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

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\+ W.P.(C) 6765/2004, CM APPL. 42096/2016

ASHOK HOTEL (A Unit of ITDC)
New Delhi .....Petitioner

Through: Mr. Ravi Sikri, Sr. Advocate with Mr. Deepak Yadav, Mr.Arun Sankal and Mr. Nishant Goyal, Advocates

versus

MUKESH KUMAR .....Respondent

Through: Mr. Vivek Kumar Tandon, Ms. Laxmi Gupta, Ms. Pooja Giri and Ms. Ritu Rajput, Advocates

CORAM:
HON'BLE MS. JUSTICE SHAIL JAIN

J U D G M E N T

SHAIL JAIN, J.

1. The present writ petition under Articles 226 and 227 of the Constitution of India has been filed by the Petitioner/management assailing the Award dated 01.07.2003 passed by the learned Presiding Officer, Labour Court, Delhi in I.D. No. 266/96, whereby the Labour Court held the termination of the Respondent/workman to be illegal for non-compliance of Section 25F of the Industrial Disputes Act, 1947

(hereinafter referred as *'the Act')* and directed his reinstatement with full back wages.

2. The brief facts of the case are that the Respondent/workman, Sh. Mukesh Kumar, raised an industrial dispute alleging illegal termination of his services by the Petitioner/management. The appropriate Government, being satisfied that an industrial dispute existed between the parties, made a reference for adjudication under Sections 10(1)(a) and 12(5) of the Act, *vide* Order No. F.24(2436)/96-Lab./48069-73 dated 30.10.1996, in the following terms:

> *"Whether the services of Sh. Mukesh Kumar 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?"*

3. Before the Labour Court, the case of Respondent/Workman was that he had been working with the Petitioner as a *Cook* on daily-wage basis from 09.11.1989 to 17.12.1990. He claimed that he had undergone apprenticeship training for three years at the Ashok Training Centre in the trade of Cook (General), that he possessed the requisite qualification, and that he had served the management diligently without any complaint. According to him, despite repeated requests for absorption as a Cook, his services were abruptly terminated on 18.12.1990 without issuance of any notice or payment of retrenchment compensation, in violation of Section 25F of the Act. He further claimed that he remained unemployed since the date of termination and prayed for reinstatement with full back wages.

4. The Petitioner/management filed a written statement raising a preliminary objection that no employer-employee relationship existed in the manner claimed by the Respondent. On merits, it was stated that the Respondent was never appointed as a Cook and that he did not possess the prescribed qualification or experience required under the ITDC Recruitment, Promotion and Seniority Rules, 2010 for the post of Cook. The management asserted that the Respondent was engaged only as a *Helper* on daily-wage basis during the period 1989-1990, depending upon exigencies of work, and that there was no sanctioned vacancy or regular post against which he could claim absorption.

5. Both parties led their respective evidence. Thereafter, arguments were heard and the proceedings culminated in the Award dated 01.07.2003 passed by the learned Labour Court. The Labour Court came to the conclusion that Respondent had remained in continuous service for more than 240 days and that his services had been terminated without compliance with Section 25F of the Act. The findings of the Labour Court were recorded in the following terms:

> *"The workman has placed on record the documents which certify that he is a qualified cook. The management has categorically admitted in the written statement that workman remained engaged as Helper on daily wager during the period 1989-90 thus the management has admitted that the workman performed his duties with the management as helper in one calendar year which means that the workman performed his duty for more than 240 days with the management."*

6. As regards the controversy as to whether the Respondent worked as a Cook or as a Helper, the Labour Court noted that while the Respondent could not produce any documentary proof of appointment as a Cook, the management had withheld the relevant service records which could have clarified the exact nature of the engagement. On this basis, the Labour Court drew an adverse inference against the management for non-production of the muster rolls and wage registers. Accordingly, the termination was held to be illegal, and the management was directed to reinstate the Respondent with full back wages.

7. Aggrieved by the said Award, the Petitioner/management has approached this Court.

8. Learned counsel for the Petitioner/management submits that the challenge to the impugned Award is two-fold. **Firstly,** it is contended that the Respondent was never employed as a Cook, rather he was merely engaged as a Helper on daily-wage basis depending upon exigencies of work. It is submitted that the Respondent failed to produce any appointment letter, service record or contemporaneous document to substantiate his claim of engagement as a Cook, and that the Labour Court erred in drawing an adverse inference against the management. **Secondly,** learned counsel submits that, even assuming without admitting that the Respondent was engaged by the Petitioner and that the termination was in violation of Section 25F of the Act, the Labour Court gravely erred in granting the relief of reinstatement with full back wages. It is urged that reinstatement after a lapse of more than thirty-six years from the date of termination is neither practical nor warranted,

particularly in the case of a daily-wage worker with a short period of engagement.

