
(2011) 08 AHC CK 0280

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37865 of 2003

Zila Panchayat Mathura and Another

APPELLANT

Vs

Dy. Labour Commissioner, Agra and Others

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7
Constitution of India, 1950 — Article 12, 14, 16, 226, 227
Industrial Disputes Act, 1947 — Section 11A, 25F, 25F(a), 25G, 25H
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 6N

Citation : (2011) 9 ADJ 55

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Krishna Mohan, for the Appellant; Rajesh Tiwari, for the Respondent

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Sri Krishna Mohan, learned counsel for petitioners and Sri Rajesh Tiwari, learned counsel appearing for respondent No. 3. Writ petition is directed against award dated 9.12.2002 of Labour Court, U.P. Agra in Adjudication Case No. 83 of 1997 whereby it has held that since termination of workman amounts to retrenchment and has been made in violation of Section 6N of the U.P. Industrial Disputes Act, 1947 (hereinafter referred as "1947 Act"), respondent No. 3 (the workman) is entitled for reinstatement with effect from 23.5.1995 with full back wages.

2. Facts in brief giving rise to the present dispute borrowed from the pleadings are as under:

3. Respondent No. 3 Chhote Lal raised an industrial dispute alleging that he was wrongly terminated by petitioner employer on 23.5.1995. Considering it an industrial dispute, the reference was made by Notification dated 10.7.1997 in purported exercise of power u/s 4K of 1947 Act to the following effect:

4. The aforesaid reference was made for adjudication of respondent No. 1. Respondent No. 3 workman filed written statement alleging that he was engaged as "Mali" in Zila Panchayat, Mathura on 1.1.1993 and was paid wages @ Rs. 1050/- per month. He was terminated by the Chairman, Zila Panchayat on 23rd of May, 1995 without following procedure prescribed u/s 6N of 1947 Act and therefore the termination is illegal.

5. Petitioners contested the reference alleging that respondent No. 3 was actually engaged as daily wage muster roll employee and never worked as "Mali". He was engaged as and when there was a requirement, by the concerned Junior Engineer. The Labour Court vide award dated 9.12.2002 (published on 26.5.2003) held that termination of workman was illegal since he had worked for more than 240 days in a year and therefore termination is in violation of Section 6N of 1947 Act, it is illegal. The Labour Court directed for reinstatement with full back wages.

6. Learned counsel for the petitioners has assailed the impugned award only to the extent of relief of reinstatement with full back wages granted by Labour Court. He contended that workman was not appointed following the procedure prescribed in law. He was a daily wager and the Labour Court should have applied its mind, whether relief of reinstatement ought to have been granted or not to such a kind of workman. It however in a mechanical manner has directed for reinstatement of the workman with full back wages. He also relied on the Government Order dated 9.6.1997 (Annexure 2 to writ petition) to contend that appointment as Ward Boy (1) was banned by the Government. Since the post being of no use, it was declared a dying cadre and therefore relief of reinstatement with full back wages ought not to have been granted.

7. Sri Rajesh Tiwari, learned counsel for workman on the contrary, contended that respondent No. 3 was initially appointed on 1.7.1987 and had worked upto 22.5.1995 as class a IV employee. Since he was wrongly terminated, without following procedure u/s 6N of 1947 Act, therefore, Labour Court had rightly directed for reinstatement with full back wages and no interference is called for in the present matter. He also pointed out that pursuant to interim order in the present writ petition passed on 29.8.2003, respondent No. 3 has been allowed to work on the post of "Mali" vide order dated 23.11.2005 and pursuant thereto he is still working. Therefore, this Court must not interfere with the impugned award.

8. Simple question up for consideration is, whether relief of reinstatement with full back wages is a consequential, automatic relief, whenever a workman is found to have been terminated without following procedure prescribed in Section 6N of 1947 Act.

9. The matter has to be examined in the light of certain factors relevant on this aspect which also I should place on record.

