

(2024) 04 CHH CK 0019
In the Chhattisgarh High Court
Case No : Writ Petition (L) No. 188 Of 2016

Registrar, Guru Ghasidas Central University

APPELLANT

Vs

Nagendra Sharma

RESPONDENT

Date of Decision : 09-04-2024

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Dispute Act, 1947 — Section 2(a), 2(J), 10, 25F

Citation : (2024) 04 CHH CK 0019

Hon'ble Judges : Naresh Kumar Chandravanshi , J

Bench : Single Bench

Advocate : Hemant Gupta, JK Gupta

Final Decision : Allowed

Judgement

1. The petitioner has filed this writ petition under Article 226/227 of the Constitution of India, challenging the Award/Order dated 08.6.2016 passed by the Central Government Industrial Tribunal Cum Labour Court, Jabalpur (for short 'CGIT') in Case No.CGIT/LC/R/26/14, whereby the learned Labour Court allowed the reference filed by the respondent No.1 holding that termination of workman/respondent No.1 is illegal for violation of Section 25-F of the Industrial Dispute Act, 1947 (for short 'the Act 1947'), hence, directed the management to reinstate workman on same status, he was working with 50% back wages along with 9% interest per annum, if the amount is not paid within 30 days from the date of notification of the award.

2. The facts, leading to file instant writ petition, are that, respondent No.1/ workman was appointed on the post of daily wages Clerk in Jawaharlal Nehru College (JLN College), Sakti Janjgir Champa by the then Guru Ghasidas University, Bilaspur (State University) on 13.8.1998. By virtue of Central University Act, 2009, Guru Ghasidas University has been established as Guru Ghasidas Central University w.e.f. 15.01.2009. Employment of the respondent/ employee was kept continued for aforesaid Central University. On 09.6.2012, a

news was published in the daily news paper 'Dainik Bhaskar' that the respondent/workman used to rectify papers by taking money. Hence, clarification was sought from him by the petitioner/University vide letter dated 09.6.2012. Subsequently, vide order dated 11.6.2012, passed by the petitioner/University, employment of the workman was discontinued with immediate effect. Being aggrieved by the same, the respondent/workman raised industrial dispute under Section 2(a) of the Act 1947, before Labour Commissioner (Central), Bilaspur hence, vide Order dated 24.02.2014, Government of India, Ministry of Labour, New Delhi made reference to CGIT, Jabalpur under Section 10 of the Act 1947. Dispute under reference was that :

"Whether the action of the management of Guru Ghasidas Central University, Bilaspur through its Registrar & Dy. Registrar (Admn.) in terminating/discontinuing the services of Shri Nagendra Sharma, Ex. Daily Wage Clerk w.e.f. 11.6.12 was legal, proper and justified? If not, to what relief the said workman is entitled to?"

After receiving the reference, the learned CGIT, Jablapur issued notice to the parties, to which they entered their appearance. The respondent/workman filed his statement of claim, the petitioner/University appeared through advocate, but, later on without filing written statement, it remained absent. After considering the evidence, CGIT, Jabalpur vide impugned Order allowed reference and passed award in favour of respondent/workman as has been stated in the preceding paragraph. Being aggrieved by that award, the petitioner/University/establishment filed instant petition.

3. In the petition, the petitioner/University has pleaded that the respondent/workman was not the workman of the petitioner as the petitioner/University came into existence w.e.f. 15.01.2009. The workman has not filed any order of his appointment with the petitioner/University and he has not completed 240 days of work in the year preceding date of his disengagement. Thus, there is no relationship of employer and employee between the petitioner and respondent/workman, therefore, provision of Act 1947 is not attracted in the instant case. Referring to the ground raised in the petition, learned counsel for the petitioner submits that the appointment of the respondent/workman was not against any sanctioned post, and due process had not been followed in his employment as a daily wager, hence, by way of reinstatement order, the illegal appointee cannot be allowed for continuation. It is further submitted that even reference was not made on the ground that reinstatement order has been passed in violation of Section 25F of the Act 1947 or he has wrongly been removed from his employment. Further since the employment of the respondent/workman was no longer required in the SC/ST cell of the University, therefore, his employment was discontinued. If the respondent/workman found himself as employee of the University of the petitioner, then he should have raised his grievance under the Act 2009 by filing appeal before executive council of the University and there was arbitration provision also in the Act 2009, but without availing such remedy, he

had raised industrial dispute. It is further submitted that order impugned passed by CGIT, Jabalpur is illegal, erroneous and contrary to law, hence, it is prayed that this petition may be allowed and impugned award may be set aside.

