* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 9th April, 2024**

\+ W.P.(C) 5193/2024 & CM APPL. 21253/2024

AIIMS ..... Petitioner

Through: Mr. Satya Ranjan Swain, Panel Counsel-AIIMS with Mr. Ankush Kapoor, Advocate

versus

ASHOK KUMAR ..... Respondent

Through: *Nemo*

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral

1. The instant petition under Articles 226/227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

> *"a. Set aside the award dated 08.07.2022 passed by the Ld. Labour Court in LIR No. 6140/2016/11 granting a lump sum compensation of Rs.90,000/-.*
> *b. Pass any other order or direction as the Hon'ble Court deem fit and proper in the interest of justice"*

2. The relevant facts necessary for the adjudication of the instant petition are as follows:

a) On 2nd February, 1989, the respondent ("respondent workman" hereinafter) was appointed as a daily wage worker in the laundry department of the petitioner i.e., AIIMS ("petitioner entity" hereinafter) by the then Laundry Manager namely Sh. Anil Khosla.

b) On 30th April, 1995, the respondent workman was implicated in a theft case and an F.I.R bearing No. 265/95 was registered at Police Station Defence Colony under Sections 379 and 411 of Indian Penal Code, 1860. Pursuant to the respondent workman being charged with theft, the petitioner entity did not allow him to join the services until he got acquitted of the aforementioned charges.

c) Subsequently, on 6th February, 2004, the respondent workman was acquitted and thereafter on 8th June, 2007, made a representation before the management of the petitioner entity thereby, seeking to be taken back in service along with entitlement to regularisation and be treated at parity with the similarly situated co-workers, to which the petitioner entity never reverted.

d) Being aggrieved by the inaction of the petitioner entity, the respondent workman filed a Writ Petition (Civil) No.7333 of 2007 before this Court, however, *vide* Order dated 5th October, 2007, the same was dismissed as withdrawn with the liberty to take appropriate remedy under law.

e) Subsequently, the respondent workman raised an industrial dispute before the Joint Labour Commissioner (District South), Labour Department Government of National Capital Territory of Delhi, who

vide reference dated 14th December, 2010, bearing reference no.F-24(356)/Lab./SD/2008/16155, referred the said dispute before the learned Labour Court for adjudication in the following terms:

> *"Whether the services of Sh. Ashok Kumar, S/o Sh. Prashadi Lal have been terminated illegally and/or unjustifiably by the management; and if so, to what relief is he entitled and what directions are necessary in this respect?"*

f) The learned Labour Court, after completion of pleadings, on 15th February, 2020, framed five issues, and thereafter, passed the Award dated 8th July, 2022, ("impugned Award" hereinafter), holding that the respondent workman is entitled to a lump sum compensation of Rs.90,000/- in lieu of reinstatement.

g) Aggrieved by the aforementioned impugned Award, the petitioner has approached this Court seeking setting aside of the same.

3. Learned Counsel appearing on behalf of the petitioner entity submitted that the learned Labour Court erred in passing the impugned Award as the same has been passed without taking into consideration the entire evidence, facts and circumstances of the present case, and therefore, is liable to be set aside.

4. It is submitted that the impugned Award passed by the learned Labour Court is perverse as the onus of proof was on the respondent workman to corroborate his employment with the petitioner entity which he failed to discharge by not adducing any documentary proof (letter of appointment, payment slips, etc.) or witnesses, to substantiate his claim.

5. It is submitted that the respondent workman failed to substantially explain the inordinate delay of 16 years in filing his statement of claim and contended that the delay occurred on account of prolonged litigation, however, he failed to state as to whether or not he was gainfully employed, and also quantify as to how he managed this finances for a period of 10 years for which he claims to be unemployed.

6. It is submitted that the learned Labour Court erred in granting compensation on compassionate grounds to the respondent workman and failed to consider that he has willfully remained unemployed for a period of 16 years.

7. It is submitted that the services of the respondent workman were discharged bearing in mind the charges of theft of four bedsheets levied against him and his conduct being found questionable, therefore, he cannot seek parity with his co-workers.