10. District Panchayat, Mathura is a statutory body constituted under U.P. Kshetra Panchayat Zila Panchayat Act, 1961 (hereinafter referred to as "Act,

1961"). Chapter IV of Act 1961 deals with the Officers and Servants of the Zila Panchayat. Section 39(2) provides and empowers the Zila Panchayat to create posts of such other officers (including Atirikt Abhiyanta and Atirikt Swasthya Adhikari) and other servants as may be prescribed by rules. The appointment whether on substantive posts, or officiating or temporary posts u/s 47 of 1961 Act have to be made by the competent appointing authority. In order to govern the recruitment and conditions of service of the employees of the Zila Panchayat/ Zila Parishad Service Rules, 1970 (hereinafter referred to as "1970 Rules") have been framed in exercise of powers u/s 237 read with Section 39(2) and (4), Sections 40, 41, 43(1), 44, 46(2) and 53 of 1961 Act. The appointing authority has been defined in Rule 2(ii) as under:

"appointing authority" means an authority empowered u/s 43 of the Act to appoint servants of the Zila Parishad.

11. For the purpose of qualification of direct recruitment, Rule 9 of 170 Rules reads as under:

9. Qualification for direct recruitment--No person shall be eligible for direct recruitment to any of the posts mentioned in Schedule "A" unless he possesses qualifications prescribed therefor in the said Schedule:

Provided, firstly, that an officer or servant referred to in sub-section (1) of Section 46 of the Act who confirmed in a permanent post at any time before the appointed date shall be deemed to be eligible for appointment to a post created in lieu of the said permanent post, whether carrying the same designation or not, irrespective of whether he fulfils or not the qualifications prescribed for it in Schedule "A".

Provided, secondly, that the prescribed qualifications may, after prior mention has been made in this behalf in the advertisement, circular or any other notice inviting applications for recruitment, be relaxed by the appointing authority--

(i) in respect of post which are to be filled in consultation with the Commission, on the advice of the Commission; or

(ii) in respect of posts which are to be filled in accordance with the recommendation of the Chunao Samiti, with the prior approval of the Commissioner of the Division;

(iii) in respect of other posts, with the prior approval of the District Magistrate;

Provided, lastly, that where the prescribed qualifications have been relaxed, the persons benefited thereby shall not be appointed to another post requiring similar or higher qualifications unless a fresh relaxation has been allowed for the purpose in the manner laid down in the preceding proviso.

12. The procedure for direct recruitment is prescribed in Rule 17 which provides for advertisement of vacancy etc. Schedule "A" to 1970 Rules at item No. 22 deals with the cadre of Malis for which the source of recruitment is direct and the

appointing authority is Mukhya Adhikari. The Ward Boy is at serial No. 55 and source of recruitment is direct and the appointing authority is Swasthya Adhikari.

13. Rule 25 also talks of requisitioning of vacancies to Employment Exchange besides advertisement in prominent daily news-papers including local daily newspapers, if any. Any engagement on daily wage basis is not contemplated in the Rules and such an engagement in effect is a casual stopgap arrangement de hors the Rules. It is true that the statutory scheme has not been referred to in the pleadings by the parties but the employer has categorically stated that the workman was engaged on daily wage basis by the concerned Junior Engineer. The workman himself has stated in the written statement that he was engaged as Mali in Zila Panchayat and was paid wages at the rate of Rs. 1050/- per month in January, 1993. Neither the appointment was brought on record by the workman to show that he was appointed under the relevant statutory Rules so as to confer upon him a right to hold the post so long as he is not terminated or his services are not dispensed with in accordance with law, nor he has placed anything to contradict the stand of the employer that the workman was engaged on daily wage basis as and when requirement was felt by Junior Engineer concerned. The statutory provisions cannot be ignored since ignorance of law is no excuse and, therefore, whenever an issue arises, statutory provisions can be taken into account suo motu by the Court even if they are not pleaded by the parties.

14. Learned counsel for respondent No. 2 did not dispute that appointment of respondent No. 3 was never made following procedure prescribed in the statute. In the circumstances, in case of termination of an employee/engaged by an official of Zila Panchayat for certain period, if not made in accordance with the procedure prescribed u/s 6N of the 1947 Act, what can be the relief which could have been granted by Labour Court/Industrial Tribunal, as the case may be; and, what are the necessary aspects to be examined in such matters. The question, in other words, is whether relief of reinstatement with full back wages is automatic, has to be considered in the light of the facts as discussed above and the relevant statutory provision and imposition of law circumstances.

15. Mere fact that workmen has successfully shown that he was wrongly terminated, and his termination is illegal, is not sufficient to ask the employer to reinstate such person and give him full back wages. Whenever such a declaration is made by the Labour Court it would not end the matter on its own without going further on certain relevant aspects about the relief which is also part of reference. The question then would arise, to what relief such workman is entitled.

