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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 13.01.2026**Date of decision: 18.02.2026**Uploaded on: 20.02.2026*

+ W.P.(C) 16809/2004, CM APPL. 12426/2004

THE MGMT.OF ESI SCHEMEPetitioner

Through: Ms. Sonam Anand, Mr. Yakesh
Anand, Mr. Shubham Goyal, Advs.
Mr. Dhuv Prasad, Assistant, AR for
ESIC, Basaidarapur

versus

RAJ BALARespondent

Through: Mr. Chirayu Jain and Ms.Tanishqua
Dhar, Advocates

+ W.P.(C) 16739/2004, CM APPL. 12084/2005

THE MGMT. OF ESI HOSPITALPetitioner

Through: Ms. Sonam Anand, Mr. Yakesh
Anand, Mr. Shubham Goyal, Advs.
Mr. Dhuv Prasad, Assistant, AR for
ESIC, Basaidarapur

versus

ASHA RAM & ORS.Respondents

Through:

+ W.P.(C) 16813/2004, CM APPL. 12011/2005

THE MGMT. OF ESI HOSPITALPetitioner

Through: Ms. Sonam Anand, Mr. Yakesh
Anand, Mr. Shubham Goyal, Advs.
Mr. Dhuv Prasad, Assistant, AR for
ESIC, Basaidarapur

versus

KAMLESHRespondent

Through:

CORAM:**HON'BLE MS. JUSTICE SHAIL JAIN**



JUDGMENT

SHAIL JAIN, J.

1. The present Petitions have been filed by the Petitioner herein under Article 226 of the Constitution of India, *inter alia*, challenging the Awards passed by the Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Courts in different industrial disputes, whereby the learned Tribunal directed the Petitioner to reinstate the Respondents with back wages varying from 20% and 25% from their respective dates of termination.

2. **W.P. (C.) No. 16809/2004**, titled “*The Management of E.S.I. Scheme vs. Raj Bala*”, has been filed by the Petitioner–Management assailing the **Award dated 25.05.2004** passed by the learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court–II, New Delhi in **I.D. No. 12/1996**. By the said Award, the learned Labour Court held the termination of the Respondent–Workman, Smt. Raj Bala, to be illegal and directed her reinstatement with 20% back wages with effect from 24.08.1994.

3. In the same batch, **W.P. (C.) No. 16739/2004**, titled “*The Management of E.S.I. Scheme vs. Asha Ram &Ors.*”, has also been preferred by the Petitioner–Management challenging the **Award dated 08.07.2004** passed by the learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court–II, New Delhi in **I.D. No. 22/1996**. By the impugned Award therein, the termination of the Respondents–Workmen, namely Sh. Asha Ram and others, namely, Sh. Mukesh Kumar, Sh. Ravi Kumar, Smt. Urmila, and Smt. Sunita was held to be illegal, and



reinstatement with 25% back wages, effective from 24.08.1994, was granted.

4. Likewise, **W.P. (C.) No. 16813/2004**, titled “*The Management of E.S.I. Scheme vs. Kamlesh*”, arises out of the **Award dated 21.06.2004** passed by the learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court–II, New Delhi in **I.D. No. 60/1996**, whereby the termination of the Respondent–Workman, Smt. Kamlesh was declared illegal, and reinstatement with 25% back wages with effect from 24.08.1994 was directed.

5. All the aforesaid writ petitions arise from a similar factual matrix, involve identical questions of law, and assail substantially similar findings returned by the learned Labour Court. Since detailed arguments were addressed in **W.P. (C.) No. 16809/2004**, titled “*The Management of E.S.I. Scheme vs. Smt. Raj Bala*”, the same has been treated as the lead matter in the present batch, and the decision rendered therein shall govern the remaining connected petitions as well.

6. Certain regular employees working as sweepers/helpers proceeded on leave, during which period the Respondents were engaged as a stop-gap arrangement to perform the duties of sweepers/helpers in order to meet the resulting exigency. During the course of such engagement, vacancies arose for regular posts of sweepers/helpers. The Respondents were permitted to participate in the process for appointment to the regular posts along with other candidates sponsored by the Employment Exchange. The Respondents were called to appear before the Selection Board for an interview; however, the Respondents either did not appear for the interview or were not selected for the post. Consequently, the Petitioner terminated the Respondents.



Subsequently, various proceedings were initiated before the Central Government Industrial Tribunal-cum-Labour Courts. Further, Impugned Awards were passed by the learned Tribunal, which are the subject matter of challenge in the present Writ Petitions.

