1993 to 31.03.2002 and the job continued and the workman was appointed as per the rules after taking sanction and by virtue of resolution passed by the Municipal Council, Pathankot. The designation of the Keyman was not covered under Section 39 of the Punjab Municipal Act, 1911 as it was not in the cadre provided in Appendix "A" to "D". No permission was required from the Government. Reliance was placed upon CWP No. 9146 of 2001 titled M.C. Dinanagar v. P.O., Labour Court & others. The agreements produced by the Management, Exhibits R2 to R5 were fabricated and fraudulent as there was unfair labour practice which was not expected from a public body like the respondents as all the agreements were non-existent on the date of execution and were purchased much afterwards and got signed on the day when salary was being paid after interval of 5 to 6 months and they were

signed undated along with the agreements which were shown and executed much prior to the purchase of the stamp paper. The respondents were acting as war slave, lords who were treating the workmen as slaves and it was unfair labour practice.

6. The Labour Court took into consideration the statement of the workman and MW 1, Desh Bandhu, Sectional Officer (M) Municipal Council and came to the conclusion that the post of the Keyman was created by the Director, Local Government, Punjab and the regular appointment was not made by any competent authority. To regulate the work, applications (Exhibit R2) had been taken by the Executive Officer and persons were appointed against these posts as a time-gap arrangement and for a specific period. Agreements had been executed inter se whereby the petitioner-workman was to be paid Rs. 1200/- per month. The said agreements were signed by the Executive Officer, Municipal Officer and Sectional Officer. Accordingly, it was held that these persons were not appointed or selected by the Selection Committee and the posts were only temporarily created and the Government, vide letter dated 24.08.2001 (Exhibit R8), decided that the services of the contractual employees were not to be extended. It was noticed that the workman had never alleged any complaint to any authority and the agreements were signed by the workman. The work, now, had been given to the contractors and the judgment in Municipal Council, Dinanagar (supra) was distinguished as in that case, the workman were regularly employed. Reliance was placed upon Regional Manager, SBI Vs. Mahatma Mishra, to grant the management the benefit of Section 2(oo)(bb). Reliance was also placed upon judgment of the Apex Court in G.M. Tanda Thermal Power Project Vs. Jai Prakash Srivastava and Another, and the judgment of this Court in Ajay Kumar v. Presiding Officer & another, 2008 (2) RSJ 531. Accordingly, references were declined as noticed above.

7. A perusal of the application given by the petitioner would go on to show that an application was made by the petitioner-workman to the Executive Officer to the post of the Keyman and the same was necessarily forwarded and approved for one year. The agreement dated 16.09.1995 (Exhibit R3) would go on to show that the contract was valid for a period of one year from the date of appointment and would automatically stand expired after a lapse of one year on 15.09.1996. Similarly, another application-Exhibit R4 which was filed in the year 2002 was also to the same effect. Vide letter dated 24.08.2001 (Exhibit R7), the Deputy Director instructed to all the Regional Directors that the benefit of regularisation to employees employed on contractual basis could not be considered, as the policy pertained to work charge/daily wage and other category of employees. Similarly, vide letter dated 15.06.2007, it was decided that the services of the employees working on contractual basis were to be terminated and the exception was only regarding the staff working in the higher grade.

8. The question that, thus, arises for consideration is as to whether the petitioners were only contractual employees in view of the agreement that they

had entered into and the benefit of Section 25-F of the Act would not be applicable to them and whether the provisions of Section 2(oo)(bb) of the Act would be attracted in the facts and circumstances of the present case. The second question that would arise in case the provisions of Section 2(oo)(bb) are not applicable as to what would be the relief the workman would be entitled; whether the workman would be entitled for reinstatement or compensation.

9. The facts in the present case goes on to show that how the State has resorted to unfair labour practice which the Labour Court, unfortunately, has failed to appreciate and therefore, not exercised its jurisdiction. There is no denying the fact that the work of Keyman is a work of perennial nature and the petitioner-workmen were working from 1993 onwards in the present case and had worked for 8 ? years. The table appended with the present judgment as Schedule "A" would show that how the workmen worked for a period ranging from 4? years to 8? years were unceremoniously shunted out by the Municipal Council on the pretext and on the ground that they were contractual employees and were bound by the terms of the contract and therefore, the Council is protected under Section 2(oo)(bb). The case of the workman was specific regarding unfair labour practice which was being carried out and they had pleaded so in their claim petition in paragraph No. 6. In the written statement filed, the only reply was that the employment was contractual and there was no need to comply with the provisions of Section 25-F and the work was for a specific date.