16. In case it is proved that termination of respondent No. 3 amounts to illegal retrenchment even then relief for lump sum amount towards back wages and compensation could be awarded and reinstatement in given circumstances can be and must be declined.

17. Whether mere declaration of retrenchment in violation of Section 6-N would

result in an automatic relief of reinstatement with back wages and benefit of continuity in service or not, at the time of grant of relief is the issue this Court has to examine.

18. The real crux lies at this dividing point, i.e., at the time of granting relief and not earlier. I have no doubt in accepting the submission of learned counsel for the respondent-workman that Section 6N would apply to a workman irrespective of his nature of employment whether daily wage or otherwise. If he is retrenched without following the procedure prescribed u/s 6N, though he has completed 240 days in a year preceding his retrenchment, it would be illegal. But that by itself would not result in automatic relief of continuity in service, reinstatement and full back wages etc.

19. For the purpose of granting such relief, the relevant aspects which have to be considered are the nature of employment/engagement of workman concerned; the manner in which he was engaged; his right to hold the post; right to continue in service and the wages to which he is entitled etc. If a person is permanently employed, has been terminated/retrenched without following the procedure prescribed u/s 6N of the Act, in such a case since the workman has a right to the post and right to continue, relief of reinstatement would be justified. But there also various other aspects, namely, whether industrial establishment is continuing, whether the post on which the incumbent was working, is continuing; whether the workman be incurred some other disability obstructing such relief, and similar other relevant factors have to be taken into account. In a case of casual or daily wage employee, even in ordinary circumstances, he neither has any right to hold the post nor to continue in service. A daily wage employee commences his service in morning and it comes to an end in evening. The very next day he has no right unless the employer chooses to engage him. It is for this reason, law contemplates that a workman in order to attract Section 6N of the Act need not work throughout the year but it would be sufficient if he has worked for 240 days in a year.

20. Existence of post, the manner in which one was engaged, whether engagement was consistent with some statutory provisions prescribing mode of recruitment and selection etc. are some other relevant factors which have to be considered while granting relief of reinstatement etc. These aspects have been referred to and pointed out in a catena of decisions, some of which I may refer here at.

21. In U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, , the Apex Court in paras 22, 41, 45, 46, and 65 has said:

22. No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in

contravention of the provisions of Section 6N of the U.P. Industrial Disputes Act.

41. Order VII, Rule 7 of the CPC confers power upon the Court to mould relief in a given situation. The provisions of the CPC are applicable to the proceedings under the Industrial Disputes Act. Section 11A of the Industrial Disputes Act empowers the Labour Court, Tribunal and National Tribunal to give appropriate relief in case of discharge or dismissal of workmen.

45. 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 its significance.

46. 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, globalization, privatization and outsourcing is evident.

65. The judgments and orders of the Labour Court and the High Court are set aside and it is directed that the Respondent herein shall be entitled to 25% back wages of the total back-wages payable during the aforesaid period and compensation payable in terms of Section 6N of the UP. Industrial Disputes Act. If, however, any sum has been paid by the Appellant herein, the same shall be adjusted from the amount payable in terms of this judgment.

22. In Jaipur Development Authority Vs. Ram Sahai and Another, , the Court said:

We would, therefore, proceed on the basis that there had been a violation of Sections 25G and 25H of the Act, but, the same by itself, in our opinion, would not mean that the Labour Court should have passed an Award of re-instatement with entire back wages. This Court time and again has held that the jurisdiction u/s 11A must be exercised judiciously. The workman must be employed by a State within the meaning of Article 12 of the Constitution of India, having regard to the doctrine of public employment. It is also required to recruit employees in terms of the provisions of the rules for recruitment framed by it. Respondent had not regularly served Appellant. The job was not of perennial nature. There was nothing to show that he, when his services were terminated any person who was junior to him in the same category, had been retained. His services were dispensed with as early as in 1987. It would not be proper to direct his reinstatement with back wages. We, therefore, are of the opinion that interest of justice would be sub-served if instead and in place of re-instatement of his services, a sum of Rs. 75,000/- is awarded to Respondent by way of compensation as has been done by this Court in a number of its judgments.

23. In U.P. State Road Transport Corporation Vs. Man Singh, , it was held:

7.....The appellant is a statutory corporation and keeping in view the fact that the respondent was appointed on a temporary basis, it was unlikely that he remained unemployed for such a long time. In any event, it would be wholly unjust at this distance of time. i.e. after a period of more than 30 years, to direct

reinstatement of the respondent in service. Unfortunately, the Labour Court or the High Court did not consider these aspects of the matter.

