



2026:DHC:7626



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on:28.07.2026
Judgment pronounced on:08.09.2026
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CNR No. DLHC011153872007

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W.P.(C) 6756/2007 & CM APPL. 12795/2007, CM APPL. 17524/2008, CM APPL. 1826/2012, CM APPL. 4975/2013, CM APPL. 2869/2014, CM APPL. 49363/2019, CM APPL. 45136/2025, CM APPL. 45137/2025

STATE BANK OF PATIALA

..... Petitioner

versus

ANIL KUMAR & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Rajiv Kapur, Standing Counsel with
Mr. Akshit Kapur, AOR and Ms. Riya Sood,
Adv.

For the Respondent : Mr. Vipin Mohan, Adv.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition has been filed under Article 226/227 of the Constitution of India, assailing the Award dated 16.04.2007, by the



Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court – II, (hereinafter ‘CGIT’) in I.D. No. 199/1997, whereby the learned CGIT held the termination of Respondent/Shri Anil Kumar to be illegal and directed his reinstatement with effect from 22.12.1992 with 10 % back wages.

2. Succinctly stated, the Respondent/Workman raised an industrial dispute alleging that he had been directly engaged by the Petitioner/Bank as a “Peon” on 16.04.1990 at its Meerut City Branch and he had continuously discharged the duties attached to the said post till 21.12.1992. It was his case that despite having rendered continuous service for more than 240 days, his services were abruptly terminated without issuance of any notice or payment of retrenchment compensation as contemplated under the Industrial Disputes Act, 1947. In support of his claim, reliance was placed upon Identity Card, Character and Experience Certificates and other documents such as Payment Vouchers and Curfew Pass allegedly issued by the Branch Manager of the Petitioner/Bank, to establish his engagement and continuity of service.

3. The Petitioner/Bank had contested the claim in its entirety. It specifically denied that the Respondent had ever been appointed as a *Peon* or that any relationship of employer-employee existed between the parties and contended that the Respondent had been deputed by *M/s Secure Well Services*, a partnership firm engaged for providing *security personnel* to the Bank, and that all payments in respect of such engagement were made directly to the said contractor. He



performed the duties of a Security Guard and the engagement ended when the contract was terminated with *M/s Secure Well Services*. The Petitioner/Bank also asserted that the identity card and curfew pass relied upon by the workman had been issued only to facilitate his movement during the curfew period and did not establish any contract of employment. It additionally raised the plea that an earlier adjudication by the Labour Court-I Meerut in Misc. Case No. 41/1993 *vide* Order dated 13.05.1997, had already negated the Respondent's claim of employment with the Bank and, therefore, the present proceedings were barred by the principles of *res judicata*.

4. The Ministry of Labour had referred the point of adjudication as “*Whether the action of the management of State Bank of Patiala in terminating the services of Shri Anil Kumar s/o Shri Malkhan Singh is legal and justified? If not, to what relief is the workman entitled.*” Upon completion of pleadings and recording of evidence, the following issues were framed for determination: -

- “1. *Whether the workman has worked for 240 days in the year 1990 to 1992?*
2. *Whether the workman is entitled to reinstatement?*
3. *To what amount of back wages the workman is entitled?”*

5. *Vide* the impugned Award dated 16.04.2007, the learned CGIT answered the reference in favour of the Respondent. While deciding *Issue No. 1*, the learned CGIT relied upon the Identity Card of the workman which designated him as a “*peon*”; Character Certificate issued by the Branch Manager of the Bank which certified that the



workman was well known to him for 2 years 2 months and bears a good moral character; Curfew Pass issued to the *Peon* as a “*Government Servant*”; Certificate issued by the Branch Manager on the letter head of the Bank certifying that the Respondent had worked in the Bank from 16.04.1990 to 21.12.1992, and Payment Vouchers produced by the workman, and observed that these documents had either been admitted by the management or that the Bank had failed to specifically dispute the signatures appearing thereon. It was further observed that the management had failed to establish its plea that the Respondent had been engaged through *M/s Secure Well Services* as a “*security guard*”, noting that no documentary evidence had been produced in support of the alleged contractual arrangement. It was also observed that on all documents he has been mentioned as “*Peon*” and not designated as a “*Security Guard*”. Even the payment vouchers indicated that payments were made directly to the Respondent in his personal capacity. Further, adverse inference was drawn against the Bank for not disclosing the identity of any *regular Peon* allegedly working at the branch during the relevant period. The learned CGIT rejected the plea of *res judicata* by observing that the Civil Court did not have jurisdiction to decide or give findings on issues pertaining an industrial dispute. On the basis of the aforesaid reasoning, the learned CGIT concluded that the Respondent had been engaged by the Bank as a *daily-wage Peon*, had worked continuously from 16.04.1990 till 21.12.1992, and had completed more than 240 days of service in the relevant period.



