

(2012) 05 DEL CK 0003

In the Delhi High Court

Case No : Writ Petition (C) 7385 of 2007

Ramesh Kumar Rawat

APPELLANT

Vs

The Management of M/s Northern Scales Company

RESPONDENT

Date of Decision : 14-05-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227, 38

Citation : (2012) 05 DEL CK 0003

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

Bench : Single Bench

Advocate : H.K. Chaturvedi, for the Appellant; D.G. Singh and Ms. Yasmin Zafar, for the Respondent

Judgement

P.K. Bhasin, J.—By way of this writ petition the petitioner-workman, who was employed as an attendant with the respondent Company, had challenged the award dated 23-12-06 in ID Case No. 70/1996 whereby the relief of re-instatement in service with back wages was denied to him by the Labour Court even after coming to the conclusion that his services had been illegally terminated by the respondent-management and he had not abandoned his job and only a lump-sum compensation of Rs. 20,000/- was awarded to him. The petitioner-workman felt that he was entitled to be re-instated in service with full back wages and so he knocked the doors of this Court for getting that relief. The petitioner-workman, as per his case, was employed as an attendant with the respondent-management in 1991 till his illegal termination on 14.11.1994. He had approached the labour authorities for his re-instatement in service but since he could not get that relief the dispute between him and the respondent-management was referred for adjudication to the Labour Court vide Reference order dated 9th February, 1996 with the following term of reference:-

Whether Shri Ramesh kumar Rawat left his services of his own accord after taking full and final dues or his services have been terminated illegally and/or unjustifiably by the management if so, to what relief is he entitled and what

directions are necessary in this respect?

2. The petitioner-workman filed his statement of claim challenging his termination to be illegal. The respondent-management filed a written statement denying the allegations of illegal termination of his services along with his joining date and pleaded that he was appointed on 1.5.93 and that it had never terminated his services but he himself had stopped coming for duty and so had abandoned his job and also that at his own request he was paid full and final payment.

3. Following issue was framed by the Labour Court for trial:-

1. What relief, if any, is the workman entitled from the management in terms of reference.

4. Thereafter evidence was adduced from both sides and after examining the evidence the Labour Court vide its award under challenge came to the conclusion that the termination of the service of the petitioner-workman was illegal but even after holding so the reliefs of reinstatement in service and back wages were not granted to the petitioner-workman and instead a compensation of Rs. 20,000/- was awarded. Relevant findings of the Labour Court are re-produced below:-

7. I have considered the respective submissions of both the ARs and have perused the record. The Management has not produced any documentary proof regarding full and final settlement. Mark A to E cannot be read and relied in support of management's evidence. The Management has also not produced any account or wages register to show that on 14.11.94, the Workman was given full and final settlement amount and left the services. Hence, in my opinion, the Workman has established that on 14.11.94, his services were terminated by the Management illegally. Hence, on the basis of above observation and discussion, the issue is decided in favour of the Workman.

10. I have considered the respective submissions and perused all the judgments. The judgments relied upon by the workman, specially Emsons Radio Corpn. (Supra), J.U. Akhtar (Supra) and Hindustan Tin Works Pvt. Ltd. (Supra). However in the judgment relied upon by the management the Supreme Court has not formulated that labour Court has to grant compensation as per full back wages. In the recent judgment of U.P. State Road Transport Corporation (Supra). Supreme Court granted lump sum compensation. The discretionary power of the labour Court cannot be restricted with a formula of granting full back wages as compensation. In view of the above mentioned several judgments of Supreme Court, the judgments of our own High Court are distinguishable in this respect especially.

11. On the basis of above observation and discussion, keeping in view the short length of service of the workman and pendency of the present adjudication for the last about 12 years. I grant compensation of ` 20,000/- (Rupees Twenty Thousand Only). Reference is answered accordingly. Copy of the award be sent

to appropriate Government within 30 days from the receipt of the Award. File be consigned to record room.

5. The petitioner-workman felt aggrieved by the award of the Industrial Tribunal and filed this writ petition. The respondent-management did not feel aggrieved with the decision of the Labour Court 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.

6. The learned counsel for the petitioner-workman contended that the award of the Labour Court 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 and that too without giving any reasons for declining that relief.

