B.S.N.L.

v.

BHURUMAL

(Civil Appeal No.10957 of 2013)

DECEMBER 11, 2013

[K.S.RADHAKRISHNAN AND A.K.SIKRI, JJ.]

Industrial Disputes Act, 1947 – s.25F – Retrenchment – Of daily wage worker – Industrial dispute raised – Management denied employer-employee relationship – Industrial Tribunal held that the workman was working under the Management and his services were illegally terminated and awarded his reinstatement with back wages – Award of Tribunal confirmed by High Court – Held: Termination of workman is rightly held to be illegal being violative of s.25F – In the case of illegal termination of a daily wage worker, reinstatement with back wages is not automatic – Instead monetary compensation would serve the ends of justice – However, where the persons junior to the terminated workmen are regularized, the workman cannot be denied reinstatement – In such cases reinstatement should be rule and denial thereof should be only in exceptional cases – In the facts of the present case, grant of compensation of Rs.3 lakhs in lieu of reinstatement would serve the interest of justice.

Constitution of India, 1950 – Arts. 136 and 226 – Powers under – Scope of – Held: Findings of facts not to be interfered, in exercise of powers u/Arts.136 or 226, unless such findings are totally perverse and based on no evidence – Insufficiency of evidence is not a ground to interfere.

The respondent-workman raised an industrial dispute alleging his wrongful termination by the appellant-management. His case was that he was working with the appellant as a Lineman on daily wages,

A for 15 years. He got electric shock while working and got hospitalized. Thereafter, he was not permitted to join the duty. The appellant denied employer-employee relationship between them. The Industrial Tribunal concluded that the respondent was directly working B under the administrative control of the appellant as a Lineman and his services were illegally terminated and directed reinstatement of the respondent with back-wages. High Court dismissed the writ petition filed by the appellant, upholding the order of the Tribunal . Hence the C present appeal.

Disposing of the appeal, the Court

HELD: 1. The findings recorded by the Industrial Tribunal are findings of fact. Such findings are not to be D interfered with by the High Court under Article 226 of the Constitution or by this Court under Article 136 of the Constitution. Interference is permissible only in case these findings are totally perverse or based on no evidence. Insufficiency of evidence cannot be a ground E to interdict these findings as it is not the function of this court to reappreciate the evidence. [Para 15] [1037-A-C]

2.1. It is apparent from the diaries produced by the respondent that the respondent had worked for the F appellant. These diaries are perused and examined by the Industrial Tribunal on the basis of which it is observed that the diaries were maintained in an ordinary course of business and were genuine. There is no reason to disbelieve these diaries and the plea of the appellant that these are self serving documents does not cut any ice. It G is a matter of common knowledge that the period in question was a period when frequent disruption in the functioning of the telephones was a normal feature and the Telephone Department used to receive numerous such complaints. Linemen were deputed to visit the H places where the telephones have gone out of order to

attend those complaints. There was a practice of giving one lineman various telephone numbers which he was supposed to attend. The respondent had maintained the diaries where he noted down those numbers, and attended the same on day to day basis. Diaries for the last 2 years i.e. 2001 and 2002 have been produced. These diaries prove that the respondent had been doing the work for the appellant and that too as a lineman. [Para 16] [1037-E-H; 1038-A-B]

2.2. Once, it is concluded that the respondent had been doing the work of the appellant, it was for the appellant to prove as to who was the contractor to whom the work was awarded and that contractor had recruited the respondent. No such evidence is produced by the appellant. Moreover, the appellant has itself accepted the fact that the work of a lineman was not given on contract basis. Thus, there is no perversity in the finding of the Industrial Tribunal, as upheld by the High Court, that the respondent had worked with the appellant on daily wage basis. The respondent produced documents proving that he met with an accident while repairing the fault of a telephone. The evidence shows that when the respondent suffered the electric shock, officers of the appellant came to the spot of occurrence and ensured his medical treatment. This would not have happened if the respondent was not in the employment of the appellant. [Para 17] [1038-C-E, G, H; 1039-A]