6. While considering the relief to be granted, the learned CGIT held that the Respondent's services had been terminated in violation of Section 25F of the Industrial Disputes Act, 1947, as no notice pay or retrenchment compensation had been paid prior to termination. It held that, since the Bank was neither a sick industrial undertaking nor shown to be in financial distress, there was no justification for substituting reinstatement with monetary compensation. Accordingly, *Issue No. 2* was decided in favour of the workman by directing *reinstatement*.

7. Insofar as back wages were concerned, it was noted that although the workman had approached the industrial forum after approximately five years, he had initially pursued a remedy before a Civil Court, which resulted in delay, and further observed that the proceedings had been prolonged on account of adjournments sought by the workman, these circumstances warranted only a partial denial of back wages. Consequently, while declining full back wages, the learned CGIT awarded *10% back wages*.

8. The Reference was thus answered by holding that the action of the Petitioner in terminating the services of the Respondent was neither legal nor justified, and the Bank was directed to reinstate the Respondent with effect from 22.12.1992 along with 10% back wages.

9. Aggrieved, the Petitioner approached this Court by way of the present Writ Petition.

10. The learned Counsel for the Petitioner has submitted that there existed no employer-employee relationship between the Petitioner and



the Respondent as the Respondent was appointed through *M/s Industrial Services Agency*. By letter dated 31.05.1990, *M/s Industrial Services Agency* offered their services of Watchman-cum-peon to the Petitioner Bank at rate of Rs. 800/- per month with 15% service charges. The offer was accepted by the Petitioner *vide* Letter dated 01.06.1990 at the rate of Rs. 760/- per month with 10% service charges. The acceptance of same was signified by *M/s Industrial Services Agency* by signing the office copy of the Letter and at the reverse side it was mentioned that they were sending a person named Mr. Anil Kumar/Respondent for duty i.e. their employee. Thus, the contract was between the Petitioner and *M/s Industrial Services Agency*.

11. It is further submitted that the *M/s Industrial Services Agency* deputed the Respondent on duty with the Petitioner at the above agreed rate and the payments were made to *M/s Industrial Services Agency*.

12. It is further submitted that when a permanent security guard was posted, the Petitioner discontinued the services of the service provider and terminated the contract. In the response to the Respondent's Legal Notice dated 17.02.1993, the Petitioner had specifically mentioned that there is no privity of contract between the Respondent and the Petitioner, and the Respondent was engaged through a third party i.e. "*M/s Secure Well Services*". The same was mentioned inadvertently as "*M/s Secure Well Services*" instead of *M/s Industrial Services Agency*.



13. It is further submitted that the Respondent's Application under Section 33(c)(2) of the Industrial Disputes Act, 1947 in the Labour Court, Meerut Registered as *Misc. Case 41 of 1993* praying for Award of Rs. 57,912/- as salary since 16.04.1990 till 30.04.1993. The same was duly contested by the Petitioner and the signatures on the Certificate purportedly issued by the Branch Manger were denied. The case was dismissed *vide* Judgment dated 13.05.1997 holding that, since the certificate issued by Branch Manager was not proved as the Respondent failed to disclose the name of the Branch Manager, the Respondent had also admitted that he did not make any application for seeking employment before the Petitioner, no appointment letter was issued, Salary was never paid by the Petitioner and no letter terminating the services was issued, there is no employer-employee relationship established between the parties.

