(2012) 05 DEL CK 0666

Delhi High Court

Case No: Writ Petition (C) 13123 of 2006

M/s D.S.I.I.D.C.	APPELLANT
Vs	
Pravin Kumar Sharma	RESPONDENT

Date of Decision: May 25, 2012

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (2012) 5 AD 382 : (2012) 190 DLT 321 : (2012) 4 LLJ 601 : (2012) LLR 718

Hon'ble Judges: P.K. Bhasin, J

Bench: Single Bench

Advocate: Anusuya Salwan, Ms. Renuka Arora, Mr. Kunal Kohli and Ms. Rashmi Bedi, for the Appellant; Sudhir Nandrajog, with Mr. Madav Khurana and Mr. Amit Sharma, for the Respondent

Judgement

P.K. Bhasin, J.

By way of this writ petition the petitioner-Company, M/s Delhi State Industrial & Infrastructure Development Corporation Ltd., had challenged the award dated 22-02-2006 in ID Case No. 124/2001 whereby the relief of re-instatement in service with back wages was granted to the respondent-workman by the Labour Court. The respondent-workman was employed as an electrician on muster roll with the petitioner-management on 19.11.98 till his services were terminated w.e.f. 17.11.2000. He had then approached the competent authorities for his re-instatement in service but since he could not get that relief the dispute between him and the petitioner was referred for adjudication to the Labour Court vide Reference order dated 14th August, 2001 with the following term of reference:-

Whether the services of Sh. Pravin Kr. Sharma S/o Sh. Harsavarup Sharma have been terminated illegally and/or unjustifiably by the management, and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/Govt. Notifications and to what other relief is he entitled and what directions

are necessary in this respect

2. The respondent-workman had filed his statement of claim whereby he claimed the termination of his services to be illegal as there was violation of the provision of Section 25-F of Industrial Disputes Act by the petitioner. The petitioner-management had filed its written statement denying the allegations of illegal termination of the services of the respondent and pleaded that he was appointed as a casual labour on daily wages for a specific project and had accordingly been disengaged on completion of the project. It was thus claimed that the termination of the services of the petitioner was legal and there was no need of complying the Section 25-F of Industrial Disputes Act.

3. Following issues were framed by the Labour Court for trial:-

(1) Whether the workman was employed for a specific project and his services came to an end "after that"

(2) As per terms of reference

4. The Labour Court vide its award under challenge came to the conclusion that the termination of the services of the respondent-workman was illegal and reliefs of reinstatement in service and back wages were accordingly granted to him.

5. The petitioner-management felt aggrieved by the award of the Labour Court granting the relief of reinstatement and back wages to the respondent-workman and thus filed this writ petition.

6. Ms. Anusuya Salwan, the learned counsel for the petitioner-management contended that the award of the Labour Court is not at all sustainable to the extent the relief of re-instatement in service with back wages has been granted even though the findings regarding the validity of termination of services also are not sustainable. It was also argued that the impugned award suffers from perversity as the legal position regarding grant of back wages and re-instatement is now different from what was there more than a decade back and the recent trend of judicial pronouncements of the Apex Court is to award only monetary compensation to the successful workmen when the termination of their services by their employer is found by the industrial adjudicators to be illegal because of non-compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947 and since that has not been done by the Labour Court in the present case there is a justified reason for this Court to interfere with its award and to support these submissions various judgments of the Apex Court were cited.

7. On the other hand, Mr. Sudhir Nandrajog, learned senior counsel for the respondent-workman argued that the impugned award does not suffer from any perversity as the legal position regarding grant of back wages and re-instatement is still the same as it used to be always and the recent trend of judicial pronouncements of the Apex Court is not to the effect that reinstatement and back

wages are never to be awarded to the successful workmen when the termination of their services by their employer is found by the industrial adjudicators to be illegal because of non-compliance of the provisions of Section 25 - F of the Industrial Disputes Act,1947 and since that is what has been done by the Labour Court in the present case there is no reason for this Court to interfere with its award. In support of his submissions Mr. Nandrajog also cited some judgments.

