



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 4242 of 2011

Shri Sharad S/o Madhavrao Mohitkar,
Aged about 50 years, Occ. : Labour,
R/o. Ward No. 6, Narkhed,
Post & Tahsil : Narkhed,
Distt. : Nagpur.

... Petitioner

- Versus -

The Chief General Manager,
Telecom (R.E.) Project,
66, Bajaj-nagar, Nagpur.

Amended
as per
Order dtd.
9-10-2013

Chief General Manager,
Bharat Sanchar Nigam Limited, (BSNL)
Zero Miles, Civil Lines,
Nagpur – 440001.

... Respondent

Mr. S. A. Kalbande, Advocate for the petitioner
Ms. U. R. Tanna, Advocate instructed by Dr. (Mr.) R. S. Sundaram,
Advocate for the respondent

CORAM : ANIL L. PANSARE, J.

Date of reserving judgment : 16-10-2024

Date of pronouncing judgment : 22-10-2024

JUDGMENT

Heard Mr. S. A. Kalbande, learned counsel for the petitioner
and Ms. U. R. Tanna, learned counsel for the respondent.

2. The order impugned indicates that the petitioner was
appointed as a Casual Labourer. He has allegedly worked for the period

from July, 1985 to June, 1988. His services were allegedly terminated orally with effect from June, 1988 without following due procedure, including Section 25F of the Industrial Disputes Act, 1947 (for short 'the Act of 1947'). The respondent – employer came up with a case of willful absenteeism with effect from 1-8-1988.

3. The petitioner admitted in cross-examination that he worked as Casual Labour in electrification division of the railway from January, 1987 to July, 1988 and his name was not sponsored by the employment exchange and that he did not receive any written order of appointment nor did he receive any termination order. He, however, denied that he has voluntary left the work.

4. On the other hand, the respondent also admitted that it did not issue any notice to workman for his absence.

5. The CGIT-cum-Labour Court, Nagpur, on going through the pleadings and evidence, found that the petitioner had worked for more than 240 days preceding 12 months from the date of his termination. There is/was no evidence to show that he has abandoned the work. The provisions of Section 25 of the Act of 1947 was not complied before termination of his service. Accordingly CGIT held that termination of petitioner is not justified and the same is illegal.

6. The CGIT then considered in detail the consequential relief, whether to award reinstatement or compensation. The Court below noted that the petitioner in cross-examination has admitted that he is working as Labour after termination. Accordingly, it was held that he was not entitled for arrears of wages. The Court below further noted that the petitioner has admitted in cross-examination that he did not receive any written order of termination from the department and his name was not sponsored by the employment exchange.

7. Accordingly, the Labour Court held that appointment of the petitioner was not in accordance with the rules and regulations. The Labour Court then referred to the judgments of *Incharge Officer and another Vs. Shanker Shetty [2010 (8) Scale 583]* and *Jagbir Singh Vs. Haryana State Agriculture Marketing Board and another [(2009) 15 SCC 327]* wherein in the first judgment, considering the lapse of time from the date of termination, the Supreme Court held that the High Court committed error in granting relief of reinstatement and accordingly set aside the said order, instead, the Supreme Court granted monetary compensation in lieu of reinstatement. In the second judgment, the Supreme Court held that though earlier view of the Court was that if the termination was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. The

Supreme Court then noted that there has been a shift in the legal position and in series of judgments, the Supreme Court has consistently taken a view that the relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in the given fact situation, even though the termination of an employee is in contravention of the prescribed procedure. The Supreme Court held that in such cases, the compensation instead of reinstatement would meet the ends of justice.

8. Applying the aforesaid principle of law, the Labour Court thought it proper to award monetary compensation of Rs. 30,000/- instead of granting reinstatement.

9. In context with above, on 14-10-2024, following order was passed.

“Heard for sometime.

2. The order impugned indicates that the Petitioner was working as Labour with the Respondent and was found to be not appointed in accordance with Rules and Regulations and was further found to be employed as Labour after termination. Accordingly, the CGIT-Cum-Labour Court, having considered the law on this point, has held that Petitioner was not entitled for the relief of reinstatement or back wages, and accordingly, has awarded Rs. 30,000/- as monetary compensation.

3. The learned Counsel for Petitioner intends to rely upon the Judgments of the Hon’ble Apex Court. He is at liberty to do so, however, he shall file chart showing facts of the case

before the Supreme Court and the law laid down and further describe as to how law will be applicable to the facts of the present case, failing which, costs may be imposed for unnecessary consuming judicial time of the Court.

4. *List the Petition on 16th October, 2024 'High on Board'."*

10. Learned counsel for the petitioner has relied upon following judgments.

(i) ***Civil Appeal No. 6188 of 2019 (arising out of SLP (C) No. 8112 of 2019)*** in the case of ***Jayantibhai Raojibhai Patel Vs. Municipal Council, Narkhed and others*** wherein the Hon'ble Supreme Court held that when the termination of service is held illegal, reinstatement is normal rule.

Thus, Hon'ble Supreme Court held that if the termination of service is held illegal, reinstatement will be a normal rule. The Supreme Court has not laid down the law that the only relief available is to reinstate the employee.

(ii) ***Ranbir Singh Vs. Executive Engineer PWD [(2021) 14 SCC 815]***.

In this case, the Labour Court had granted relief of reinstatement with 25% back wages. The High Court modified the relief to compensation of Rs. 25,000/-. Thus, the High Court awarded compensation in lieu of reinstatement. The Supreme Court enhanced the compensation to Rs. 3,50,000/-. Thus, upon own showing of the petitioner, the order of

compensation in lieu of reinstatement can be passed in appropriate cases.

(iii) *Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1, Panipat (Haryana) [(2010) 5 SCC 497]*. The Supreme Court, in the light of facts of the case, held that the order of termination without complying with the mandate of Section 25F of the Act of 1947 is illegal and the employee is entitled to continue in employment as if his service was not terminated. Similar view was taken by the Supreme Court in the case of *R. R. Yellati Vs. The Assistant Executive Engineer [2005 III CLR 1028]*.

(iv) *Nicks (India) Tools Vs. Ram Surat and another [2004(8) SCC 222]* wherein the Supreme Court, in the facts and circumstances of the case before it, where the employer took a plea that workman himself has abandoned the work, held that the termination without following the procedure of law is invalid and the workman therein is entitled for full back wages, as he was forced to keep out of work.

11. As could be seen, the Hon'ble Supreme Court has not laid down the law that the only option available to the Courts below is to reinstate the workman, if the service is terminated without following the procedure of law. The issue has been well settled by catena of judgments that an order of termination passed in violation of Section

25F of the Act of 1947 although may be set aside, but an award of reinstatement is not automatic.

12. In the present case, the petitioner has admitted that he did not receive order of termination. He has further admitted that he was in employment after termination. He admitted in cross-examination that he was working as Casual Labour which is a work akin to what he was employed for by the respondent. Thus, it could be said that he was in gainful employment after termination of service.

13. Considering the aforesaid facts, the Labour Court thought it proper to award compensation of Rs. 30,000/- instead of granting relief of reinstatement or back wages. This view is based on well settled principles of law and is, even otherwise, a possible view. No interference is, therefore, called for in writ jurisdiction. The counsel for petitioner has unnecessarily consumed the judicial time. The writ petition is, accordingly, dismissed with costs of Rs. 5,000/- to be deposited by the petitioner with the Bar Library, High Court Bar Association, Nagpur within four weeks from today.

14. Rule is discharged.

(Anil L. Pansare, J.)

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