10. Counsel for the respondents vehemently submitted that the workmen were back door entries and therefore, reinstatement could not be ordered and it was a policy decision of the Government not to regularise the said employees who were appointed on daily wages. Reliance was also placed upon the judgment of the Apex Court in Regional Manager, S.B.I. Vs. Rakesh Kumar Tewari, .

11. The said argument is without any basis. Firstly, the said fact was never pleaded before the Labour Court and secondly, the Municipal Council, on his own, sought regularisation of the contractual employees which it had appointed with the sanction of the Government. But sanction for regularisation was not granted and directions were issued to terminate the services of the contractual employees. Instead of resorting to the provisions of Section 25-F and granting compensation in lieu of retrenchment, the employees were arbitrarily thrown out and thus, their statutory rights were violated. The judgment referred to above is not applicable as in the said case, admittedly, during the litigation, a sum of approximately Rs. 8.03 lacs was paid under Section 17-B of the Act in the said case and the Apex Court was of the view that the said amount was not to be recovered. In the said case, there were no pleadings that there was any unfair labour practice and after the termination, even the procedure under Section 25-H had been followed. It was, in such circumstances, the appeals of the Management were allowed, which are not the facts in the present case.

12. There is no denying to the fact that the workman was engaged on 01.09.1993 and as per Exhibit R2, he submitted a fresh application whereby he

was appointed for a period of one year from 16.09.1995 and thereafter, the agreement was got renewed whereby it was provided that the contract would be valid for a period of one year and would stand already rescinded after the lapse of one year. The agreement (Exhibit R3) reads as under:

"Today i.e. on 16.09.95 this agreement for the post of Keyman on contractual basis in the office of Executing Officer, Municipal Council, Pathankot has been effected as per following conditions:--

You will have to perform duty for eight hours as fixed by the Municipal Corporation.

You will be paid lump sum amount to the tune of Rs. 1200/- per month and a sum of Rs. 50/- per day will be deducted from your salary, if you are found absent from the duty and if you remain absent from your duty continuously for three days then the agreement effected will be treated as cancelled.

If any sort of loss/damage is occurred to the sluice value of the Municipal Council by you during the duty then recovery for the loss whatsoever occurred will be made from your monthly salary as per recovery rules.

This contract will be valid for the period of one year from the date of appointment and it will stand automatically rescinded after the lapse of period of one year.

If you are found to be negligent while performing duty then contract can be terminated without prior intimation.

The minimum qualification should be Middle pass and candidates should be physically fit to perform duty.

This contract will be valid for a period of one year and will be considered as rescinded on 15.09.96."

13. It is also not denied that thereafter also, the workman continued working by submitting applications at the end of the expiry period and was appointed afresh. The applications (Exhibit R4) would go on to show that sanction was asked for his appointment as Keyman on 01.01.2002 to 31.03.2002 and eventually, a decision was taken that the workmen were not to be considered for regularisation on 24.08.2001 by the Deputy Director, which reads as under:

"Subject: Review of the policy of regularisation of work charged/daily wage and other categories of employees. In reference to instructions issued by the Department of Personnel, Punjab (P.P. 111) vide letter No. 11/34/2000-4 P.P. 111/1301, dated 23.01.2001 as adopted by this Department vide endst. No. illegible-2001/7011-7184 dated 14.02.2001.

You are hereby informed that a clarification had been sought by the Personnel Department, Punjab regarding regularizing the employees working on contractual basis in Local Institutions. The Personnel Department has given clarification that

such cases are not considered as per the instructions in the reference.

Sd/- Deputy Director (A)

Endst No. illegible-2001/30548-57

Dated: 24-8-01"

14. In pursuance of the said letter, thereafter, the services of the workman were terminated in spite of the fact that the workman had completed 240 days in the preceding year. The provisions of Section 2(oo)(bb) provides an exception to the retrenchment of the workman on account of non-renewal of the contract between the employee and the employer or on the expiry of such contract being terminated under stipulation in that behalf, as contained in the said contract of employment, which has been examined time and again by this Court.