BRIEF FACTS

7. The brief background of facts in **W.P. (C.) No. 16809/2004**, as well as in the connected writ petitions, is as follows:

A. The Employees' State Insurance Corporation (hereinafter referred to as "ESI") operates hospitals for the benefit of insured employees and pensioners. The medical services provided in these hospitals are financed through contributions made by employees and employers. To run and maintain these hospitals, personnel are engaged in various capacities depending on operational requirements. Such engagements include the engagement of casual workers as well as regular workers against permanent posts for duties relating to cleanliness and hygiene, which are essential for the effective functioning of the hospitals and for maintaining sanitary conditions.

B. On 01.03.1993, the Respondent Smt. Raj Bala was engaged as a casual worker, on daily wages as a sweeper, on a temporary and a stop-gap basis at E.S.I. Hospital, BasaiDarapur, New Delhi. The Respondent herein rendered service for more than 256 days in 1993 and for 180 days in 1994.

C. During the period of such engagement, vacancies arose for regular posts of sweepers. The candidates were required to be sponsored through the Employment Exchange, Delhi, for consideration



for employment. The selection to the posts was conducted by a duly constituted Selection Board through an interview process. As the Respondent was already performing duties of a similar nature with the Corporation in a temporary capacity, the Respondent was permitted to appear directly before the Selection Board for the interview process. Interviews for selection to the relevant posts were conducted on 14.01.1994. The Respondent, however, did not appear before the Selection Board on the said date. As appointments were made against the regular posts of sweepers, the Respondent's services were brought to an end on 24.08.1994.

CHART I

FACTUAL CHART OF ALL THE RESPONDENTS

WRIT PETITION NO.	NAME / POST HELD	APPOINTED ON	INTERVIEW STATUS	SERVICES CEASED ON	NO. OF DAYS IN SERVICE
W.P. (C.) 16809/ 2004	Raj Bala (Sweeper)	01.03.1993	Held on 14.07.1994 - Absent	24.08.1994	436 days
W.P. (C.) 16739/ 2004	Asha Ram (Helper)	24.02.1993	Held on 12.07.1994 - Not Selected	25.08.1994	420 days
	Mukesh Kumar (Sweeper)	24.02.1993	Held on 14.07.1994 - Absent	24.08.1994	440 days



	Ravi Kumar (Sweeper)	16.12.1991	Held on 12.07.1994 - Not Selected	27.08.1994	895 days
	Urmila (Sweeper)	02.01.1991	Held on 12.07.1994 - Not Selected	28.08.1994	809 days
	Sunita (Sweeper)	24.02.1993	Held on 13.07.1994 - Not Selected	24.08.1994	546 days
W.P. (C.) 16813/ 2004	Kamlesh (Sweeper)	26.02.1993	Held on 14.07.1994 - Not Selected	24.08.1994	544 days

D. After the termination, the Respondent issued a Demand Notice dated 21.09.1994 to the Petitioner. The notice was served upon the Regional Office of the ESIC by registered post, with a copy marked to the Medical Superintendent of the ESI Hospital, BasaiDarapur, New Delhi. The notice was duly received in the respective offices; however, no response was issued, nor was any action taken in respect thereof.

E. Thereafter, the Respondent raised a dispute before the Conciliation Officer (Central). Conciliation proceedings were initiated but did not result in a settlement. Eventually, an Industrial Dispute bearing I.D. No. 12 of 1996 was taken up by the Presiding Officer, Central Government Industrial Tribunal Cum Labour Court - II in the year 1996, and the Ministry of Labour by its letter No. L-15012/09/95/IR(Vividh) CENTRAL GOVERNMENT DT. 30.01.1996 referred the following point for adjudication.



"Whether the action of the management of ESI Hospital, Basaidarapur, Ring Road, New Delhi and the Regional Director, ESIC, Kotla Road, New Delhi, in terminating the services of Smt. Raj Bala, SafaiKaramchariw.e.f. 24.8.94 is just and fair? If not, to what relief the concerned workman is entitled ?"

F. Subsequently, upon the adjudication of the same, the Award dated 25.05.2004 was passed. The reasoning adopted by the learned Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court was that the Respondent had rendered service for more than 240 days in a calendar year and had not been paid retrenchment compensation. In view of these circumstances, the learned Tribunal held that Section 25F of the Industrial Disputes Act, 1947, (hereinafter referred to as '*the Act*') was attracted, and directed that the Respondent was entitled to reinstatement with 20% back wages with effect from 24.08.1994.

G. Moreover, in pursuance of Section 17 of the Act, the Award was published by the Central Government on 16.06.2004.

H. Consequently, a Show Cause Notice (hereinafter referred to as "*SCN*") was issued to the Petitioner, demanding payment of Rs. 57,426/- (Fifty-Seven Thousand Four Hundred Twenty-Six Rupees only) by the Office of Regional Labour Commissioner (Central), Delhi; in accordance with the Impugned Award.

I. Being aggrieved by the aforesaid Impugned Awards in the respective Industrial Disputes, the present Petitions have been preferred by the Petitioner, *inter alia*, seeking the following reliefs.

