



2025:DHC:299



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

% **Reserved on : 6<sup>th</sup> November, 2024**  
**Pronounced on: 21<sup>st</sup> January, 2025**

+ W.P.(C) 11492/2018 & CM APPL. No.44450/2018

M/S APOLLO HOSPITALS ENTERPRISES PRIVATE  
LIMITED .....Petitioner

Through: Mr. Alok Bhasin and Mr. Kamal  
Kant Tyagi, Advocates

versus

SHRI SURESH MALIK .....Respondent

Through: Mr. Anshu Mahajan, Advocate

+ W.P.(C) 11585/2018 & CM APPL. No.44820/2018

M/S APOLLO HOSPITALS ENTERPRISES PRIVATE  
LIMITED .....Petitioner

Through: Mr. Alok Bhasin and Mr. Kamal  
Kant Tyagi, Advocates

versus

SHRI VINEET CHAWLA .....Respondent

Through: Mr. Anshu Mahajan, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

### **J U D G M E N T**

**CHANDRA DHARI SINGH, J.**

1. The instant writ petitions under Articles 226 and 227 of the Constitution of India (hereinafter as the "Constitution") has been filed on behalf of the petitioner/Management namely M/s Apollo Hospitals



Enterprises Private Limited against the respondent/workmen i.e., Mr. Suresh Malik and Mr. Vineet Chawla, thereby, seeking setting aside of both the awards dated 15<sup>th</sup> May, 2018 (hereinafter as the “impugned award”) passed by the learned Presiding Officer, Labour Court – V, Dwarka Courts, Delhi (hereinafter as the “Labour Court”) in Industrial Dispute bearing ID No. 1227/16 titled as *Sh. Suresh Malik vs. M/s Apollo Hospital Enterprises Ltd.* and *Sh. Vineet Chawla vs. M/s Apollo Hospital Enterprises Ltd.* The learned Labour Court has passed two separate awards in the ID No. 1227/2016 in favour of the respective workmen wherein, the workmen were granted the relief of reinstatement with full back wages and continuity of services.

2. Since both the writ petitions arise out of the same impugned award, this Court finds it appropriate to decide the instant writ petitions i.e., W.P. (C) No. 11492/2018 and W.P. (C) No. 11585/2018 vide a common judgment. Therefore, for the sake of convenience, since the facts, pleadings and submissions of the instant writ petitions are similar, this Court shall adjudicate the instant matter accordingly.

### **FACTUAL MATRIX**

3. The workmen namely Mr. Suresh Malik (in W.P. (C) No. 11492/2018) and Mr. Vineet Chawla (in W.P. (C) No. 11585/2018) joined the Management w.e.f. 17<sup>th</sup> May, 2000 and 2<sup>nd</sup> January, 2001, respectively, on the post of “Architect Assistant” and the appointment letter was issued by the Management to Mr. Suresh Malik and Mr. Vineet Chawla on 4<sup>th</sup> August, 2000 and 2<sup>nd</sup> March, 2001, respectively.

4. As per the aforesaid appointment letters, the workmen were appointed on probation for a period of twelve months which may be



2025:DHC:299



extended for a further period of six months, if considered necessary by the Management. The workmen's appointment was also terminable by one month's notice on either side or on payment of one month's salary in lieu of the notice to the other party. Further, during probation, the service of the workmen could be terminated without notice if there is a reason to do so.

5. In the interregnum, an industrial dispute was raised by the workmen alleging that on 28<sup>th</sup> May, 2003, when the workmen went to report for their duty, they were prevented from doing so and the Management also directed their security personnel to not allow the workmen to enter the Management's premises. It was also alleged that the workmen were forced to tender their resignation by putting signatures on blank paper which the workmen refused to do so. Further, when the workmen refused to tender their resignation as asked by the Management, they were threatened that their services shall either be terminated or they shall be transferred to a far-flung area of the country.

6. Thereafter, the parties participated in the conciliation proceedings under the Industrial Disputes Act, 1947 (hereinafter as the "Act") for the resolution of their disputes. Upon failure of the conciliation proceedings, a reference was made by the learned Deputy Labour Commissioner, GNCTD, Delhi to the learned Labour Court while exercising its power under Sections 10(1)(c) and 12(5) of the Act read with notification bearing no. F-24(3317)/2003/Lab/4481-4486 dated 8<sup>th</sup> December, 2003. The said reference sent to the learned Labour Court with respect to both the workmen reads as follows:

*"Whether Sh Suresh Malik S/o Late Sh. P.C. Malik have*



*abandoned the services, or his services have been terminated illegally and/or unjustifiably by the management; if so, to what relief is he entitled and what directions are necessary in this respect?”*

\*\*\*

*“Whether Sh Vineet Chawla S/o Late Sh. P.C. Chawla have abandoned the services, or his services have been terminated illegally and/or unjustifiably by the management; if so, to what relief is he entitled and what directions are necessary in this respect?”*

7. The aforesaid industrial dispute was registered as ID No. 1227/16, wherein, the workmen filed their statement of claim. Following the same, the Management filed its reply before the learned Labour Court where it was submitted that the respondents/workmen are not covered by the definition of “workman”, rather, covered by the exception as laid down under Section 2(s)(iv) of the Act since they were holding a supervisory post.

8. It was also stated by the Management before the learned Labour Court that the workmen’s services were never terminated by the Management at any point of time and they were offered to get transferred to Chennai, however, the said offer was refused by the workmen and later, they stopped reporting to work voluntarily.

9. Subsequently, the learned Labour Court framed the following issues vide order dated 14<sup>th</sup> January, 2010:

- “a) Whether the workman is covered under Section 2(s) of Industrial Dispute Act, 1947? OPW*
- b) Whether the services of the workman have been illegally terminated by the management? OPW.*
- c) Whether the workman abandoned the services of the management? OPM*



*d) Relief.”*

10. Thereafter, the workmen as well as the Management were examined before the learned Labour Court, wherein it was observed that as per the workmen’s deposition, they were illegally terminated and as per the Management’s deposition, the workmen had voluntarily abandoned their services w.e.f. 28<sup>th</sup> May, 2003.

