A.F.R.
Reserved on 06.04.2023
Delivered on 02.05.2023

Court No. - 52

Case :- WRIT - C No. - 25182 of 2016

Petitioner :- State of U.P.
Respondent :- Presiding Officer Labour Court U.P And Another
Counsel for Petitioner :- S.M. Iqbal Hasan
Counsel for Respondent :- Bhupendra Nath Singh,Devendra Nath Singh,Dharmendra Kumar Srivastava,Hari Prakash Mishra

Hon'ble Kshitij Shailendra,J.

1. This writ petition has been filed challenging the award dated 01.04.2015 passed in Adjudication Case No. 77 of 2006 (Executive Engineer vs Krishna Murari Sharma) published on 04.11.2015 by the Presiding Officer, Labour Court, Bareilly (herein-after referred to as the "Labour Court").

Facts of the Case

2. The facts of the case are that the respondent-workman was appointed on the post of Tubewell Operator on 27.02.1985 and was assigned duties at Tubewell No. 106 Adhkata, Bareilly. He was given the charge of the said Tubewell under the order dated 30.07.1985 issued by the Assistant Engineer.

3. It is contended that the workman performed duties till October, 1990, but all of a sudden, his services were terminated in November, 1990 without disclosing any reason and without paying him retrenchment compensation. The workman agitated the issue and, ultimately, the matter was referred by the State Government to the Labour Court, Bareilly, where it was registered as Adjudication

Case No. 77 of 2006 (Executive Engineer vs Krishna Murari Sharma) for adjudication of the dispute as to whether termination of services of the workman Krishna Murari Sharma w.e.f. 23.11.1990 is legal and, if not, as to what relief/benefit/compensation, the workman is entitled to get?

4. Pursuant to the notices issued by the Labour Court to the contesting parties, the workman filed his reply stating that he was appointed under the Office order No. 12/84/85 numbered as Letter No. 944/1/न0स0व0/dated 27.02.1985 and, initially he was sent for training and was appointed on the Tubewill No. 106 Adhkata Bareilly. It was further stated that the workman had been given complete charge of the aforesaid Tubewell under the Order No. 523, dated 30.07.1985 and further letter No. 200, dated 30.07.1985 issued by the Assistant Engineer; his services were full time in nature and that he had worked with full sataisfaction of the authorities. It was further contended that violating the provisions of section 6-N of the U.P. Industrial Disputes Act, 1947 and Rule 42, the services of the workman were suddenly terminated in the year 1990. Accordingly, the workman made a prayer that he be reinstated on his post with full backwages and continuity in services. The workman also filed written arguments.

5. On the other hand, the employer (Executive Engineer) submitted his reply before the Labour Court stating that the workman was appointed on a monthly honorarium of Rs.299/- on purely temporary basis, which was mentioned in the conditions of the service agreement itself. The termination of services in April, 1990 was not disputed in the reply, and it was contended that since the Government had declared cadre of part-time Tubewell Operator

as a dead cadre, the workman was not entitled for any relief. It was futher contended that the Department did not fall within the definition of "Industry" and, therefore, the matter was not covered by the provisions of the U.P. Industrial Disputes Act, 1947.

Evidence before Labour Court

6. The parties led evidence in support of their respective cases. A cash book has been annexed along with the writ petition, which shows that the workman was engaged by the Department and was paid salary/honorarium. The workman appeared as D.W.-1 and reiterated his stand in his oral evidence also explaining the nature of works and activities performed by him. He also stated that since after termination of his services, he was unemployed and dependent upon other persons. He also proved the documents on record, which included the Salary Register etc.

7. One Sushil Sharma, the Assistant Engineer was examined by the Department, who stated that the services of the workman according to the agreement were purely part-time, which were extended upto 30.09.1989 and the said agreement was not further extended. The said witness expressed his ignorance about sending/service of notice to the workman before termanation of his services. Written arguments were also filed on behalf of the Department, stating that the reference was made after a long delay of 15 years in the year 2005 after the termination of his services; that the opposite party cannot be treated as a workman and that the Irrigation Department did not fall within the definition of "Industry" and, therefore, the provisions of U.P. Industrial Disputes

Act, 1947 were not applicable and, consequently, the reference was liable to be dismissed.