9. Reliance is placed by the Petitioner/management, among others, on ***Ashok Kumar & Ors v. M/s Hindustan Vegetable Oil Co.***, *2017 SCC OnLine Del 9516;* ***Ram Manohar Lohia Joint Hospital & Ors v. Munna Prasad Saini & Anr***, *(2021) 12 SCC 466 and* ***State of Uttarakhand & Anr. v. Raj Kumar***, *(2019) 14 SCC 353.*

10. Learned counsel for the Petitioner/management further submits that during the pendency of the writ petition, the Respondent has already received a sum exceeding ₹20 lakhs under Section 17B of the Act, which far exceeds the compensation ordinarily awarded in cases of short-term daily-wage employment.

11. *Per contra,* learned counsel for the Respondent/workman supports the impugned Award and submits that the Respondent was employed as a Cook and had completed more than 240 days of continuous service. It is contended that the termination of the Respondent was illegal for non-compliance with the mandatory provisions of Section 25F of the Act, and that the Labour Court rightly drew an adverse inference against the management for non-production of service records.

12. Learned counsel for the Respondent/workman further submits that once termination is held to be illegal, the Award directing reinstatement with back wages is justified and does not call for interference.

13. Reliance is placed by the Respondent/workman on ***Dinesh Chandra Sharma (Dead) through LRs v. Bhartiya Paryatan Vikas Nigam Limited & Anr.***, *Civil Appeal arising out of SLP (C) No.*

8180/2020 and ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya* & Ors.,** *(2013) 10 SCC 324*.

14. This Court has considered the aforesaid submissions. At the outset, it is necessary to note that the scope of interference under Articles 226 and 227 of the Constitution of India with an Award passed by the Labour Court is limited. Interference is warranted only where the Award suffers from patent illegality, perversity or an error apparent on the face of the record. The present Petition does not invite this Court to re-appreciate the evidence or disturb findings of fact but is confined to examining the legality and propriety of the relief granted by the Labour Court.

15. In this context, it is necessary to examine whether the findings recorded by the learned Labour Court regarding the nature of engagement of the Respondent, completion of 240 days of continuous service and violation of Section 25F of the Act suffer from any perversity or patent illegality warranting interference by this Court.

16. The learned Labour Court has recorded a clear finding that the Respondent was engaged by the Petitioner/management during the calendar year 1989-1990. This finding is founded on the admission made by the management witness during cross-examination and is not in dispute before this Court. The controversy raised by the Petitioner pertains not to the factum of engagement, but to the designation under which the Respondent worked, namely, whether he was engaged as a Cook or as a Helper. The Labour Court noted that, despite repeated opportunities, the management failed to produce the muster rolls, wage

registers and service records for the relevant period, which were admittedly within its exclusive possession. The management witness also failed to present himself for further cross-examination, resulting in closure of management evidence. In these circumstances, the Labour Court drew an adverse inference against the management. This approach cannot be faulted, as it is well settled that when the employer withholds the best evidence in its custody, an adverse inference is permissible. Even otherwise, the precise designation of the Respondent pales into insignificance once the engagement itself stands admitted.

17. Proceeding on the admitted engagement and the adverse inference drawn for non-production of records, the Labour Court held that the Respondent had completed more than 240 days of continuous service in one calendar year. The said finding is a pure finding of fact based on material on record and settled principles governing burden of proof. This Court, exercising supervisory jurisdiction under Articles 226 and 227 of the Constitution of India, finds no perversity, arbitrariness or error apparent on the face of the record so as to justify interference with this conclusion.

18. Once completion of 240 days of continuous service was established, the applicability of Section 25F of the Act was clearly attracted. Section 25F, which prescribes the conditions precedent to retrenchment of workmen, reads as under:

> ***"25F. Conditions precedent to retrenchment of workmen.***- *No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that*

employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

19. The said provision mandates that a workman who has completed 240 days of continuous service shall not be retrenched unless the above statutory requirements are complied with. It is an admitted position that the Respondent was neither issued any notice nor paid retrenchment compensation at the time his services were discontinued. Non-compliance with the mandatory conditions prescribed under Section 25F of the Act renders the termination illegal. The Labour Court, therefore, rightly held that the termination of the Respondent was illegal for violation of Section 25F of the Act.

20. Accordingly, this Court finds no infirmity in the findings of the Labour Court insofar as the existence of employer–employee relationship, completion of 240 days of continuous service and illegality

of termination for non-compliance with Section 25F are concerned. These findings are upheld and are not interfered with.

21. The only question that now survives for consideration is whether the relief of reinstatement with full back wages was rightly granted by the learned Labour Court.

22. It is trite that a finding of illegality in termination does not, by itself, mandate reinstatement in every case. While earlier decisions treated reinstatement with full back wages as a natural corollary of illegal retrenchment, the Hon'ble Supreme Court has, over time, consciously shifted away from that approach. The Apex Court has repeatedly held that reinstatement is not an automatic or mechanical consequence of violation of Section 25F and that the relief must be moulded having regard to the nature of employment, length of service and the surrounding circumstances of the case.