8. It is submitted that the decision to remove the respondent workman from his services was purely an administrative decision and cannot be interfered with by the Court unless it suffers from illegality, procedural impropriety and/or irrationality.

9. It is further submitted that the removal of the respondent workman is justified as it is a pure administrative action executed to safeguard its employment standards and since the petitioner entity is a leading health care provider in the country and it is unacceptable for it to employ a daily wager with questionable conduct and criminal antecedents.

10. It is submitted that it is a settled position of law that daily wage

employees and regular employees are two different sets of classes and thus, a daily wager such as the respondent workman cannot be equated at par with other regular employees employed under the petitioner entity. To substantiate the same the learned counsel for the petitioner entity placed reliance upon the case tiled ***Ganesh Digamber Jambhrunkar v. State of Maharashtra,* 2023 SCC OnLine SC 1417**.

11. It is submitted that the respondent workman does not have a vested right to be granted any sort of compensation as it is an admitted position by him that he was not a regular employee and was employed purely as a daily wager by the contractor.

12. It is submitted that the learned Labour Court has already rejected the prayer for reinstatement sought by the respondent workman thus, there exists no legal sanction for it to extend the benefit of compensation of Rs.90,000/- on compassionate grounds to the respondent workman.

13. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner entity seeks that the instant petition may be allowed, and the reliefs be granted, as prayed.

14. Heard learned counsel appearing on behalf of the petitioner and perused the record.

15. It is the case of the petitioner entity that the learned Labour Court erred in passing the impugned Award as the respondent workman failed to discharge his onus to prove his employment with the petitioner entity by adducing any documentary evidence. It is contended that services of the respondent workman were terminated pursuant to his conduct being

questionable as he was charged with theft. It is also contended that his services cannot be deemed at par with other regular workers as he was appointed as a daily wager. It is further asserted that since the respondent workman's prayer for reinstatement was rejected by the learned Court below thus, the compensation granted in lieu of reinstatement is impermissible in law.

16. At the outset, it is imperative to understand the scope of a Writ Court's jurisdiction in interfering with labour or workman disputes. The Hon'ble Supreme Court in a catena of judgments has reiterated time and again that the Labour Court is the final court of fact in the disputes between a labour/workman and an employer/industry.

17. In this backdrop, this Court deems it imperative to briefly reiterate the scope of a Writ Court's jurisdiction under Article 226 of the Constitution of India in interfering with findings of the Labour Court/Tribunal *qua* the following circumstances. *Firstly*, a High Court shall exercise its writ jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. *Secondly*, in matters wherein the Labour Court has adjudicated after having gone in the details of both fact and law while carefully adducing the evidence placed on record, the High Court shall not exercise its writ jurisdiction to interfere with the award when *prima facie* the Court can conclude that no error of law has occurred. *Thirdly*, judicial review involves a challenge to the legal validity of the decision. It does not allow the Court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. The

reasoning must be cogent and convincing. *Fourthly*, a High Court shall intervene with the order/award passed by a Court below only in cases where there is a gross violation of the rights of the petitioner and the conclusion of the Tribunal/Labour Courts is perverse. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the court to intervene with the order passed by the concerned court. *Fifthly*, if the Court observes that there has been a gross violation of the principles of natural justice. *Lastly*, the punishment imposed can be challenged on the ground of violation of doctrine of proportionality.

18. At this juncture, this Court deems it imperative to analyse the findings of the impugned Award and ascertain the reasoning afforded by it. The learned Labour Court heard the parties and perused the evidence led before it, and on the basis of such evidence adduced and cross examinations, it has passed the impugned Award by granting a lump sum compensation of Rs.90,000/- to the respondent workman in lieu of his reinstatement. The relevant paragraphs of the impugned Award are reproduced below:

> *"……21.* ***Issue No. 1. Whether there is no delay in filing the statement of claim, if so its effect? OPW and Issue No. 2. Whether the reference order dated 14.12.2012 is bad in the eyes of law as A/IMS is being controlled by Central Government? OPM and Issue No. 3. Whether the workman worked as daily wage worker and was appointed by Mr. Anil Khosla, the then Manager. Laundry, AIIMS? OPM and Issue No. 4. As per terms of reference. OPW:-*** *All these issues are taken up together being inter-connected.*
>
> *X* *X* *X*