The Award

8. The Labour Court, after considering the material on record and after hearing the respective parties, passed the impugned award dated 01.04.2015 holding that termination of the services of the workman w.e.f. 23.11.1990 was improper and illegal and the workman was held entitled to get the entire salary for the period with effect from the date of reference till the enforcement of the award.

The Basic Structure of the writ petition

9. The writ petition is founded basically on the pleas that Irrigation Department is not an "Industry" as per the law laid down by the Supreme Court in the case of ***Executive Engineer (State of Karnataka vs K Somasetty and others,*** reproted in 1997 (5) Surpeme Court Cases 434; the reference was made after a delay of 16 years; and, therefore, the workman is not entitled for any relief; the Labour Court has not properly considered the evidence; as per the decisions of the Supreme Court, payment of compensation is not a necessary consequence in case of reinstatement of the workman, and therefore, the order of reinstatement is bad in the eyes of law. (*The plea qua reinstatement is contrary to award as reinstatement was not ordered under the award*).

Counter Affidavit

10. Counter affidavit has been filed on behalf of the respondent-workman stating that termination of his services was contrary to the provisions of the U.P. Industrial Disputes Act, 1947,

specially section 6-N thereof; that the workman had worked for more than 240 days and, therefore, is entitled for the reliefs claimed; findings of fact have been recorded by the Labour Court while passing the award impugned, which do not call for interference. Insofar as the law relied upon in the writ petition with regard to definition of "Industry" in connection with Irrigation Department is concerned, reliance has been placed upon the judgments of Supreme Court in the cases of ***Des Raj etc. Vs State of Punjab and others,*** reported in AIR 1988 Supreme Court 1182 and ***Bangalore Water Supply and Sewerage Board vs A. Rajappa and others,*** reported in 1978 (2) Supreme Court Cases 213.

Rejoinder Affidavit

11. A rejoinder affidavit has been filed by the petitioner reiterating the stand taken in the writ petition also annexing a copy of the order dated 29.07.1985 as Annexure No. R.A.-1 to the rejoinder affidavit, wherein the conditions of services of the respondent-workman are enlisted, particularly disclosing that after 30.09.1989, the services of the workman shall automatically come to an end and that extension was granted to the services w.e.f. 01.10.1988 to 30.09.1989 after he was reappointed as part-time Tubewell Operator since after the expiry of his services on 30.09.1988.

12. I have heard Shri Dhananjay Singh, learned Standing Counsel for the petitioner State of U.P. and Shri Dharmendra Kumar Srivastava, learned Counsel for the respondent-workman.

Contention of the Petitioner

13. The contention of learned Standing Counsel on behalf of the petitioner is that since, the Irrigation Department does not fall within the definition of "Industry" as laid down by the Supreme Court in the case of ***Executive Engineer (State of Karnataka)*** (supra), not only the reference, but also the impugned award is illegal as the matter was not covered by the provisions of U.P. Industrial Disputes Act, 1947. Further submission is that the services of the respondent-workman were purely part time in nature, which ceased to operate after 1989 and, therefore, the termination was an automatic consequence as per conditions of the services and, hence, there is no illegality in terminating the services of the respondent-workman. Further submission is that reference was made at a very belated stage, i.e. after a period of 15-16 years and, therefore, the workman is not entitled for any relief.

Contention of Respondent-Workman

14. Per contra, Shri Dharmendra Kumar Srivastava, learned counsel for respondent-workman has elaborately explained the ratio of the judgments of the Supreme Court in the cases of ***Des Raj etc.*** (supra) and ***Bangalore Water Supply and Sewerage Board (supra)*** and by placing reliance upon the decision of this Court in the case of ***State of U.P. through Secretary Irrigation vs Mohd. Rais,*** reported in 2021 (169) FLR 520, he has contended that the issue as to whether the Department of Irrigation is or is not an Industry so as to attract the provisions of U.P. Industrial Disputes Act, 1947, has already been settled in the aforesaid authorities and,

therefore, the contention of the State to the contrary is unacceptable.

Analysis of Rival Contentions

15. Before proceeding further, it is necessary to refer the law laid in various authorities as to the applicability of the provisions of the Act of 1947 on the Irrigation Department.