11. After considering the testimonies of the witnesses as well as the requisite evidence on record, the learned Labour Court decided issue nos. 1, 2 and 3 in favour of the workmen, thereby, holding that the workmen were illegally terminated and that they did not abandon their services voluntarily. While deciding the issue no. 4, the learned Labour Court reinstated the workmen with full back wages along with continuity of services and all other consequential benefits.

12. Being aggrieved by the said impugned awards, the Management has filed the instant writ petitions seeking setting aside of the same.

### **PLEADINGS BEFORE THIS COURT**

13. The instant writ petitions were filed on behalf of the petitioner/Management seeking setting aside of the impugned award based on the following grounds:

*“A. The Labour Court failed to take notice that on admitted position the Respondent was holding the post of Architect and was engaged for the ongoing construction work of Apollo Hospital building at Sarita Vihar, New Delhi and which post ceased to exist on completion of the construction activities. The Labour Court failed to take notice and appreciate that since the post of Architect held by the Respondent no longer existed, the question of his reinstatement on the said post of Architect could not arise.*



*The impugned Award, thus, passed is liable to be quashed on this ground alone.*

*B. The Labour Court failed to take notice that the co-worker of the Respondent himself has admitted that the post of Architect no longer existed on the completion of the project at Sarita Vihar and in the absence of availability of the post of Architect no relief, much less, the relief of reinstatement could be granted with full back wages and continuity of service. The Impugned Award, thus, passed is perverse and unsustainable under law. When the post of Architect no longer existed, the question of reinstating the Respondent in service could not under law arise. The Impugned Award, thus, passed is patently illegal and liable to be quashed on this ground as well.*

*C. The Labour Court failed to appreciate and take notice that the Respondent was a qualified Architect and the post of Architect held by him no longer existed on the completion of the construction activities and there being no other project in existence where he could be employed as an Architect, no relief, much less, the relief of reinstatement with full back wages and continuity of service could be awarded.*

*D. The Labour Court failed to appreciate that the Respondent in his Statement of Claim has admitted that on completion of project at Sarita Vihar, New Delhi, the employees were offered to proceed to Chennai to look after the ongoing projects which offer was declined by the Respondent without any reason or justification. The Respondent having failed to proceed to Chennai as advised by the Petitioner is deemed to have abandoned his service and, as such, the Labour Court could not have come to the conclusion that his services were terminated, much less, illegally. The Impugned Award thus, passed is perverse and is liable to be quashed on this ground as well.*

\*\*\*



*G. In terms of the reference made, the Labour Court was required to determine as to whether the Respondent has abandoned his services or his services have been terminated illegally and/or unjustifiably. Based on the terms of reference made by the appropriate Government, the Labour Court had framed Issue No. (iii) as to whether the workman abandoned the services of the Management. While deciding this issue, the Labour Court in para 28 of the Impugned Award recorded a finding of fact that all the projects of the Petitioner at Delhi had come to an end and the same was also accepted by the claimant viz the Respondent herein. Treating the aforesaid submission as an admission on the part of the Respondent the Labour Court went on to observe that it was the duty cast upon the Management to prove that it ever called upon the claimant (Respondent herein) and other workmen informing them or taking their consent regarding their transfer to Chennai. The fact of transfer of the Respondent to Chennai has, thus, been accepted and upheld by the Labour Court. Having so held the Labour Court further erroneously went on to hold that not a single person employed in the Project Division in which the Respondent was employed, was examined by the Management to prove that such offer/intimation was ever made or conveyed or in pursuance of the same any such person was transferred to Chennai or not. The observations made are perverse and irrelevant for the purpose of adjudication of the industrial dispute referred by the appropriate Government. The Labour Court failed to appreciate that no consent of the workman was needed for his transfer to Chennai in terms of the appointment letter issued to the Respondent as his services were liable to be transferred anywhere in India and which fact has been duly admitted to by the Respondent during his evidence before the Labour Court. The Labour Court failed to appreciate that the Respondent in order to avoid his transfer and joining duty at the Head Office of the company at Chennai deliberately raised the industrial dispute in the Office of the*



*Labour Commissioner which led to the present reference for the adjudication of the Labour Court.*

\*\*\*

*I. The Labour Court failed to appreciate and take notice that the cause of action in the present case arose on 28.05.2003 when the Respondent stopped reporting at work w.e.f. 28.05.2003, while the Statement of Claim was filed on 04.02.2004 and the affidavit of evidence was filed by him on 04.01.2017 after the matter was remanded back by the Hon'ble High Court to the Labour Court at the instance of the Respondent. The Labour Court failed to appreciate and take notice that it is settled law that where the inordinate delay has been caused in adjudicating upon the matter, then the relief of reinstatement is not to be granted. Reference in this regard is made to a judgment of the Hon'ble Supreme Court in the case of Sain Steel Products vs. Naipal Singh and Ors, 2001 1 LLR 566 (SC) where it was held that it would not be appropriate to put the workman back in service if inordinate delay has been caused in adjudicating the matter. In this case a compensation of Rs. 50,000/- was awarded. The Labour Court also failed to take notice of the judgment of the Hon'ble High Court of Delhi in the case of Pramod Kumar and Another and Presiding Officer and Another, 2006 LLR 302 The Hon'ble High Court has held that where a long period has lapsed since the date of termination, compensation should be paid in lieu of reinstatement and back wages. In view of this well established principle of law laid down by the Hon'ble Supreme Court and various High Courts, where inordinate delay has been caused at the adjudication process, in that event relief of reinstatement with back wages and continuity of service cannot be granted and, as such, the Labour Court, even if it was convinced that the Respondent had been refused duty ought not to have directed his reinstatement in service with full back wages. The Impugned Award, thus, passed is patently illegal, unlawful and unjustified and is liable to be quashed.”*