4. The respondent/workman has filed his reply. Learned counsel for the respondent/employee referring to its reply would submit that the respondent/workman was appointed as daily wages Clerk by the Guru Ghasidas University, Bilaspur on 13.8.1998 vide Annexure-P/3. Even after establishment of aforesaid University as Guru Ghasidas Central University, Bilaspur in the year 2009, services of the petitioner were continued and he worked there till 2012. Thus, there was relation of employer-employee between the petitioner and the respondent/workman. But in the year 2012, without giving any notice or following procedure prescribed under the Act 1947, his employment was discontinued. It is further submitted by learned counsel that in the instant case, it is not disputed by the petitioner that the respondent/workman was appointed as daily wages employee, thus, despite being continuously worked from 1998 to 2012 without break, 240 days in a year, his termination is illegal in view of the provisions of Act 1947. Further, the petitioner has raised ground other than provisions of ID Act taking the case to another line, whereas, the order impugned passed by CGIT, Jabalpur is well merited, which does not call for any interference by this Court, hence, the petition is liable to be dismissed.

5. I have heard learned counsel for the parties and perused the material available on record along with original record of CGIT, Jabalpur with utmost circumspection.

6. As per the case projected by both the parties and facts available on record, it is evidently clear that vide order dated 13.8.1998 (Annexure-P/3), respondent/workman was appointed as daily wages clerk by the then Guru Ghasidas University, Bilaspur (State University). Subsequently, in the year 2009, aforesaid university was established as 'Guru Ghasidas Central University, Bilaspur' by virtue of Central University Act, 2009. Employment of the respondent/workman was kept continued even after change of State University with Guru Ghasidas Central University, Bilaspur. In such situation, contention raised by learned counsel for the petitioner that respondent was not employee of the petitioner/University is not found to be correct. Rather even after establishment of Central university, he was permitted to continue his employment of daily wages clerk, hence he was the employee of the petitioner/University.

7. Hon'ble Supreme Court while considering the alike issue has observed that the question "who is a workman?" has been well settled by various decisions of the Supreme Court. A person to be a "workman" under the ID Act must be employed to do the work of any of the categories viz. Manual, unskilled, skilled, technical, operational, clerical or supervisory. The issue whether educational institution is an "industry" and its employees are "workmen" for the purpose of the ID Act has been answered by a seven-Judge Bench of the Supreme Court, in the case of Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213,

wherein it was held that educational institution is an industry in terms of Section 2(j) of the ID Act, though not all of its employees are workmen.

8. Hon'ble Supreme Court in the case of *Rajkumar Vs. Director of Education and others*, (2016) 6 SCC 541, has observed in para 29 as under:

29. The issue whether educational institution is an "industry", and its employees are "workmen" for the purpose of the ID Act has been answered by a seven-Judge Bench of this Court way back in the year 1978 in *Bangalore Water Supply [Bangalore Water Supply and Sewerage Board v. A. Rajappa*, (1978) 2 SCC 213 : 1978 SCC (L&S) 215]. It was held that educational institution is an industry in terms of Section 2(j) of the ID Act, though not all of its employees are workmen. It was held as under : (SCC pp. 264-65, paras 95-96)

"95. ... The premises relied on is that the bulk of the employees in the University is the teaching community. Teachers are not workmen and cannot raise disputes under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thing to say that a large number of its employees are not "workmen" and cannot therefore avail of the benefits of the Act so the institution ceases to be an industry. The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of a university or an educational institution, the nature of the activity is, *ex hypothesi*, education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may so say with great respect, in mixing up the numerical strength of the personnel with the nature of the activity.

96. Secondly, there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have *karamcharis* of various hues. As *Corpn. of Nagpur [Corpn. of the City of Nagpur v. Employees*, AIR 1960 SC 675] has effectively ruled, these operations, viewed in severally or collectively, may be treated as industry. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of the University's multi-form operations."

(emphasis supplied)

9. In view of the above law laid down by the Hon'ble Apex Court, contention

raised by learned counsel for the petitioner that the petitioner/University does not come into the definition of 'Industry' and there is no relation of employer-employee between the petitioner/University and respondent/ workman, is also not found to be sustainable.

10. As per the impugned order and the record of the CGIT, Jabalpur, the petitioner/University entered its appearance through advocate before CGIT Jabalpur, subsequently, without filing written statement it remained absent in subsequent proceedings, thus, the petitioner has neither filed any written statement nor adduced any evidence to rebutt the claim and deposition of the respondent/workman, therefore, his contentions and deposition that he was appointed on 13.8.1998 and worked with the petitioner/ University till 11.6.2012 continuously and prior to discontinuation of his service, he had continuously worked 240 days in a calendar year, has rightly been held proved by CGIT, Jabalpur in absence of any pleading and evidence from the petitioner side. The CGIT has also not committed any mistake in holding that without following the procedure of Section 25 F of the Act 1947, the petitioner has discontinued the service and therefore, order passed by the petitioner/University for discontinuation of service of the respondent/workman from 11.6.2012 was not found to be legal, proper and justified, as that order has been passed without notice, without paying retrenchment compensation and without any enquiry which is violation of provisions of Section 25F of the Act 1947. Hence, impugned order passed by the CGIT, Jablapur on this count is not found to be perverse or illegal.