16. This Court in the case of ***State of U.P. through Secretary Irrigation Vs. Mohd Rais*** reported in 2021 (169) FLR 520, in paragraphs 5, 7, 8, 9, 10 and11, has held as under:

> *"5. Learned counsel appearing on behalf of opposite party no.1 refuting the submission advanced by learned counsel for petitioner has in turn placed reliance upon judgment rendered by Hon'ble the Supreme Court in the case of Des Raj vs. State of Punjab & Ors. reported in AIR 1988 Supreme Court 1182 to submit that a Government Department such as the Irrigation Department has already been held to come within the purview of term 'Industry' but the subsequent judgment rendered in the case of K. Soma Setty (supra) has been passed without noticing the aforesaid two judgments, which should therefore prevail. Learned counsel has also relied upon judgment rendered by Hon'ble the Supreme Court in the case of Workmen of American Express International Banking Corporation vs. Management of American Express International Banking Corporation reported in AIR 1986 Supreme Court 458 to submit that for the purposes of calculation of 240 days of service, weekends and other gazetted holidays are required to be taken into account. Learned counsel has also relied upon a Full Bench Decision of this Court rendered in Ganga Saran vs. Civil Judge, Hapur reported in AIR 1991 Allahabad 114 to submit that in case of a conflict between judgments of Hon'ble Supreme Court consisting of equal authorities, the concerned High Court must follow judgment which appears to lay down the law elaborately and accurately irrespective of time line.*

Learned counsel also placed reliance on a Single Judge judgment rendered by High Court of Bombay in Executive Engineer, Yavantmal Medium Project Division & Anrs. vs. Anant S/o Yadao Murate & Another reported in 1997 ILLJ 91 wherein after considering the contradictory judgments of Hon'ble Supreme Court regarding Irrigation Department being an 'Industry' has followed the judgment rendered in the case of Des Raj (supra).

……..

7. As has been indicated hereinabove, the Hon'ble Supreme Court in the case of Des Raj (supra) has held that an Irrigation Department of particular Government to be an Industry in terms of the Act of 1947. The said judgment has taken into account various other judgments rendered by Hon'ble the Supreme Court particularly a Constitution Bench judgment rendered in Bangalore Water Supply and Sewerage Board vs. A. Rajappa, reported in (1978)2 SCC 213. On the contrary, the subsequent judgment rendered by Hon'ble Supreme Court in case of K. Soma Setty (supra) has not adverted to the aforesaid judgments of Des Raj (supra) and Bangalore Water Supply and Sewerage Board (supra).

8. Upon perusal of Judgment rendered in the case of Desh Raj (supra) as compared to judgment rendered in the case of K. Soma Setty (supra), it is apparent that in the case of Desh Raj (supra) Irrigation Department has been held to come within the definition of Industry whereas judgment of K. Soma Setty holds otherwise. As such, there is clear conflict in the two judgments which are of Coordinate Bench.

9. The proposition of law required to be followed in conflicting judgments rendered by Hon'ble the Supreme Court by Benches of Coordinate strength has been discussed in the Full Bench of this Court in Ganga Saran (supra). The Full Bench after considering the relevant aspect has held as follows:

" 7. One line of decision is that if there is a conflict in two Supreme Court decisions, the decision which is later in point of time would be binding on the High Courts. The second line of decisions is that in case there is a conflict between the judgments of Supreme Court consisting of equal authorities, incidence of time is not a relevant factor and the High Court must follow the judgment which appears it to lay down law elaborately and accurately.

8. Similar situation arose before a Full Bench of Punjab and Haryana High Court in the case of M/s Indo Swiss Time Limited, Dundahera, vs. Umrao, AIR 1981 Punj & Har 213. What the Full Bench in the said case held is extracted below (at pp. 219-220 of AIR) :

> *Now the contention that the latest judgment of a co-ordinate Bench is to be mechanically followed and must have pre-eminence irrespective of any other consideration does not commend itself to me. When judgments of the superior Court are of co-equal Benches and therefore, of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortutious circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting judgments of the superior Court and of equal authority are extant then both of them cannot be binding on the courts below. Inevitably a choice, though a difficult one, has to be made in such a situation. On principle it appears to me that the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgments of coequal Benches of the Superior Court are earlier later is a consideration which appears to me as hardly relevant."*
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> *This decision was followed by the Bombay High Court in the case of Special Land Acquisition Officer vs. Municipal Corporation, AIR 1988 Bombay 9. The majority of Judges in the Full Bench held that if there was a conflict between the*

two decisions of equal benches which cannot possibly reconcile, the courts must follow the judgment which appear to them to state the law accurately and elaborately. We are in respectful agreement with the view expressed by the Full Bench of Punjab & Haryana High Court in the case of M/s Indo Swiss Time Limited v. Umrao, (AIR 1981 Punj & Har 213) (Supra) especially when the Supreme Court while deciding Qamaruddin's case (1990 All WC 308) (Supra) did not notice the U.P. amendment to S.115, C.P.C. and earlier decision of the Supreme Court."