8. Before proceeding further it should be mentioned here that even though in the writ petition challenge were made to the conclusion of the Labour Court that it was a case of illegal retrenchment on the ground that respondent having been appointed for a particular project and that project having come to end the services of the respondent-workman had come to an end automatically but the learned counsel for the petitioner-management could not seriously pursue this point before me as no document was proved in the Labour Court to prove the same. So, I do not find any infirmity in the findings of the Labour Court that this is a case of retrenchment of the workman and that too illegal retrenchment as undisputedly, Section 25-F of the Industrial Disputes Act was not complied with. However, it was strongly argued that reinstatement of the respondent-workman with full back wages was not at all justified in view of the recent trend of the Hon''ble Supreme Court on this aspect of reliefs given to the daily wagers.

9. Since it was argued from the side of the respondent-workman that there is no departure from the legal position which had been laid down by the Apex Court in the sixties and the same position continues today also while from the side of the petitioner-management it was argued by its counsel that there has been considerable change in the views of the Supreme Court during the the last decade I deem it appropriate to notice various judgments from the sixties onwards till date on the question of grant of relief of re-instatement with back wages to successful workman by the industrial Courts.

10. Let me start with one judgment given in the sixties by a three Judge Bench of the Apex Court. In " Swadesamitran Limited, Madras Vs. Their Workmen, it was held as under:-

13. That leaves two minor questions which were formulated for our decision by the learned Attorney-General. He contended that, even if the impugned retrenchment of the 15 workmen in question was not justified, reinstatement should not have been directed; some compensation instead should have been ordered; and in the alternative he argued that the order directing compensation to the remaining 24 retrenched workmen was also not justified. We do not see any substance in either of these two contentions. Once it is found that retrenchment is unjustified and improper it is for the tribunals below to consider to what relief the retrenchment workmen are entitled. Ordinarily, if a workman has been improperly and illegally retrenched he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workmen would not necessarily defeat the claim for

reinstatement of the retrenched workmen; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This court has consistently held that in the case of wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed...

(emphasis laid)

11. Sixteen years thereafter, in Hindustan Steel Ltd. Vs. The Presiding Officer, Labour Court, Orissa and Others, , also the question of grant of back wages to an industrial workman after the termination of his services is found to be illegal and invalid had come up for consideration and was dealt with and decided by another three Judge Bench of the Apex Court in the following para of its judgment:-

8. Another point made on behalf of the appellant was that the Presiding Officer of the Labour Court was wrong in awarding full back wages to the respondents without satisfying himself that they had been unemployed after they were released from service by the appellant and, further, that they had taken all reasonable steps to mitigate their losses consequent on their retrenchment. The Labour Court has found that it had not been proved that the respondents had any alternative employment. In the writ petition filed by the appellant in the High Court, the finding that the respondents had no alternative employment was not challenged. From the judgment of the High Court it appears that the submission on the propriety of awarding full back wages to the respondents was confined to the ground that the respondents had not proved that they had tried to mitigate their losses during the period of unemployment. In the SLP also what has been urged is that the High Court should have held that the respondents were not entitled to full back wages unless they succeeded in proving that they tried to secure alternative employment but failed. The Labour Court awarded full back wages to the respondents on the finding that they had been illegally retrenched. It does not appear that the question of mitigation of loss for deprivation of employment had at all been raised before the Labour Court. The High Court therefore refrained from exercising its "discretionary jurisdiction in favour of the employer" and proposed not to "deprive the workmen of the benefit they had been found entitled to by the Presiding Officer". That the respondents were unemployed cannot now be disputed. In these circumstances the High Court was justified, in our opinion, in refusing to interfere on this interfere on this point.
(underlining is mine)

12. Three years later the same question again came up before the Apex Court in the case of " Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, (which was again a three Judge Bench judgment). The relevant portions from this decision are also re-produced below:-

4. The question whether the workmen who were retrenched were entitled to the relief of reinstatement is no more open to challenge. In other words, it would mean that the retrenchment of workmen was invalid for the reasons found by the Labour Court and the workmen were entitled to the relief of reinstatement effective from the day on which they were sought to be retrenched. The workmen were sought to be retrenched from 1st August, 1974 and the Labour Court has directed their reinstatement effective from that date. The Labour Court has also awarded full back wages to the workmen on its finding that the retrenchment was not bona fide...