8. Keeping in view the particular facts and circumstances of this case, we are of the opinion that instead and in place of the direction for reinstatement of the respondent together with back wages from 1986, interest of justice would be subserved if the appellant is directed to pay a sum of Rs. 50,000 to him. Similar orders, we may place on record, have been passed by this Court in *State of Rajasthan v. Ghyan Chand*, *State of M.P. v. Arjunlal Rajak*, *Nagar Mahapalika (now Municipal Corporation) v. State of U.P.*, and *Haryana State Electronics Development Corporation Ltd. v. Mamni*.

24. In *Uttaranchal Forest Development Corporation Vs. M.C. Joshi*, :

We are therefore, of the opinion that keeping in view the nature and period of services rendered by the respondent herein as also the period during which he had worked and the fact that he had raised an industrial dispute after six years, interest of justice would be met if the impugned judgments are substituted by an award of compensation for a sum of Rs. 75,000/- in favour of the respondent.

25. In *Madhya Pradesh Administration Vs. Tribhuban*, :

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 re-instatement with full back wages, we are of the opinion that interest of justice would be subserved if 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.

26. In *Mahboob Deepak Vs. Nagar Panchayat Gajraula and Another*, :

8. 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 regularized.

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

noncompliance of the provisions of Section 6N of the U.P. Industrial Disputes Act, 1947. 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.

27. In Ghaziabad Development Authority and Another Vs. Ashok Kumar and Another, :

9. The question which however, arises for consideration is as to whether the Labour Court was justified in awarding the relief of reinstatement with full back wages in favour of the workman.

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.

A statutory authority is obligated to make recruitments only upon compliance of 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.

10. 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.

11. We are, therefore, of the opinion that the appellant should be directed to pay compensation to the first respondent instead and in place of the relief of reinstatement in service.

28. In Sita Ram and Others Vs. Moti Lal Nehru Farmers Training Institute, :

17. 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.

18. Keeping in view the period during which the services were rendered by the respondent; 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 re-instated in service.

19. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor, 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.

20. 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.

29. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, , the Court said:

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.

30. Relying on the above propositions, recently in Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others, , the Court said:

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 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 wages 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.

31. So far as the decisions cited by Sri Rajesh Tewari, learned counsel for the workman are concerned, I find that in R.M. Yellatti Vs. The Assistant Executive Engineer, , what relief should be granted was not the question raised before the Court. Holding termination illegal, the Labour Court granted relief of reinstatement with 50% back wages. The question raised before the High Court and Apex Court was about the onus upon whom it lie to prove that the workman has completed 240 days in a year or not. The decision, therefore, is not an authority on the proposition as to what should be the relief to be granted when a termination/retrenchment is found in violation of the procedure for retrenchment prescribed in the statute. Moreover, in para 15 of the judgment the Apex Court said that the Court did not grant relief of reinstatement in the manner it applies to a case where termination of a permanent employee is set aside and he is restored to his position as if he was not terminated. The Apex Court said that name of workman will be restored as daily wager in the nominal muster roll, meaning thereby whenever requirement is felt by employer to engage person in muster roll, the workman would be employed accordingly. This judgment,

therefore, does not help the respondent-workman at all.

32. The decision of Hon"ble Single Judge in Civil Misc. Writ Petition No. 7133 of 1995, Rajya Krishi Utpadan Mandi Parishad, U.P. Meerut and another v. The Prescribed Authority, Industrial Tribunal (V), U.P. Meerut and another (decided on 12.4.2002) also has not considered the question as to what relief ought to be granted. The award of Labour Court was challenged in respect of two issues decided by Labour Court namely, whether workman is covered by definition of workman under 1947 Act and whether the employer is an industry. Therefore, this judgment also does not lay down any proposition of law about the relief to be granted which is a question directly considered by the Apex Court in a catena of decisions, some of which I have already discussed above and are binding on this Court on the above exposition of law. The two decisions cited by learned counsel for the respondent-workman, therefore, lends no credence to his case.