25. It is a very peculiar case with of long history pertaining to the year 1995 when the workman was working on a daily wages basis since 02.02.1989, in Laundry department of AIIMS and as per facts of the case, on 30.04.1995, workman was allegedly falsely implicated by Sh. Gurdev Singh, the then security Hawaldar, AIIMS in a theft case (theft of four bed sheets) at the behest of Sh. Rajinder Singh, the then Laundry Supervisor and accordingly, an FIR No. 265/95, U/s 379/411 IPS was registered as PS-Defence Colony on same day and he was produced before Ld. MM who released the workman on bail on same day i.e. 30.04.1995. It has come on record that when the workman went to AIIMS to join his duty, where the then Supervisor did not allow workman to join his duty by saying that since criminal case is registered against him therefore, the workman cannot be allowed to work and he was told that when he would be acquitted by the Ld. Court then he would be ·allowed to join his duties with all consequential benefits. It has also come on record that ultimately, till he was acquitted by the Ld. Court on 06.02.2004 and during this period i.e. from 30.04.1995 to 06.02.2004, the services of co-workers of the workman (Colleagues)/similarly situated persons were regularised by the management, therefore, the workman is also entitled to get the similar treatment by the management.

26. On the contrary, the management has denied the case of workman and argued that workman was not allowed to join back the duty as AIIMS has a practice of not allowing any contractual/daily wage workers with questionable conduct.

27. In order to come at some conclusion, the court has to weigh evidence of both the parties lead before the court.

28. In support of his case, the workman has produced himself in witness box and relied upon various documents in the form of copy of order dated 05.10.2007 passed by Hon'ble High Court, Copy of CA Receipt and CA form, copy of judgment dated

06.02.2004, copy of representation dated 08.06.2007 and copy of postal receipts of representation.

29. In his cross-examination conducted by AR for management, he has deposed that "The amount paid to me was neither a bank transfer nor by cheque. I used to sign the register and receive money in cash monthly." From his above deposition it is clear that salary was being received by him in cash against receipt in register being maintained by his Supervisor and there was no bank transfer which could be produced before the court.

*30. He further deposed that "**There was no criminal case pending against me except the theft case. There were no other co-accused in the theft case". So it is clear that apart from said criminal theft case, there was no other case pending against workman. Even otherwise also, the management has also not produced any questionable conduct of workman before the court. Rather the said criminal case was disposed off by concerned court by giving specific finding which says that "Admittedly, the accused was working in the laundry of the hospital. PW-2 had admitted in his cross-examination that the accused was working in the laundry of the AIIMS Hospital. PW-2 Gurdev Singh also admitted that all the employees of the laundry used to take the bed sheets from the hospital to the laundry and vice-versa. Therefore, it is clear that as the accused was employee of the laundry of the hospital and it was a part of his duty to take the bed sheets from hospital to the laundry and vice-versa. The case of prosecution is that the accused was apprehended in the hospital itself alongwith the bed sheets. Therefore, in my view, the accused was in legal possession of the bed sheets as it was his duty to take the bed sheets from the hospital to the laundry and vice-versa. Moreover, PW-2 has admitted in his cross-examination that the accused had some dispute with his superior and on this account, he was falsely implicated. Therefore, as per the statement of PW-2, the accused had***

some dispute and he was falsely implicated, coupled with the fact that accused was apprehended in the hospital premises alongwith bed sheets, which he was carrying as it was his duty to take the bed sheets from the hospital to the laundry and viceversa. In view of the above discussion, in my opinion, the prosecution has failed to prove its case against the accused and accordingly, the accused is acquitted of the charge."

31. The first argument of management is that workman was prosecuted and hence, he cannot be deemed to be continued in service. The above arguments is not tenable because this was not acquittal based on no evidence but the findings in criminal case are perfect as per law and having no illegality and infirmity in the same. The Ld. Court while acquitting the accused/workman herein has clearly noted the part of statement of PW-2 that accused/workman herein had some dispute and he was falsely implicated.