10. The aforesaid aspect has also been dealt with by a learned Single Judge of the High Court of Bombay in which judgment rendered by Hon'ble the Supreme Court in the case of Des Raj (supra) has been followed:

"13. On considering all the concepts of industry and after reviewing the various tests which need not be repeated, as the tests were laid down in Bangalore Water Supply case (supra). The concept of sovereign and regal function was explained in Chief Conservator of Forests (supra). The Apex Court in para 13 specifically rejected an argument that welfare activities partake sovereign functions on the ground that if such a view was taken it would be eroding the view taken by it in Bangalore Water Supply's case. While observing that welfare activities partake sovereign functions the Apex Court did not notice this in Sub-Divisional Inspector of Post, Vaikam and Other (supra). Therefore, considering the various precedents of the Apex Court itself it is clear that the law declared by the Apex Court is that welfare activities do not necessarily partake sovereign functions. In Executive Engineer, State of Karnataka the reliance was placed on the judgment in the case of Union of India v. Jai Narain Singh (supra). In Union of India v. Jai Narain Singh, the Apex Court has merely noted that the Central

Ground Water Board is not an Industry. It is not possible to discern from that judgment as to what were the reasons for the Apex Court to so hold. The other judgment relied on is that of State of Himachal Pradesh v. Suresh Kumar Varma & Anr. (supra). On a perusal of the fact and the law laid down it does not seem that the issue as to whether a particular department was an industry or not was in issue. What was in issue was whether the work charged employees who perform duty of transitory nature were appointed to posts and their appointments were on daily wage basis in an appointment to a post. The Apex Court therein noted that such appointments were not appointments to the posts and, therefore, no directions could have been given to re-engage them in any work or appoint them against existing vacancies. Thus the two judgments relied upon by the Apex Court to arrive at the conclusion arrived at in Executive Engineer, State of Karnataka (supra), nowhere have laid down the tests to hold as to why Irrigation Department is to be excluded from the definition of industry. As pointed out earlier, even the case of Sub Divisional Inspector of Post, Vaikam and Others was considered by the Apex Court in Physical Research Laboratory and explained the same in paragraph 10 of the judgment. After that, it proceeded to apply the tests as laid down in Bangalore Water Supply. In the case of Des Raj v. State of Punjab (supra) the Apex Court had considered the tests laid down in various earlier judgments of the Apex Court itself, culminating in the judgment in Bangalore Water Supply (supra) and thereafter had arrived at a conclusion that the Irrigation Department falls within the definition of Industry within the meaning of Section 2(j) of the I.D. Act. I am, therefore, of the considered opinion that the view laid down in Des Raj's case is the better in point of

law and hence it is the view in Des Raj's case which will have to be followed. Once it is so held and as I have already set out earlier the work of the Irrigation Department of the State of Punjab and the material placed before this Court including the written submissions filed on behalf of the petitioners show that the projects undertaken by the irrigation department of the State of Maharashtra is discharging the same or similar functions as the Irrigation Department of the State of Punjab. It, therefore, follows that the projects of the Irrigation Department or work connected with that of the State of Maharashtra, on the same tests as applied by the Apex Court in Des Raj's case would fall within the definition of an industry for the purpose of Section 2(j) of the I.D. Act."

11. Upon applicability of said factors to the present case, it is clear that the judgment rendered by Hon'ble the Supreme Court in Des Raj (supra) has elaborately dealt with the question as to whether Irrigation Department of the Government would come within the definition of Industry or not. After considering the Constitution Bench Judgment of Hon'ble Supreme Court rendered in Bangalore Water Supply and Sewerage Board (supra), the Hon'ble Supreme Court has reached a definite conclusion that Irrigation Department of the Government would come within the definition of Industry."