14. Countering the instant writ petitions, the workmen have filed their written submissions, which are similar in both the writ petitions, and the relevant extracts of the same are as follows:

*“1. The Respondent is filing written submissions restricted to the issue of-*

*“After lapse of more than 21 years and attaining the age of superannuation whether granting of compensation is the only remedy for workman instead of reinstatement and back wages.”*

*2. That after wrongful/ illegal termination of Respondent on 08.12.2003 the appropriate government referred the matter for adjudication to Labour Court. The first award (ex-parte) dated 10.02.2006 was set aside on 31.03.2009 by the Hon'ble High Court of Delhi with remand back to Labour Court for fresh adjudication which culminated in the impugned award dated 15.05.2018.*

\*\*\*

*4. In the present case, the adjudication was initiated in 2003 itself with first award in 2006. The fact of 21 years of litigation cannot be a reason for denying back wages and consequential retiral benefits (even if reinstatement cannot be granted on account of Respondent having attained age of superannuation). If the Petitioner/ Management had accepted the 2006 award or even the 2018 award, Respondent would have enjoyed the fruits of reinstatement and would also have been redeemed of stigma of termination.”*

## **SUBMISSIONS**

*(on behalf of the petitioner/Management)*

15. Learned counsel appearing on behalf of the Management submitted that the learned Labour Court erred in granting the relief of reinstatement



with full back wages and continuity of services to the workmen without any application of judicial mind.

16. It is submitted that the learned Labour Court failed to consider that the workmen were employed as “Architect Assistant” in the aforesaid project, and with the completion of the same, the said position ceased to exist and therefore, reinstating the workmen in the same position is not practically possible.

17. It is submitted that while granting the relief of reinstatement to the workmen, the learned Labour Court erred in not considering that there is no position of the same nature lying with the Management, where they can be absorbed and hence, reinstatement cannot be granted in such cases.

18. It is further submitted that the impugned award was passed erroneously by the learned Labour Court as the workmen have voluntarily abandoned their services and the same cannot be inferred as the illegal termination of services by the Management.

19. It is submitted that with the absence of any work in Delhi, the workmen were offered to be placed in Chennai for the similar nature of work i.e., supervising the construction projects, however, the same was refused by the workmen, thereby, leading to abandonment of services.

20. It is submitted that the learned Labour Court observed in the impugned award that the Management has the power to transfer the workmen to Chennai. Despite the said observation, the learned Labour Court erroneously held that the Management herein failed to prove as to whether consent of the workmen regarding the said transfer was taken.



21. It is submitted that the learned Labour Court failed to take into consideration that the consent of the workmen regarding the said transfer is not required as the Management is vested with the power to transfer the workmen to Chennai, which is specifically mentioned in their respective Appointment Letters.

22. It is submitted that the Management has not issued any communication regarding the termination of the workmen and that they have voluntarily stopped coming to work w.e.f. 28<sup>th</sup> May, 2003, thereby, inferring that the workmen have abandoned the services.

23. It is further submitted that there has been a lapse of considerable period since the date of the alleged termination of the workmen and therefore, compensation instead of reinstatement must be provided in such cases as per the settled position of law.

24. In view of the foregoing submissions, it is prayed that the instant petitions may be allowed, thereby, setting aside the impugned award.

*(on behalf of the respondent/workmen)*

25. Learned counsel appearing on behalf of the respondents/workmen vehemently opposed the instant petitions submitting to the effect that the learned Labour Court has rightly passed the impugned award by observing that the workmen were illegally terminated and accordingly, has rightly been granted the relief of reinstatement to the workmen with full back wages.

26. It is submitted that the learned Labour Court has rightly examined the requisite documents on record such as the Appointment Letter of the workmen, Statement of Claim and reply thereof, and testimonies of the



witnesses while passing the impugned award. Moreover, it was correct in observing that although the Management is vested with the power to transfer the workmen to Chennai as per the Appointment Letter, no such communication was given to them and the same infers that the Management has illegally terminated the services of the workmen.

27. It is submitted that while passing the impugned award, the learned Labour Court has rightly observed that the Management has failed to examine any other workmen who were employed alongwith the respondents to establish that they have voluntarily abandoned the services.

28. It is submitted that it is a settled position of law that once it is determined that the workmen were illegally terminated, the cardinal rule for granting relief is to reinstate the workmen back to its earlier position and the same has been rightly awarded by the learned Labour Court.

29. It is further submitted that the lapse of considerable period of time from the date of termination of services cannot be taken as a ground for not granting the relief of reinstatement as the said relief is automatically granted due to the illegal termination of workmen's services and therefore, the learned Labour Court was correct in awarding reinstatement with full back wages and continuity of services instead of mere monetary compensation.

30. Therefore, in light of the aforementioned submissions, it is prayed that the instant writ petitions are devoid of any merit and the same may be dismissed.



## **ANALYSIS AND FINDINGS**

31. Heard learned counsel for the parties and perused the material on record, including the Lower Court Record.

32. It is the case of the petitioner/Management that the workmen were not illegally terminated from their respective services by the Management, rather, they have voluntarily abandoned the services, thereby, not reporting to work w.e.f. 28<sup>th</sup> May, 2003. It has been contended that even if the services are said to be terminated illegally, the relief of reinstatement may not be granted as the position of “Architect Assistant”, in which the workmen earlier positioned, ceased to be in existence. Moreover, it has been contended that there has been an inordinate lapse of time since the date of the alleged termination, hence, compensation instead of reinstatement is a feasible relief to be granted in the instant case in terms of the settled position of law.

