

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE
Misc. Petition No.4540 of 2023
MPMKVV CO. LTD. & OTHERS
Vs.
SURENDRA KUMAR GUPTA

APPEARANCE

Shri Ravi Jain - Advocate for the petitioner.

Shri Jay Nandan Singh Sengar - Advocate for respondent No.1.

<i>Reserved on</i>	<i>:</i>	<i>25/03/2025</i>
<i>Delivered on</i>	<i>:</i>	<i>12/6/2025</i>

*This petition having been heard and reserved for orders, coming on for pronouncement this day, the **Hon'ble Shri Justice Milind Ramesh Phadke** pronounced/passed the following:*

ORDER

The present petition, under Article 226/227 of the Constitution of India, has been filed by the petitioner/employer being aggrieved by the Award dated 31.01.2023 (Annexure P/1) passed by the Labour Court No.2, Gwalior in Case No.24/A/I.D.Act/2016 (Reference), by which the termination of the services of the respondent has been held to be bad and direction has been issued for reinstatement alongwith 25% back-wages.

2. Short facts of the case are that initially, the respondent/workman was engaged as Steno-typist in the respondent/department in the year 2007 and his services were terminated on 28.09.2009 by an oral order.

Against the said termination, a Writ Petition No.5657 of 2015(S) was filed by the respondent/workman before this Court, which was dismissed vide order dated 14.10.2015, with a liberty to the respondent/employee to raise an industrial dispute and on the basis of the said liberty, the respondent had raised a dispute before the Labour Commissioner, Indore, where conciliation proceedings ended into failure and the case was referred to Labour Court No.2, Gwalior for adjudication of the industrial dispute. The terms of reference before the Labour Court is reproduced below:-

"क्या सुरेन्द्र कुमार गुप्ता पिता ओमप्रकाश का नियोजक द्वारा किया गया सेवापृथक्करण वैध एवं उचित है ? यदि नहीं तो सेवानियुक्ति किस सहायता का पात्र है एवं इस संबंध में सेवानियोजक को क्या निर्देश दिये जाने चाहिये? "

3. After the aforesaid reference, the learned Labour Court registered the case and issued notice to the parties for filing statement of claims. The employee filed statement of claim alleging that since he had worked for more than 240 days in one calendar year therefore, his services could not have been retrenched without payment of compensation as well as without following any procedure of law, a claim was raised to reinstate him into the service with full back-wages. The petitioner/department filed a reply alleging that there was no regular appointment given to the respondent in accordance with service Rules and neither any advertisement was issued nor eligible persons were considered alongwith the respondent/employee at the time of his appointment in the year 2007, rather his appointment has all along been shown to be for a fixed period subject to extensions and such further continuation for a fixed period, without following the procedure

prescribed under the rules and without allowing other eligible candidates to participate in the selection process for regular appointment, thus, he had no right to the post. After appreciating the evidence and perusing the record, the learned Labour Court had passed the impugned award dated 31.01.2023 observing that since termination of the respondent/employee, who has worked more than 08 years, was illegal and was not proper, therefore, he is entitled for reinstatement in service alongwith 20% back-wages. Being aggrieved by the aforesaid the Award, the petitioner/employer has filed the present petition before this Court seeking following reliefs:

"(1) That the impugned Award dated 31-01-2023 declared on 23-03-2023 Annexure-P/1, may kindly be directed to be sat-aside.

(2) That any other relief which this Hon'ble Court may deem fit and proper in the circumstances of the case may also kindly be granted.

(3) That the cost of this petition be also granted in favor of petitioners.

(4) That the record of Labour Court No. 2 Gwalior in Case No. 24/A/I.D. Act / 2016 (Reference) may kindly be called and perused."

4. Learned counsel for the petitioners/employer has submitted before this Court that the impugned order dated 31.01.2023 passed by the Labour Court allowing the application of respondent, is manifestly illegal, therefore, is liable to be set aside, as it has wrongly interpreted the provisions of retrenchment and wrongly given finding of 08 year continuous service of the respondent which is clear from the evidence of both the parties and documents on record exhibited before it that the respondent was never appointed in the regular service of petitioners' company rather he was appointed on contact basis for a period of 06

month from 27.06.2006 to 31.12.2006 at Collector rate and again for 06 months from 27.02.2007 to 27.08.2007, thereafter, the contract of respondent was never renewed, thus, his removal would not come under the definition of retrenchment.