17. The Supreme Court in the case of ***The State of Uttar Pradesh and others Vs. Uttam Singh***, reported in AIR 2021 Supreme Court 3909, in paragraphs 10 and 11, has held as under:

"10. We have also taken note of the fact that during his 13 long years of employment and before that having battled the appellants for the period of 6 years to get his dues, the father of the respondent was also transferred from one department to the other, normally an aspect which would be associated with a person who had a regular employment. The most significant aspect is that had the father of the respondent not been considered a regular

appointee, there would be no occasion for the Department to volunteer his services to the State Election Commission to perform election duties, which could have been done only by a Government employee, as is specified under Section 159 of the Representation of the People Act, 1950 ("Staff of certain authorities to be made available for election work").

11. The present case is thus one which is peculiar in its given factual scenario which we have discussed above and thus for all practical purposes, it is a case of an appointment against a regular vacancy. The respondent's father was treated as a regular employee by the aforesaid conduct of the appellants even though he was labelled as a Part Time tubewell operator."

18. This Court in the case of ***Chairman, Town Area & another Vs. State of U.P. and others***, reported in 2013 (11) ADJ 197, in paragraph 14 held as under:

"14. The submission of learned counsel for the petitioner that in respect of true meaning and import of the expression 'Industry' defined under Industrial Disputes Act, the correctness of decision of Apex Court rendered in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa & others, AIR 1978 S.C. 548 has been doubted by Apex Court in Coir Board, Ernakulam, Cochin and Another Vs. Indira Devi P.S. and others, (1998) 3 S.C.C. 259 and further in case of State of U.P. Vs. Jai Bir Singh (2005) 5 S.C.C. Page 1 and decision of the Apex Court rendered in Bangalore Water Supply case has been referred to the larger Bench, also does not make any difference for the reason that the learned counsel for the petitioner could not point out the final decision rendered by larger Constitution Bench of the Apex Court in respect of the aforesaid references, therefore, I have no hesitation to hold that earlier view taken by the Apex Court is still good law and cannot be held to be detracted by Apex Court itself by now. Accordingly, no different opinion can be given by this court in this regard."

19. The submission of the learned counsel for the respondent-workman, therefore, is that once the Supreme Court as well as this Court have already held in the aforesaid authorities that Irrigation Department and also the departments of the like nature depending upon the services rendered by the said departments, shall be covered by definition of 'Industry' and, further, once the respondent was treated as an employee in the petitioner establishment, no error can be pointed out in adjudication of the dispute by the Labour Court and the provisions of U.P. Industrial Disputes Act, 1947 were fully applicable.

20. I find substance in the arguments advanced by the learned counsel for the respondent-workman as in the case of ***Des Raj v. State of Punjab*** (supra) the Apex Court had considered the tests laid down in various earlier judgments of the Apex Court itself, culminating in the judgment in ***Bangalore Water Supply*** (supra) and thereafter had arrived at a conclusion that the Irrigation Department falls within the definition of Industry within the meaning of Section 2(j) of the I.D. Act. It was held that the view taken down in ***Des Raj's*** case was the better in point of law and hence it is the view in ***Des Raj's*** case which was directed to be followed. Once it was so held and also that the work of the Irrigation Department of the State of Punjab and the material placed before the Surpeme Court including the written submissions filed on behalf of the concerned petitioners that the irrigation department of the State of Maharashtra was discharging the same or similar functions as the Irrigation Department of the State of Punjab, it was held that the projects of the Irrigation Department or work connected with that of the State of Maharashtra, on the same

tests as applied by the Apex Court in ***Des Raj's*** case would fall within the definition of an industry for the purpose of Section 2(j) of the I.D. Act.

21. In view of above discussions, the **first contention** of the State to the effect that Irrigation Department does not fall within the definition of "Industry" or that provisions of Act of 1947 are not applicable, does not have any force and is hereby **rejected**. Even, the Labour Court, in the impugned award has also given the same interpretation after relying upon the judgments in the case of ***Des Raj and etc.*** (supra) and other authorities. I do not find any error in the view taken by the Labour Court in this regard.