(a) *Issue a writ of mandamus or any other writ or directions to set aside the Award dated 25.05.2004 passed*



by the Presiding Officer, Central Government Industrial Tribunal- Cum-Labour Court-II in I.D. No. 12/1996,

(b) Award the cost of the proceedings throughout,

(c) Pass any other order or orders as this Hon'ble Court may deem just and proper in the facts and circumstances of the case.

J. During the pendency of the proceedings, the Petitioner, in W.P. (C.) No. 16809/2004, filed C.M. Appl. No. 12426/2004 seeking a stay of the operation of the Impugned Award dated 25.05.2004. *Vide* Order dated 15.09.2005, this Court had allowed to stay the operation of the said Award, subject to the Petitioner depositing the amount directed under the Impugned Award with the Registry of this Court and further paying litigation expenses of Rs. 5,000/- (Rupees Five Thousand only) to the Respondent.

K. Likewise, in W.P. (C.) No. 16739/2004 and W.P. (C.) No. 16813/2004, the Petitioner preferred C.M. Appl. No. 12048/2004 and C.M. Appl. No. 12011/2004, respectively, seeking a stay of the Awards dated 08.07.2004 and 21.06.2004. *Vide* Orders dated 23.09.2005 passed in the respective petitions, this Court granted a stay of the operation of the Impugned Awards, subject to deposit of the awarded amounts with the Registry of this Court and payment of Rs. 5,000/- (Rupees Five Thousand only) towards litigation expenses to the concerned Respondents.

L. Furthermore, the Respondent Raj Bala in W.P.(C.) No. 16809/2004 had also filed an Application bearing C.M. Appl. No. 1552/2012 under Section 17B of the Act, praying for the payment of wages in terms of the said provision, with effect from 25.05.2004,



being the date of the Impugned Award, till the disposal of the present proceedings. The said Application was adjudicated and subsequently allowed *vide* Order dated 25.03.2014, wherein the following was held:

“In view of the submission of learned counsel for the respondent/workman, coupled with the fact that the petitioner/non-applicant has not denied the factum of the respondent being not gainfully employed, this application needs to be allowed. I allow the present application and direct the petitioner to give the respondent benefit under Section 17-B of the Act by paying her the last drawn wages or the minimum wages, whichever is higher, on month to month basis on or before 10th day of each calendar month, subject to the respondent/workman giving an undertaking in this Court that in the eventuality the petitioner succeeds in the writ petition, she would pay back to the petitioner the difference of last wages drawn and the minimum wages. The respondent/workman would also be entitled to the arrears under Section 17-B of the Act with effect from January 31, 2012, the date on which the present application has been filed. The arrears shall be released to the respondent within a period of six weeks from today.”

M. Therefore, in compliance with the orders of this Court, the Petitioner Hospital has been paying monthly wages to the Respondent Raj Bala and, to date, the Respondent Raj Bala has been paid a total amount of Rs. 20,35,786/- (Rupees Twenty Lakh Thirty-Five Thousand Seven Hundred and Eighty-Six Only).

N. It is also pertinent to note that in W.P. (C.) No. 16739/2004 and W.P. (C.) No. 16813/2004, the respective Respondents did not file any Applications seeking relief under Section 17B of the Act, and consequently, no benefits under the said provision have been received by them during the pendency of the present Writ Petitions.



GROUND FOR THE PETITIONS

8. The present Petitions have been preferred by the Petitioners on the following grounds in respect to the reliefs claimed by them -

A. The regular appointments by the Petitioner, an autonomous statutory body, can be made only through the prescribed selection process, and **that casual engagement confers no right to regular appointment.** Further, mere engagement as a daily-rated or casual worker does not confer any vested right to regularisation.

B. The Respondent was afforded an opportunity to be considered for regular appointment, including by relaxation of Employment Exchange sponsorship, but **failed to appear before the Selection Board.**

C. The direction for reinstatement with back wages is untenable in the absence of any sanctioned vacant post and in view of the **unexplained delay in raising the industrial dispute.**

D. The cessation of the Respondent's casual engagement was held to be illegal, despite such **engagement having come to an end upon filling up of regular posts through a lawful selection process.**

E. The **Respondents had been gainfully employed after the cessation of engagement,** which disentitled the Respondents to the relief of reinstatement and back wages.

ISSUES INVOLVED

9. The issues before this Court, in all the Writ Petitions, are, to a great extent, identical, and are as follows -



- I. Whether the cessation of the Respondent's engagement constituted retrenchment under Section 25F of the Act.
- II. Whether the present dispute also attracts the provisions of Sections 25G and 25H of the Act.
- III. Whether, in the facts and circumstances of the case and having regard to the lapse of time, the relief of reinstatement granted under the Impugned Awards is liable to be substituted with the relief of monetary compensation.