2.3. There may be some dispute as to whether respondent in fact worked for 15 years. However, nothing turns on this as the outcome is not dependent on this aspect. Fact remains that the respondent had produced some other documents to show that he had been working for quite some time. The award is passed on the basis that the respondent had worked for 240 days in preceding 12 months period prior to his termination and therefore

A it is a clear case of violation of Section 25-F of the Industrial Disputes Act. The termination is, thus, rightly held to be illegal. [Para 18] [1039-B-E]

3.1. 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 *malafide* and/or by way of victimization, 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 procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, 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. [Para 23] [1042-E-G; 1043-A]

Incharge Officer and Anr. vs. Shankar Shetty (2010) 9 SCC 126: 2010 (10) SCR 773; *Telecom District Manager vs. Keshab Deb* (2008) 8 SCC 402: 2008 (7) SCR 835; *A. Umarani vs. Registrar, Coop.Societies* (2004) 7 SCC 112 *Secy., State of Karnataka vs. Umadevi* (2006) 4 SCC 1: 2006 (3) SCR 953; *Coal India Ltd. vs. Ananta Saha* (2011) 5 SCC 142: 2011 (5) SCR 44; *Metropolitan Transport Corporation vs. V.Venkatesan* (2009) 9 SCC 601: 2009 (12) SCR 583 – relied on.

3.2. 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 regularization. Thus

when he cannot claim regularization 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. [Para 24] [1043-A-E]

State of Karnataka vs. Uma Devi (2006) 4 SCC 1: 2006 (3) SCR 953 – relied on.

3.3. However, 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. [Para 25] [1043-F-H]

3.4. In the present case, the respondent was working as a daily wager. Moreover, the termination took place more than 11 years ago. No doubt, as per the respondent he had worked for 15 years. However, the fact remains that no direct evidence for working 15 years has been furnished by the respondent and most of his documents are relatable to two years i.e. 2001 and 2002. Judicial notice can also be taken of the fact that the need of

A **lineman in the telephone department is drastically reduced after the advancement of technology. For all these reasons, ends of justice would be met by granting compensation in lieu of reinstatement. The respondent should be paid a compensation of Rs. 3 lakhs. This**
B **compensation should be paid within 2 months failing which the respondent shall also be entitled to interest at the rate of 12% per annum from the date of this judgment. [Para 26] [1044-A-E]**

C *BSNL vs. Man Singh* **(2012) 1 SCC 558 – relied on.**

Case Law Reference :

2010 (10) SCR 773	**relied on**	**Para 20**
2008 (7) SCR 835	**relied on**	**Para 21**
D **(2004) 7 SCC 112**	**relied on**	**Para 21**
2006 (3) SCR 953	**relied on**	**Para 21**
2011 (5) SCR 44	**relied on**	**Para 22**
E **2009 (12) SCR 583**	**relied on**	**Para 22**
2006 (3) SCR 953	**relied on**	**Para 24**
(2012) 1 SCC 558	**relied on**	**Para 26**

F CIVIL APPELLATE JURISDICTION : Civil Appeal No.10957 of 2013.

From the Judgment and Order dated 02.11.2011 of the High Court of Punjab & Harynana at Chandigarh in LPA No. 1999 of 2011.

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Ankur Mittal for the Appellant.

Geeta Luthra, Rohit Bhardwaj, Prabal Bagchi (for D. N. Goburdhan) for the Respondent.

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The Judgment of the Court was delivered by A

A.K.SIKRI,J. 1. Leave granted.