14. It was further submitted that the Respondent also filed Civil Suit *O.S. No. 1025/1993* seeking a declaration of legal status as continuous and regular employee as Peon of the Bank, was dismissed *vide* Judgment and Decree dated 12.05.1995 holding that the Petitioner has failed to prove his employment with the Petitioner. Since, the issue was an industrial dispute liberty was granted to the Respondent to approach the appropriate forum. No appeal has been filed against the above Decree and thus, the same has attained finality and is binding on the parties.

15. It was further submitted that merely on the basis of the ID card/ curfew passes, it could not have been deduced that the Respondent is



employed with the Petitioner, in the absence of appointment letter, termination letter, attendance register, payment of salary etc. Even the payment vouchers were towards reimbursement of misc. expenses incurred by the Respondent and were not salary payment vouchers. The burden rested upon the Respondent to prove that he had been engaged with the Petitioner bank and was in service for 240 days, which has not been discharged.

16. It has also been submitted that without prejudice to the above argument, as regards the relief granted is concerned, the learned CGIT has erred in granting the relief of reinstatement and back wages, when it is well settled that even if termination is found illegal, the relief of reinstatement and grant of back wages cannot be granted mechanically. As per the recent trend, compensation has been held to meet the ends of justice. To buttress the above argument, reliance is placed upon ***BSNL v. Bhurumal : (2014) 7 SCC 177.***

17. Hence, it is urged that the Award is liable to be set-aside.

18. *Per Contra*, the learned Counsel for the Respondent has vehemently opposed the present petition and has submitted that all the contentions raised have already been addressed by the learned CGIT in detail, which is the fact-finding authority and this Court cannot sit in appeal and re-appreciate evidence, once a plausible view has been adopted by the learned CGIT.

19. It is further submitted that the Respondent has duly performed duties of a *Peon*, and was working under direct control of the Bank,



which is evident from the documents filed before the learned CGIT. However, the services of the Respondent were terminated illegally.

20. It is further submitted that the Respondent has had no relation with any service provider or *M/s Industrial Services Agency*. Rather, the documents relating to *M/s Industrial Services Agency* were never filed before the learned CGIT and it is for the first time a stand has been taken that the Respondent was engaged through *M/s Industrial Services Agency* as before the learned CGIT it has been stated that the Respondent was engaged through *M/s Secure Well Services*.

21. It is further submitted that the Judgment and Decree dated 12.05.1995 has not been filed by the Petitioner and in any case, by the same, only the point of jurisdiction was decided in negative. Even the reliance placed by the Petitioner upon the outcome of the Application filed under Section 33 of the Industrial Disputes Act, 1947 is misplaced as the same was dismissed by holding that it had no jurisdiction to decide the relationship of employer-employee between the parties and the case would have to be decided by way of an Award in the appropriate proceedings.

22. Hence, it is urged that the present petition is liable to be dismissed.

23. *Vide* Order dated 30.08.2011, the workman's application under Section 17B was allowed and the Bank was directed to pay the higher of the *last-drawn wages and applicable minimum wages*, from the date of the award till the final disposal of the writ.



24. The Petitioner Bank had challenged the above order by way of LPA No. 1005/2011, which was allowed *vide* Order dated 28.02.2012 and the Order was set-aside. This Order was then challenged by the Respondent by way of *Civil Appeal No. 7359/2013* which was allowed, and the original Order dated 30.08.2011 was restored by observing that even if the proof of last drawn wages has not been furnished, the Respondent cannot be deprived of the benefit of minimum wages fixed by the Authority.

25. Arguments heard and the material placed on record perused.

26. At the outset, it is apposite to mention that in exercise of jurisdiction under Articles 226 and 227 of the Constitution, this Court does not sit as a Court of appeal over the findings recorded by the Labour Court/Tribunals. Interference is warranted only where the findings suffer from patent perversity, are based on no evidence, or are such that no reasonable person could have arrived at them. Merely because another view on the evidence is possible would not justify interference. Reference in this regard may be made to the judgment in ***International Airport Authority of India v. International Air Cargo Workers Union* : (2009) 13 SCC 374** where the Hon'ble Apex Court held as under: -

“47. It is true that in exercising the writ jurisdiction, the High Court cannot sit in appeal over the findings and award of the Industrial Tribunal and therefore, cannot reappreciate evidence. The findings of fact recorded by a fact-finding authority should ordinarily be considered as final. The findings of the Tribunal should not be interfered with in writ jurisdiction merely on



the ground that the material on which the Tribunal had acted was insufficient or not credible.