15. A three Judge Bench of the Apex Court in Chief Conservator of Forests and another, Vs. Jagannath Maruti Kondhare, etc. etc., held that the appellants in that case were guilty of adopting unfair labour practice by employing the workman for 5 to 6 years and answered the question against the State, keeping in view the permanent nature of the job. The relevant observations read as under:

"22. We have given our due thought to the aforesaid rival contentions and, according to us, the object of the State Act, inter alia, being prevention of certain unfair labour practices, the same would be thwarted or get frustrated if such a burden is placed on a workman which he cannot reasonably discharge. In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years. We further state that the present was such a case inasmuch as from the materials on record we are satisfied that the 25 workmen who went to Industrial Court of Pune (and 15 to Industrial Court, Ahmednagar) had been kept as casuals for long years with the primary object of depriving them the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed under the Minimum Wages Act. We can think of no other possible object as, it may be remembered that the Pachgaon Parwati Scheme was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par excellence permanent. We would say the same about environment-pollution-care work of Ahmednagar, whose need is on increase because of increase in pollution. Permanency is thus writ large on the face of both the types of work. If, even in such projects, persons are kept in jobs on casual for years the object manifests itself; no scrutiny is required. We, therefore, answer the second question also against the appellants."

16. A Division Bench of this Court in Bhikku Ram v. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak, 1998 (1) RSJ 703 held that where

an appointment had been initially made for a period of 89 days and continued for almost 3 years, when the service was discontinued, while placing reliance upon the judgment of the Apex Court in *The State Bank of India Vs. Shri N. Sundara Money*, held that the provisions of Section 25-F would be attracted in such cases, keeping in view the fact that the Act is a beneficial piece of legislation. Reference was also made to the unfair labour practices under Section 2(ra) and which are specified in the 5th Schedule. Clause 10 of which further provides that where the employees are badlis, casual or temporary and to continue them in the same capacity for years together with the object of depriving them of the status and privileges of permanent workmen, would fall under the definition of unfair labour practice as defined under Section 25-T of Chapter V-C. It was held that the exception provided under Clause (bb) has the effect of taking over the right which is vested in the workman and if the Court finds that the conditions are arbitrary and unreasonable and forced upon the workman, then the termination of service, covered under Section 2(oo)(bb), is liable to be rejected. It was, accordingly, held that the protection granted under Section 25-F(a) & (b) could not be taken away by taking cover under the provisions of the said exception clause. An important fact which is to be noticed in the present case is that the job which is performed by the employees continues to be in existence and the methodology of the fixed term employment which has been resorted to by the Municipal Council is only an attempt to frustrate the rights of the workman. Relevant observations from the above said judgment read as under:

"35. From the above, it is clear that termination of service of a workman who has worked under an employer for 240 days in a period of twelve months preceding the date of termination of service will ordinarily be decided as void if it is found that the employer has violated the provisions of Section 25-F(a) and (b). If the employer resists the claim of the workman and invokes Section 2(oo)(bb), burden lies on the employer to show that though the employee has worked for 240 days in twelve months prior to termination of his service, such termination of service cannot be treated as retrenchment because it is in accordance with the terms of the contract of employment or on account of non-renewal of the contract of employment. It has also to be shown by the employer that the workman had been employed for a specified work and the job which was being performed by the employee is no more required. Only a bona fide exercise of right by an employer to terminate the service in terms of the contract of employment or for non renewal will be covered by the Clause (bb). If the Court finds that the exercise of rights by the employer is not bona fide or the employer has adopted the methodology of fixed term employment as a conduit or mechanism to frustrate the rights of the workman, the termination of the service will not be covered by the exception contained in Clause (bb). Instead the action of the employer will have to be treated as an act of unfair labour practice as specified in the Fifth Schedule of the Act. The various judgments rendered by the different High Courts and the Supreme Court clearly bring out the principle that only a bona fide exercise of the powers by the employer in cases where the work

is of specified nature or where the temporary employee is replaced by a regular employee the action of the employer will be upheld. In all other cases, the termination of service will be treated as retrenchment unless they are covered by other exceptions set out hereinabove."