2. For deciding this appeal, the seminal facts, which are required a mention are recapitulated below: B

3. The respondent herein raised an industrial dispute alleging his wrongful termination, by approaching the Assistant Labour Commissioner, Faridabad in the year 2000. He claimed that he was working as a Lineman on daily wages with the Sonipat Telephone Department, BSNL at Saidpur Exchange C and was not paid his wages for the period from October 2001 till April 2002. He further stated that while working he got an electrical shock and because of this accident he was hospitalized. However, he was not allowed to resume his duty which amounted to wrongful termination. Conciliation D Proceedings commenced after notice was sent to the appellant. Defence of the appellant was that the respondent never worked with the appellant. It was pleaded that there was an agreement dated 18.1.2002 entered into between appellant and M/s. Haryana Securities/Services (Regd) for supply of securities E personnel to SSA, Sonipat. The appellant stated that the respondent may have worked as a contract employee with the said contractor and deployed at the establishment of the appellant in that capacity. The conciliation proceedings were not successful, the Conciliation Officer sent his failure report to F the Central Government and on that basis Central Government made a reference to the Central Government Industrial Disputes-cum-Labour Court (CGIT), Chandigarh, with the following terms of reference.

> "Whether the action of the management of BSNL, Sonipat G in terminating the services of Sh. Bhurumal worker w.e.f. Arpil 2002 is just and legal? If not what relief he is entitled to?

4. In the claim statement filed by the respondent before the H

A CGIT, the respondent stated that he had been working as a Lineman with the appellant from 1.7.1987 and worked in that capacity till 27th April 2002 on daily wages basis. He also stated that on 17.11.2001, while repairing the fault of a telephone, he suffered electric shock and due to this accident, B he sustained injuries. He was admitted in a hospital. He was not paid his salary from August 2001 to April 2002. His services were illegally terminated with effect from 28TH April, 2002. In the written statement filed by the appellant, appellant took up the same stand which it had taken in the conciliation C proceedings. It was emphasized that as there was a complete ban on recruitment, the department had employed contractors for carrying out the petty jobs, who in turn had engaged contract workers. The respondent was not issued any appointment/ engagement letter by the appellant. The appellant had never made any payment of daily wages to the respondent as he was D not the employee of the appellant and was not directly recruited by the appellant and there was no employer-employee relationship between them. Both the parties led their respective evidence. Thereafter, arguments were heard and the proceedings culminated in the award dated 11.4.2011 passed E by the learned CGIT. The CGIT came to the conclusion that there was clear evidence to the effect that the respondent was directly working under the administrative control of the appellant as a Lineman and his services were illegally terminated. Thus, answering the reference in favour of the respondent, the CGIT F directed reinstatement of the respondent along with back wages.

5. A perusal of the award of the CGIT would disclose that in support of his case, the respondent had filed two diaries in G which he had entered all the jobs undertaken by him on different dates in the Telephone Department. The CGIT too found that these diaries were maintained in an ordinary course of business and were reliable piece of evidence, particularly before the Tribunal, which works on the basis of equity, just and good

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conscience. The findings that the respondent was directly under the administrative control of the Management, were recorded in the following manner:

> "If all these facts are considered and implemented in the present case, it is evidently clear that workman was directly working under the administrative control of the management. The documents filed by the workman which have not been seriously challenged by the management proves beyond doubt that workman was working with the management as lineman. Moreover the diaries which have been filed by the workman and were prepared in the ordinary course of business also prove this fact that workman was working directly under the administrative control of the management. For daily waged worker nature of initial appointment is immaterial. Sh. Bhurumal worked with the management almost 15 years as a daily waged worker. Thus, the nature of initial appointment cannot be challenged by the management to justify the illegal termination. It is also established while working as a lineman and the officers of the management have helped him socially, emotionally and financially at the time to accident but after the termination of the services of workman they tried to become hostile. This is the function of the Tribunal to reach to the truth. Accordingly, the demeanor of every witness which was recorded by the Tribunal in detail this demeanor is very well available and in the evidence of every witness. Only one witness dare to deny the fact of accident. Rest two witnesses only showed the ignorance. If the evidence of all the witnesses is taken jointly and cumulatively, it established that workman was electrocuted while working as a lineman."

