



GAHC010061932020



2026:GAU-AS:3982

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2933/2020

AGRICULTURAL AND PROCESSED FOOD PRODUCTS EXPORTS
DEVELOPMENT AUTHORITY (APEADA)
MINISTRY OF COMMERCE AND INDUSTRY GOVT. OF INDIA, 3RD FLOOR,
NCUI BUILDING, 3, SIRI INDUSTRIAL AREA, AUGUST KRANTI MARG,
NEW DELHI-110016, REP. BY ITS ASSISTANT GENERAL MANAGER,
REGIONAL OFFICE GUWAHATI

VERSUS

THE UNION OF INDIA AND 2 ORS
REP. BY SECRETARY GOVT. OF INDIA, MINISTRY OF LABOUR AND
EMPLOYMENT, SHRAM SHAKTI BHAWAN, RAFI MARG, NEW DELHI-1

2: PRESIDING OFFICER
CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM LABOUR COURT
ASSAM
KENDRIYA SHRAM SADAN
BIRUBARI
GUWAHATI-16

3: BINOD CH. BARMAN
C/O SRI JOGENDRA NATH BORAH
HOUSE NO. 598
ANANDA NAGAR
CHRISTIAN BASTI
NEAR SANI MANDIR
GUWAHATI-78100



BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri A. Kumar, Advocate.

Advocates for the respondents : Shri L. C. Dey, Advocate, (R-3).

Date on which judgment is reserved : 06.03.2026

Date of pronouncement of judgment : **19.03.2026**

Whether the pronouncement is of the
operative part of the judgment? : NA

Whether the full judgment has been pronounced? : Yes

JUDGMENT AND ORDER (CAV)

An Award dated 01.10.2019 passed by the learned Central Government Industrial Tribunal-cum-Labour Court, Guwahati, in Reference Case No. 02 of 2013 is the subject matter of challenge in this petition instituted under Article 226 of the Constitution of India. By the aforesaid Award, the concerned Workman, respondent no.3 has been directed to be reinstated and the Management is also directed to pay a lump sum amount of Rs. 1,00,000/-, in lieu of the back wages. The Management is the petitioner, which has questioned the legality and validity of the said Award.

2. As per facts projected, the respondent no. 3-Workman was initially appointed in September 1998 in the establishment of the Management on contractual basis for different periods and the 1st period was from 06.10.1998 to 05.01.1999. The last appointment was made vide order dated 08.07.2011 for a period upto 31.12.2011. The Management has highlighted that the



appointment orders were contractual in nature and there was specific clause that no right would be accrued in favour of the workman. Further clauses were there, that the contract would be rescinded automatically and the same would not confer any right. It is also clarified that the post in which the petitioner was engaged was not a regular post and also a non-sanctioned post. Upon expiry of the period of the last contractual term on 31.12.2011 the engagement was not continued and accordingly, the workman had raised a dispute and a Reference was made in the following terms: Reference

"Whether the action of the management of Agricultural & Processed Food Products Export Development Authority (APEDA). under M/o Commerce & Industry in terminating the service of Sh. Binod Chandra Barman w.e.f. 01.01.2012 with-out notice and without any terminate benefits as well as refusal to reinstate him on completion of 13 yrs into service is proper and justifies? If not, what relief the concerned workman is entitled to ?"

3. The learned Central Government Industrial Tribunal (CGIT) after hearing the parties has passed the impugned Award dated 01.10.2019 directing reinstatement of the workman and the payment of a lump sum in lieu of back wages. It is this Award which is the subject matter of challenge as indicated above.

4. I have heard Shri A. Kumar, learned counsel for the petitioner, who has appeared online. I have also heard Shri L. C. Dey, learned counsel for the respondent no. 3.