33. The next decision is dated 11.11.2005 passed in Civil Misc. Writ Petition No. 12249 of 2001 Nagar Palika Parishad, Farrukhabad and another v. Prescribed Authority Labour Court-I U.P. Kanpur and another. Therein question up for consideration was, whether the workman is entitled to full back wages having been terminated in violation of Section 6N of 1947 Act. This Court noted that it is no doubt true that there is no rule of thumb that in every case where the industrial Tribunal gives a finding that the termination of service was in violation of Section 25F of the Act, entire back wages should be awarded. Whenever the Court is called upon to consider, a large number of factor may weigh to balance the rights of the parties in taking a decision regarding award of back wages. Some of these are:

- i. Manner and method of selection and appointment, i.e. whether it was after proper advertisement of the vacancy or inviting applications from the employment exchange.
- ii. Nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character.
- iii. Whether any special qualification required for the job.
- iv. Length of service rendered by the workman with the Employer before his termination.
- v. The age of the workman concerned.
- vi. The probability of availability of employment in the nearby area.
- vii. Delay in raising industrial dispute.
- viii. The financial capacity and sustainability of employer.

34. Further in the last but one paragraph it was observed that the employer had not pleaded in the writ petition that the workman was not entitled for back wages and this issue was raised during course of arguments.

35. In the present writ petition, situation is not like this. Here in para 16 of writ petition petitioner has pleaded that instead of back wages respondent No. 3 could have been allowed lump sum amount considering nature of the appointment etc.

36. In Ramesh Kumar Vs. State of Haryana, , the workman was appointed as "Mali" in Public Works Department on casual basis in December, 1991 and was terminated on 31st January, 1993. The Labour Court held the termination of workman being in violation of Section 25F of the Industrial Disputes Act, 1947 (Hereinafter referred as "Central Act, 1947"). Having said so it granted relief of reinstatement with continuity of service and 50% back wages from the date of termination. The High Court set aside the award granting reinstatement and back wages vide its judgment dated 23.12.2008 in writ petition No. 575 of 2004 and that is how the matter came up before Apex Court.

37. The facts of the case in Ramesh Kumar (supra) show that initially when the award of Labour Court was challenged, the writ petition was dismissed by the High Court where against a SLP was filed before the Apex Court and matter was remanded back to the High Court, whereafter it set aside the award holding that the Labour Court erred in granting reinstatement and back wages. The Apex Court considered that the question whether the relief of reinstatement and back wages could have been allowed. The Court found that this plea was not raised by the employer either before Labour Court or the High Court when the writ petition on the earlier occasion was filed but the issue was raised at the time of argument only when the matter was remanded by the Apex Court. The Court hence said that in these circumstances High Court ought not to have enquired with the factual findings of Labour Court which is evident from extract of para 13 of the writ petition which reads as under:

Though it was contended that the initial appointment of the appellant was contrary to the recruitment rules and constitutional scheme of employment, admittedly, the said objection was not raised by the Department either before the Labour Court or before the High Court at the first instance. It was only for the first time that they raised the said issue before the High Court when the matter was remitted to it that too the same was raised only during the arguments. In such circumstances, the High Court ought not to have interfered with the factual finding rendered by the Labour Court.

38. In the present case, it is evident that in the pleadings itself this issue has been raised by the employer and therefore the aforesaid decision lends no credence to respondent No. 3.

39. In Harjinder Singh Vs. Punjab State Warehousing Corporation, workman was employed in Punjab State Warehousing Corporation as Workcharge Motor Mate with effect from 5.3.1986. On 3.10.1986 the Executive Engineer of the Corporation appointed him as Work Munshi in the pay scale of Rs. 350-525 for three months. By another order dated 5.2.1987 the same officer appointed him