6. The CGIT also discussed the demeanor of the witnesses on the basis of which it chose to accept the version of the respondent as against that of the appellant. The CGIT also observed that photocopies of the documents were filed by

A the respondent, original thereof were in the possession of the appellant and the appellant failed to produce them. Therefore, adverse inference had to be drawn. This part is discussed in the following manner:

B "From the above discussions it is clearly established that workman was directly engaged by the management as a lineman. He has worked for substantial period (almost for 15 years) with the management. His services were illegally terminated. The management which is the Government Department is supposed to be a role model employer in the C society. But, the act of management in this case is otherwise. The management has not disputed the fact that workman has worked for more than 240 days in the preceding year from the date of his termination. The management has denied his very much existence in the department without any proof. D Photocopies of relevant documents were filed by the workman. Originals were summoned. The management failed to provide the originals. There is no doubt in the genuineness and correctness of the documents filed by the workman. As management has failed to provide the originals, even after E direction of Tribunal, adverse inference will be taken. The nature of adverse inference shall be that it shall be considered that workman has completed 240 days of work in the preceding year from the date of his termination. Undisputedly no notice or one month wages in lieu of notice and retrenchment F compensation was paid to the workman. This makes his termination illegal and void."

7. The appellant preferred the Writ Petition against the aforesaid award in the High Court of Punjab and Haryana. This G Writ Petition was dismissed by the learned Single Judge vide judgment dated 27.2.2011 holding the same as bereft of any merit. Reasons given in the said order virtually echo the reasons which were recorded by the CGIT in support of its award, as is clear from the following discussion in the judgment of the learned Single Judge:

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"After hearing counsel for the petitioner, it is not disputed that the workman had worked for almost for 15 years as a daily wage workman as lineman. The documents filed by the workman beyond doubt proved that he had been working with the petitioner Management as lineman. The entries, which have been filed by the workman, were prepared in an ordinary course of business proved that the workman was working directly under the administrative control of the management. It is established before the Tribunal that the workman had met with an accident while working in the office hours of the Management. He was socially emotionally and financially helped at the time of accident. The Management has not proved the contract agreement with the contractor. The contractor was not summoned in the Court as a witness. The Management failed to prove that the consolidated amount was paid to the contractor and the contractor used to pay the wages to the workman. Even in the documents relating to his treatment he has been shown by the Government Medical College as Government servant. It is not disputed by the Management that he had worked for 240 days in the office before the date of termination. Despite direction by the Tribunal the Management failed to prove the original agreement with contractor tendered by it. All these above facts goes to prove that the workman was working under the direct control of the petitioner management for the last 15 years. After he met with the accident he was unceremoniously terminated and not allowed to join the duty on 28.4.2002."

8. The learned Single Judge held that the appellant had not proved contract agreement with the contractor and even the contractor was not summoned as a witness and nothing was produced to show to the court that consolidated amount was paid to the contractor and the contractor used to pay the wages to the workman.

A 9. Even the intra court appeal filed by the appellant i.e. Letters Patent Appeal (LPA) has been dismissed by the Division Bench of the High Court vide judgment dated November 2, 2011 holding that the concurrent finding of facts recorded by the CGIT as well as learned Single Judge did not
B warrant any interference.

10. Learned counsel for the appellant, at the outset, submitted that though the respondent had alleged that he had been working since with the appellant for 15 years, he had not produced any documents in support of this assertion. He also
C argued that onus to prove that the respondent was employed by the appellant, was on the workman but he did not produce any documents either in the form of appointment letter/ engagement letter or any other proof which could prove that he was employed by the appellant. He did not even produce a
D single wage slip to show that wages were paid to him by the appellant. His further submission was that diaries produced by the respondent were self serving documents allegedly maintained by him and no evidentiary value could be attached thereto.