7. The question in controversy which fairly often is raised in this Court is whether even where reinstatement is found to be an appropriate relief, what should be the guiding considerations for awarding full or partial back wages. This question is neither new nor raised for the first time. It crops up every time when the workman questions the validity and legality of termination of his service howsoever brought about, to wit, by dismissal, removal, discharge or retrenchment, and the relief of reinstatement is granted. As a necessary corollary the question immediately is raised as to whether the workman should be awarded full back wages or some sacrifice is expected of him.

8. Let us steer clear of one controversy whether where termination of service is found to be invalid, reinstatement as a matter of course should be awarded or compensation would be an adequate relief...

11. In the very nature of things there cannot be a straight jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstance...

12. If the normal rule in a case like this is to award full back wages, the burden will be on the appellant employer to establish circumstances which would permit a departure from the normal rule...

(emphasis laid)

13. Now I come to the views of the Supreme Court in eighties. In the case of " Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, it was held by the three Judge Bench as follows:-

6....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 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-a-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 would 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.

(emphasis supplied)

14. Now I come to those judgments of the Supreme Court, which according to the learned counsel for the management, have brought about the change in the trend from the year 2000 onwards. In " Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, it was held by the Supreme Court as follows:-

13. From the award passed by the Industrial Tribunal which has been confirmed by the Division Bench of the High Court it is clear that the order for payment of full back wages to the workman was passed without any discussion and without stating any reason. It appears that the Tribunal and the Division Bench had proceeded on the footing that since the order of dismissal passed by the Management was set aside, the order of reinstatement with full back wages was to follow as a matter of course.

15. The Court, on taking into account the financial position of the employer-Company, thought it fit to modify the award by allowing 75% of the back wages instead of full back wages.

16. In P.G.I. of M.E. and Research, Chandigarh Vs. Raj Kumar, this Court found fault with the High Court in setting aside the award of the Labour Court which restricted the back wages to 60% and directing payment of full back wages. It was observed thus:

The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect.

17. Again at paragraph 12, this Court observed:

"Payment of back wages having a discretionary element involved in it has to be delta with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety."

18. As already noted, there was no application of mind to the question of back wages by the Labour Court. There was no pleading or evidence whatsoever on the whether the respondent was employed elsewhere during this long interregnum. Instead of remitting the matter to the Labour Court or High Court for fresh consideration at this distance of time, we feel that the issue relating to payment of back wages should be settled finally. On consideration of the entire matter in the light of the observation referred to supra in the matter of awarding back wages, we are of the view that in the context of the facts of this particular case including the vicissitudes of long drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement...

15. Then in "General Manager, Haryana Roadways vs Rudhan Singh", 2005 Judgments Today (6) 137 it was held by the Supreme Court as under:-

13. The residual question relates to direction for back wages.

15. When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard.

16. In "Kendriya Vidyalaya Sanghathan vs S.C. Sharma", 2005 Judgments Today (1) 336 (which was a case of daily wager) it was held as under:-

7. In our opinion certain factors, which are relevant for forming an opinion regarding award of back wages, have been completely ignored and, therefore, the award on this point is vitiated. The list of dates given in the Special Leave Petition, which have not been controverted, show that though according to the own case of the respondent his services had been terminated on 18.2.1989, yet he served a demand notice, praying for reinstatement in service after two and half years on 24.8.1991. The State Government made reference to the Industrial Tribunal-cum-Labour Court in the year 1997, which means eight years after the termination of service. Normally, a reference should not be made after lapse of a long period. A labour dispute should be resolved expeditiously and there is no justification for the State Government to sleep over the matter and make a reference after a long period of time at its sweet will. It causes prejudice both to the workman and also to the employer. It is not possible for an employer to retain all the documents for a long period and then to produce evidence, whether oral or documentary, after years as the officers, who may have dealt with the matter, might have left the establishment on account of superannuation or any other reason. The

employer is not at fault if the reference is not made expeditiously by the State Government, but it is saddled with an award directing payment of back wages without having taken any work from the concerned workman. The plight of the workman who is thrown out of employment is equally bad as it is a question of survival for his family and he should not be left in a state of uncertainty for a long period.