22. Insofar as the **second contention** of the State-petitioner that respondent-workman was appointed on part time basis and there was automatic cessation of his services, I have perused the award impugned in the writ petition, and I find that no document demonstrating the conditions of services of the respondent-workman was filed by the petitioner-Department during the course of proceedings before the Labour Court. The Labour Court has also observed that despite the fact that the workman had summoned the concerned documents from the Department, the latter did not produce the same. Therefore, relying upon the oral testimony of the D.W-1, in which reference of appointment letters/orders numbered as 523 dated 30.07.1985 and 200 dated 30.07.1985 was also made, the contention of the petitioner-Department regarding nature of services of the respondent-workman was not accepted.

23. In this regard, I find it appropriate to refer to the provisions of section of 114 of Indian Evidence Act, 1872. It is a

provision wherein the Court may draw inferences in any proceedings which include inferences favourable or unfavourable (adverse) to any party. Section 114 alongwith relevant illustration (g) is quoted hereinbelow:-

> ***"114. Court may presume existence of certain facts.*** *-- The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*
>
> *Illustrations*
>
> *The Court may presume-*
>
> *(a) to (f) .....*
>
> ***(g). That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;"***

24. In the present case, reliance has been placed upon Annexure R.A.-1 to the rejoinder affidavit, so as to explain the nature of services of the respondent-workman, however the said document did not form part of the record of the proceedings before the Labour Court. In view of provisions of section 114 of Indian Evidence Act, 1872, as quoted herein-above, the said document cannot confer any advantage upon the State-petitioner in a writ of certiorari, by which a challenge has been made to the award of the Labour Court, which is based upon the oral and documentary evidence produced by the respective sides before it. Admittedly, annexure R.A.-1 to the rejoinder affidavit, did not form part of the record of the proceedings. Therefore, **second contention** of the State regarding nature of service of the respondent is hereby rejected.

25. The **third contention** of the petitioner is to the effect that since reference was made after a huge delay of 16 years and, therefore, reinstatement with back wages was not proper, particularly, when there is nothing on record to indicate that the workman was not gainfully employed anywhere.

26. In this regard, I have perused the oral testimony of D.W.-1, who clearly stated that after termination of his services, he could not get job anywhere and was wholly unemployed and dependent upon others. **Futher, I find that reinstatement has not been ordered under the impugned award and what has been awarded is the past wages/salary to the workman only**. Therefore, the contention that reinstatement is bad, is contrary to the award passed in the present case.

27. Insofar as gainful employment is concerned, there is no reason to disbelieve the statement of the workman as referred to herein-above that he was not gainfully employed.

28. In ***State of Karnataka and another Vs. Ravi Kumar*** reported in 2009 (13) SCC 746, long delay in seeking reference of the dispute rendered the reference stale and Supreme Court held that it should have been rejected by the Labour Court. In that case reference was sought after fourteen years.

29. In ***Haryana State Cooperation Land Development Bank Vs. Neelam*** reported in 2005 (5) SCC 91, the Supreme Court held delay of seven years in approaching the Labour Court to be relevant factor to refuse relief of reinstatement.

30. In ***Bharat Sanchar Nigam Ltd. Vs. Bhurumal*** reported in 2014 (7) SCC 177, it has been held that relief of reinstatement

with full back-wages, when termination is found to be illegal is not to be granted mechanically in all cases. In case of termination of a daily wage worker, made in violation of Section 25F of the Industrial Disputes Act, 1947 it was held reinstatement with back-wages was not automatic and instead workman should be given monetary compensation.

31. The Supreme Court in the case of ***Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub Division, Kota Vs, Madan Lal*** reported in (2013) 14 SCC 543, after considering the law on the subject, held that though Limitation Act is not applicable to such cases, yet delay in raising the dispute is an important circumstance and Labour Court must consider before it exercises discretion irrespective of objection has or has not been raised by the other side.

32. Further in the case of ***Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Versus Mohan Lal*** reported in (2013) 14 SCC 543 in similar circumstances, a muster roll employee in a government establishment who had been found to have worked for 286 days in one twelve calendar month period prior to his dis-engagement, and in whose case the industrial dispute was raised after six years, was found not entitled to reinstatement but compensation in lieu thereof, Rs. One lac only.