48. It is also true that as long as the findings of fact are based on some materials which are relevant, findings may not be interfered with merely because another view is also possible. But where the Tribunal records findings on no evidence or irrelevant evidence, it is certainly open to the High Court to interfere with the award of the Industrial Tribunal.”

27. In the present case, the learned CGIT has returned its findings after appreciating both the oral as well as documentary evidence led by the parties. The Respondent relied upon contemporaneous admitted documents including the Identity Card describing him as a "Peon", Character and Experience Certificates issued on the Bank's letterhead showing that he had worked with the bank for almost 2 years, Curfew Pass issued to him as "Government Servant", and Payment Vouchers which demonstrated that payments were made directly to him.

28. Though the Petitioner had admitted that the Respondent had been working with it since 1990-1992, the principal challenge raised before the learned CGIT as well as this Court has been that no employer-employee relationship existed between the parties as the Respondent had merely been deployed through a service provider.

29. The cross-examination dated 28.07.2000, of MW1-Sh. Rattan Lal Gupta, Branch Manager, reflects that it is an admitted position that ***"Shri Anil Kumar had never worked on the score of the Bank. The workman had worked in the bank as watchman through an agency. The workman had worked in the Bank approximately from year***



1990 to 1992.”Once it was admitted that the Respondent has been discharging duties and working with the Bank and a specific defence was raised regarding the engagement through a third party, the burden shifted upon the Petitioner to substantiate the same by producing the best evidence available in its possession.

30. In ***Bank of Baroda v. Ghemarbhai Harjibhai Rabari, (2005) 10 SCC 792***, the hon’ble Apex Court, while discussing the onus and degree of proof required to be discharged by a workman, opined that though the initial burden to establish employment with the management rests primarily with the workman, however, the degree of proof so required would vary from case to case. It was held that, despite no letter of appointment, the workman would be entitled to relief as he had been able to establish a *prima facie* case on the basis of the payment vouchers furnished and the management has failed to rebut the case of the workman. The relevant extract is reproduced herein below: -

“8. While there is no doubt in law that the burden of proof that a claimant was in the employment of a management, primarily lies on the workman who claims to be a workman, the degree of such proof so required, would vary from case to case. In the instant case, the workman has established the fact which, of course, has not been denied by the Bank, that he did work as a driver of the car belonging to the Bank during the relevant period which comes to more than 240 days of work. He has produced 3 vouchers which showed that he had been paid certain sums of money towards his wages and the said amount has been debited to the account of the Bank. As against this, as found by the for a below, no evidence whatsoever has been



adduced by the Bank to rebut even this piece of evidence produced by the workman. It remained contented by filing a written statement wherein it denied the claim of the workman **and took up a plea that the employment of such drivers was under a scheme by which they are, in reality, the employee of the executive concerned and not that of the Bank; none was examined to prove the scheme. No evidence was led to establish that the vouchers produced by the workman were either not genuine or did not pertain to the wages paid to the workman. No explanation by way of evidence was produced to show for what purpose the workman's signatures were taken in the register maintained by the Bank. In this factual background, the question of the workman further proving his case does not arise because there was no challenge at all to his evidence by way of rebuttal by the Bank.**

(emphasis supplied)

31. Keeping the above in mind, in the present case, the Petitioner has miserably failed to rebut the case of the Workman. If indeed the Respondent had been deputed by an independent contractor, the agreement executed with such contractor, payment records, bills, correspondence, deployment records, or examination of the representative of the contractor would have constituted the primary evidence in support of the said plea. Admittedly, no such material was ever produced before the learned CGIT. Notably, no such material has been placed before this Court as well. Rather, even the identity of the alleged contractor has not remained consistent. While the defense before the learned CGIT referred to *M/s Secure Well Services* being the service provider, the present writ petition has sought to attribute the Respondent's engagement to *M/s Industrial Services Agency*. No



satisfactory explanation has been furnished for this inconsistency. The record, as presented, does not show a complete commercial trail consisting of the agency's registration, proprietor or partner evidence, recurring invoices, receipts, account entries and testimony explaining deployment and payment. There is nothing to even support the plea of alleged termination of agreement between the Petitioner and the Agency or any contemporaneous document to show that the salary of the Respondent was being paid to any Agency. Further, the Petitioner has also not been able to substantiate the plea that the permanent security guard had replaced the Respondent.