8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e., whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period, i.e., from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year.
9... A person appointed on daily wage basis gets wages only for days on which he has performed work.

11. In the case in hand the respondent had worked for a very short period with the appellant, which was less than one year. Even during this period there were breaks in service and he had been given short term appointments on daily wage basis in different capacities. The respondent is not a technically trained person, but was working on a class IV post. According to the finding of the Industrial Tribunal-cum-Labour Court plenty of work of the same nature, which the respondent was doing, was available in the District of Rohtak. In such circumstances we are of the opinion that the respondent is not entitled to payment of any back wages...

(emphasis supplied)

17. In "Sonepat Cooperative Sugar Mills Ltd. v. Rakesh Kumar"; JT 2005 (10) SC 6299 the concerned workman was a daily wager and since had put in 240 days service he was awarded re-instatement in service by the Labour Court and that award was upheld by the Apex Court. Relevant observations are as under:-

6. The contention of the appellant that the respondent was appointed for a specific period, namely, 1.7.1998 to 31.8.1999 and the termination of his service is on account of non-renewal of contract of employment is not borne out either by the pleadings or the evidence... From the evidence led before the Labour Court, the finding recorded by the Labour Court that the respondent was employed on daily wage basis and had worked for more than 240 days during the period of 12 months before the date of termination, did not call for interference. The appellant had examined one Randhir Singh, Time Keeper as MW-2 who had produced the Attendance Register for the period 1.7.1998 to 31.8.1999 and specifically admitted that as per the Attendance Register, the respondent had worked continuously between the said period and further admitted that the respondent had worked for more than 240 days in a period of one year prior to respondent''s termination. In view of it there was a clear violation of Section 25F and we find no error in the direction for reinstatement.

18. In Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. and Others, , it was held by the Apex Court:-

8. It was furthermore urged that in any event, the said Respondents having been appointed only on an adhoc basis and not in terms of the provisions of the said Adhiniyam and the rules framed thereunder, had no legal right to continue in service. Moreover, they having been appointed on daily wages, their disengagement from services cannot be construed to be ''retrenchment'' under the provisions of the U.P. Industrial Disputes Act.

9. The High Court, however, did not go into the aforementioned questions at all. The High Court dismissed the said writ petition only on the premise that the workmen having completed 240 days of continuous service and as they had been reinstated in service pursuant to the interim order passed by the High Court, it would not be appropriate to displace the workmen from employment and to offer other reliefs, particularly, when a relief of reinstatement can be granted for violation of the provisions of Section 6-N of the Act in view of the decision of this Court in Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, However, they were directed to be paid 50% of the backwages.

10. The learned Counsel appearing on behalf of the Appellant would contend that having regard to the nature of appointment, the impugned award could not have been passed. The learned Counsel appearing on behalf of the Respondent, on the other hand, would support the impugned award.

11. This is one of those cases which clearly depict as to how the officers of the local-self government at their own whims and caprice have been making appointments without following the procedures laid down under the Adhiniyam. The Administrator of a Municipal Corporation is a public servant. He was bound to follow the provisions of the Adhiniyam and the Rules. It is surprising how the Respondents could be appointed even prior to creation of the temporary posts by the State... Evidently, the provisions of the Apprentice Act, 1961 have also not been followed...

12. This Court in a large number of decisions has expressed its concern on how and in what manner appointments on daily basis or by way of ad hoc arrangement are made in flagrant violations of constitutional provisions enshrined under Articles 14 and 16 of the Constitution of India and/ or the statutory recruitment rules. This Court has also been noticing that the State or the public sector undertakings or the local self governments themselves are making all endeavours to regularise the services of such employees who have entered the services through the backdoor. The Industrial Tribunals, in some cases the High Courts also, had been generous enough to direct regularisation for the services of such workmen without proper application of mind.