7. On the other hand, the learned counsel for the respondent-management supported the impugned award and argued that it 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 back and the recent trend of judicial pronouncements of the Apex Court is to award only monetary compensation to the successful workmen when the termination their services by their employer is found by the industrial adjudicators to be illegal because of non-compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947 and since that is what has been done by the Labour Court in the present case there is no reason for this Court to interfere with its award.

8. Before proceeding further to decide whether the award of the Labour Court needs to be interfered with by this Court or not I deem it appropriate to notice the recent trend in the Supreme Court judgments on the question of grant of re-instatement and back wages to successful workmen. In a very recent decision rendered in the case of "Devinder Singh vs. Municipal Council, Sanaur", (2011) 6 Supreme Court Cases 584 the Supreme Court took note of many of its earlier judgments on this aspect as also the impact of delay in adjudication of the industrial disputes by the industrial courts and gave its views in the following paras:-

17. Section 25-F is couched in a negative form. It imposes a restriction on the employer's right to retrench a workman and lays down that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched until he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or he has been paid wages for the period of notice and he has also been paid, at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months and notice in the prescribed manner has been served upon the appropriate Government or the authority as may be

specified by the appropriate Government by notification in the Official Gazette.

18. This Court has repeatedly held that the provisions contained in Sections 25-F(a) and (b) are mandatory and termination of the service of a workman, which amounts to retrenchment within the meaning of Section 2(oo) without giving one month's notice or pay in lieu thereof and retrenchment compensation is null and void/illegal/inoperative. *State of Bombay v. Hospital Mazdoor Sabha*, *Bombay Union of Journalists v. State of Bombay*, *SBI v. N. Sundara Money*, *Santosh Gupta v. State Bank of Patiala*, *Mohan Lal v. Bharat Electronics Ltd.*, *L. Robert D'Souza v. Southern Railway*, *Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*, *Gammon India Ltd. v. Niranjana Dass*, *Gurmail Singh v. State of Punjab* and *Pramod Jha v. State of Bihar*.

19. the termination of service of a workman without complying with the mandatory provisions contained in Sections 25-F(a) and (b) should ordinarily result in his reinstatement.

28. The other reason given by the High Court is equally untenable. The appellant could hardly be blamed for the delay, if any, in the adjudication of the dispute by the Labour Court or the writ petition filed by the respondent. The delay of four to five years in the adjudication of disputes by the Labour Court/Industrial Tribunal is a normal phenomena. If what the High Court has done is held to be justified, gross illegalities committed by the employer in terminating the services of workman will acquire legitimacy in majority of cases. Therefore, we have no hesitation to disapprove the approach adopted by the High Court in dealing with the appellant's case." (emphasis supplied)

9. 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 25-F(a) and (b) of the Act are mandatory and non-compliance therewith renders the retrenchment of an employee nullity-*State of Bombay v. Hospital Mazdoor Sabha*, *Bombay Union of Journalists v. State of Bombay*, *SBI v. N. Sundara Money*, *Santosh Gupta v. State Bank of Patiala*, *Mohan Lal v. Bharat Electronics Ltd.*, *L. Robert D'Souza v. Southern Railway*, *Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*, *Gammon India Ltd. v. Niranjana Dass*, *Gurmail Singh v. State of Punjab* and *Pramod Jha v. State of Bihar*.

18. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Sections 25-F(a) and (b) has the effect of rendering the action of the employer

as nullity and the employee is entitled to continue in employment as if his service was not terminated.(emphasis supplied)

10. In "Krishan Singh vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana); (2010) 3 Supreme Court Cases 637 the Supreme Court had laid down the guidelines which the High Court should keep in mind while interfering with the discretionary powers exercised by the labour courts. In the following paras of its judgment the Supreme Court had noticed the facts of the case and then had set down the legal position regarding grant of relief of re-instatement etc.:-