SUBMISSIONS ON BEHALF OF THE PARTIES

10. Whether the retrenchment was legal and valid.

- a. As regards the submissions advanced on behalf of the Petitioner, learned counsel submitted that the Respondents were engaged purely on a casual and stop-gap basis, pending the filling up of regular posts through a lawful selection process. It was contended that their engagement was not against any sanctioned permanent post and was co-terminus with the availability of work.
- b. It was further contended that subsequently, the vacant regular posts were filled in accordance with law through a selection process conducted by a duly constituted Selection Committee, pursuant to which interviews were held. It is the claim of the Petitioner that the Respondents in the present cases either did not appear for the interviews or were not selected by the Selection Committee. Upon completion of the regular recruitment process, their casual engagement came to an end. According to the Petitioner, such cessation of engagement did not constitute "retrenchment" within the meaning of



Section 2(oo) of the Act, and consequently, the provisions of Section 25F were not attracted.

c. Learned Counsel further submitted that, notwithstanding the absence of any vested right, the Respondents were permitted to participate in the interview process directly, without insisting upon the formal requirement of sponsorship through the Employment Exchange, thereby granting them an additional opportunity.

d. Per contra, learned Counsel for the Respondents submitted that the termination of the Respondents squarely amounted to retrenchment under the Act. It was argued that the Respondents had admittedly completed more than 240 days of continuous service in a calendar year and that their services were terminated without compliance with the mandatory conditions prescribed under Section 25F, rendering the retrenchment illegal.

e. Learned Counsel further submitted that the document relied upon by the Management showing the alleged interview results was never exhibited or proved before the Labour Court or the Tribunal. It was further argued that no documentary evidence, such as a public notice, individual call letters, or any record, was produced by the Management to establish that the interview process was duly notified to, or within the knowledge of, the Respondents.

f. Reliance was placed by the learned Counsel upon the cross-examination of the Management witness to contend that no letters of appointment or written terms of engagement were ever issued to the Respondents. It was also argued that if the continuation of employment was allegedly contingent upon selection in an interview, the



Management ought to have expressly stipulated such a condition in writing, which it admittedly failed to do.

g. Learned Counsel for the Respondents also submitted that even assuming compliance with the interview procedure, the retrenchment remains illegal, as junior workmen were retained and no retrenchment compensation was paid, rendering the action *void ab initio*.

h. On another note, it was also argued by the learned Counsel for the Respondents that there can be no artificial gradation of permanency based solely on the length of service, and that denial of reinstatement merely on the ground that the Respondents had worked for a period of two to three years is unsustainable in law.

11. Whether the dispute attracts the provisions in Sections 25G and 25H of the Industrial Disputes Act, 1947.

a. Learned Counsel for the Respondents, in the present context, contended that the termination was not only illegal under Section 25F but was also vitiated by violations of Sections 25G and 25H of the Act. It was argued that juniors were retained while the Respondents were terminated, in clear breach of the principle of “*last come, first go*”.

b. It was further submitted on behalf of the Respondents that the judgments relied upon by the Petitioner pertain primarily to cases involving isolated violations of Section 25F, whereas the present case involves cumulative violations of Sections 25F, 25G, and 25H, thereby warranting a legal consequence.

c. It was further submitted that despite the availability of work and the continued requirement of sweepers, the Respondents were



neither retained nor offered reemployment, thereby attracting Section 25H of the Act. According to the Respondents, the nature of duties being perennial, it could not be contended by the Management that the posts had become redundant.

d. In response, learned Counsel for the Petitioner submitted that the Impugned Award of the Labour Court is founded solely on an alleged violation of Section 25F and does not record any finding with respect to Sections 25G or 25H of the Act. It was contended that in the absence of pleadings or findings on these provisions, the Respondents could not seek to assail the Award on grounds beyond those expressly dealt with by the Labour Court.

12. Whether the relief of reinstatement granted under the Impugned Awards is liable to be substituted with the relief of monetary compensation.

a. Learned counsel for the Petitioner submitted that, even assuming without admitting that there was a procedural violation attracting Section 25F of the Act, reinstatement after a considerable lapse of time would neither be just nor equitable, particularly when the workmen were engaged on a purely casual basis.

b. Reliance was placed upon the consistent judicial trend reflected in a catena of decisions of the Hon'ble Supreme Court, wherein monetary compensation, depending upon the facts and circumstances of each case, has been held to be an appropriate substitute for reinstatement in such cases.



c. Attention was also drawn to the fact by the learned Counsel that in W.P. (C) No. 16809/2004, the concerned workman has already received a sum of approximately Rs. 20,35,786/- (Rupees Twenty Lakh Thirty-Five Thousand Seven Hundred and Eighty-Six Only) under Section 17B of the Act, and submitted that granting reinstatement in addition thereto would result in manifest injustice.