13. Recently, a Constitution Bench of this Court has held that such appointments being contrary to the provisions of Articles 14 and 16 of the Constitution of India are illegal. [See Secretary, State of Karnataka and Others Vs. Umadevi and Others,

14. .... It is unfortunate that the writ petition filed in the year 1989 has been disposed of in 2004 but the Appellants cannot be blamed therefor...

15. In our opinion, the High Court did not adopt a correct approach in the matter. Non-compliance of the provisions of Section 6-N of the U.P. Industrial Disputes Act, although, may lead to the grant of a relief of reinstatement with full backwages and continuity of service in favour of the retrenched workmen, the same would not mean that such a relief is to be granted automatically or as a matter of course.

16. The Labour Court in its award did not take into consideration the relevant facts for exercise of its discretion in granting the relief. It is now well-settled, by reason of a catena of decisions of this Court, that only because the Labour Court may grant the relief of reinstatement with full backwages, the same should be granted as a matter of course. The Appellant herein has clearly stated that the appointments of the Respondents have been made in violation of the provisions of the Adhiniyam. An appointment made in violation of the provisions of Adhiniyam is void. The same, however, although would not mean that the provisions of the Industrial Disputes Act are not required to be taken into consideration for the purpose of determination of the question as to whether the termination of workmen from services is legal or not but the same should have to be considered to be an important factor in the matter of grant of relief. The Municipal Corporation deals with public money.

Appointments of the Respondents were made for carrying out the work of assessment. Such assessments are done periodically. Their services, thus, should not have been directed to be continued despite the requirements therefore having come to an end. It is, therefore, in our considered view, not a case where the relief of reinstatement should have been granted.

(underlining is mine)

19. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, which was a case of termination of the services of a daily wager who had worked from 01.09.1995 to 18.07.1996 and in which judgment the Supreme Court took note of its various judgments rendered after 2000 and held as follows:-

7. It is true that 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 long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

8. In U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, , the question for consideration before this Court was whether direction to pay back wages consequent upon a declaration that a workman has been retrenched in violation of the provisions of the Section 6N of the U.P. Industrial Disputes Act, 1947 (equivalent to Section 25F of `the Act, 1947'') as a rule was proper exercise of discretion. This Court considered a large number of cases and observed thus:

41. The Industrial Courts while adjudicating on disputes between the management and the workmen, therefore, must take such decisions which would be in consonance with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically. Rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law.

42. A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance.

45. The Court, therefore, emphasised that while granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages, therefore, cannot be the natural consequence.

9. This Court in the case of Uttaranchal Forest Development Corporation Vs. M.C. Joshi, held that relief of reinstatement with full back wages were not being granted automatically only because it would be lawful to do so and several factors have to be considered, few of them being as to whether appointment of the workman had been made in terms of statute/rules and the delay in raising the industrial dispute. This Court granted compensation instead of reinstatement although there was violation of Section 6N of the U.P. Industrial Disputes Act, 1947 (equivalent to Section 25F) of the Act, 1947. This is what this Court said:

9. Although according to the learned Counsel appearing on behalf of the appellant the Labour Court and the High Court committed an error in arriving at a finding that in terminating the services of the respondent, the provisions of Section 6N of the U.P. Industrial Disputes Act were contravened, we will proceed on the basis that the said finding is correct. The question, however, would be as to whether in a situation of this nature, relief of reinstatement in services should have been granted. It is now well settled by reason of a catena of decisions of this Court that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration, one of them being as to whether such an appointment had been made in terms of the statutory rules. Delay in raising an industrial dispute is also a relevant fact.

10. In the case of State of M.P. and Others Vs. Lalit Kumar Verma, , this Court substituted the award of reinstatement by compensation.