33. Rebutting the petitioner’s case, the contention of the workmen/respondents is that they have been illegally retrenched from their respective jobs when they were refused to tender voluntary resignation due to the completion of work in Delhi. It has been contended that when an illegal termination of the workmen is determined, the relief of reinstatement is automatically provided, and a lapse of considerable time cannot be made a ground for not granting the relief of reinstatement to the workmen.

34. Before adverting to the merits of the instant case, it is apposite for this Court to examine the findings of the learned Labour Court in the



impugned award and the relevant paragraphs of the same are reproduced hereinunder –

*“ISSUE No.3 : Whether the workman abandoned the services of the management? OPM*

*26. It has come on record that the claimant was employed on the basis of appointment letter Ex.WW2/l and as per the terms and conditions of the same, the claimant could have been transferred to any place in any part of India including Madras (Chennai)*

*27. The defence taken by the management is to the effect that as all the projects of management at Delhi have come to an end, there was no work left which could have been provided to the claimant at Delhi and accordingly, the management called upon the claimant and other workmen informing them that they are going to be transferred to Chennai in terms of their appointment letters and as per the further case of the management, the claimant instead of having agreed to be transferred to Chennai, had chosen not to report for duty and as such abandoned the same.*

*28. As far as the stand of the management that all its projects at Delhi have come to an end, the same is also accepted by the claimant.*

*29. However, even in view of the said submission/admission on the part of the claimant, it was the duty casted upon the management to prove that it ever called upon the claimant and other workmen informing them or taking their consent regarding their transfer to Chennai.*

*30.As per the admission of the MWl himself during the course of his cross examination, not only the claimant but a number of persons were employed in the very same project division in which the claimant was employed.*



31. Surprisingly, not even a single person who was employed in the said project division in which the claimant was employed was examined by the management in order to prove that such an offer/ intimation was ever made / conveyed and in pursuance of the same any such person was ever transferred to Chennai or not.

32. Even the MWL, who was stated to be employed in the very same division in which the claimant was employed, has given his address of place of working as of Delhi. If all the persons in the project division in which the claimant was employed stand transferred to Chennai, there is no explanation as to why even MWL, who was also employed in the same division, was not transferred to Chennai because as per the stand taken by the management it had got no work left at Delhi which could be provided to its employees.

33. In these circumstances, the only conclusion which can be drawn is that the management is telling a lie on this point as it failed to prove the stand taken by it that all its employees in the project division in which the claimant was employed are required to be transferred to Chennai and the claimant having not willing to do the same abandoned the job.

34. Accordingly, issue no.3 is decided against the management.

*ISSUE No.2 : Whether the services of the workman have been illegally terminated by the management? OPW.*

35. In view of the outcome of issue no. 3, the court has come to the conclusion that the services of the claimant were illegally terminated by the management. Issue no.2 is accordingly, decided in favour of the claimant.

*ISSUE No.4: RELIEF*



*36. In view of the outcome of issue no. 2, the court has come to the conclusion that the claimant is entitled to the relief of reinstatement with full backwages along with continuity of services and all other consequential benefits.”*

35. Upon perusal of the impugned award, it is observed that the learned Labour Court has examined the contents of the Statement of Claim and the reply filed therein by the Management herein along with the testimonies of the witnesses and the requisite documents such as the Appointment Letter and Salary Slips of the respective workmen. In the impugned award, it is categorically observed by the learned Labour Court that as per the terms of the Appointment Letter of the respective workmen, the Management herein has the power to transfer the workmen to Chennai. It is further recorded in the impugned award that all the projects existing at the relevant time in Delhi came to an end on 28<sup>th</sup> May, 2003, which was admitted by both the workmen as well as the Management herein.

36. However, despite recording the same, the learned Labour Court observed that the Management failed to provide any evidence pertaining to the communication given to the workmen with respect to the transfer to Chennai and accordingly, the learned Labour Court held that the workmen's services were illegally terminated and were not voluntarily abandoned by the workmen. In view of the same, the learned Labour Court awarded reinstatement of the workmen with full back wages and continuity of services.

37. Therefore, this Court deems it apposite to adjudicate the instant writ petitions collectively by framing the following issues –



I. Whether the learned Labour Court was right in determining that the workmen were illegally terminated by the Management?

II. If the Issue - I is answered in the affirmative, whether the learned Labour Court was right in granting the relief of reinstatement with full back wages and continuity of services to the workmen in light of the peculiar facts and circumstances?

38. Bearing the above in mind, now adverting to the issues at hand.

**I. WHETHER THE LEARNED LABOUR COURT WAS RIGHT IN DETERMINING THAT THE WORKMEN WERE ILLEGALLY TERMINATED BY THE MANAGEMENT?**

39. It is the contention of the Management that the workmen stopped reporting to work voluntarily w.e.f. 28<sup>th</sup> May, 2003, which leads to the inference that the workmen have abandoned their services voluntarily and have not been illegally terminated by the Management.

40. At this juncture, it is pertinent to understand the meaning and definition of the term “abandonment of services”. The Hon’ble Supreme Court in the case of *Buckingham Co. vs. Venkataiah & Ors.*<sup>1</sup> observed that as per the principles of common law, an inference regarding an employee’s voluntary relinquishment of services or abandonment of services is based on the relevant factors such as the length of absence and other surrounding circumstances. It is further observed that the act of abandoning or relinquishment of services of the employees is always a question of intention and the same cannot be answered effectively in absence of substantial evidence.

---

<sup>1</sup> 1963 SCC OnLine SC 79



41. Therefore, for determining whether there was any intention of the workmen to abandon the services in the instant case, it is pertinent to examine the testimonies of the witnesses as well as the documentary evidence available on record.

42. At this stage, this Court has perused the testimony of WW-1 i.e., Mr. Vineet Chawla. In his affidavit, WW-1 testified that he joined the Management on 2<sup>nd</sup> January, 2001, however, the Appointment Letter was issued to him only on 2<sup>nd</sup> March, 2001.