d. Learned Counsel for the Petitioner further submitted that the age of the Respondents is also a relevant factor while considering the grant of reinstatement, particularly after a long lapse of time, as reinstatement at this stage would neither be practical nor in the interest of administrative efficiency.

e. It was additionally contended that the post of sweeper is no longer being filled through direct engagement, and that pursuant to policy decisions, the work relating to sanitation and housekeeping has since been outsourced through a tendering process to private contractors. It was submitted that, in view of such subsequent developments, reinstatement of the Respondents against non-existent or outsourced posts is neither feasible nor permissible in law, and that monetary compensation would be the appropriate relief, if any.

f. Learned counsel for the Petitioner, *inter alia*, 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.

"9. In our opinion, the case at hand is covered by the two decisions of this Court rendered in the case of Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177



and District Development Officer and Anr. vs. Satish KantilAmerelia (2018) 12 SCC 298. [...]

11. Here is also a case where the respondent claimed to have worked as daily wager hardly for a period of one year or so in PWD of the State; Secondly, he had no right to claim regularization; Thirdly, he had no right to continue as daily wager and lastly, the dispute was raised by the respondent (workman) almost after 25 years of the alleged termination before the Labour Court. [...]

14. Having regard to the totality of the facts taken note of supra, we consider it just and reasonable to award a sum of Rs.1,00,000/(Rs. One lakh) to the respondent in lieu of his right to claim reinstatement and back wages in full and final satisfaction of this dispute in place of Rs. 30,000/awarded by the Labour Court. Only to this extent we modify the award of the Labour Court in quantum of award of compensation by enhancing it from Rs.30,000/- to Rs.1,00,000 (one lakh).”

g. Learned Counsel for the Respondents, on the other hand, opposed the substitution of reinstatement with compensation and submitted that reinstatement continues to be the normal rule where retrenchment is held to be illegal. Reliance was placed on relevant precedents to contend that denial of reinstatement would cause serious prejudice to the Respondents, particularly where the delay in adjudication was not attributable to them.

h. With respect to the decision in “*State of Uttarakhand v. Raj Kumar(2019) 14 SCC 353*”, learned Counsel for the Respondent submitted that the grant of lump-sum compensation therein was justified solely on account of an inordinate delay of 25 years in raising the dispute, a circumstance which is wholly absent in the present cases.



It was reiterated that the delay in adjudication cannot be attributed to the Respondents in the present Petitions.

i. Further, emphasis was placed on the prejudice and irreparable hardship that would be caused to the Respondents if reinstatement were denied. Reliance was placed upon Paragraph 35 of the judgment in “*Bharat Sanchar Nigam Ltd. vs. Bhurumal, (2014) 7 SCC 177*”, by the learned Counsel appearing for the Respondent.

“35. We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.”

j. Lastly, learned Counsel appearing on behalf of the Respondents submitted that the Petitioner could not derive benefit from the subsequent judicial trend favouring compensation over reinstatement, particularly when such precedents were not in existence at the time when the dispute arose, or the Awards were passed, and where the Respondents were diligent in pursuing their remedies.



DISCUSSION

13. This Court has considered the aforesaid submissions. At the outset, it must be observed that the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, while examining an Award passed by the Labour Court, is supervisory and circumscribed. Interference is justified only where the Award is vitiated by patent illegality, perversity, or an error apparent on the face of the record. The present petition does not call upon this Court to re-appreciate the evidence or reevaluate findings of fact, but is confined to scrutinizing the legality and correctness of the relief granted by the learned Labour Court.

14. In that backdrop, nevertheless, it becomes necessary to consider whether the findings returned by the learned Labour Court about the nature of engagement of the Respondent, the completion of 240 days of continuous service, and the alleged violation of Section 25F of the Act suffer from any perversity or manifest illegality to warrant interference in the exercise of this Court's supervisory jurisdiction.

A. AS REGARDS THE NATURE OF RETRENCHMENT

15. The undisputed position in the present Petitions is that the Respondents were engaged as sweepers/helpers on a casual basis. It is also not in dispute that they were not appointed to sanctioned posts, nor was any formal appointment letter issued to them. The engagement was admittedly not pursuant to a regular selection process.

16. The Petitioner's case herein is that the engagement was purely stop-gap, pending regular recruitment, and that upon completion of such recruitment, the casual engagement came to an end. On this premise, it is



urged that the cessation of engagement does not amount to retrenchment under Section 2(oo) of the Act. However, the manner in which the engagement came to an end assumes significance.