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11. In an attempt to find potholes in the award of the Tribunal, the learned counsel argued that the Tribunal wrongly recorded that the documents filed by the workman had not been "seriously challenged" by the appellant. He referred to the cross-
F examination of the respondent as well as management evidence to show that there was serious challenge of the varsity of those documents, namely, diaries produced by the respondent. The learned counsel also submitted that it was totally wrongful on the part of the CGIT to draw adverse inference
G for not producing any original of those documents, photocopies whereof were filed by the respondent. The submission was that when the genuineness of the documents filed by the respondent itself was questioned by the appellant and appellant categorically stated that these are bogus and self-made documents, there was no question of producing the original
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thereof and, thus, no adverse inference could be drawn. According to the learned counsel, these findings were totally perverse and this aspect was which were categorically argued before the High Court but the High Court also fell into the same error. Another submission of the learned counsel qua the High Court judgment was that a serious error occurred by presuming certain facts to be admitted facts. Drawing attention to that portion of the judgment of the learned Single Judge, which is already extracted above, it was argued that the learned Single Judge proceeded on the basis that the appellant had not disputed that the respondent had worked for almost 15 years in the capacity as Lineman. He emphasized that this was precisely the dispute not only in the pleadings but in the evidence led by the appellant. The appellant had stated that the respondent had not worked with the appellant at all, much less for a period of 15 years, as claimed by him, and never worked as a Lineman. He also submitted that even when these infirmities in the order of the CGIT as well as the learned Single Judge were pointed out to the Division Bench in the LPA, the Division Bench did not, at all, advert to these arguments and by short and cryptic order dismissed the LPA by simple observation that there were concurrent findings of facts reached by the courts below. His submission, therefore, was that the orders of the courts below are based on perverse findings which warranted interference by this Court.

12. In the alternative, the learned counsel further submitted that it was not a case where reinstatement should have been given by the CGIT and at the most some monetary compensation in lieu of reinstatement and back wages should have been awarded. He referred to few judgments of this Court including orders dated 4th October 2011 passed in respect of some other employees of the appellant itself.

13. Learned counsel for the respondent, on the other hand, supported the decision by relying upon the reasons given in the impugned judgment. He laid much emphasis on the diaries

A produced by the respondent which were kept in the normal course. He also submitted that, in addition, the respondent had produced various other documents Exhibit C-15 to C-40 to show that he was in the employment of the appellant. He further argued that since the attendance record or the wage slips/ B register etc. are maintained by the employer and remained in its custody, it was not possible for the respondent to produce those documents and in these circumstances the Labour Court rightly drew adverse inference against the appellant in not producing the original of the documents.

C 14. We have considered the aforesaid submissions. From the award of the CGIT, as upheld by the High Court, it is clear that the CGIT has given the award after arriving at the following findings:

D a. It is held that the respondent herein directly worked under the appellant and was not a contract employee.

b. It is also held that the respondent had worked for almost 15 years i.e. 17.1987 to 27th April 2002.

E c. He worked in the capacity as a Lineman on daily wage basis.

d. On 17.11.2011, while repairing the fault of a telephone, the respondent suffered an electric shock because of which he F sustained injuries and was admitted in a hospital. At that time officers of the appellant had not only shown sympathy with him but got him admitted in the hospital and helped him in receiving the medical treatment.

e. Services of the respondent were terminated by the G appellant w.e.f. 28th April 2002. Since the respondent had worked for more than 240 days in the preceding year from the date of his termination, and before terminating his services, no notice or one month salary in lieu thereof and retrenchment compensation was paid to the respondent, such a termination H was illegal and void.

f. On the aforesaid findings, award of reinstatement with back wages given in favour of the respondent. A

15. It is apparent that the aforesaid findings are findings of fact. Such findings are not to be interfered with by the High Court under Article 226 of the Constitution or by this Court under Article 136 of the Constitution. Interference is permissible only in case these findings are totally perverse or based on no evidence. Insufficiency of evidence cannot be a ground to interdict these findings as it is not the function of this court to reappreciate the evidence. It was because of this reason that learned counsel for the appellant made frontal attack on the findings of the courts below endeavoured to demonstrate that there was perversity in the fact finding by the CGIT which was glossed over by the High Court as well. B C