32. As far as question of recovery of four bed sheets from the possession of workman is concerned, it is apparent that he was posted in laundry department of management and PW-2 of said case has clearly deposed that it was a part of his duty to take the bed sheets from hospital to the laundry and vice-versa. The position would be have been totally different, if the recovery would have been effected from his house or at any other place which is located outside the hospital premises and in those eventuality, the court would have held the workman guilty and must have convicted him under relevant provisions of law but it is not so herein.

33. The counsel for management has retied upon one judgment titled as Union Territory, Chandigarh Administration & Ors. Vs. Pradeep Kumar & Anr. (2018) 1 sec 797 and I have perused the same. The perusal of this judgment shows that same is not applicable to the facts of the case because in the present case, the workman was acquitted after full-fledged trial and facts of the case law relied upon by management are different

and not based on full-fledged trial. So the judgment relied upon by management is of no help to their case.

34. Second argument of management was that workman was not working with AIIMS but with different entity. The workman was working in laundry but during the course of trial, it has come on record that both the entities are same. The laundry department was working under AIIMS only and was not different entity. So this argument is also not tenable. It is further important to note here that Manager of management has acted on behalf of management and he is not different identity. Third argument was that the AIIMS is covered under Central Govt. and reference by Delhi Govt. is bad in law. The issue No. 2 is already framed to that effect. This issue was already determined by my Ld. Predecessor and same will operate as resjudicata and now same cannot be re-agitated.

35. MW-1 was put specific question whether management challenged the reference order passed by the appropriate Govt. before Hon'ble High Court of Delhi to which, he answered that the management had not challenged the same before the Hon'ble High Court of Delhi and thus issue No. 2 is decided against the management and in favour of workman.

36. Now issue No. 1 and 3 are taken up together which are to the effect that whether there is no delay in filing the WS, if so its effect and whether the workman worked as daily wage worker and was appointed by the then Laundry Manager. The AR for management has relied upon judgment titled as ***Avas Vikas Sansthan & Anr. Vs. Avas Vikas Sansthan Engineers Assn. & Ors. (2006} 4 SCC 132 wherein it was held that "Power to abolish a post as a measure of economy and based on the need for streamlining the administration to make it more efficient has got to be recognised - In case a department was abolished or abandoned wholly or partially for want of funds, the court cannot, by a writ of mandamus, direct the employer to continue employing such employees as have been***

dislodged, unless such abolition was malafide". *These findings are fully applicable to the facts of the present case.*

*37. WW-1 Sh. Ashok Kumar has further deposed in his cross-examination that "**There was no appointment letter given to me by the management because my name was suggested by Employment Exchange, R. K. Puram, Sector-04, New Delhi**". So it is clear that his name was suggested for said post by Employment Exchange to the management and he was not given any appointment letter.*

38. It is not the case of workman himself that he was regular employee of the management and the workman has himself admitted that he worked as daily wager in AIIMS from 02.02.1989 to 30.04.1995 and after his termination on account of involvement in criminal case, the services of his colleagues and similarly situated persons were regularised. Rather MW-1 Sh. joginder has admitted that management used to appoint workers on daily wage basis. Thus the workman argued that on same parity, he is also required to be given all due consequential benefits as given to other similarly situated persons in the management.

*39. Though it is correct that in the cross-examination, MW-1 admitted that management used to appoint workers on daily wage basis. MW-1 further deposed that "**I cannot admit or deny whether the said persons were also regularised on regular basis after completing the period of daily wages. I do not know how the attendance of daily wages workers used to mark. The same is my reply with respect to salary of daily wages workers**". It is important to note here that MW-1 is working as Administrative Officer (Hospital) with the management and even despite being senior officer, he gave vague replies regarding attendance and salary of daily wages workers.*

40. MW-1 further deposed that "The contents in para 11 of the affidavit is according to my knowledge and after going through the record, however, same are destroyed and are not in

possession of the management. I do not know, if any noting had been done in this regard or not." From his above deposition, it is clear that some record pertaining to workman has been destroyed as per witness and is not in possession of the management. However, he failed to tell to the court, if any noting had been done in this regard or not nor any record weeding out order has been placed on record.