6. The only question that we have to decide in this case is whether the High Court was right in setting aside the Award dated 18.07.2006 of the Labour Court directing reinstatement of the appellant with 50% back wages and directing instead payment of compensation of Rs. 50,000/- to the appellant. We find that the dispute that was referred to by the State Government u/s 10 of the Act to the Labour Court was: "whether the termination of the services of the appellant was justified and if not, to what relief he was entitled to" As per the claim-statement filed by the appellant before the Labour Court, he was appointed by the respondent as a daily wager against a regular post on 01.06.1988 under the Junior Engineer at Meham and the appellant worked there for different periods until the respondent terminated his services in December, 1993 without any notice and without complying with the provisions of Section 25F of the Act. The respondent in its objections did not take a plea that the engagement of the appellant was either against a post which was not sanctioned or contrary to the statutory rules.....the Labour Court held that the appellant has completed 267 days from 1.6.1988 to 30.4.1989 and without any notice or notice pay and without retrenchment compensation. In the relief portion of the Award, the Labour Court held that as the services of the appellant had been terminated illegally, he was entitled to be re-instated in his previous post with continuity of service and 50% back wages from the date of demand notice, i.e. 31.12.1997.

7. In a recent judgment of this Court in Harjinder Singh v. Punjab State Warehousing Corporation JT 2010 (1) SC 598 the Labour Court, Gurdaspur, by its Award directed re-instatement of the workman with 50% back wages, but the Award of the Labour Court was modified by a learned Single Judge of the Punjab and Haryana High Court in the writ petition and this Court has held that the order of the learned Single Judge of the High Court was liable to be set aside only on the ground that while interfering with the Award of the Labour Court, the learned Single Judge did not keep in view the parameters laid down by this Court for exercise of jurisdiction by the High Court under Articles 226 and/or 227 of the Constitution. Learned Brother G.S. Singhvi, J., in his opinion, has observed that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution, the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the

preamble of the Constitution and the provisions contained in Part IV of the Constitution including Articles 38, 39(a) to (e), 43 and 43A thereof. Learned Brother Asok Kumar Ganguly, J. agreeing with learned Brother G. S. Singhvi, J., has also observed that this Court has a duty to interpret statutes with social welfare benefits in such a way as to further the statutory goal and not to frustrate it.

8. Section 11A of the Act clearly provides that where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. Wide discretion is, therefore, vested in the Labour Court while adjudicating an industrial dispute relating to discharge or dismissal of a workman and if the Labour Court has exercised its jurisdiction in the facts and circumstances of the case to direct re-instatement of a workman with 50% back wages taking into consideration the pleadings of the parties and the evidence on record, the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India will not interfere with the same, except on well-settled principles laid down by this Court for a writ of certiorari against an order passed by a Court or a Tribunal.

9. The High Court, however, has relied on the decision of this Court in *Mahboob Deepak v. Nagar Panchayat, Gajraula and Anr.* (supra) and on reading of the aforesaid decision, we find that this Court in the aforesaid decision has mentioned the following factors, which are relevant for determining whether an award of re-instatement should or should not be passed:

- (i) whether in making the appointment, the statutory rules, if any, had 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.

This Court further held in the aforesaid decision that in the light of these principles the relief of re-instatement granted by the Labour Court in that case was wholly unsustainable and has accordingly directed payment of a sum of Rs. 50,000/- by way of damages to the workman with interest at the rate of 9% per annum.

10. The High Court has also relied on the decision of this Court in *Ghaziabad*

Development Authority and Anr. v. Ashok Kumar and Anr. (supra) and on reading of the aforesaid decision we find that the contention of the management before the Labour Court was that the post, in which the workman was working in that case, was not sanctioned after 31.03.1990 and this was not disputed by the workman and this Court held that if there did not exist any post, the Labour Court should not have directed re-instatement of the workman in service.

11. The aforesaid two decisions of this Court in Mahboob Deepak v. Nagar Panchayat, Gajraula and Anr. (supra) and Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr. (supra) have no application to the facts in this case. In the present case, the respondent has not taken any stand before the Labour Court in his objections that the post in which the workman was working was not sanctioned or that his engagement was contrary to statutory rules or that he was employed elsewhere or that there was no vacancy. In the absence of any pleadings, evidence or findings on any of these aspects, the High Court should not have modified the Award of the Labour Court directing re-instatement of the appellant with 50% back wages and instead directed payment of compensation of Rs. 50,000/- to the appellant.(emphasis laid)

11. In "P.V.K. Distillery vs. Mahendra Ram"; (2009) 5 Supreme Court Cases 705 the Supreme Court had noticed all its earlier decisions on the aspect of grant of the relief of re-instatement and back wages to the industrial workmen whose services are found to have been terminated illegally and it was held as under:-

10. The only question which requires to be considered by us in this appeal is, whether the Labour Court was justified in awarding full back wages, while directing the employer to re-instate the workman in service.....