23. In ***Assistant Engineer, Rajasthan Development Corporation & Anr. v. Gitam Singh,*** *(2013) 5 SCC 136* and ***Bharat Sanchar Nigam Limited (BSNL) v. Bhurumal*** *(2014) 7 SCC 177***,** the Apex Court clarified that, in the case of daily-wagers, casual laborers, or workmen who have rendered only a short spell of service, reinstatement is not an automatic consequence of a procedural violation of Section 25F of the Act, and that monetary compensation would ordinarily meet the ends of justice. This principle finds definitive expression in ***Assistant Engineer, Rajasthan Development Corpn. v. Gitam Singh*** *(supra)***.** The relevant extract reads as under:

> *"22. From the long line of cases indicated above, it*

> *can be said without any fear of contradiction that this Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations. It has always been the view of this Court that there could be circumstance(s) in a case which may make it inexpedient to order reinstatement. Therefore, the normal rule that the dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception. Insofar as wrongful termination of daily-rated workers is concerned, this Court has laid down that consequential relief would depend on host of factors, namely, manner and method of appointment, nature of employment and length of service. Where the length of engagement as daily wager has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid. A distinction has been drawn between a daily wager and an employee holding the regular post for the purposes of consequential relief."*

24. In ***BSNL v. Bhurumal (supra),*** the Court further explained the rationale for this approach in the following terms:

> *"**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)]. 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."*

25. Learned counsel for the Petitioner placed reliance on the judgment of the Hon'ble Supreme Court in ***State of Uttarakhand and Another v. Raj Kumar***, *(2019) 14 SCC 353*, which arose out of similar facts. Hon'ble Supreme Court, after adverting to and relying upon ***BSNL v. Bhurumal (supra)***, held that where the Respondent had worked as a daily wager for hardly a period of one year, reinstatement with back wages is not automatic and instead, awarded a lump-sum compensation

of ₹1,00,000/- (Rupees One Lakh) in lieu of reinstatement and all consequential benefits.

26. The reliance placed by the Respondent on ***Dinesh Chandra Sharma (Dead) through LRs v. Bhartiya Paryatan Vikas Nigam Limited & Anr (supra)*** does not advance his case. The said decision is clearly distinguishable on facts as well as on the governing legal principles. In *Dinesh Chandra Sharma* (supra), the workman was a regular employee who had rendered more than thirteen years of continuous service, and his termination was by way of punishment on charges of misconduct, which were ultimately found not proved. In that context, the Hon'ble Supreme Court emphasised reinstatement with back wages as the normal rule and reiterated that denial of back wages in cases of wrongful termination of a long-serving regular workman, particularly where termination carries a stigma, would amount to rewarding the employer for its own wrong.

27. Applying the aforesaid principles to the facts of the present case, it is evident that the Respondent was engaged on a daily-wage basis for a short duration of approximately one year. There is no finding of victimisation, unfair labour practice or stigmatic termination. The illegality found by the Labour Court is confined to procedural non-compliance with Section 25F of the Act. Moreover, the termination dates back to December 1990, and more than three decades have elapsed since then. The respondent, who was about 37 years of age at the time of the Award, is now nearing 60 years of age. In these circumstances,

reinstatement at this stage would neither be practical nor equitable and would not advance the object of industrial justice.

28. The Court must also take into consideration the payments already made to the Respondent under Section 17B of the Act during the pendency of the present writ petition. The said provision strikes a balance between the right of the employer to pursue legal remedies and the need to ensure that the workman is not rendered destitute during the pendency of prolonged litigation. Section 17B is intended to provide subsistence to a workman during the pendency of proceedings and not to confer a windfall.

29. In the present case, it is not in dispute that during the pendency of the writ petition, the Respondent has received a sum exceeding ₹20 lakhs under Section 17B of the Act. In ***Amit Kumar Dubey v. M.P.P.K.V.V. Co. Ltd.*** **(***Civil Appeal arising from SLP (C) No. 20902/2024, decided on 29.01.2025*), the Hon'ble Supreme Court indicated an approximate benchmark of ₹1,50,000/- (Rupees One Lakh Fifty Thousand) per year of service to be awarded in lieu of reinstatement for casual/daily-wage employees and further directed that payments made under Section 17B of the Act must be adjusted against such compensation. Having regard to the short duration of engagement of the Respondent as a daily-wage worker, the amount already received is far in excess of the compensation ordinarily awarded in lieu of reinstatement in comparable cases.

30. In view of the nature of employment of the Respondent, the brief duration of service, the absence of any allegation or finding of victimisation or unfair labour practice, the long lapse of time since

termination, the present age of the Respondent, and the substantial amount already paid under Section 17B of the Act, this Court is of the considered view that the ends of justice would be met by treating the amount already paid to the Respondent under Section 17B of the Act as full and final compensation in lieu of reinstatement and back wages.

31. Accordingly, while upholding the finding of the learned Labour Court that the termination of the Respondent was illegal for violation of Section 25F of the Act, the direction for reinstatement with full back wages is set aside. The Award dated 01.07.2003 is modified to the aforesaid extent.

32. The amount already paid to the Respondent under Section 17B of the Act shall be treated as lump-sum compensation in full and final settlement of all claims arising out of the impugned Award and the termination in question.

33. The writ petition is allowed in the above terms. Pending applications, if any, stand disposed of. There shall be no order as to costs.

SHAIL JAIN
(JUDGE)

FEBRUARY 4, 2026/DG