on the post of Work Munshi in the pay scale of Rs. 400-600 for a period of three months. Despite the end of tenure on 4.5.1987, the workman continued till 5.7.1988 when Managing Director of the Corporation issued one month's notice for termination of his services by way of retrenchment. This notice was stayed by High Court in writ petition No. 8723 of 1988 filed by the workman which later on was dismissed on the ground of alternative remedy under Central Act, 1947. Another notice was issued by Managing Director of the Corporation on 26.11.1992 retrenching the workman and 21 others giving them one month's pay and allowances in lieu of notice as required u/s 25F(a) of the Act. An industrial dispute was raised stating that while terminating the workman, rule of "last come first go" was not followed and persons junior were retained in service. Defence was taken by the employer that project on which workman was engaged had completed and therefore he was retrenched complying with the procedure u/s 25F of the Central Act, 1947. Allegation of retaining juniors was denied. The Labour Court answered the reference in favour of workman directing for reinstatement with 50% back wages. The Labour Court found that though Section 25F was complied with but principle of equality u/s 25G of Central Act, 1947 was violated and juniors were retained while workman was terminated. In the writ petition, High Court upheld award to the extent of violation of Section 25G but did not approve direction relating to reinstatement on the ground that initial appointment of workman was not in accordance with statutory regulations. It substituted this direction by a lump sum compensation of Rs. 87,582/-. The Apex Court, from the pleadings in the High Court came to the conclusion that there was no pleadings whatsoever about validity of appointment of workman and therefore on this account High Court ought not to have interfered. It was thoroughly a question of fact which could have been decided on pleadings and evidence produced before the Labour Court and not otherwise. The Apex Court also observed that High Court did not find any jurisdictional error in the award nor any error apparent on record and has given a judgment only on assumption. The Apex Court pointed out that in the Labour Court the claim of workman for reinstatement with back wages was not resisted by employer in its pleadings stating that initial appointment of workman was illegal and unconstitutional.

40. In the present case, the petitioners have pleaded before the Labour Court about the nature of appointment of the workman. From perusal of award it is also evident that there was a pleading about appointment of workman that he was daily wager but this aspect has not been discussed by the Labour Court with reference to relevant documents and it has simply proceeded to consider that since workman's engagement was made in 1994 and he has proved that he worked for 280 days, there was nothing further required. Whenever a dispute with regard to nature of appointment is raised it is incumbent upon the Labour Court/Industrial Tribunal, as the case may be, to look into this aspect of matter also since this would be necessary to be considered while deciding the issue of relief which ought to be granted to the workman. The reference itself contemplates as to what compensation may be awarded to workman, meaning

thereby before deciding the question what relief is to be granted to the workman, all relevant aspects have to be considered by labour Court which it has failed to consider in the present case. Thus it is not a case where in respect of nature of appointment of the workman, no issue was raised by the employer at all. Therefore the judgment in Harjinder Singh (supra) as such would not help respondent No. 3.

41. In Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana), , the Apex Court in para 8 of the judgment said:

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.

42. Thereafter while distinguishing its own two other earlier judgments, in paras 9, 10, 11 and 12 it said as under:

9. The High Court, however, has relied on the decision of this Court in Mahboob Deepak Vs. Nagar Panchayat Gajraula and Another, 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 another v. Ashok Kumar and another (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 31.3.1990 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 another (supra) and Ghaziabad Development Authority and another v. Ashok Kumar and another (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.

12. The decision of this Court in Secretary, State of Karnataka and others v. Umadevi (3) and others (supra) cited by the counsel for the respondent relates to regularization in public employment and has no relevance to an Award for re-instatement of a discharged workman passed by the Labour Court u/s 11A of the Act without any direction for regularization of his services.

43. I have already said that with respect to nature of appointment of respondent No. 3 and his right to claim reinstatement, an issue was raised by petitioners before Labour Court whereupon the question whether Labour Court ought to have granted full relief namely reinstatement and full wages, has been raised before this Court also. In the circumstances, it cannot be said that here is a case where there is no pleading whatsoever. On the contrary what has been held in Mahboob Deepak (supra) would equally apply which says that before granting reinstatement and full back wages, the Labour Court would have to consider following factors.

(i) whether in making the appointment, the statutory rules, if any, had been complied with;

(ii) The period the workman had worked;

(iii) Whether there existed any vacancy; and

(iv) Whether the workman adopted some other employment on the date of termination or passing of the award.

44. The facts of the case in Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana), , are similar to that of Harjinder Singh (supra) and Ramesh Kumar (supra) and said judgments would have no application to this case.

45. In normal course, the matter could have been remanded to the Labour Court, but considering the fact that 16 years have already passed since the workman was terminated and in case of remand, this would further add agony to both the parties, I consider it a fit case where in the light of the facts of the matter, an appropriate order be passed at this stage.

46. The judgment of the Labour Court in so far as it directs reinstatement and full back wages is set aside and the award is modified to the extent that respondent workman shall be paid one and half years" wages calculated on the basis of last wages paid to respondent workman at the time of his termination as lump sum amount of compensation. The amount of wages already received by workman-respondent No. 3 during course of his employment pursuant to interim order shall neither be recovered nor be adjusted against the amount of lump sum compensation as directed above.

47. The writ petition is partly allowed with the above direction. No costs.