43. He also stated that he was drawing a salary of Rs. 10,500/-, working in the capacity of “Architect Assistant”, which is not a supervisory role. He further testified that he was pressurised to tender his resignation, however, upon refusal to do the same, the Management threatened to terminate his services. Furthermore, he stated that he received no communication from the Management regarding his transfer to Chennai, which has been repeatedly and falsely claimed by the Management.

44. In his cross-examination, he admitted that as on 28<sup>th</sup> May, 2003, there was no work available with the Management in Delhi and that as per Clause 17 of his Appointment Letter dated 2<sup>nd</sup> March, 2001, the Management has the power to transfer the workmen to any part of the country, including Chennai. However, WW-1 also reiterated in his testimony that no communication regarding the transfer to Chennai, as claimed by the Management, was provided to him. He further stated that he was unjustifiably stopped by the Management to report to work on 28<sup>th</sup> May, 2003.



45. In the testimony of WW-2 i.e., Mr. Suresh Malik, it was testified that he was orally appointed on 17<sup>th</sup> May, 2000 and the same was reflected on his Employee State Insurance Corporation ID Card. However, he stated that he was issued an Appointment Letter dated 4<sup>th</sup> August, 2000. He further stated that he was working in the capacity of “Architect Assistant”, drawing a salary of Rs. 6,897/- per month. It was further testified that he was also pressurised to tender his resignation voluntarily, however, when refused to do so, the Management threatened to terminate his services. It was also testified that on 28<sup>th</sup> May, 2003, the Management did not allow him to report for this work. It is further testified in his affidavit that he did not receive any communication from the Management with respect to his transfer to Chennai.

46. In his cross examination, he reiterated that the Management stopped him from reporting to work and was restricted on 28<sup>th</sup> May, 2003. It is further testified that he admitted that the job was transferable and that he was aware of Clause 12 of his Appointment Letter, wherein, it was stated that if the workman absents himself from work for eight consecutive days, the said conduct of the workman will be considered as abandonment of services.

47. This Court has further perused the testimonies of MW-1 and MW-2, who are authorised representatives of the Management and have stated in their testimony that there was no work left in Delhi as on 28<sup>th</sup> May, 2003.

48. It was further deposed that the workmen were offered to get transferred to Chennai as per Clause 17 of their respective Appointment Letters, however, the same was declined by the workmen, thereby,



amounting to abandonment of services. It is further stated that on 28<sup>th</sup> May, 2003, no security personnel was deployed by the Management and hence, it cannot be said that the workmen were restricted to report to work on the said day. In their cross examination, it was specifically denied that no communication was provided to the workmen for their transfer to Chennai.

49. Before analysing the testimonies of the witnesses herein, it is pertinent to peruse the contents of the Appointment Letters dated 4<sup>th</sup> August, 2000 and 2<sup>nd</sup> March, 2001. The relevant clauses therein i.e., Clause 12 and 17 of the said Appointment Letters, which are similar in both the instances, are reproduced hereinunder –

*“12. Unauthorised absence for eight consecutive days will be construed as voluntary abandonment of the Company's employment.*

\*\*\*

*17. You are initially posted at our Delhi branch. However, you are liable to be transferred to any other branches or department located in.-Chennai or other parts of India or to any other Company of the group.”*

50. Upon examining the aforesaid testimonies of the witnesses as well as the contents of the Appointment Letters, it is observed that it is an admitted fact that there was no work available with the Management in Delhi as on 28<sup>th</sup> May, 2003.

51. It is further admitted that as per the terms of the Appointment Letter, the Management has the power to transfer the workmen to Chennai or any part of the country. The discrepancy in testimonies arose when MW-1 and MW-2 testified that the Management had offered the workmen to get transferred to Chennai for other pending work and the



offer was rejected by the workmen, on the other hand, the workmen i.e., WW-1 and WW-2 testified that they have received no communication from the Management with respect to the said transfer to Chennai.

52. In light of the aforesaid discrepancy in the testimonies of the witnesses as to whether any communication of transfer to Chennai was made to the workmen, this Court has meticulously perused the Lower Court Record as well as the documents appended to the instant writ petitions.

53. As stated earlier, it is the case of the Management that the workmen were offered to get transferred to Chennai when the work at Delhi has come to an end and the said offer was not accepted by the workmen. Therefore, upon perusal of the record, including the Lower Court Record, it is observed that the Management has evidently not provided any evidence or document to that effect and in absence of the same, it cannot be inferred that the workmen were offered to get transferred to Chennai.

54. Therefore, given the absence of any material proof to the effect of providing communication with respect to the transfer to Chennai, this Court is of the considered view that the non-providence of any material proof sufficiently indicates that the Management has illegally terminated the services of the workmen, thereby, showing that the workmen had no intent to abandon their services.

55. In light of the foregoing discussion, this Court is of the view that the learned Labour Court has rightly observed in the impugned award that the services of the workmen were illegally terminated by the Management.



56. Accordingly, Issue – I is decided in favour of the workmen/respondents.

**II. WHETHER THE LEARNED LABOUR COURT WAS RIGHT IN GRANTING THE RELIEF OF REINSTATEMENT WITH FULL BACK WAGES AND CONTINUITY OF SERVICES TO THE WORKMEN IN LIGHT OF THE PECULIAR FACTS AND CIRCUMSTANCES?**

57. Since the Issue – I is answered in the affirmative i.e., that the workmen were illegally terminated by the Management as rightly observed by the learned Labour Court, it is imperative for this Court to examine the relief granted by the learned Labour Court in awarding the relief of reinstatement of the workmen with full back wages and continuity of services.