17. Along the same lines, Section 2(oo) of the Act defines retrenchment as the termination of service of a workman by the employer for any reason whatsoever, other than as a punishment inflicted by way of disciplinary action, subject to expressly enumerated exclusions. These exclusions include the following -

- a. Voluntary retirement of the workman;
- b. Retirement on reaching the age of superannuation, where the contract of employment contains such a stipulation;
- c. Termination as a result of non-renewal of a contract of employment, or termination under a contractual stipulation (Section 2(oo)(bb));
- d. Termination on the ground of continued ill-health.

Thus, unless the termination falls within these exclusions, it is treated as retrenchment, irrespective of the employer's motive. Once termination qualifies as retrenchment under Section 2(oo), the employer must comply with Chapter V-A of the Act.

18. In other words, once this threshold of completion of 240 days of continuous service is crossed, the termination of service, however described, attracts the statutory protection under Chapter V-A of the Act, unless it falls within one of the recognised exceptions.

19. In view of the aforesaid, it is noted that the Respondents admittedly had completed more than 240 days of continuous service in a calendar year. This factual position stands admitted based on material on record and settled



principles governing the burden of proof. This Court, therefore, in exercise of its 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.

20. In progression of the above, Section 25F of the Act lays down mandatory conditions that an employer must fulfil before retrenching a workman who has completed continuous service of not less than one year in an industrial establishment, and 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.”

21. The aforesaid 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 in this case that the Respondents were neither issued any notice nor paid retrenchment compensation at the time their 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.

22. The Petitioner herein relied upon an alleged interview process to contend that the Respondents were afforded an opportunity to continue. However, the record placed before the Labour Court does not substantiate this assertion. The interview result relied upon by the Management was neither exhibited nor proved. No contemporaneous documentary evidence, such as call letters, public notices, or individual intimation, was produced to establish that the Respondents were duly informed of, or participated in, the said process. Further, the Management witness, in cross-examination, admitted that no written terms governed the engagement of the Respondents. If continuation of employment was indeed conditional upon selection through an interview, such a condition ought to have been expressly recorded. The absence of any such stipulation weakens the Management's plea that the engagement automatically came to an end upon non-selection. In industrial adjudication, the burden to justify termination rests squarely on the employer. That burden has not been discharged in the present case.

23. Moreover, the contention of the Petitioner that cessation of casual engagement does not amount to retrenchment cannot be accepted in isolation in the present context. What is determinative is not the nomenclature of the engagement, but the effect of the termination. It is reiterated that in the present case, the services of workmen who had rendered continuous service were brought to an end without compliance with Section 25F. No material was produced to demonstrate adherence to the statutory order of retrenchment. Equally, there is no dispute that retrenchment compensation was not paid.



24. In view thereof, this Court thinks that the termination of the Respondents answers the description of “retrenchment” under Section 2(o) and suffers from non-compliance with the mandatory conditions under Section 25F of the Act. The finding of illegality recorded by the Labour Court, therefore, does not warrant interference on this ground.

B. AS REGARDS THE APPLICATION OF PROVISIONS OF SECTIONS 25G AND 25H OF THE ACT

25. The Respondents have further contended that the termination was vitiated not only for violation of Section 25F, but also on account of non-compliance with Sections 25G and 25H of the Act.

26. Section 25G embodies the principle of “last come, first go” and mandates that, in the absence of any recorded reasons to the contrary, an employer shall ordinarily retrench the workman who was the last person to be employed in a particular category. Section 25H, on the other hand, confers a preferential right of re-employment upon retrenched workmen, requiring the employer to offer an opportunity of reengagement to such workmen in the event of future vacancies in the establishment.

27. Upon a perusal of the Impugned Award, however, it is evident that the learned Labour Court has primarily rested its conclusion on the finding of non-compliance with Section 25F of the Act, which prescribes the mandatory conditions precedent to retrenchment. No specific or independent finding has been recorded with respect to any alleged infraction of the principles embodied in Sections 25G or 25H.

28. It is trite that an Award is to be examined based on the pleadings and findings recorded therein, and ordinarily, grounds which were neither urged



nor adjudicated upon before the Labour Court cannot be pressed into service before this Court. In the present case, the material on record clearly establishes non-compliance with the mandatory requirements of Section 25F, and the illegality of the retrenchment stands demonstrated on that ground alone.

29. In view thereof, this Court is of the considered opinion that the Impugned Award need not be tested on the anvil of Sections 25G and 25H. The admitted non-compliance with Section 25F is, by itself, sufficient to sustain the finding that the retrenchment was illegal. While the submissions advanced on behalf of the Respondents with respect to Sections 25G and 25H have been duly noted, this Court refrains from returning any definitive finding on the said provisions, particularly in the absence of any adjudication thereon by the learned Labour Court.

C. AS REGARDS THE RELIEF TO THE RESPONDENTS HEREIN

30. The only issue that now remains for consideration is whether the learned Labour Court was justified in granting the relief of reinstatement along with back wages.