32. In these circumstances, the learned CGIT's conclusion that the Bank was the real employer cannot be characterized as based on no evidence or as one no reasonable adjudicator could reach. The finding that the Respondent was engaged directly by the Petitioner is not based upon a solitary document but upon a cumulative appreciation of the evidence produced by the parties coupled with the failure of the Petitioner to produce the material evidence which was admittedly within its exclusive possession. The appreciation of evidence by the learned CGIT is certainly a plausible one. Hence, the observations regarding the illegal termination do not warrant interference.

33. Further, the reliance placed by the Petitioner on the Judgment dated 12.05.1995 and Order 13.05.1997, *vide* which the Suit O.S. No. 1025/1993 and Section 33 Application, filed by the Respondent, were dismissed, is misplaced. A perusal of the same demonstrates that the Labour Court while deciding the Section 33 Application, had



categorically observed that the proceedings under Section 33C(2) are in the nature of computation of an existing right and thus, it possesses no jurisdiction to decide whether an employer-employee relationship exists between the parties and the present issues have to be decided by way of an Award.

34. As regards the Judgment and Decree dated 12.05.1995, the same has not been placed on record. However, it is recorded in the Judgment dated 28.02.2012 passed by the Division Bench of this Court in LPA No. 1005/2011 (challenging the 17-B Order), that: -

“3. After his alleged termination, the workman first filed civil suit in the year 1993 in the Court of City Munsif, Meerut. The said suit was contested by the appellant/management raising various defences. One of the defences of the management was that respondent/workman was never appointed/ employed by the management. According to the management, it had engaged the services of M/s. Secure Well Services, a partnership firm, to provide security guard to the bank on temporary basis and it was M/s. Secure Well Services which had deployed the respondent/workman at the aforesaid Meerut Branch therefore there was no employer-employee relationship between the management and the respondent. Another defence was that the civil court had no jurisdiction as it was an industrial dispute. The Civil Court while deciding the aforesaid suit in July 1995 recorded a finding that there was no employer-employee relationship between the appellant and the respondent. At the same time, the suit was dismissed on the ground that it was an industrial dispute and therefore the jurisdiction was of the industrial tribunal / labour court under the ID Act.”

(emphasis supplied)



35. From a perusal of the above, it emerges that the issue in the Suit was also never decided finally and the matter was to be decided afresh by the Industrial Tribunal/Labour Court. As rightly observed by the learned CGIT, the dismissal of the civil suit does not bar the industrial reference and when the jurisdiction was itself in issue; a finding by a court lacking jurisdiction cannot be enlarged into a final industrial adjudication on the existence of an employer-employee relationship.

36. As regards violation of Section 25F, it is well settled that the workman bears the initial burden of showing 240 days of service however, the practical reality is that daily-wage workers rarely possess formal service records. Thus, an adverse inference may be drawn against the Employer if such records are not produced depending on the facts. The finding that the Respondent had completed continuous service and that his services were terminated(*despite him serving the Petitioner from 1990-1992 as admitted by MW-1 in his cross-examination*) in violation of Section 25F of the Industrial Disputes Act is founded upon the evidence appreciated by the learned CGIT. The Bank did not produce a coherent alternate attendance and payment record demonstrating intermittent service or employment elsewhere. The Petitioner has been unable to demonstrate that the said findings are based on no evidence or suffer from such perversity as would warrant interference in exercise of the writ jurisdiction of this Court.

37. Reliance has been placed by the Petitioner upon ***Municipal Corpn., Faridabad v. Siri Niwas, (2004) 8 SCC 195***, to contend that



the initial burden of establishing that the workman had completed 240 days of service rests upon the workman. As discussed above, there can be no quarrel with the said proposition. However, whether such burden has been discharged has to be examined on the basis of the evidence led in the particular case. The said judgment does not lay down that the workman is required to establish his employment only through a formal appointment letter or other records which, particularly in the case of a daily-wage engagement, may ordinarily remain in the custody of the employer.