11. So far as relief granted by CGIT, Jabalpur for reinstatement of the petitioner/workman along with 50% backwages is concerned, it has not been proved by the workman that procedure required for the appointment on the post of clerk had been followed prior to his appointment and his appointment was made against any sanctioned or vacant post. Rather, vide Annexure-A/3, he was appointed as daily wages clerk and he worked for 14 years on the same status with the petitioner/university. His services had been discontinued since 2012, thus, he is out of service for about 12 years. In the aforesaid facts situation of the case, order of reinstatement of respondent/workman is not found to be justified and proper.

12. In similarly situated case of Incharge Officer & another v. Shankar Sheety, (2010) 9 SCC 126, their Lordships of the Supreme Court considering various cases has held in paragraphs 3 & 4, which reads as under :-

3. In the case of Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr.(2009) 15 SCC 327, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court - namely, U.P. State Brassware Corporation Ltd. & Anr. v. Uday Narain Pandey (2006) 1 SCC 479; Uttranchal Forest Development Corporation vs. M.C. Joshi (2007) 9 SCC 353; State of M.P. & Ors. v. Lalit Kumar Verma (2007 (1) SCC 575; Madhya Pradesh Admn v. Tribhuban (2007) 9 SCC 748; Sita Ram & Ors. v. Motil Lal Nehru

Farmers Training Institute (2008) 5 SCC 75; Jaipur Development Authority v. Ramasahai & Anr. (2006) 11 SCC 684 ;Ghaziabad Development Authority & Anr. v. Ashok Kumar & Anr.(2008) 4 SCC 261 Mahboob Deepak v. Nagar Panchayat, Gajraula & Anr.(2008) 1 SCC 575 and stated as follows:

"7. It is true that the 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 a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, 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".

3. Jagbir Singh (supra) has been applied very recently in the case of Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh (2008) 1 SCC 575 Kumar Seal & Ors. (Civil Appeal No. 3815 of 2010) decided on April 26, 2010 wherein this Court stated:

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

13. In aforesaid case, Hon'ble Supreme Court has further held in paragraph 7 as under :-

7. We think that if the principles stated in Jagbir Singh and the decisions of this Court referred to therein are kept in mind, it will be found that the High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 years intermittently upto September 6, 1985 i.e. about 25 years back. In a case such as the present one, it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion, the compensation of Rs. 1,00,000/- (Rupees One lac) in lieu of reinstatement shall be appropriate, just and equitable. We order accordingly. Such payment shall be made within 6 weeks from today failing

which the same shall carry interest at the rate of 9 per cent per annum.”

14. In the case of *Bharat Sanchar Nigam Limited vs. Bhurumal* (2014) 7 SCC 177 their Lordships of the Supreme Court have observed as under:-

“33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see *State of Karnataka v. Umadevi* (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753]]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.”

15. Aforesaid case was further followed by the Apex Court in the case of *District*

Development Officer and Anr. vs. Satish Kantilal Amerelia(2018) 12 SCC 298 and State of Uttrakhand & another vs. Rajkumar (2019) 14 SCC 353.

16. Thus, similar issue involved in the instant case has been considered by the Apex Court in the aforecited judgments that, if employment of the daily wager has been terminated illegally because of the procedural defect of the Act 1947, Hon'ble Apex Court is consistent in taking view in such cases that, reinstatement would not automatic and instead workman should be given monetary compensation, which will meet the ends of justice. Rationale for shifting in this direction has been considered by the Apex Court holding that even after reinstatement, it is always open to the management to terminate the services of that employee by paying him retrenchment compensation and following other procedures. Since such workman working on daily wages basis and even after he is reinstated, he has no right to seek regularization and that he cannot claim regularization and he has no right to continue even as a daily wage worker and no useful purpose would be served in reinstating such worker and he can be given monetary compensation by the Court.

17. Applying the ratio of law laid down by the Apex Court in the aforesaid cases, if we see the instant case, then it is found that it is also a case of daily wager who has illegally been terminated from the services without following due process of law. Since respondent/workman was a daily wager clerk, hence, his services could have been terminated at any point of time after following due procedure of law prescribed under the Act 1947, as status of such employee cannot be equated with those employees who are regular/permanent employee and have faced termination illegally.

18. Since the respondent/workman had worked as daily wage worker with the petitioner/University for about 14 years and he is out of service since last 12 years, in between, various situation have been changed, hence, considering the totality of the facts of the case, and law enunciated by the Apex Court in the aforesaid cases, this Court is of the view that instead of granting reinstatement to respondent/workman, it would be just and proper to award lump sum monetary compensation to him.

19. Consequently, this petition is allowed in part. Impugned award of reinstatement passed in favour of the respondent/workman along with 50% back wages by the CGIT, Jabalpur/Labour Court vide order dated 08.6.2016 is set aside to the above extent and in lieu thereof, the respondent/workman Shri Nagendra Sharma shall be granted lump sum compensation to the tune of Rs.5 lakh by the petitioner/University. It is further directed that aforesaid amount be paid within a period of 30 days from today. In case of default, the amount shall carry 9% interest per annum till realization of the aforesaid amount.

20. The petition is allowed to the extent indicated herein above.

21. Original record of the CGIT, Jabalpur/Labour Court be sent back forthwith.