31. It is well settled that a declaration of illegality in termination does not invariably result in an order of reinstatement. Although earlier judicial pronouncements regarded reinstatement with full back wages as the normal consequence of illegal retrenchment, the Hon'ble Supreme Court has, over time, departed from that rigid approach. The Hon'ble Apex Court has, in recent decisions, consistently held that reinstatement is not to follow as an automatic or mechanical outcome of a violation of Section 25F, and that the



appropriate relief must be fashioned in view of the nature of employment, the duration of service, and the overall facts and circumstances of each case.

32. As mentioned earlier, in the present case, the Respondents were engaged as casual sweepers/ helpers. They were not appointed against sanctioned posts. Their engagement was not preceded by a regular selection process. The termination occurred several years ago. The litigation has remained pending for a considerable period of more than thirty-two years, given the alleged termination.

33. Moreover, the Petitioner has also brought on record subsequent developments, namely, that sanitation and housekeeping services are now being outsourced through private contractors pursuant to policy decisions. This assertion has not been seriously disputed. Reinstatement against posts which are no longer filled through direct engagement would raise serious administrative and legal complications.

34. The age of the Respondents constitutes an additional relevant factor for consideration. Reinstatement at this belated stage, that is, after an inordinate lapse of thirty-two years due to the pendency of litigation, would neither be feasible nor advance the ends of justice, and the Respondents would now be of an advanced age and, in all probability, nearing the age of superannuation.

35. Accordingly, Coordinate Bench of this Court in “*AIIMS vs Ashok Kumar, 2024 SCC OnLine Del 3286*”, has clarified the current position on the subject of compensation being granted in place of reinstatement, after due consideration of the judgments in *BSNL vs. Bhurumal(supra)* as well as *State of Uttarakhand &Anr. vs. Raj Kumar (supra)*. The relevant part of the judgment is extracted hereunder.



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

36. Additionally, the Apex Court in ***State of Uttarakhand and Another v. Raj Kumar, (2019) 14 SCC 353***, which arose out of similar facts as in that of the present Petitions, 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 only) in lieu of reinstatement and all consequential benefits.

37. Furthermore, in the case ***Bharat Sanchar Nigam Ltd. vs. Bhurumal(supra)***, the aforesaid position has been made clear.

“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. Ullaladevi* (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.”*

38. In the judgment of ***Jagbir Singh vs. Haryana State Agriculture Marketing*** (2009) 15 SCC 327, the Hon’ble Apex Court dealt with similar issues and held that -

“7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of all 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 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 to 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 if 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.

17. While awarding compensation, the host of factors, inter-alia, matter 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.”

39. On this point, this Court also finds support from the judgment of the Hon'ble Supreme Court of India in the case titled “***Employers, Management of Central P & D Inst. Ltd Vs Union of India & Another, AIR 2005 Supreme Court 633***. The contextual part is extracted hereunder.

“But it is to be noticed that it is not always mandatory for the courts to order reinstatement in cases where there has been violation of section 25F of the Act (5A of the Standing Orders) which can be substituted for good reasons by awarding compensation. [.....]”

40. Having regard to the aforesaid principles and upon an examination of the facts of the present case, this Court observes that the Respondents were appointed only as daily-rated workers for brief and intermittent periods. The



infirmity noted by the learned Labour Court pertains solely to non-observance of the procedural mandate under Section 25F of the Act and does not involve any finding of substantive illegality or unfair labour practice. It is an admitted position that the cessation of service occurred in the year 1994, and an inordinate period of over three decades has elapsed thereafter. In view of such prolonged passage of time, an order of reinstatement at this juncture would be neither feasible nor just and would not further the cause of industrial harmony or justice.

41. In addition, this Court cannot lose sight of the fact that in W.P.(C) No. 16809/2004, a substantial amount has already been paid to the workman Raj Bala under Section 17B of the Act. Granting reinstatement in addition thereto would result in a disproportionate outcome.

42. The Respondents, as well, have relied upon the judgment in *BSNL vs. Bhurumal (supra)* to contend that reinstatement remains the normal rule. However, even *Bhurumal (supra)* recognises that compensation may be an appropriate substitute where reinstatement is rendered impracticable due to lapse of time or the nature of employment.

43. Similarly, the decision in *State of Uttarakhand v. Raj Kumar (supra)* cannot be read as confined only to cases involving extreme delay. The principle that relief must be equitable and proportionate permeates the jurisprudence on the subject.

44. In the considered opinion of this Court, while the retrenchment of the Respondents was illegal, reinstatement at this stage would not be an appropriate or workable remedy. The ends of justice would be met by substituting the relief of reinstatement with monetary compensation,



commensurate with the length of service rendered by the Respondents and the attendant circumstances.