38. The submissions advanced on behalf of the Petitioner essentially invite this Court to re-appreciate the evidence and substitute its own conclusions for those arrived at by the learned Labour Court. Such an exercise is impermissible while exercising supervisory jurisdiction under Articles 226 and 227 of the Constitution. Since the view taken by the learned CGIT is a reasonably possible view emerging from the material on record, no interference with the observations regarding illegal termination in the impugned Award is called for.

39. Having upheld the finding of illegal termination, the next issue that arises for consideration is the nature and extent of relief to be granted to the Respondent. It is no more *res-integral* that the finding of illegality of termination does not make reinstatement with back wages automatic. The Hon'ble Apex Court in **Allahabad Bank v. Krishan Pal Singh : (2021) 19 SCC 227**, has held that reinstatement with full back wages is not automatic in every case where termination



or dismissal is found to be not in accordance with the procedure prescribed under law and that the relief can be molded depending upon the facts and circumstances of the case.

40. As regards the relief of reinstatement, the Petitioner has placed reliance upon ***Jagbir Singh v. Haryana State Agriculture Marketing Board***, (2009) 15 SCC 327 and ***Haryana Tourism Corporation Ltd. v. Fakir Chand***, (2003) 8 SCC 248, to contend that reinstatement does not follow as an automatic consequence even where termination is found to be in violation of Section 25F of the Industrial Disputes Act. The said proposition is well settled and has subsequently been reiterated in a catena of decisions. In ***Jagbir Singh*** (supra), the Hon'ble Supreme Court recognized that the earlier principle of automatic reinstatement with back wages had undergone a shift and that compensation instead of reinstatement may meet the ends of justice. The relevant extract is reproduced herein below: -

“7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

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14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, **particularly, daily wagers** has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

15. Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. **However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages.**

16. As a matter of fact, in all the judgments of this Court referred to and relied upon by the High Court while upsetting the award of reinstatement and back wages, this Court has awarded compensation.

17. While awarding compensation, a host of factors, inter alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances.”

(emphasis supplied)

41. Similarly, in ***Haryana Tourism Corporation Ltd.*** (supra), the Hon'ble Supreme Court, while considering that the claimants were daily-wage employees; who were not recruited through any employment exchange or any accepted mode of selection; whether there was any advertisement calling for applications for appointment



of them; none of them was regularized in service before their termination; considerable passage of time; and possibility that a daily wager must have continued working somewhere after termination, held that reinstatement would not be a just or equitable solution and interest of justice would be met if compensation in lieu of reinstatement.

42. The Hon'ble Apex Court, in **Bhurumal** (supra) has also held that daily-wage workers are not automatically entitled to reinstatement with back wages when their termination violates procedural laws like Section 25-F of the Industrial Disputes Act. Instead, the Court held that lump-sum monetary compensation is the appropriate remedy. The relevant extract is reproduced herein below: -

“28. The only question that survives for consideration is as to whether the relief of reinstatement with full back wages was rightly granted by CGIT.

29. The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In BSNL v. Man Singh [BSNL v. Man Singh, (2012) 1 SCC 558 : (2012) 1 SCC (L&S) 207], this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In Incharge Officer v. Shankar Shetty [(2010) 9 SCC 126 : (2010) 2 SCC (L&S) 733], it was held that those cases where the workman had worked on daily-wage basis, and worked merely for a period of 240 days or 2 to 3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.



30. In this judgment of Shankar Shetty [(2010) 9 SCC 126 : (2010) 2 SCC (L&S) 733] , this trend was reiterated by referring to various judgments, as is clear from the following discussion: (SCC pp. 127-28, paras 2-4)

“2. Should an order of reinstatement automatically follow in a case where the engagement of a daily-wager has been brought to an end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short ‘the ID Act’)? **The course of the decisions of this Court in recent years has been uniform on the above question.**