58. Therefore, at this juncture, it is pertinent to mention the contentions raised on behalf of the Management with respect to the instant issue, wherein, the primary contention is that workmen cannot be reinstated to the earlier position of the work as the same ceased to exist from the date of their alleged termination. *Secondly*, it is contended that compensation instead of reinstatement is required to be granted as there is an inordinate delay of adjudication of the instant matter from the date of the alleged termination, and hence, the learned Labour Court erred in granting reinstatement to the workmen herein.

59. For the sake of proper adjudication of the instant issue, this Court will *firstly* deal with the issue of cessation of the position of the workmen and *secondly*, with the issue of lapse of considerable time from the date of termination of services.



### **Reinstatement of services in case of cessation of position:**

60. Before advertng to the issue at hand, it is pertinent for this Court to understand the existing position of law on the concept of reinstatement of services.

61. Reinstatement is a relief granted to the workmen if the Courts are satisfied that the workmen's services have been wrongfully terminated by the employer and in order to rectify the illegal actions adopted by the employer, the workmen are restored back to their earlier position on the same terms and conditions of their appointment.

62. However, as stated by the Hon'ble Supreme Court in catena of judgments, including *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*<sup>2</sup>, in cases of wrongful termination of services, reinstatement with continuity of services and full back wages is the normal rule. However, a transformative principle has been developed over the period and the jurisprudence *qua* the same has shifted in the recent times, where the ordinary rules of reinstatement cannot be applied automatically or mechanically to all cases of wrongful termination, thereby, granting the relief of compensation in lieu of reinstatement.

63. Observing the aforesaid principle of law, the Hon'ble Supreme Court in the case of *Jagbir Singh v. Haryana State Agriculture Marketing Board and Another*<sup>3</sup> observed that the reinstatement is not a relief which is granted automatically or mechanically as the relief granted depends on the facts and circumstances of each case, wherein, the concerned Court may grant monetary compensation if it considers

---

<sup>2</sup> (2013) 10 SCC 324

<sup>3</sup> (2009) 15 SCC 327



feasible in light of the peculiar facts of the case. The relevant portion of the same is reproduced hereinunder –

*“7. It is true that the earlier view of the Supreme 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, the Supreme 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. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not be automatically passed. The award of reinstatement with full back wages in a case where the workman particularly a daily wager, who has completed 240 days of work in a year preceding the date of termination has not been found to be proper. Compensation instead of reinstatement has been held to meet the ends of justice. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee.*

\*\*\*\*

*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.”*



64. A similar transformative view was also taken in the case of *U.P. SEB v. Laxmi Kant Gupta*<sup>4</sup> by the Hon'ble Supreme Court, wherein, it was observed that the relief of reinstatement is not a hard and fast rule and is granted only subject to the specific factual scenario. Furthermore, it was observed that the granting of reinstatement is not an automatic mechanism for relief of illegal termination, instead a discretionary one. The relevant portion of the same is as follows:

*“9. In U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey [(2006) 1 SCC 479 : 2006 SCC (L&S) 250 : JT (2005) 10 SC 344] this Court referred to a large number of its earlier decisions on the question as to the relief to be granted to the workman when his termination of service is found to be illegal. It was noted that while the earlier view of the Court was that if an order of termination was found to be illegal, normally the relief to be granted should be reinstatement with full back wages. However, as noted in the various decisions referred to in the above decision, with the passage of time it came to be realised that an industry should not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all. This Court after discussing various earlier decisions held that the relief to be granted is discretionary and not automatic. It was pointed out in the aforesaid decision of this Court in U.P. State Brassware Corpn. [(2006) 1 SCC 479 : 2006 SCC (L&S) 250 : JT (2005) 10 SC 344] that a person is not entitled to get something only because it would be lawful to do so. The changes brought out by the subsequent decisions of this Court, probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing was evident. Hence, now there is no such principle that for an illegal termination of service the normal*

---

<sup>4</sup> (2009) 16 SCC 562



*rule is reinstatement with back wages, and instead the Labour Court can award compensation. The same view was followed by this Court in Haryana State Electronics Development Corpn. Ltd. v. Mamni [(2006) 9 SCC 434 : 2006 SCC (L&S) 1830 : AIR 2006 SC 2427] (AIR vide paras 15 to 17).*

*10. Thus it is evident that there has been a shift in the legal position which has been modified by this Court and there is no hard-and-fast principle now that on the termination of service being found to be illegal, the normal rule is reinstatement with back wages. Compensation can be awarded instead, at the discretion of the Labour Court, depending on the facts and circumstances of the case.*

\*\*\*

*12. Hence, while we are not inclined to quash the reference order on the ground of delay, we allow this appeal and set aside the impugned judgment and order of the High Court as well as the Labour Court to the extent that they grant reinstatement to the respondent, and we hold that in this case compensation should have been granted instead of reinstatement. In this case the amount already paid to the respondent is more than sufficient compensation for his illegal termination of service, and no further amount needs to be paid to him. However, what has already been paid to him should not be recovered from him.”*

65. Therefore, keeping the aforesaid position of law in mind, especially the transformative view taken by the Courts in the recent times and advertent to the instant case, it is pertinent to mention the contention of the Management that the learned Labour Court erred in granting the relief of reinstatement as the same cannot be possible when the position in which the respondents were employed ceased to exist due to the completion of the said project.