16. We start with the discussion as to whether the respondent was the employee of the appellant or he was a contract employee. One thing is clear namely the respondent had worked for the appellant. It becomes apparent from the diaries produced by the respondent. These diaries are perused and examined by the CGIT on the basis of which it is observed that the diaries were maintained in an ordinary course of business and were genuine. There is no reason to disbelieve these diaries and argument of the learned counsel for the appellant that these are self serving documents does not cut any ice. It is a matter of common knowledge that the period in question was a period when frequent disruption in the functioning of the telephones was a normal feature and the Telephone Department used to receive numerous such complaints. Linemen were deputed to visit the places where the telephones have gone out of order to attend those complaints. There was a practice of giving one lineman various telephone numbers which he was supposed to attend. (Though all that has changed because of advancement in technology resulting in drastic reduction in such complaints and most of the complaints can even be rectified sitting in the exchange D E F G H

A itself with the aid of computers). The respondent had maintained the diaries where he noted down those numbers, and attended the same on day to day basis. Diaries for the last 2 years i.e. 2001 and 2002 have been produced. These diaries prove that the respondent had been doing the work for the appellant and
B that too as a lineman.

17. The next question is as to whether he did this work as a contract employee or was employed by the appellant directly. Once, we come to the conclusion that the respondent had been doing the work of the appellant, it was for the appellant to prove
C as to who was the contractor to whom the work was awarded and that contractor had recruited the respondent. No such evidence is produced by the appellant. Moreover, the appellant has itself accepted the fact that the work of a lineman was not given on contract basis. We, thus, find that there is no perversity
D in the finding of the CGIT, as upheld by the High Court, that the respondent had worked with the appellant on daily wage basis. It would also be pertinent to mention that the respondent produced documents proving that he met with an accident on 17.11.2001 while repairing the fault of telephone No.65033. For
E repairing the said telephone it had to climb a pole where electricity wires with 11000 electric volts was hanging as this telephone was installed in a factory. Due to this reason he got the electric shock. He was admitted in the hospital by JTO Dilbagh Singh, posted at SDO group Saidpur and another
F officer of the appellant viz. Naresh Malik got him admitted in Randhir Nursing Home at Kharkhoda on 17.11.2001. When he was shifted to Dr. Sethi Hospital, Mr. Jatinder Kumar SDO Group Sonepat visited there. He was referred to Medical Hospital, Rohtak on 19.11.2001. More pertinently he was shown
G as a Government employee and all these record to this effect in the form of Ex. C-5 to C-8 has also been produced. All this evidence shows that when the respondent suffered the electric shock, officers of the appellant came to the spot of occurrence and ensured his medical treatment. This would not have

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happened if the respondent was not in the employment of the appellant. A

18. There may be some dispute as to whether respondent in fact worked for 15 years. The appellant may be correct that observations of the learned Single Judge in this behalf, namely, it was an undisputed fact that, are incorrect. However, nothing turns on this as the outcome is not dependent on this aspect. Fact remains that the respondent had produced some other documents show that he had been working for quite some time. He had categorically asserted that he worked from July 1987. The case of the appellant before the CGIT was not that the respondent did not work for 15 years but worked for lesser period. On the contrary, the stand of the appellant was that of complete denial, namely that respondent never worked with the appellant at all. Once, that stand is proved to be false, there is no reason to interfere with the findings of the CGIT. In any case, the award is passed on the basis that the respondent had worked for 240 days in preceding 12 months period prior to his termination and therefore it is a clear case of violation of Section 25-F of the Industrial Disputes Act. The termination is, thus, rightly held to be illegal. We do not find any perversity in this outcome. B C D E

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

20. The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In the case of *BSNL vs. Man Singh*[1], 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 the case of *Incharge Officer & Anr. vs. Shankar* G

1. (2012) 1 SCC 558.
2. (2010) 9 SCC 126. H

A *Shetty* [2], 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 2-3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement. In this judgment of
B Shankar Shetty (supra), this trend was reiterated by referring to various judgments, as is clear from the following discussion.