17. Similarly in *Simla Devi Vs. Presiding Officer, Labour Courts and Others*, while placing reliance upon the case of *Bhikhu Ram (supra)*, it was held by the Division Bench of this Court that the respondent had deliberately given breaks in service with a view to avoid compliance of the provisions of the Act as the workman was employed for a period of 1 year, as a part-time employee. She had been denied the relief on the ground that her services fell under the purview of Section 2(oo) (bb) of the Act. Reliance was also placed upon *The Haryana State Co-operative Supply & Marketing Federation Ltd. v. State of Haryana*, 1995 (4) RSJ 369. In *President, Zila Parishad, Panipat Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat*, a Division Bench of this Court refused to interfere with the order of reinstatement on the ground that there were breaks of 2 days in the spell of appointments and filling up the posts on contract basis amounted to unfair labour practice. In *The Haryana State Co-operative Land Development Bank Ltd. v. The Presiding Officer, Labour Court, Rohtak & another*, 2004 (1) RSJ 631, a clerk who was appointed on ad hoc basis for 89 days and whose service period was a little over a period of one year, was directed to be reinstated in service by the Labour Court. This Court upheld the said reinstatement and rejected the submission that the provisions of Section 2(oo)(bb) would be attracted and held that it was a case of retrenchment. Relevant observation read as under:

"9. After consideration of the matter, I find that the workman had been getting service on 89 days basis from time to time with intermittent notional breaks. He had continued in service on 89 days basis. Therefore, when the services were being extended from time to time, it cannot be said that it is a case where the service of the workman had been terminated as a result of non-renewal of contract of employment between the employer and the workman. The case in hand is one of retrenchment and, therefore, the provisions of Section 25 of the Act would apply. It is not in dispute that the respondent-workman has not been given any retrenchment compensation in terms of Section 25-F of the Act. He has admittedly been in service of the bank for more than 240 days in the last calendar year preceding the date of his termination. This Court in the case of *Haryana State Cooperative Land Development Bank Ltd. Vs. Presiding Officer, Labour Court, Rohtak* in somewhat similar circumstances found that the workman in the said case by virtue of the various orders of appointment of 89 days had completed 240 days of the service in the last calendar year or immediately preceding the date of his termination. Therefore, there was no legal reason shown as to why he would not be continued thereafter. It was held that the termination of an employee by such orders amounts to unfair labour practice. The ratio of the Division Bench judgment of this Court in *Bhikhu Ram v. The Presiding Officer*, 1998 (1) RSJ 703, was followed and the termination of service

of the respondent was set aside."

18. In the present case, as noticed above, it is not the case of the respondent-Council that there was any break in the service and it was only that the workmen were working on contract basis and even the request for regularisation had been made for all contractual employees by the Council which was rejected by the State Government on 24.08.2001. Thus, it would be clear that even proposal for regularising the services of the contractual employees was subject-matter of consideration and the workman having completed 240 days were, thus, entitled for the benefit of the protective umbrella of Section 25-F and the mandatory provisions as laid down under it had to be followed before dispensing with the services of the workmen. But the same had not been done. The Labour Court was in error in not granting the said benefit by holding that the provisions of Section 2(oo)(bb) would apply and wrongly relied upon the observations made in the case of Regional Manager, SBI Vs. Mahatma Mishra, wherein the Apex Court held that unfair labour practice is not to be readily inferred and the conditions have to be satisfied. It was noticed that the appointments were made in violation of the appointment letter and requirements had not been complied with and in such circumstances, reinstatement was not justified. In the present case, as noticed above, the job of the Keyman does not exist, as per the provisions of the Municipal Act but the respondent-Council had employed the petitioners-workmen for a period between 4 ? years to 8 ? years and a contract agreement was got executed by them. Practice of unfair labour has been alleged in the petition and in the evidence wherein it has been stated that the agreements were got signed at the time of giving the salaries and the respondents had acted as war slave lords who had treated the workmen like slaves. The Sectional Officer has admitted in evidence that the job of Keyman is to regulate the flow of water through valves installed in pipes in particular areas daily and the job is of perennial nature. The job of the Keyman existed even after 31.02.2002. It has also been admitted that the workman was employed as per rules and the proceedings of Section 25-F have not been followed.