11. In the case of P.G.I. of M.E. and Research, Chandigarh v. Raj Kumar; 2000 (8) SCALE 469, 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. The issue as raised in the matter of back wages has been dealt with by the Labour Court in the manner as above having regard to the facts and circumstances of the matter in the issue, upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. There exists an obligation on the part of the High Court to record in the judgment, the reasoning before however denouncing a judgment of an inferior Tribunal, in the absence of which, the judgment in our view cannot stand the scrutiny of otherwise being reasonable.

12. In the case of Hindustan Motors v. T.K. Bhattacharya: (2002) II LLJ 1156 SC, 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. Court then held that Industrial Tribunal and Division Bench of High Court erred in proceeding on the assumption that quashment of dismissal order should be followed by reinstatement with full back wages as a matter of course. On consideration of the entire matter in the light of the observations 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.

13. In *U.P. State Brassware Corp. Ltd. v. Uday Narain Pandey* : (2006) I LLJ 496 SC, 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 v. Om Pal*: (2007) 2 LLJ 1030 SC, 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. [*Western India Match Co. Ltd. v. Third Industrial Tribunal, West Bengal* : (1978) I LLJ 206 SC.]

16. In *Hindustan Tin Works (P) Ltd. v. Employees*: (1978) II LLJ 474 SC, this Court has held that the relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It, therefore, does not lay down a law in absolute terms to the effect that the right to claim back wages must necessarily follow an order declaring that the termination of service is invalid in law.

17. In the case of *Surendra Kumar Verma v. Central Govt. Industrial Tribunal-*

cum-Labour Court : (1981) I LLJ 386 SC, this Court has observed that the plain common sense dictates that the removal 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-?-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 mould the relief.

18. In Allahabad Jal Sansthan v. Daya Shankar Rai : (2005) II LLJ 847 SC, 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%, stating: It is an undisputed fact that the workman had since attained the age of superannuation and the question of reinstatement does not arise. Because of the award, the respondent workman will be entitled to his retiral benefits like gratuity, etc. and accepting the statement of the learned Senior Counsel for the appellant Mills that it is undergoing a financial crisis, on the facts of this case we think it appropriate that the full back wages granted by the Labour Court be reduced to 50% of the back wages."

20. In the instant case, the notice had been issued limiting the question to the payment of 50% of the total back wages. This does not mean that the respondent is not entitled to further relief. 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, because the appellant's factory had been declared sick and remained closed for many years and has been assigned to a new management led by its Chief Executive Director, Sri M.K. Pilania in order to rehabilitate/reconstruct it.(underlining is mine)

12. Similarly 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, the Supreme Court took note of its earlier decisions 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 Corporation Ltd. v. Uday Narain Pandey (2006) I LLJ 496 SC, 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.

43. The changes brought about by the subsequent decisions of this Court, probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing, is evident.

44. ...

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 v. M.C. Joshi* (2007) 2 LLJ 390 SC 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 Ors. v. Lalit Kumar Verma* AIR 2007 SC 528, this Court substituted the award of reinstatement by compensation.

11. In yet another decision in the case of *M.P. Administration v. Tribhuwan* : (2007) 9 SCC 748, 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.

13. We, therefore, are of the opinion that keeping in view the peculiar facts and circumstances of this case and particularly in view of the fact that the High Court had directed reinstatement with full back wages, we are of the opinion that interest of justice would be subserved if the appellant herein be directed to pay a sum of Rs. 75,000 by way of compensation to the respondent. This appeal is allowed to the aforementioned extent.

12. In the case of *Sita Ram v. Moti Lal Nehru Farmers Training Institute* (2008) II LLJ 688 SC, this Court considered the question as to whether the Labour Court was justified in awarding reinstatement of the appellants therein:

21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.

22. Keeping in view the period during which the services were rendered by the respondent (sic appellants); the fact that the respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.