66. In light of the said contention, it is pertinent for this Court to examine whether reinstatement may be granted as a relief for illegal termination if the position is not in existence. With respect to the same, this Court has referred to the judgment of *Surendra Kumar Verma and Others vs. Central Government Industrial Tribunal-cum-Labour Court, New Delhi and Another*<sup>5</sup>, wherein, it was explicitly observed that if the circumstantial situation does not favour for the relief of reinstatement due to certain impossible factors, the said relief cannot be granted and the burden of such impossibility cannot be shifted onto the employer. The relevant portion of the same is as follows:

*“6. We do not propose to refer to the cases arising under Sections 33 and 33-A of the Industrial Disputes Act or to cases arising out of references under Sections 10 and 10-A of the Industrial Disputes Act. Nor do we propose to engage ourselves in the unfruitful task of answering the question whether the termination of the services of a workman in violation of the provisions of Section 25-F is void ab initio or merely invalid and inoperative, even if it is possible to discover some razor's edge distinction between the Latin ‘void ab initio’ and the Anglo-Saxon ‘invalid and inoperative’. Semantic luxuries are misplaced in the interpretation of ‘bread and butter’ statutes. Welfare statutes must, of necessity receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions. ‘Void ab initio’, ‘invalid and inoperative’ or call it what you will, the workmen and the employer are primarily concerned with the consequence of striking down the order of termination of the services of the workmen. Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the*

---

<sup>5</sup> (1980) 4 SCC 443



*workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.”*

67. The said principle of law is further encapsulated in the case of **Tapash Kumar Paul v. BSNL**<sup>6</sup>, wherein, it categorically laid down certain parameters where compensation instead of reinstatement may be considered. Furthermore, it specifically mentioned that if a particular industry, to which the workmen belong to, is closed or any other situation where the reinstatement cannot be granted, compensation with that effect may be awarded to the workmen given the facts and circumstances of the case. The relevant portion of the same is as follows –

---

<sup>6</sup> (2014) 15 SCC 313



*“4. It is no doubt true that a court may pass an order substituting an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds viz. (i) where the industry is closed; (ii) where the employee has superannuated or is going to retire shortly and no period of service is left to his credit; (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated; and/or (iv) when he has lost confidence of the Management to discharge duties. What is sought to be emphasised is that there may be appropriate case on facts which may justify substituting the order of reinstatement by award of compensation, but that has to be supported by some legal and justifiable reasons indicating why the order of reinstatement should be allowed to be substituted by award of compensation.”*

68. Adverting to the instant facts, it has been already observed in Issue– I that the workmen were terminated illegal. However, currently, the issue before this Court is pertaining to the relief of reinstatement granted by the learned Labour Court, especially with respect to the cessation of the earlier work position. Upon examination of the testimonies of the witnesses, it is observed that it is an admitted fact that the construction work of the said project has come to an end in the month of May, 2003 and with effect from 28<sup>th</sup> May, 2003, the workmen were not working with the Management.

69. As already dealt in the earlier issue, the workmen were not given any communication by the Management with regards to their transfer to Chennai and evidence to that effect was also not produced by the Management. Therefore, it is clear that the position of “Architect Assistant”, in which the workmen were employed, has ceased to exist with the completion of the said project as there was no work available as



on 28<sup>th</sup> May, 2003 and no offer of transfer to Chennai, as alleged by the Management, was made to the workmen.

70. Applying the said position of law to the instant case, it is to be noted that the reinstatement of the workmen cannot be granted as the position itself is not available as on date with the Management to further continue with their services. The objective behind this view is that the workmen were employed in a position, which can be viewed as a temporary service, utilised only for the specific project and with the said project coming to an end and in absence of any other projects in Delhi, their position ceased to exist. The nature of their employment given that no other project was subsisting at the time of the completion of the said project is, therefore, temporary.

71. Therefore, while the services or employment is specific to the said project and that the same has come to an end with the said project, especially when the workmen were not even offered to get transferred despite having the power to do so, reinstating the workmen to the said position has become impossible and therefore, the relief granted by the learned Labour Court is erroneous with that regard.

**Issue of lapse of considerable period of time from the date of termination of services:**

72. Adverting to the issue of non-granting of reinstatement due to the lapse of considerable time of adjudication of the instant dispute from the date of termination.

73. The contention of the Management for non-granting of reinstatement is that there is an inordinate delay of adjudication of the instant matter from the date of the alleged termination, and hence, the



learned Labour Court erred in granting reinstatement to the workmen herein.

74. In its rival submission, it is contended by the workmen that as long as the termination is illegal and unjustifiable, the relief of reinstatement can be granted and therefore, the lapse of considerable period of time may not be taken as a ground for non-grant of reinstatement of services.

75. In light of the same, this Court deems it pertinent to examine the findings of the case titled *Talwara Coop. Credit and Service Society*<sup>7</sup> wherein, it was observed as under:

*“15. We have noticed hereinbefore that the respondent was employed for a short period and that too in two different spells viz. from 1987 to 1990 and from 1995 to 1997. Having regard to the fact that the respondent has not worked for a long period and the appellant does not have any capacity to pay as it is a sick unit, interest of justice would be subserved if in stead and in place of an award of reinstatement with full back wages, a compensation for a sum of Rs 2,00,000 (Rupees two lakhs only) is directed to be paid. The said sum would be over and above the amount which the appellant has deposited in terms of the order of the High Court under Section 17-B of the Industrial Disputes Act.”*

76. The principle and objective behind the said view is further discussed by the Hon’ble Supreme Court in the case of *Hari Nandan Prasad v. Food Corporation*<sup>8</sup>, wherein, it was observed that if a long gap persists after the termination of services, the relief of reinstatement of services does not serve any purpose and in the interest of justice,

---

<sup>7</sup> (2008) 9 SCC 486

<sup>8</sup> (2014) 7 SCC 190



monetary compensation may be given as an alternative in such cases. The relevant portion of the said judgment is as follows:

*“19. The following passages from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement: (BSNL case [BSNL v. Bhurumal, (2014) 7 SCC 177] , SCC pp. 187-88, paras 29-30)*

*“29. The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In 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 Deptt. 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.”*

\*\*\*

*21. We make it clear that reference to Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , in the aforesaid discussion is in a situation where the dispute referred pertained to termination alone. Going by the principles carved out above, had it been a case where the issue is limited only to the validity of termination, Appellant 1 would not be entitled to reinstatement. This could be the position in respect of Appellant 2 as well. Though the factual matrix in his case is slightly different, that by itself would not have made much of a difference. However, the matter does not end here. In the present case, the reference of dispute to CGIT was not limited to the validity of termination. The terms of reference also contained the claim made by the appellants for their regularisation of service.”*



77. For the sake of relevancy and clarity, it is reiterated that reinstatement is not an automatic mechanism and the same is discretionary in nature as it depends on the peculiar facts and circumstances of each case.