45. At this stage, it is apposite to refer to the decision of the Supreme Court in *Amit Kumar Dubey v. M.P.P.K.V.V. Co. Ltd. &Anr. (Civil Appeal arising out of SLP (C) No. 20902/2024 and connected matters, decided on 29 January 2025)*, which lays down clear guidelines for determination of the quantum of compensation in cases where reinstatement is substituted with monetary relief. Herein, the Apex Court has categorically held that compensation cannot be nominal, uniform, or arbitrary, and must bear a direct nexus with the length of service rendered by the workman. It was emphasised that a blanket award of compensation, without regard to the duration of employment, would violate the principle of proportionality. The relevant part of the judgment is extracted here under-

“9. Therefore, in the facts and circumstances of the matters, we deem it fit to enhance the compensation granted to the appellants by the High Court. We hold that the appellants would be entitled to enhanced compensation at the rate of Rs. 1.5 lakhs per year for the period they have worked and in case, they have worked for a part of the year, then the amount of compensation is to be calculated at the same rate to be applied on a pro-rata basis.[...]”

46. In light of the above principles, as enunciated by the Supreme Court in *Amit Kumar Dubey v. M.P.P.K.V.V. Co. Ltd. &Anr. (supra)*, this Court deems it fit and appropriate that the compensation in the present case be awarded in accordance with the aforesaid parameters, having due regard to the duration of service rendered by the Respondents and the attendant facts and circumstances.



47. In W.P.(C) No. 16809/2004, having regard to the brief tenure of the Respondent's engagement as a daily-wage worker, this Court is of the view that the amount already received is far in excess of the compensation ordinarily awarded in lieu of reinstatement in comparable cases. Further, taking note of the considerable lapse of time since the cessation of service and the substantial amount already disbursed to the Respondent, the amount paid under Section 17B of the Act shall be treated as full and final compensation in the matter. No further amount shall be payable.

48. It is further observed that, inasmuch as no applications under Section 17B of the Act, were preferred by the remaining Respondents, it may reasonably be presumed that they were gainfully employed during the pendency of the proceedings. In accordance, in W.P.(C) Nos. 16739/2004 and 16813/2004, the Petitioner shall pay a lump-sum compensation to each Respondent within a period of three months from today, in accordance with the table set out below.

49. The specific amounts of the lump-sum compensation granted to the Respondents in W.P.(C.) 16739/2004 and W.P.(C.) 16739/2004, as mentioned below, have been calculated in accordance with the guidelines laid out by the Hon'ble Apex Court in the case *Amit Kumar Dubey v. M.P.P.K.V.V. Co. Ltd. &Anr. (supra)*. Further, the amount shall be paid by the Petitioner to the Respondents/Workmen within a period of three months from the date of the Order, failing which the Respondent Workmen shall be entitled to interest at the rate of 9% per annum, from the date of default till the payment is actually made to the Respondent Workmen.

**(CHART II)****AMOUNT OF LUMP-SUM COMPENSATION TO BE PAID TO
RESPONDENTS IN W.P.(C.) 16739/2004 and W.P.(C.) 16739/2004**

NAME OF THE RESPONDENT	DATE OF JOINING	DATE OF TERMINATION	PERIOD OF SERVICE	AMOUNT OF COMPENSATION
Raj Bala (Sweeper)	01.03.1993	23.08.1994	1 Year 5 Months	Amount already paid under Section 17B of the Act of 1947
Asha Ram (Helper)	24.02.1993	25.08.1994	1 Year 6 Months	Rs. 3,00,000/-
Mukesh Kumar (Sweeper)	24.02.1993	24.08.1994	1 Year 6 Months	Rs. 3,00,000/-
Ravi Kumar (Sweeper)	16.12.1991	27.08.1994	2 Years 8 Months	Rs. 5,00,000/-
Urmila (Sweeper)	02.01.1991	28.08.1994	3 Years 7 Months	Rs. 6,50,000/-
Sunita (Sweeper)	24.02.1993	24.08.1994	1 Year 6 Months	Rs. 3,00,000/-
Kamlesh (Sweeper)	26.02.1993	24.08.1994	1 Year 6 Months	Rs. 3,00,000/-

50. Having regard to the legal position crystallised by the precedents discussed and the findings recorded herein, this Court is of the view that the Petitioners have made out a fit case for interference. Accordingly, the present Petitions are allowed to the effect that the finding of the Tribunal that the retrenchment violated Section 25F of the Industrial Disputes Act, 1947, is upheld.



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51. The directions for reinstatement with back wages in the Impugned Awards are set aside. In substitution thereof, the Respondents shall be entitled to lump-sum monetary compensation as mentioned above, which, in the facts of the present cases, is held to be a just and equitable relief.

52. Pending applications, if any, are disposed of. There shall be no order as to costs.

**SHAIL JAIN
JUDGE**

FEBRUARY 18, 2026/M.M.