5. Shri Kumar, learned counsel for the petitioner has submitted that the impugned Award has made observations which are not only incorrect, but also perverse. He has highlighted that in paragraph 9 of the impugned Award, there is a finding of a clear employer- employee relationship between the workman



and the management, which is not substantiated by records. He has also highlighted the observations made by the learned Tribunal that though, the appointment was contractual and periodic, by sheer length of his continuity, he can be held to be permanent in nature. It is submitted that the Section 2 (oo) of the ***Industrial Disputes Act, 1947***, deals with "retrenchment". However, sub Section (bb) clarifies that the same does not include termination as a result of non-renewal of contracts. He has submitted that the present discontinuation removal cannot be equated with retrenchment. He has submitted that though there was a clause in the appointment that the same could be terminated without any notice. In the instant case, the termination was not during the pendency of the contract and therefore, the question of issuing notice would not arise. He submits that the termination was after completion of the period of the contract and as there was no further requirement of the work, the same was not continued. He has highlighted that there was no employee-employer relationship and the workman cannot claim for continuance of the engagement. He has also submitted that there is no *mala fide* involved as no new appointment has been made by replacing the petitioner in the post where he was serving. He has also submitted that length of service, *per se* would not be relevant for adjudication of a dispute of the present nature.

6. By referring to the case of ***Director, Institute of Management vs Smt. Pushpa Srivastava***, reported in ***(1992) 4 SCC 33***, the learned counsel has submitted that non-renewal of contractual employee is not retrenchment and therefore, there will be no application of Section 2 (oo) of the ***Industrial Disputes Act***. As a corollary thereof, it is submitted that there is no requirement to follow Section 25 F of the Act which lays down the conditions precedent to retrenchment of workman. In this regard, reliance has been



placed on the decision of ***Surendranagar District Panchayat Vs Dahyabhai Amarsinh*** reported in **(2005) 8 SCC 750**. He has also relied upon a decision of the Hon'ble Gujarat High Court, in the case of ***Rasmilaben R Thakker Vs. IndexT/C Industrial Extension Cottage & Ors.*** [R/Special Civil Appl. No. 12240 of 2008] reported in **2022 GUJHC:37859** wherein it has been laid down that there cannot be any right to seek continuation in service. He has submitted that in the entire writ petition and the proceeding before the learned Tribunal, there was no allegation of any discrimination or unreasonable action or any violation of the provisions of Article 14 of the Constitution of India. He has highlighted that the appointment was not made against any sanctioned post. He has also drawn the attention of this Court to a decision of ***Deepali Gundu Surwase Vs Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Ors.*** reported in **(2013) 10 SCC 324**, wherein the aspect of retrenchment and reinstatement has been explained. For ready reference, the relevant excerpts are extracted herein below:

“21. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol. 2, 3rd Edn., the word "reinstatement" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; b re-establishment. As per Law Lexicon, 2nd Edn., the word "reinstatement" means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word "reinstatement" means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam-Webster Dictionary, the word "reinstatement" means to place again (as C in possession or in a former position), to restore to a previous effective state.



As per Black's Law Dictionary, 6th Edn., "reinstatement" means: "To reinstall, to re-establish, to place again in a former state, condition, or office; to restore to a state or position from which the object or person had been removed."

22. The very idea of restoring an employee to the position which he held d before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the f legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential g benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."



7. Shri Kumar, the learned counsel for the petitioner has submitted that length of service would not be a relevant consideration when it is a contractual arrangement. He accordingly submits that the impugned Award be interfered with and the writ petition be allowed.
8. *Per contra*, Shri Dey, learned counsel for the respondent no. 3 has submitted that the Award has been passed after considering all the relevant facts and circumstances. He has also pointed out that the compliance of Section 17 B of the Act was not fully done. He has submitted that such compliance has been done only from the filing of the writ petition and not from the date of the Award.
9. By drawing the attention of this Court to the ***Agricultural and Processed Food Products Export Development Authority (APEDA) Regulations*** which governs the service condition, he has submitted that Clause 28 (d) deals with contractual appointment. He has submitted that the petitioner was not a contract labour and was under the direct control of the Management. He has also submitted that no notice was issued for his discontinuation and accordingly, the Award is justified. He has submitted that representations were submitted by the respondent no. 3 and those were forwarded to the headquarter. He has also highlighted that the respondent no. 3 has served for a long period of time and the Attendance Register was tampered and even the PF amount was deducted. He has relied upon the decision of ***Hussainbhai, Calicut Vs The Alath Factory Thezhilali Union, Kozhikode and Ors.*** reported in ***(1978) 4 SCC 257***. He has submitted that the Management has been indulging in unfair labour practice as in spite of the services of the respondent no. 3 being required, his services have not been continued. By referring to the written submission, the learned counsel for the respondent no. 3 has submitted that