11. In yet another decision in the case of Madhya Pradesh Administration Vs. Tribhuban, this Court reversed the High Court''s order directing reinstatement with full back wages and instead awarded compensation. It was opined:

12. In this case, the Industrial Court exercised its discretionary jurisdiction u/s 11A of the Industrial Disputes Act. It merely directed the amount of compensation to which the respondent was entitled had the provisions of Section 25F been complied with should be sufficient to meet the ends of justice. We are not suggesting that the High Court could not interfere with the said order, but the discretionary jurisdiction exercised by the Industrial Court, in our opinion, should have been taken into consideration for determination of the question as to what relief should be granted in the peculiar facts and circumstances of this case. Each case is required to be dealt with in the fact situation obtaining therein.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefore were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.

24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice...

13. In Ghaziabad Development Authority and Another Vs. Ashok Kumar and Another, , this Court again considered the question whether the Labour Court was justified in awarding the relief of reinstatement with full back wages in favour of the workman and held:

18. The first respondent was admittedly appointed on a daily wage of Rs. 17 per day. He worked for a bit more than two years... If there did not exist any post, in our opinion, the Labour Court should not have directed reinstatement of the first respondent in service.

19. A statutory authority is obligated to make recruitments only upon compliance with the equality clause contained in Articles 14 and 16 of the Constitution of India. Any appointment in violation of the said constitutional scheme as also the statutory recruitment rules, if any, would be void. These facts were required to be kept in mind by the Labour Court before passing an award of reinstatement.

21. We are, therefore, of the opinion that the appellant should be directed to pay compensation to the first respondent in stead and in place of the relief of reinstatement in service.

14. In Mahboob Deepak Vs. Nagar Panchayat Gajraula and Another, it was observed:

6. Such termination of service, having regard to the fact that he had completed 240 days of work during a period of 12 months preceding the said date, required compliance with the provisions of Section 6N of the U.P. Industrial Disputes Act. An order of retrenchment passed in violation of the said provision although can be set aside but as has been noticed by this Court in a large number of decisions, an award of reinstatement should not, however, be automatically passed.

7. The factors which are relevant for determining the same, inter alia, are:

(i) whether in making the appointment, the statutory rules, if any, had been complied with;

(ii) the period he had worked;

(iii) whether there existed any vacancy; and

(iv) whether he obtained some other employment on the date of termination or passing of the award.

8. The respondent is a local authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a local authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional

scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularised.

13. In this view of the matter, we are of the opinion that as the appellant had worked only for a short period, the interest of justice will be subserved if the High Court''s judgment is modified by directing payment of a sum of Rs 50,000 (Rupees fifty thousand only) by way of damages to the appellant by the

respondent...

15. It would be, thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed... This Court has distinguished between a daily wager who does not hold a post and a permanent employee...

(emphasis laid)

20. The crux of these decisions of the Supreme Court is that the reliefs of reinstatement and back wages should not be granted by the Courts mechanically after holding the termination of services of the concerned workmen to be illegal. It is however significant to notice, and as was rightly pointed out even by the learned counsel for the petitioner also, that as far as daily wagers are concerned the Supreme Court is now taking the view that they should not be re-instated and instead monetary compensation should be awarded to them in lieu of reinstatement and back wages and particularly where their engagement was not as per relevant rules of public sector undertakings. In some cases the Supreme Court had not interfered with the awards of the labour Courts giving reinstatement and some back wages to daily wagers but that was so because the employers had not taken the plea in those cases that the engagement of daily wagers was not as per the rules. In the present case that plea had been taken by the petitioner-management.

21. In the present case the respondent-workman was a daily wager and had worked for two years with the petitioner but his services had been terminated without complying with the mandatory provisions of Section 25F of the Industrial Disputes Act so, he deserved some relief admittedly but not that of reinstatement and back wages because his initial engagement was not made through regular selection process. Thus, keeping in mind the decisions of the Apex Court delivered in cases of daily wagers only a lump sum compensation should have been awarded to him by

the Labour Court. This writ petition is, therefore, allowed to the extent a monetary compensation of Rs. 50,000 is awarded to the respondent-workman in lieu of the relief of reinstatement in service with back wages awarded to him by the Labour Court. To that extent the award of the Labour Court would stand modified and this writ petition stands disposed of accordingly.