19. Similarly, in the case of Ajay Kumar (supra), this Court declined the benefit of reinstatement on the ground that the employee was appointed for a fixed term and was released on the expiry of the fixed term and therefore, the provisions of Section 2(oo)(bb) would come into effect. It was noticed that the appointment was from 1993 only and not on a regular basis. There was no averment regarding unfair labour practice and there were substantial breaks in service during the period of 3 years, of as many as 6 months at one point of time and 3 months at another point of time. The appointment was made 4 times for a specific period. Thus, the said judgment would also not be applicable to the facts and circumstances of the present case.

20. In Devinder Singh Vs. Municipal Council, Sanaur, , the Apex Court examined the provisions of Section 2(oo)(bb) and held that the definition of term "retrenchment" is very comprehensive and the source of employment, the

method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) and contractual employees are not excluded from the said definition. Thus, even contractual employees could not be denied the benefit under Section 25-F(a) & (b). Relevant observations read as under:

"10. The definition of the term "retrenchment" is quite comprehensive. It covers every type of termination of the service of a workman by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action. The cases of voluntary retirement of the workman, retirement on reaching the age of superannuation, termination of service as a result of non-renewal of the contract of employment or of such contract being terminated under a stipulation contained therein or termination of the service of a workman on the ground of continued ill health also do not fall within the ambit of retrenchment.

11. In *The State Bank of India Vs. Shri N. Sundara Money*, , a three Judge Bench of this Court analysed Section 2(oo) and held: ".....Termination ... for any reason whatsoever" are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is, has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. Maybe, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25-F and Section 2(oo). Without speculating on possibilities, we may agree that "retrenchment" is no longer terra incognita but area covered by an expansive definition. It means "to end, conclude, cease"....." The ratio of the aforementioned judgment was approved by the Constitution Bench in *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*, .

12. Section 2(s) contains an exhaustive definition of the term "workman". The definition takes within its ambit any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and it is immaterial that the terms of employment are not reduced into writing. The definition also includes a person, who has been dismissed, discharged or retrenched in connection with an industrial dispute or as a consequence of such dispute or whose dismissal, discharge or retrenchment has led to that dispute. The last segment of the definition specifies certain exclusions. A person to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, is applicable or who is employed in the police service as an officer or other employee of a prison or who is

employed mainly in managerial or administrative capacity or who is employed in a supervisory capacity and is drawing specified wages per mensem or exercises mainly managerial functions does not fall within the definition of the term "workman".

13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act.

14. It is apposite to observe that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

21. However, two factors stand in the way of the workman to get a right to reinstatement. One dominant factor which weighs with this Court is that admittedly, there is no post under the rules and therefore, relief of reinstatement, in such circumstances, cannot be granted. The workman was appointed at that point of time to overcome the exigency of the situation and the Municipal Council made an effort to get their services regularised but the Government declined the said request in the absence of any post and in such circumstances, it has been held that reinstatement cannot be directed. Reliance can be placed upon the judgment of G.M. Tanda Thermal Power Project Vs. Jai Prakash Srivastava and Another, wherein a direction had been issued for reinstatement by the Labour Court which had been upheld by the Allahabad High Court. It was, accordingly, held that the daily wagger appointed by the Special Land Acquisition Officer were to work for a particular purpose and when the said purpose ceased to exist, their services were terminated and there was no such post which existed. Accordingly, the reinstatement order was set aside. Relevant portion reads as under:

"12. Lands are acquired in terms of the provisions of the Land Acquisition Act. It is for the authorities concerned to conduct the cases relating to acquisition of land in the courts of law. Although the appellant was providing for the funds for meeting the expenditure in relation to payment of wages etc. to the first respondent herein, evidently, the relationship between an employer and employee did not come into being between the appellant and the first respondent. It did not require the services of the appellant. The Special Land Acquisition Officer did. The offer of appointment was issued by the Special Land Acquisition Officer. First respondent was working under his supervision and control. His services were being taken by the Special Land Acquisition Officer for a particular purpose, namely, looking after the land acquisition cases. When the purpose for which the first respondent was appointed ceased to exist, his