another peon has been appointed in place of the petitioner. He has also highlighted that APEDA is constituted by an Act of the Parliament, and therefore, it is under an obligation to act strictly in accordance with law and the Constitution. Reliance has been placed on the case of ***Haryana, State Electronics Development Corporation Ltd. Vs Mamni*** reported in **(2006) 9 SCC 434** and the following observations have been pressed into service:

“9. The respondent was appointed from time to time. Her services used to be terminated on the expiry of 89 days on regular basis. However, it is noticed that she used to be appointed after a gap of one or two days upon completion of each term, Such an action on the part of the appellant cannot be said to be bona fide. The High Court rejected the contention raised on behalf of the appellant herein stating:

“... It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been disputed, reveals that the respondent workman was repeatedly engaged on 89 days' basis. It is, therefore, clear that the intention of the management was not to engage the respondent workman for a specified period, as alleged, but was to defeat the rights available to her under Section 25-F of the Act. The aforesaid practice at the hands of the petitioner management to employ the workman repeatedly after a notional break, clearly falls within the ambit and scope of unfair labour practice....”

11. In this case the services of the respondent had been terminated on a regular basis and she had been reappointed after a gap of one or two days. Such a course of action was adopted by the appellant with a view to defeat the object of the Act. Section 2(oo)(bb) of the Industrial Disputes Act, 1947, therefore, is not attracted in the instant case.”



10. Shri Dey, the learned counsel for the respondent has also relied upon the case of ***Anoop Sharma Vs Executive Engineer, Public Health Division*** reported in **(2010) 5 SCC 497** wherein it has been laid down that Section 25 F (a) & (b) of the Act are mandatory. He has however, informed that so far as the Gratuity is concerned, the same has been paid and there is no dispute with this regard.

11. Shri Kumar, the learned counsel for the petitioner in his rejoinder has submitted that acceptance of Gratuity would preclude the respondent no 3 to claim reinstatement. He has also reiterated that the nature of the work was not perennial and therefore, there was no requirement to continue with the respondent no. 3. As regards the obligation under Section 17 B of the Act, the learned counsel for the petitioner has submitted that an amount of Rs. 6.7 lakh has been paid to the respondent no. 3. He has also referred to the ledger and has submitted that from March, 2020 onwards the back wages have been paid and even for the month of December 2019, the same has been paid.

12. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

13. The learned Tribunal in the impugned Award dated 01.10.2019 after discussing the facts and circumstances has come to a conclusion that the respondent no. 3 is entitled to be reinstated. As regards the back wages, as indicated above, a lump sum amount of Rs. 1 lakh has been granted. The learned Tribunal has proceeded on the assumption that there was a clear employer-employee relationship and though the contractual appointment was periodic in nature, the sheer length of his service would show the continuity. The learned Tribunal has also taken into consideration Section 2 (oo) of the Act of 1947 and has also taken the aspect that the termination was done without



any notice.

14. Let us, however, deal with the provisions of Section 2 (oo), which deals with retrenchment. Sub Section (bb) would clarify that it does not include termination as a result of non-renewal. For ready reference the aforesaid provisions of law are extracted herein below:

“2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health.”