5. It was further submitted that the learned Labour Court has not considered the fact that after the contract period was over, the respondent/employee was engaged through different service providers and lastly, his engagement was extended from 01.07.2015 to 31.07.2015 through Service Provider M/s. Industrial Labour Supplier, thereafter the contract for supply the manpower was given to M/s Balaji Detective and Security Services Indore, but the respondent/employee did not made them as party respondents, it was thus prayed that on account of misjoinder of necessary parties, the present petition be dismissed.

6. It was further submitted that in case of termination of a daily wage employee, the reinstatement with back-wages is not automatic and instead, the employee should be given monetary compensation in lieu of reinstatement, which will meet the ends of justice, which the learned Labour Court had wrongly awarded. In the aforesaid regard, reliance was placed on the judgment of the Supreme Court in the matter of **Jeetubha Khansangji Jadeja Vs. Kutchh District Panchayat**, decided on **23.09.2022 in Civil Appeal No.6890 of 2022**.

7. *Per contra*, learned counsel for the respondent/employee has submitted that the petitioners did not file any document to prove that the respondent, who was appointed as Steno-typist in the respondent/department in the year 2007 has not worked for more than 240 days in a calendar year and as the petitioner was in possession of every document, it should had proved that the respondent/employee has

not worked for the said statutory period since it is well established principle of law that if a party, who is in possession of best evidence, fails to produce the same then, an adverse inference is to be drawn against it, which the learned learned Labour Court has rightly drawn and held that the respondent was illegally retrenched, therefore, he was rightly directed to be reinstated with 20% back-wages. In support of this argument, reliance was placed in the matter of **Union of India vs. Ex. Maj. Sudarshan Gupta** reported in (2009) 6 SCC 298 to point out that the non-production of the official records will impact an adverse inference against the employer. It was thus submitted that the present petition, being devoid of any sum and substance, deserves to be dismissed, as there is no illegality or perversity committed by the learned Labour Court in passing the award dated 31.01.2023.

8. In alternate, it was argued that if this Court finds that looking to the nature of the employment, the order of reinstatement is not proper, then, the compensation in lieu of reinstatement be directed to be paid in conformity with the guidelines laid by the Apex Court. So far as the compensation in lieu of reinstatement is concerned, the counsel for the respondent/employee has relied upon the judgment of Supreme Court in the case of **Bharat Sanchar Nigam Limited Vs. Bhurumal** reported in (2014) 7 SCC 177.

9. Heard counsel for the parties and perused the record.

10. So far as the findings given by the Court below that the termination of the respondent was illegal, since the petitioners being the employer and in possession of the relevant document, had not challenged the said finding to show that the respondent had not worked for more than 240 days and in wake of well-established principle of law

that if a party is in possession of best evidence and fails to produce the same, then an adverse inference is to be drawn against it, this Court is of the considered opinion that the Court below did not commit any mistake by holding that the petitioner has worked for more than 240 days.

11. So far as the question of reinstatement with back-wages or with compensation of amount is concerned, the Supreme Court in the matter of **Bharat Sanchar Nigam Limited Vs. Bhurumal** reported in (2014) 7 SCC 177 has held 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. Rationale for shifting in this direction is obvious."

12. Further, the Supreme Court in the matter of **Jayant Vasantrao Hiwarkar Vs. Anoop Ganaptrao Bobde** reported in (2017) 11 SCC 244 has upheld the grant of compensation in lieu of reinstatement to the

proper as the respondent had merely worked for a period of one year.

13. The Supreme Court in the case of **Hari Nandan Prasad Vs. Food Corporation of India**, reported in **(2014) 7 SCC 190** has held as under:-

"19. The following passages from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement: (BSNL case, SCC pp. 187-88, paras 29-30)

"29. The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In BSNL v. Man Singh, this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In Incharge Officer v. Shankar Shetty, it was held that those cases where the workman had worked on daily-wage basis, and worked merely for a period of 240 days or 2 to 3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.