41. MW-1 further admitted that ***"It is correct that management did not give job to the workman even after acquittal of the workman from the criminal case. I do not know, if any appeal had been represented before the Hon'ble High Court by the management against acquittal of the workman"****.*

42. MW-1 further specifically deposed that no chargesheet was issued to the workman pursuant to his involvement in FIR mentioned above. He voluntarily deposed that no such charge sheet is required in case of daily wages worker. He further admitted that no show cause notice or departmental inquiry was initiated in this respect. He further admitted that even after acquittal of the workman by the court, he was not offered appointment by the management. He further admitted that during the period 02.02.1989 to 30.04.1995, the workman had worked with the management regularly. MW-1 could not tell if any show cause notice had been issued to the workman during the period 02.02.1989 to 30.04.1995 for any absence. But the above stated facts are of no help to the workman because it has to be kept in mind that workman was acquitted in criminal case on 06.02.2004 and after his acquittal, he waited for three years and he filed his representation before management on 08.06.2007. It has also come on record that he filed one writ petition before Hon1ble High Court on 05.10.2007 but the present statement of claim was filed before the court only on 11.5.2011. The workman has totally failed to justified the reason of inordinate delay in filing reference and claim before the court. Thus, it is held that present claim is beyond limitation

qua the claim till 11.05.2011 and to that effect reference is time barred but cause of action was still continuing.

43. It is important to note here that as per record, he joined the management in the year 1989 and he was terminated from the services of management in the year 1995 on account of said criminal case. On getting bail in said case, when he approached the management for service, he was assured that he would be allowed to join the management on having acquittal in said case. Later on, he was acquitted in said criminal case in the year 2004 but when he again visited the hospital for his appointment in management, he was refused to join back the management on account of questionable conduct. It has also come on record that he also preferred civil writ petition before Hon'ble High Court and same was disposed of by Hon'ble High Court holding that workman should approach competent court of law. Thereafter, he preferred present claim petition before this Labour Court for redressal of his grievances in the year 2011. So his claim can be considered for acquittal after 2011.

44. Simultaneously, it has to be kept in mind that workman was acquitted in criminal case of theft and on account of said case, his services were terminated from management and he is running from pillar to post in the search of justice. Though it is correct that daily wage worker has no right in these circumstances but this case stands on different footing as it has come on record that similarly situated persons to the workman were regularised by management during the course of their service and if criminal case would not have been registered against workman, then in those circumstances, his service must have been regularised alongwith similarly situated persons but same cannot be done now considering the facts and circumstances of the case but workman is entitled to some relief. So the court is required to give balance approach. So he is required to be treated at par with other similarly situated workman subject to pronouncement of judgment on this aspect

by superior courts. Accordingly, issues No. 1 and 3 are partly decided in favour of management and partly decided in favour of workman.

45. The workman has made a prayer in statement of claim that he is unemployed since the date of termination of his service and as such the management be directed to reinstate him in service with full back wages including benefits of continuity of service and any other consequential benefits. However, this court is of the opinion that since both the parties have lost faith in each other, reinstatement of the workman in service would not be in the interest of both the parties and the compensation in lieu of reinstatement would be a better option.

46. On this point, this court finds support from the judgment of the ***Hon'ble Supreme Court of India in case titled as Employers, Management of central P & D Inst. Ltd Vs Union of India & Another, AIR 2005 Supreme Court 633*** *in which it was held that "****it is not always mandatory to order reinstatement after holding the termination illegal and instead compensation can be granted by the court.****"*

47. Similar views were expressed by the ***Hon'ble Delhi High Court in case titled as Indian Hydraulic Industries Pvt. Ltd Vs Krishan Devi and Bhagwati Devi & Ors. ILR (2007) I Delhi 219*** *wherein it was held by the court that "****even if the termination of a person is held illegal, Labour Court is not supposed to direct reinstatement along with full back wages and the relief can be moulded according to the facts and circumstances of each case and the Labour Court can allow compensation to the workman instead of reinstatement and back wages.****"*

48. Further, since much time has elapsed since date of termination of services of the workmen, it cannot be presumed that he would remain idle for such a long period.