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. (See *Jaipur Development Authority v. Ramsahai* (2006) 11 SCC 684, *M.P. Admn. v. Tribhuban* : (2007) 9 SCC 748 and *Uttaranchal Forest Development Corporation v: M.C. Joshi* (2007)2 LLJ 390 SC)

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs.

13. In *Ghaziabad Development Authority and Anr. v Ashok Kumar and Anr.* (2008)ILLJ1013SC, 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. It has not been disputed before us that sanction of the State of U.P. was necessary for creation of posts. The contention of the appellant before the Labour Court that the post was not sanctioned after 31-3-1990 by the State was not denied or disputed. 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.

20. Furthermore, public interest would not be subserved if after such a long lapse of time, the first respondent is directed to be reinstated in service.

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.

22. Keeping in view the fact that the respondent worked for about six years as also the amount of daily wages which he had been getting, we are of the opinion that the interest of justice would be subserved if the appellant is directed to pay a sum of Rs 50,000 to the first respondent....

14. In *Mahboob Deepak v. Nagar Panchayat, Gajraula* (2008) 1 LLJ 855 SC, 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.

10. Applying the legal principles, as noticed hereinbefore, the relief granted in favour of the appellant by the Labour Court is wholly unsustainable. The same also appears to be somewhat unintelligible.

11. The High Court, on the other hand, did not consider the effect of non-compliance with the provisions of Section 6N of the U.P. Industrial Disputes Act, 1947. The appellant was entitled to compensation, notice and notice pay.

12. It is now well settled by a catena of decisions of this Court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation. (See M.P. Admn. v. Tribhuban (2007) 9 SCC 748.)

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. Such payment should be made within eight weeks from this date, failing which the same will carry interest at the rate of 9% per annum.

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. 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."

13. From these judgments of the Supreme Court, in which the employers were mainly Government Departments or statutory bodies/public sector undertakings and wherein all the previous judgments on the point of grant of re-instatement in service and back wages were noticed, 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 labour Courts that the termination of

their services by their employer was illegal and unjustified. All that has been held 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. However, while denying these reliefs, the industrial adjudicators are expected to give good reasons also. In the present case the Labour Court has failed to give any reason as to why after coming to the conclusion that the termination of the petitioner-workman was illegal, which conclusion has not even been challenged by the respondent-employer here, the relief of his re-instatement in service with back wages was not justified. Even though the Labour Court is not bound to give such reliefs in every case but refusal to grant the same cannot be in an arbitrary manner, as has been done in the present case by the Labour Court by refusing these reliefs to the petitioner-workman without giving any reasons. Of course, there is a stray observation in the concluding para of the impugned award, which I have already re-produced, that ten years had passed by in this litigation and that factor appears to have weighed with the Labour Court while denying these reliefs but that since delay has not been found to be attributable to the petitioner-workman it could not be used against him.

14. In the present case it was not the case of the respondent-employer, which is a private company that the appointment of the petitioner was illegal for any reason or that there was no requirement of attendants any more. It was also not its case that the petitioner was employed on temporary basis or as a daily wager, which was the position in most of the cases where the Supreme Court had awarded compensation only in lieu of the relief of re-instatement and back wages. During the course of hearing of this matter the learned counsel for the respondent-management had submitted that the respondent firm has been closed down but this was not the defence plea either before the Labour Court or in this writ petition and so it cannot be entertained, much less accepted for denying the relief of re-instatement to the petitioner-workman. In its counter affidavit the respondent had simply pleaded that it will not be in its interest to re-instate the petitioner-workman but no justification was given for such a plea. In one decision of this Court reported as (2002) 95 FLR 1204, "Jaipal Sharma vs.P.O.,Labour Court & anr.", this Court while reversing the decision of the Labour Court in not giving the relief of re-instatement and back wages to the workman involved in that case without giving any reasons for denying him those reliefs had granted the relief of re-instatement and back wages to the workman. For all these reasons, the award of the Labour Court in the present case to the extent it has declined the reliefs of re-instatement and back wages is not sustainable at all. It is a case of arbitrary exercise of discretion by the Labour Court. So, this writ petition succeeds and the petitioner-workman is granted the relief of re-instatement in service and considering the fact that he had not worked with the respondent all these years he is awarded only 50% back wages. This writ petition stands disposed of accordingly.