> "Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25-F of the Industrial
C 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.
>
> In *Jagbir Singh v. Haryana State Agriculture*
D *Mktg. Board*[3], *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*[4], *Uttaranchal Forest Development Corpn. V. M.C. Joshi*[5], *State of M.P. v. Lalit Kumar*
E *Verma*[6], *M.P.Admn v.Tribhuban*[7], *Sita Ram v.Moti Lal Nehru Farmers Training Institute*[8], *Jaipur Development Authority v. Ramsahai*[9], *GDA v. Ashok Kumar*[10] *and Mahboob Deepak v.Nagar Panchyat, Gajraula*[11] and stated as follows: (Jagbir Singh case, SCC pp.330 & 335
F paras 7 & 14)

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3. (2009) 15 SCC 327.
4. (2006) 1 SCC 479.
5. (2007) 9 SCC 353.
G 6. (2007) 1 SCC 575.
7. (2007) 9 SCC 748.
8. (2008) 5 SCC 75.
9. (2006) 11 SCC 684.
10. (2008) 4 SCC 575.
H 11. (2008) 1 SCC 575.

"It is true that the earlier view of this Court articulated in many decision 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.

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, 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."

Jagbir Singh has been applied very recently in Telegraph Deptt. V. Santosh Kumar Seal[12], wherein this Court stated: (SCC p.777, para 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."

12. (2010) 6 SCC 773.

A 21. In the case of *Telecom District Manager v. Keshab Deb*[13] the Court emphasized that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one months' pay in lieu of one month's notice and wages of 15 days of each B completed year of service as envisaged under Section 25-F of the Industrial Disputes Act. He could not have been directed to be regularized in service or granted /given a temporary status. Such a scheme has been held to be unconstitutional by this Court in *A.Umarani v. Registrar, Coop.Societies*[14] and C *Secy.,State of Karnataka v. Umadevi*[15].

22. It was further submitted by the learned counsel for the appellant that likewise, even when reinstatement was ordered, it does not automatically follow full back wages should be directed to be paid to the workman. He drew our attention of D this Court in the case of *Coal India Ltd. Vs. Ananta Saha*[16] and *Metropolitan Transport Corporation v. V.Venkatesan*[17].

23. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back E 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 malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of F termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should

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13. (2008) 8 SCC 402.

14. (2004) 7 SCC 112.

15. (2006) 4 SCC 1.

16. (2011) 5 SCC 142.

H 17. (2009) 9 SCC 601.

be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious. A

24. 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 regularization (See: *State of Karnataka vs. Uma Devi* (2006) 4 SCC 1). Thus when he cannot claim regularization 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. B C D E

25. 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 wee 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. F G H

A 26. Applying the aforesaid principles, let us discuss the present case. We find that the respondent was working as a daily wager. Moreover, the termination took place more than 11 years ago. No doubt, as per the respondent he had worked for 15 years. However, the fact remains that no direct evidence B for working 15 years has been furnished by the respondent and most of his documents are relatable to two years i.e. 2001 and 2002. Therefore, this fact becomes relevant when it comes to giving the relief. Judicial notice can also be taken of the fact that the need of lineman in the telephone department is C drastically reduced after the advancement of technology. For all these reasons, we are of the view that ends of justice would be met by granting compensation in lieu of reinstatement. In Man Singh (supra) which was also a case of BSNL, this Court had granted compensation of Rs.2 Lakh to each of the D workmen when they had worked for merely 240 days. Since the respondent herein worked for longer period, we are of the view that he should be paid a compensation of Rs. 3 lakhs. This compensation should be paid within 2 months failing which the respondent shall also be entitled to interest at the rate of 12% per annum from the date of this judgment. Award of the CGIT E is modified to this extent. The appeal is disposed of in the above terms. The respondent shall also be entitled to the cost of Rs.15,000/-(Rupees Fifteen Thousand only) in this appeal.

Kalpana K. Tripathy Appeal disposed of