services were terminated. If there did not exist any relationship of employer and employee, the question of the appellant's fulfilling the obligations required in terms of the U.P. Industrial Disputes Act, namely, payment of retrenchment compensation or one month's pay in lieu of notice did not and could not arise. If the first respondent was a workman working under the Special Land Acquisition Officer, the question of compliance of the said provisions by the said authority would also not arise. The High Court, therefore, in our opinion, committed a serious error in refusing to interfere in the matter. When existence of the relationship of employer and employee is disputed, the same was required to be determined in presence of all the parties who are interested in the subject-matter of reference. The Special Land Acquisition Officer was not a party to the reference. The learned Presiding Officer, Labour Court, U.P., Lucknow neither went into the question as regards the nature of duties required to be performed by the first respondent and also other relevant factors, namely, who had issued the offer of appointment; who used to supervise and control the work of the respondent; or who was the authority to grant leave and take disciplinary action etc. The said questions were relevant. (See *Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of Tamil Nadu and Others*, .

13. The High Court, furthermore, committed a serious error insofar as it failed to take into consideration that a direction for reinstatement cannot be issued when there does not exist any post. Requirement of the Special Land Acquisition Officer to have the services of some employees was for a short period. No such post was created by the competent authority. The services of the first respondent were necessary for looking after the land acquisition cases of the petitioner. Even in a case where the workman is appointed on contractual basis, the industrial court would ordinarily not direct for reinstatement. Subject to statutory interdict, the agreement between the parties in this behalf must be given due weight."

22. Recently, the Apex Court has held that if there is a technical violation of the provisions of Section 25-F, then instead of directing reinstatement, compensation can be ordered. Reference can safely be made to the judgment of the Apex Court in *Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh*, wherein it has been held that the nature of job, the period of service and mode of employment are to be taken into consideration and reinstatement is not to be directed as a matter of course. Relevant observations read asunder:

"26. From the long line of cases indicated above, it can be said without any fear of contradiction that this Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations. It has always been the view of this Court that there could be circumstance(s) in a case which may make it inexpedient to order reinstatement. Therefore, the normal rule that dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception. Insofar as wrongful termination of daily-rated workers is concerned, this Court has laid down that consequential relief would depend on host of factors, namely, manner

and method of appointment, nature of employment and length of service. Where the length of engagement as daily wagger has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid. A distinction has been drawn between a daily wagger and an employee holding the regular post for the purposes of consequential relief.

xxxx xxxx xxxx

29. In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This Court found in those cases that judicial discretion exercised by the Labour Court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wagger, who had worked for a short period, this Court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors, including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute before grant of relief in an industrial dispute."

23. The said view was further followed in B.S.N.L. Vs. Bhurumal, and it has been held that if there is victimisation and unfair labour practice, reinstatement with back wages would be the necessary relief and only in exceptional cases, such relief is to be granted. The said view was followed in Hari Nandan Prasad and Another Vs. Employer I/R to Management of FCI and Another, . Thus, the workmen have no right to be reinstated, in such circumstances.

24. The vexed question that, thus, now arises is as to what would be the amount of compensation which could be granted to the workmen in view of the discussion made above. As per the table attached to the present judgment as Schedule "A", the workmen worked for a period ranging from 4 ? years to 8 ? years and therefore, granting lump sum compensation in all cases would be prejudicial to the employees who had rendered more service. A Division Bench of this Court in State of Haryana through Executive Engineer, PWD, Public Health Division No. 2, Sonipat v. Ishwar Singh & another, 2009 (1) RSJ 24 ordered that a sum of Rs. 20,000/- be awarded for each completed year, which would be appropriate. Accordingly, following the principles laid down by the Division Bench, a sum of Rs. 20,000/- is granted as compensation for each completed year and the workmen will be entitled to the compensation as per the table attached as Schedule "A". Apart from the compensation, the workmen will also be entitled for cost of litigation to the tune of Rs. 20,000/- each, in view of the litigation which they have been fighting since their illegal termination on 31.03.2002 and since a period of more than one decade has passed by since then. The amount, as indicated, be paid to the workman within a period of 2 months from the date of receipt of a certified copy of this order, failing which, the

same will carry interest @ 9% per annum, from the date of this order. With the above directions, all the writ petitions are allowed and the workman shall be granted compensation as mentioned in Schedule "A", attached with this order plus litigation expenses of Rs. 20,000/- each.