30. In this judgment of Shankar Shetty, this trend was reiterated by referring to various judgments, as is clear from the following discussion: (SCC pp. 127-28, paras 2-4)

'2. Should an order of reinstatement automatically follow in a case where the engagement of a dailywager has been brought to an end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the ID Act")? The course of the decisions of this Court in recent years has

been uniform on the above question.

3. In Jagbir Singh v. Haryana State Agriculture Mktg. Board, 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 Corpn. Ltd. v. Uday Narain Pandey, Uttaranchal Forest Development Corpn. v. M.C. Joshi, State of M.P. v. Lalit Kumar Verma, M.P. Admn. v. Tribhuban, Sita Ram v. Moti Lal Nehru Farmers Training Institute, Jaipur Development Authority v. Ramsahai, GDA v. Ashok Kumar and Mahboob Deepak v. Nagar Panchayat, Gajraula and stated as follows: (Jagbir Singh case, SCC pp. 330 & 335, paras 7 & 14)

"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."

4. Jagbir Singh has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal, wherein this Court stated: (SCC p. 777, para 11) 11. In view of the aforesaid legal position and the fact that the workmen were engaged as dailywagers 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."

21. We make it clear that reference to Umadevi, in the aforesaid discussion is in a situation where the dispute referred pertained to termination alone. Going by the principles carved out above, had it been a case where the issue is limited only to the validity of termination, Appellant I would not be entitled to reinstatement....."

14. The Supreme Court in the matter of **O.P. Bhandari Vs. Indian Tourism Development Corporation Limited & Others** reported in

(1986) 4 SCC 337 has held as under :-

"6. Time is now ripe to turn to the next question as to whether it is obligatory to direct reinstatement when the concerned regulation is found to be void. In the sphere of employer-employee relations in public sector undertakings, to which Article 12 of the Constitution of India is attracted, it cannot be posited that reinstatement must invariably follow as a consequence of holding that an order of termination of service of an employee is void. No doubt in regard to "blue collar" workmen and "white collar" employees other than those belonging to the managerial or similar high level cadre, reinstatement would be a rule, and compensation in lieu thereof a rare exception. Insofar as the high level managerial cadre is concerned, the matter deserves to be viewed from an altogether different perspective -- a larger perspective which must take into account the demands of National Interest and the resultant compulsion to ensure the success of the public sector in its competitive co-existence with the private sector. The public sector can never fulfil its life aim or successfully vie with the private sector if it is not managed by capable and efficient personnel with unimpeachable integrity and the requisite vision, who enjoy the fullest confidence of the "policy-makers" of such undertakings. Then and then only can the public sector undertaking achieve the goals of (1) maximum production for the benefit of the community, (2) social justice for workers, consumers and the people, and

(3) reasonable return on the public funds invested in the undertaking.

7. It is in public interest that such undertakings or their Boards of Directors are not compelled and obliged to entrust their managements to personnel in whom, on reasonable grounds, they have no trust or faith and with whom they are in a bona fide manner unable to function harmoniously as a team working arm-in-arm with success in the aforesaid three- dimensional sense as their common goal. These factors have to be taken into account by the court at the time of passing the consequential order, for the court has full discretion in the matter of granting relief, and the court can sculpture the relief to suit the needs of the matter at hand. The court, if satisfied that ends of justice so demand, can certainly direct that the employer shall have the option not to reinstate provided the employer pays reasonable compensation as indicated by the court."

15. In the matter of **Jeetubha Khansangji Jadeja** (*supra*), the Apex Court had also taken a similar view.

16. In the present case, this Court has concurred with the findings of the learned Labour Court with regard to the termination of the respondent was to be illegal, but this Court, looking to the date of termination i.e. 01.08.2015, his nature of service is contractual and the length of the service which is about 08 years as is evident from para 16 of the Award dated 31.01.2023, is of the considered opinion that the Court below should have directed for payment of monetary compensation of **Rs.5,00,000/-** in lieu of reinstatement and 25% of

back-wages.

17. Accordingly, the impugned Award dated 31.01.2023 passed by Labour Court No.1, Gwalior is modified to the extent that the respondent/employee shall be entitled for monetary compensation of **Rs.5,00,000/-**, which shall be paid by the petitioner/department within a period of **six months** from the date of receipt of certified copy of this order.

18. Accordingly, the petition stands **partly allowed** and **disposed of**.

(Milind Ramesh Phadke)
Judge