33. In ***Nagar Mahapalika vs. State of U.P. and Ors***. reported in 2006,(5) SCC 127, it was held by Supreme Court that non compliance with the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 (this provision is broadly *pari materia*

with Section 25-F), although, leads to the grant of a relief of reinstatement with full back wages and continuity of service in favour of the workman, the same would not mean that such relief is to be granted automatically or as a matter of course. It was emphasised that the Labour Court must take into consideration the relevant facts for exercise of its discretion in granting the relief.

34. Supreme Court in ***Municipal Council, Sujanpur vs. Surinder Kumar*** reported in 2006 (5) SCC 173, reiterated the above legal position. That was a case where the Labour Court had granted reinstatement in service with full back wages to the workman as statutory provisions were not followed. The award was not interfered with by the High Court. However, the Court granted monetary compensation in lieu of reinstatement.

35. In ***Haryana State Electronics Development Corporation Ltd. v. Mamni*** reported in 2006 (9) SCC 434 following Nagar Mahapalika (supra), Supreme Court held that the reinstatement granted to the workman because there was violation of Section 25F, was not justified and modified the order of reinstatement by directing that the workman shall be compensated by payment of a sum of Rs.25,000/- instead of the order of the reinstatement.

36. In ***Uttaranchal Forest Development Corporation v. M.C. Joshi*** reported in 2007 (9) SCC 353, the services were terminated on 24.11.1991 in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act. He had completed 240 days of continuous work in a period of twelve months preceding the order of termination. The workman approached the Conciliation Officer

on or about 02.09.1996, i.e., after a period of about five years. The Labour Court granted to the workman, M.C.Joshi, relief of reinstatement with 50% back wages. In the writ petition filed by the Corporation, the direction of reinstatement was maintained but back wages were reduced from 50% to 25%. The Supreme Court substituted the award of reinstatement by compensation for a sum of Rs.75,000/-.

37. In ***Ghaziabad Development Authority and Another v. Ashok Kumar and Another*** reported in 2008 (4) SCC 261], the Apex Court was concerned with the question as to whether the Labour Court was justified in awarding relief of reinstatement in favour of the workman who had worked as daily wager for two years. His termination was held to be violative of U.P. Industrial Disputes Act. The Supreme Court held that the Labour Court should not have directed reinstatement of the workman in service and substituted the order of reinstatement by awarding compensation of Rs.50,000/-

38. In ***Telecom District Manager v. Keshab Deb,*** reported in 2008 (8) SCC 402, the termination of the workman who was a daily wager, was held illegal on diverse grounds including violation of the provisions of Section 25-F. Supreme Court held that even in a case where order of termination was illegal, automatic direction for reinstatement with full back wages was not contemplated. The Court substituted the order of reinstatement by an award of compensation of Rs.1,50,000/-.

39. In **Jagbir Singh v. Haryana State Agriculture Marketing Board** reported in 2009 (15) SCC 327, the workman had worked

from 01.09.1995 to 18.07.1996 as a daily wager and was granted compensation of Rs.50,000/- in lieu of reinstatement with back wages.

40. It is also necessary to refer to subsequent three decisions of Supreme Court, namely, ***Uttar Pradesh State Electricity Board vs. Laxmi Kant Gupta*** reported in 2009 (16) SCC 562, ***Bharat Sanchar Nigam Limited vs. Man Singh*** reported in 2012 (1) SCC 558 and ***Senior Superintendent Telegraph (Traffic), Bhopal vs. Santosh Kumar Seal and Others,*** reported in 2010 (6) SCC 773, where the view has been taken in line with the cases discussed above. As a matter of fact in ***Santosh Kumar Seal*** (supra), Apex Court awarded compensation of Rs.40,000/-to each of the workmen who were illegally retrenched as they were engaged as daily wagers about 25 years back and worked hardly for two or three years. It was held that the relief of reinstatement cannot be said to be justified and instead granted monetary compensation.

41. In the case of ***Assistant Engineer, Rajasthan Development Corporation and Anr. v. Gitam Singh*** reported in 2013 (5) SCC 136], Supreme Court on consideration of the most of the cases cited above reiterated the principle regarding exercise of judicial discretion by the Labour Court in a matter where the termination of the workman is held to be illegal being in violation of Section 25-F by holding that the Labour Court has to keep in view all relevant factors, including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute before grant of relief in an industrial.

42. The aforesaid authorities have been considered by this Court in its judgment in the case of ***State of U.P. Vs. Presiding Officer, Labour Court and another*** reported in 2017 (7) ADJ 393.