49. It has to be kept in mind that the workman has not stated about what efforts he has made to secure the alternate employment after the alleged termination. ***[2011 (131) FLR***

24], the Hon'ble Bombay High Court *stated in the case that no evidence led by the respondent to show that he made any efforts to secure employment during pendency of the litigation respondents not entitled to any back wages.*

50. In ***2021 LLR 1040, the Hon'ble Supreme court of India*** *also stated in para C that workmen is not entitled to relief of back wages if he has not pleaded that he was not gainfully employed after his dismissal and has not proved his version by leading cogent and convincing evidence.*

51. It has to be kept in mind that admittedly, the workman has been in services of management for some time. It is not denied that workmen had sent demand notice to management.

52. Therefore, keeping in view all these facts and also keeping in view of the aforesaid law point, this court deems it appropriate to grant a lump sum compensation to the workman in lieu of his reinstatement. Accordingly, considering his salary, this court grants a lump sum compensation of Rs.90,000/- (Rupees Ninety Thousand only) 'to· the workmen in lieu of his reinstatement, back wages and all other consequential benefits. The amount of compensation shall be paid to the workman by the management within one month from the date when this award becomes enforceable failing which the amount shall carry an interest@ 9% p.a. from the date it becomes due title the time it is realized.

Relief:- In view of the findings of the court on issues, it is held that the workman is not entitled to whole reliefs; as claimed against the management and claim of workman stands partly rejected and award to that effect is hereby passed……"

19. Upon perusal of the aforementioned extracts of the impugned Award it can be summarily stated that the learned Labour Court while adjudicating upon the issues of the respondent workman's conduct being questionable, categorically noted that the services of the respondent workman were

terminated based on the charges levied against him for theft, the learned Labour Court discarded the contention raised by the petitioner entity thereby, reiterating the reasoning afforded by the Court adjudicating the alleged case of theft levelled against the respondent workman wherein it was categorically observed that the respondent workman was implicated falsely due to a dispute with his supervisor and the act alleged against him was in fact a part of his service.

20. With regard to the second argument advanced by the management which is whether the respondent workman was working with the laundry department of the petitioner entity, the learned Labour Court observed that during the course of the trial it has come to light that the workman was working in laundry and the laundry department falls under the petitioner entity hence, he was employed with the petitioner entity.

21. The learned Labour Court while dealing with issues no.1 and 3 observed that the petitioner has nowhere contended that he was a regular employee of the petitioner entity rather admittedly he worked as a daily wager during the period 2nd February, 1989 to 30th April, 1995.

22. The learned Court below, bearing in mind that the respondent workman had been acquitted from the charges of theft and the fact that the services of similarly situated co-workers had been regularized, held that the case of the respondent workman stood on a different footing despite being a daily wager as the services of the respondent workman would have been regularized had he not been falsely charged with theft thus, in the interest of justice the learned Court below observing a balanced approach opined that

the workman be treated at par with his fellow workers.

23. The learned Court below further categorically noted that since both the parties had lost faith in each other, therefore, reinstatement as sought by the respondent workman was not in the best interest of both the parties and rather a better alternative was grant of compensation in lieu of reinstatement. To substantiate the same the learned Court below referred to the judgment passed in ***Employers, Management of Central P & D Inst. Ltd Vs. Union Of India & Another,*** **AIR 2005 SC 633** and ***Indian Hydraulic Industries (P) Ltd. v. Kishan Devi,*** **2007 SCC OnLine Del 10**.

24. The learned Labour Court also dealt with the aspect of back wages and it categorically noted that the respondent workman was not entitled to back wages as he failed to produce any evidence to substantiate that he was not gainfully employed and efforts were made by him to seek an alternative employment. In view of the above, the learned Court below granted the lump sum compensation amounting to Rs.90,000/- in lieu of reinstatement.