15. In the instant case, it is not in dispute that the engagement of the respondent no. 3 was periodical and contractual in nature and the last appointment dated 08.07.2011 was upto 31.12.2011. It is also not in dispute that the discontinuation was not done in the midst of the said period but there was no continuation after expiry of that period. This Court cannot be oblivious of the fact that the petitioner is a statutory body and is accountable for all engagements and consequential payment. If according to the petitioner, such continuation was not necessary, it cannot be forced upon them as the same



would depend on the necessity as well as the fund position. It is also clarified by the learned counsel for the petitioner that no other person was appointed in place of the petitioner and therefore the question of *mala fide* would not arise. The Hon'ble Supreme Court in the case of **Surendranagar** (supra), has been clarified that there was no requirement to follow Section 25 F of the Act if it could not be proved by the workman that he was in continuous service for the stipulated period of 240 days. In the said case, after discussing the precedence, the following observations have been made:

“18. In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he has actually worked with the employer for not less than 240 days during the period twelve calendar months preceding the date of termination. What we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by the employer has not been contradicted. It is improbable that workman who claimed to have worked with the appellant for such a long period would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer. Therefore, we are of the opinion that the workman has failed to discharge his burden that he was in employment for 240 days during the preceding 12 months of the date of termination of his service. The Courts below have wrongly drawn an adverse inference for non production of the record of the workman for ten years. The scope of enquiry before the Labour Court was confined to only 12 months preceding the date of termination to decide the question of continuation of service for the purpose of Section 25F of the Industrial Disputes Act. The workman has never contended that he was regularly employed in the



Panchayat for one year to claim the uninterrupted period of service as required under Section 25B(1) of the Act. In the fact & situation and in the light of the law on the subject, we find that the workman-respondent is not entitled for the protection or compliance of Section 25F of the Act before his service was terminated by the employer. As regards non-compliance of Sections 25G and 25H suffice is to say that Witness Vinod Mishra examined by the appellant has stated that no seniority list was maintained by the department of daily wagers. In the absence of regular employment of the workman, the appellant was not expected to maintain seniority list of the employees engaged on daily wages and in the absence of any proof by the respondent regarding existence of the seniority list and his so called seniority no relief could be given to him for non-compliance of provisions of the Act. The courts could have drawn adverse inference against the appellant only when seniority list was proved to be in existence and then not produced before the court. In order to entitle the court to draw inference unfavourable to the party, the court must be satisfied that evidence is in existence and could have be proved."

16. This Court has also been apprised that the appointment of the Respondent No. 3 was not against any sanctioned post. Under those facts and circumstances, this Court is unable to agree with the conclusion and findings of the learned Tribunal that the respondent no. 3 was able to make out a case of reinstatement.

17. As regards the aspect of compliance of Section 17 B of the Act, this Court has been apprised that the said issue was specifically taken up in IA(C)/1544/2020 filed in this case and the same was disposed of vide an order dated 14.12.2021 directing compliance of the aforesaid provision of law which was statutory in nature. This Court had also made an observation that the Hon'ble Supreme Court had made it clear that apart from grant of relief under



Section 17 B of the Act, a superior Court would not be precluded to grant better relief to the workmen during the pendency of the proceeding. It is also clarified that the petitioner has been paid back-wages of an amount of Rs 6.7 lakhs. However, it appears that for the period 01.10.2019 to November, 2019 and from January, 2020 to 11.03.2020 such back-wages have not been paid. This Court accordingly, directs payment of the full back wages of the aforesaid period apart from the payments already made. Though this Court has interfered with the direction for reinstatement, a specific query was made to the learned counsel for the petitioner as regards payment of a lump sum compensation to the respondent no. 3, who, as a matter of fact had served for a long time periodically with the petitioner.

18. The learned counsel for the petitioner has submitted that there are instructions that payment of maximum upto Rs 2 lakhs can be paid to the Workmen.

19. Considering the above and by balancing the equities, while this writ petition is allowed and the impugned Award dated 01.10.2019 is set aside, a direction is given to pay the entire back-wages including the period mentioned above. Additionally, the petitioner is directed to make a payment of an amount of Rs. 3 lakhs to the workman as lump sum compensation in view of the long period of service rendered, though with interruption and the period of litigation. The aforesaid amount be paid within a period of 45 days from today.

20. Writ petition accordingly stands allowed in the manner indicated above. The interim order stands merged with this final order. It is further clarified that the direction to make payment of lump sum amount of Rs. 3 Lakh (Rupees Three Lakh) only is passed on the peculiar facts and circumstance and shall not be taken as a precedent.



21. No order as to cost.

JUDGE

Comparing Assistant