78. In the instant case, the date of termination is 28<sup>th</sup> May, 2003 and the workmen have been pursuing the instant dispute since the year 2004. A considerable period of more than 21 years of valuable time has already lapsed in adjudication of the instant industrial dispute and the reinstatement of the workmen is practically not viable and feasible.

79. Therefore, applying the aforesaid law to the instant case, it is observed that if the workmen are reinstated despite the lapse of 21 years of time, the workmen will not be adequately compensated for the inordinate delay occurred in adjudicating the said issue. Therefore, this Court is of the considered view that it is not reasonable to grant the relief of reinstatement given the peculiar factual situation.

80. As discussed hereinabove, where the relief of reinstatement cannot be made possible, an adequate monetary compensation may be awarded for the illegal termination of workmen from their respective jobs. The Hon'ble Supreme Court in the cases of *Sain Steel Products vs. Naipal Singh and Others*<sup>9</sup> and *Pramod Kumar and Anr. vs. Presiding Officer and Anr.*<sup>10</sup> awarded monetary compensation, thereby, observing that it is not feasible and appropriate to reinstate an employee after a lapse of quantitative and qualitative time of services.

---

<sup>9</sup> (2003) 4 SCC 628

<sup>10</sup> 2006 (2) LLN 254



81. Summarily stated, in its written statement, the Management contended that the even if it is determined that the workmen are illegally terminated, compensation in lieu of reinstatement ought to have been granted. At this stage, this Court is of the view that *firstly*, reinstatement of the workmen is not possible due to the cessation of the position, *secondly*, there is a lapse of considerable period of time and *thirdly*, as per the settled position of law, if the termination is illegal, compensation in lieu of reinstatement may be granted given the peculiar facts and circumstances.

82. Taking the aforesaid position of law into consideration, this Court is of the considered view that the workmen are entitled for the relief of compensation in lieu of reinstatement with full back wages and continuity of services. Therefore, it is held that the learned Labour Court has erred in awarding the relief of reinstatement of the workmen's services and instead, it ought to have awarded some monetary compensation in the interest of justice.

83. Accordingly, Issue – II is decided in favour of the petitioner/Management.

### **CONCLUSION**

84. While dealing with the issue of illegal termination of the workmen, this Court has meticulously perused the record available before this Court, including the Statement of Claim and reply thereof, Appointment Letters of the workmen, as well as the testimonies of the witnesses, and the salary slips.



85. Upon perusal of the same, this Court has arrived at the conclusion that there was no project in existence in Delhi as on 28<sup>th</sup> May, 2003 and that the Management has the power to transfer the workmen to Chennai at any occasion. Although it was claimed by the Management that the workmen were offered to get transferred to Chennai and the same was refused by them, the Management failed to substantiate the said claim with any material proof. Thus, it is inferred by the testimonies of the workmen that no communication with that regard has been provided by the Management, thereby, amounting to wrongful and illegal termination of the services of the workmen herein.

86. While dealing with the issue of relief provided by the learned Labour Court, i.e., reinstatement of the workmen with full back wages and continuity of services, this Court has observed that the position in which the workmen were earlier employed is not in existence as the same has ceased to exist with the completion of the said project. It is further observed that there is a lapse of considerable period of time from the date of the alleged termination and therefore, the relief of reinstatement with full back wages and continuity of services cannot be granted in both these instances. Therefore, adverting to the transformative view taken by the Courts in the recent times, this Court is of the considered view that the relief of monetary compensation in lieu of reinstatement is the appropriate relief to which the workmen are entitled to due to the illegal termination of their services in terms of the peculiar facts and circumstances of the case.



87. Taking into consideration the above facts and circumstances as well as the discussion on law and merits of the case, the following is held by this Court:

- a. The issue no. 1 i.e., *Whether the learned labour court was right in determining that the workmen were illegally terminated by the Management?*, is decided in favour of the respondents/workmen. It is held that the learned Labour Court rightly decided that their services were illegally terminated.
- b. The issue no. 2 i.e., *whether the learned labour court was right in granting the relief of reinstatement with full back wages and continuity of services to the workmen in light of the peculiar facts and circumstances?* is decided in favour of the petitioner/Management. However, as stated above, it is held that reinstating the workmen is not possible due to the peculiar facts and circumstances. Therefore, the petitioner/Management is directed to pay a compensation of Rs. 10,00,000/- (Rupees Ten Lakh Only) to Mr. Suresh Malik, and Rs. 15,00,000/- (Rupees Fifteen Lakh Only) to Mr. Vineet Chawla within a period of four weeks from today, failing which, an interest @ 9% per annum shall be applicable thereon from the date of passing of this judgment.
- c. In view of the foregoing, the impugned award dated 15<sup>th</sup> May, 2018 passed by the learned Presiding Officer, Labour Court – V, Dwarka Courts, Delhi in Industrial Dispute bearing ID No. 1227/16 is partly set aside and modified in aforesaid terms.



2025:DHC:299



88. Accordingly, the writ petitions bearing W.P. (C) No. 11492/2018 and W.P. (C) No. 11585/2018 are partly allowed and stands disposed of, along with pending applications, if any.

89. The judgment will be uploaded on website forthwith.

**(CHANDRA DHARI SINGH)**  
**JUDGE**

**JANUARY 21, 2025**  
**Rt/mk/ryp**

*Click here to check corrigendum, if any*