3. In Jagbir Singh v. Haryana State Agriculture Mktg. Board [Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] , delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey [(2006) 1 SCC 479 : 2006 SCC (L&S) 250] , Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353 : (2007) 2 SCC (L&S) 813] , State of M.P. v. Lalit Kumar Verma [(2007) 1 SCC 575 : (2007) 1 SCC (L&S) 405] , M.P. Admn. v. Tribhuban [(2007) 9 SCC 748 : (2008) 1 SCC (L&S) 264] , Sita Ram v. Moti Lal Nehru Farmers Training Institute [(2008) 5 SCC 75 : (2008) 2 SCC (L&S) 71] , Jaipur Development Authority v. Ramsahai [(2006) 11 SCC 684 : (2007) 1 SCC (L&S) 518] , GDA v. Ashok Kumar [(2008) 4 SCC 261 : (2008) 1 SCC (L&S) 1016] and Mahboob Deepak v. Nagar Panchayat, Gajraula [(2008) 1 SCC 575 : (2008) 1 SCC (L&S) 239] and stated as follows: (Jagbir Singh case [Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15



SCC 327 : (2010) 1 SCC (L&S) 545] ,
SCC pp. 330 & 335, paras 7 & 14)

'7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily-wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily-wager who does not hold a post and a permanent employee.'

4. Jagbir Singh [Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] has been applied very recently in Telegraph Depts. v. Santosh Kumar Seal [(2010)



6 SCC 773 : (2010) 2 SCC (L&S) 309] , wherein this Court stated: (SCC p. 777, para 11)

‘11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily-wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.’”

31. In *Deptt. of Telecommunications v. Keshab Deb* [(2008) 8 SCC 402 : (2008) 2 SCC (L&S) 709] the Court emphasised that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one month's pay in lieu of one month's notice and wages of 15 days of each completed year of service as envisaged under Section 25-F of the Industrial Disputes Act. He could not have been directed to be regularised in service or granted/given a temporary status. Such a scheme has been held to be unconstitutional by this Court in *A. Umarani v. Registrar, Coop. Societies* [(2004) 7 SCC 112 : 2004 SCC (L&S) 918] and *State of Karnataka v. Umadevi* (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] .

32. It was further submitted by the learned counsel for the appellant that likewise, even when reinstatement was ordered, it does not automatically follow that full back wages should be directed to be paid to the workman. He drew the attention of this Court to *Coal India Ltd. v. Ananta Saha* [(2011) 5 SCC 142 : (2011) 1 SCC (L&S) 750] and *Metropolitan Transport Corpn. v. V. Venkatesan* [(2009) 9 SCC 601 : (2009) 2 SCC (L&S) 719] .

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) [(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.”

(Emphasis supplied)

43. The reliance placed by the Petitioner upon **Haryana Urban Development Authority v. Devi Dayal**, (2002) 3 SCC 473, is also



relevant to the extent that the Hon'ble Supreme Court, while considering the question of back wages, took into account the short duration of service of the daily wager and the possibility of gainful employment during the intervening period, and thus, moulded the relief of full back wages to 50% back wages.

44. Hence, it is well crystallized that the relief of reinstatement and back wages is required to be moulded having regard to the facts and circumstances of each case.

45. Applying the above settled principles to the case at hand, it is noted that the present case concerns an engagement of less than three years ending in 1992; more than thirty-three years have elapsed; and the workman is near the applicable age of superannuation. *Vide* Order dated 30.08.2011, the workman's application under Section 17B was allowed and the Bank was directed to pay the higher of the *last-drawn wages and applicable minimum wages*. It had been submitted by the Counsel for the Petitioner Bank that it has been complying with the 17B orders and till 2022 approximately Rs. 11 Lakhs has already been paid to the Respondent. Though the amounts paid under 17B are in the nature of subsistence allowance, however, the Respondent has gotten the benefit of payments made under 17B without working or rendering any services to the Petitioner and the Petitioner had been paying the same for a long period. In the opinion of this Court, considering the totality of circumstances, ends of justice will be met by modifying the relief and awarding a **lumpsum compensation of Rs. 3,00,000** to the



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Respondent. The same shall be paid by the Petitioner within a period of eight weeks from the date of this Judgment.

46. The above compensation amount shall be paid over and above sums validly paid under Section 17B. The Petitioner shall remain liable for any unpaid amount due under Section 17B till date of this Judgment.

47. Accordingly, the Impugned Award is modified to the above extent and present petition is disposed with the above directions, along with pending application(s).

AMIT MAHAJAN, J

SEPTEMBER 8, 2026

'KDK'