25. Bearing in mind the reasoning afforded by the learned Labour Court, this Court deems it imperative to briefly state the position of law as to in what circumstances may the Court grant the relief of compensation in lieu of reinstatement. The Hon'ble Supreme Court in ***State of Uttarakhand v. Raj Kumar,*** **(2019) 14 SCC 353,** observed as to how and when must the Labour Court/Tribunal grant the relief of compensation in lieu of reinstalment along with back wages. The relevant paragraphs are reproduced herein below:

> *".....**9.** In our opinion, the case at hand is covered by the two decisions of this Court rendered in BSNL v. Bhurumal [BSNL v.*

Bhurumal, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373] and Distt. Development Officer v. Satish Kantilal Amrelia [Distt. Development Officer v. Satish Kantilal Amrelia, (2018) 12 SCC 298 : (2018) 2 SCC (L&S) 276] .

10. *It is apposite to reproduce what this Court has held in BSNL [BSNL v. Bhurumal, (2014) 7 SCC 177 : (2014) 2 SCC (L&S) 373] : (SCC p. 189, paras 33-35)*

> *"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.*
>
> *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) [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……"

26. Upon perusal of the aforementioned judicial dictum, it is inferred that ordinarily when the termination is found to be illegal, the principle of grant of reinstatement with full back wages has to be applied as per the facts and circumstances of each case and shall not be awarded mechanically. It is further observed that termination of a daily-wage worker where, found illegal on account of procedural defects, reinstatement with back wages is not to be construed automatically rather, in the interest of justice, the workman shall be granted a relief in the form of a lump sum monetary compensation as it is more appropriate.

27. In the above backdrop, this Court is of the considered view that in certain instances compensation serves as a remedy for unjustified and premature termination of employment, especially in cases such as the present matter, wherein, the respondent workman's services were terminated on account of being falsely implicated in a case for theft of bedsheets and was later on acquitted by the learned Court.

28. Another aspect that has bearing on the present matter is that the respondent workman was acquitted in a criminal case of theft for which his services were terminated by the petitioner entity. Although it is an admitted position that the respondent workman was employed as a daily wager but the fact that his similarly situated co-workers have been regularised, hence, it is in the interest of justice to treat him at par and grant an appropriate relief.

29. This Court, bearing in mind the findings of the learned Labour Court i.e., the respondent workman being falsely charged with theft and services of

his fellow workers being regularized, is of the similar view as observed by the learned Labour Court that since both the parties have lost faith in each other, reinstatement is not a viable option and rather providing a one-time compensation is a more suitable solution.

30. This Court, after having perused the findings in the impugned Award, is of the considered view that, the learned Labour Court has dealt with each of the issues thereby, affording a detailed reasoning after having appraised the evidence placed on record, the cross examination as well as the settled position of law.

31. Thus, in view of the above discussions of law and fact, this Court observes that the learned Labour Court has rightly arrived at the finding that since both the parties have lost faith in each other and in the interest of justice, it is appropriate to grant a lump sum compensation of Rs.90,000/- in lieu of reinstatement, to the respondent workman.

32. This Court is further of the view that as the scope of its writ jurisdiction is limited and is to be exercised sparingly, this Court cannot undertake an exercise, impermissible for this Court in exercising the writ jurisdiction, by liberally re-appreciating the evidence and drawing conclusions on pure questions of fact, as this Court is not sitting in an appellate jurisdiction over the awards passed by the learned Labour Court.

33. It is perceptible from the findings of the learned Labour Court that it had gone into the depth of the material placed before it, therefore, this Court discerns no material to establish the propositions put forth by the petitioner entity.

34. It is held that there is no material to characterise the impugned Award as perverse and the learned Court below is well justified in passing the same thus, the findings of the impugned Award are upheld.

35. In view of the foregoing discussions, this Court finds no infirmity in the impugned Award dated 8th July, 2022, passed by the learned Presiding Office, Labour Court-06, Rouse Avenue, New Delhi in LIR No. 6140/2016.

36. Based on the aforementioned observations, this writ petition is accordingly dismissed along with pending applications, if any.

37. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 9, 2024
gs/da/ryp

Click here to check corrigendum, if any