43. Further, The Supreme Court in several authorities some of which are mentioned below has held that if the only defect in the termination order is non payment of retrenchment compensation as required by Section 25 F of Industrial Dispute Act (or Section 6 N of U.P.I.D. Act) then it is not always necessary to direct reinstatement with full back wages and that in such situation more often than not proper relief may be to award consolidated damages/compensation particularly when the employer is Government or Governmental agency and relevant rules have not been followed before appointment.

- ***Nagar Mahapalika v. State of U.P.****, AIR 2006 SC 2113*
- ***Haryana State Electronics Devpt Corpn v. Mamni****, AIR 2006 SC 2427*
- ***Sita Ram v. Moti Lal Nehru Farmers Training Institute****, AIR 2008 SC 1955*
- ***Jagbir Singh Vs. Haryana State Agriculture Marketing Board and another****, AIR 2009 SC 3004*

44. In ***Senior Superintendent, Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and others***, reported in AIR 2010 SC 2140, it has been held that if daily wagers had worked for 2 or 3 years and their services were terminated without payment of retrenchment compensation then consolidated damages should be awarded to them (Rs.40,000/- to each of the workmen was awarded in the said case). It has also been held that daily wager does not hold a post and can not be equated with permanent employee. This view has

been reiterated in ***Incharge Officer Vs. Shankar Shetty*** reported in JT 2010(9) SC 262.

45. The aforesaid authorities have been considered by this Court in its judgment reported in ***2011 (4) ADJ, 199: Divisional Engineer, Telecom, Jhansi Vs. Presiding Officer and another***.

46. The Court cannot ignore one aspect of the matter. The Labour Court, in the present case, **has not directed reinstatement of the workman in his services**. In case, the workman was aggrieved by denying such relief, he could have challenged the award but, admittedly, he has not challenged the same nor has he claimed relief of reinstatement. Even during the course of arguments, learned counsel for the respondent-workman submitted that at this stage he is just supporting the award whereby only backwages from the date of reference till the enforcement of the award have been awarded. Therefore, this Court is conscious of the fact that Labour Court did not award even backwages from the year, 1990, when the services of the respondent-workman were terminated, but the same have been awarded from the date of reference. Therefore, the delay of 15-16 years in the present case, is not fatal to the claim of the respondent-workman, who, though claimed reinstatement, but has been denied the same. I do not think that award of the backwages from the year 2005 onwards, would be defeated by the delay, which may be a factor in those cases, where the reinstatement with backwages has been ordered, as there is no question of reinstatement in the present case either under the award or in the absence of challenge by the workman to the award.

47. Even the Labour Court has recorded clear finding just above the operative portion of the impugned award that the workman had stated that he had not worked over a period of 15 years and that he had made an oral request from the employer to take him on duty, but did not submit any application in this regard. Therefore, the labour Court has taken a view that the workman was not entitled to get backwages upto the date of making reference. Since the said denial has not been challenged by the workman by filing writ petition or otherwise, I cannot examine the validity or illegality of the said findings in totality of the facts of the case.

48. Therefore, the **third contention** of the State-petitioner based upon the delay in making reference also does not have any force and is liable to be discarded.

49. Insofar as other findings recorded in the award impugned are concerned, I find that the view taken by the Labour Court that termination of services of respondent-workman was contrary to the provisions of section 6-N of the U.P. Industrial Disputes Act,1947 does not suffer from any illegality or perversity in view of the evidence on record produced before the Labour Court.

50. In view of above discussions, I do not find any illegality or perversity in the impugned award. **The writ petition fails and is accordingly, dismissed.**

51. The respondent-workman shall submit appropriate application before the Comptent Court/Authority by giving a calculation of the backwages/salary awarded under the impugned award with effect from the date of reference till the date of moving

such application. The Court/Authoirty shall call upon the employer to submit calculations/computations of the backwages/salary payable to the respondent-workman under the award impugned. While computing/calculating the same, all increments in the backwages/salary, which the workman would have been entitled to, with effect from the date of reference shall also be added in award of the “entire backwages/salary”.

52. On submission of such application by the respondent-workman, the Court/Authority shall pass an order directing release of the benefits, so computed and respondent-workman shall be paid the same within a period of **four months** from the date of moving of such application.

Order Date :- 02.05.2023
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