

1 WPS 8715/16 & 192/17

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR.

(SB: SHEEL NAGU, J)

(Writ Petition 8715/2016)

Arun Kumar Dixit

Vs.

Scindia Kanya Vidhyalay & another

Connected with

(Writ Petition 192/2017)

Scindia Kanya Vidhyalay & another

Vs.

Arun Kumar Dixit

Shri Nirmal Sharma, Advocate for the petitioner in W.P.No. 8715/16 and for respondent in W.P.No. 192/17.

Shri Ankur Mody, Advocate for respondent in W.P.No. 8715/16 and for petitioner in W.P.No. 192/17.

WHETHER REPORTABLE : Yes ☐ No ☐

Law Laid Down:

The Decision of **Hindustan Tin Works (P) Ltd. Vs. Employees of M/s Hindustan Tin Works Pvt. Ltd. & others (AIR 1979 SC 75)** relates to the issue of entitlement of back wages when termination is held to be illegal but does not relate to the issue of adoption of alternative course of compensation in lieu of reinstatement with or without back wages which issue is governed by a different set of decisions of the Apex Court in **U.P. State of Brassware Corpn. Ltd. & another Vs. Uday Narain Pandey (2006) 1 SCC 479, State of M.P. & others Vs. Lalit Kumar Verma (2007) 1 SCC 575, Sita Ram & others Vs. Motilal Nehru Farmers Training Institute (2008) 5 SCC 75 & Tapash Kumar Paul Vs. BSNL & another (AIR 2015 SC 357).**

Significant Paragraph Numbers: Paras 4, 6, 6.1, 6.2, 6.3 & 7.

O r d e r
(Passed on 28 /2/2019)

SHEEL NAGU, J. -

1. The factual matrix and question of law involved being common in both the said WPs., they have been heard analogously and are being disposed by the present common order.
2. W.P.8715/16 filed earlier in point of time is by the workman while W.P 192/17 is by the employer, both assailing the same award of the Labour Court No.1-Gwalior passed on 22/10/2016 in COC 58/A/ID Act/2012 (Ref.) whereby while answering the dispute referred by the appropriate government as regards legality and validity of termination of service of workman on 27/3/2012 by the employer, the Labour Court has adopted the alternative course of granting compensation to the tune of Rs. Two Lakhs to the workman, after rendering the following findings:-

- (1) The retrenchment compensation as per Sec. 25-F (b) of the Industrial Disputes Act, 1947 (for brevity the 1947 Act) has though been paid but with delay, i.e., after 6 days of the termination and therefore termination cannot be treated as unlawful retrenchment in real sense.
- (2) Since there is no unlawful retrenchment in it's real sense as aforesaid, the workman is not entitled to reinstatement.
- (3) Thus, instead of reinstatement, the

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workman is entitled to compensation to the tune of Rs. Two lakhs.

(4) In view of the subsequent event of arrest of workman on 9/9/2014 in regard to offence registered against him qua an incident of workman using abusive language against one of the teachers working with the employer, the employer has lost confidence in the workman.

(5) The work discharged by workman prior to his termination is no more available since the post of Estate Officer has since been abolished.

3. Before adverting to the factual scenario it would be apt to deal with the seminal question involved herein which is to the following effect:-

“(A) Whether the verdict in **Hindustan Tin Works (P) Ltd. Vs. Employees of M/s Hindustan Tin Works Pvt. Ltd. & others** in **AIR 1979 SC 75** decides the issue of justifiably of grant of compensation in lieu of reinstatement and back wages, or not ?.

(B) If the answer to the aforesaid is yes, then are the subsequent decisions of Apex Court of lesser bench strength in **Jagbir Singh Vs. Haryana State Agriculture Marketing Board & another (2009) 15 SCC 327** and **Senior Superintendent Telegraph (Traffic), Bhopal**

Vs. Santosh Kumar Seal and others (2010)

6 SCC 773 laying down law regarding compensation in lieu of reinstatement and back wages lose their precedential strength for being per incurium **Hindustan Tin Works (P) Ltd. (supra) ?.**

(c) If the answer is no, whether the Division Bench decision in case of **Nagar Palika Parishad Banmore & others Vs. Mohammad Shakil** dated 2/4/2018 in W.A.60/18 loses its precedential value for being per incurium **Hindustan Tin Works (P) Ltd. (supra) ?.**

3.1 This court has to first decipher whether the ratio laid down by the Apex court in **Hindustan Tin Works (P) Ltd.** would apply to the prevailing fact situation of award of compensation in lieu of reinstatement with or without back wages.

3.2 The facts before the Apex court in **Hindustan Tin Works (P) Ltd. (supra)** were that in respect of termination of a few workmen, the Labour court found their termination to be unlawful and directed reinstatement with full back wages. When the matter reached the Apex Court on behest of the employer, the Apex Court limited the challenge before it by granting leave to appeal to the employer only in respect of question of grant of full back wages.

3.3 Thus, the sole question before the Apex Court in **Hindustan Tin Works (P) Ltd.** was whether in the given facts and circumstances where termination was held to be unlawful retrenchment, the workmen are entitled to full back wages or part thereof, which is vivid from following extracted para of the said judgment :-

Para 1. *This appeal by special leave, limited to the question of grant of back wages, raises a very humane problem in the field of industrial jurisprudence, namely, where termination of service either by dismissal, discharge or even retrenchment is held invalid and the relief of reinstatement with continuity of service is awarded what ought to be the criterion for grant of compensation to the extent of full wages or a Part of it ?*

Pausing here for a moment, the use of expression "compensation" by Apex Court in para 1 (supra) of verdict in **Hindustan Tin Works (P) Ltd.**, is synonymous to back wages, which is further evident from the underlined portion of extracted paras 3,5 & 8 of the said judgment infra. Thus, the expression "compensation" was not meant by Apex Court to mean the concept of compensation in lieu of reinstatement with or without back wages. Relevant paras 3,5 & 8 of the said judgment are reproduced below for ready reference and convenience:-

Para 3.When

the special` leave petition came up for admission Court rejected the special leave petition with regard to the relief of reinstatement but limited the leave to the grant of full back wages.

Para 5. *Mr. Pai, learned counsel for the appellant in his attempt to persuade us to give something less than full back wages,*
.....

Para 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. That question does not arise in this. appeal. Here the relief of reinstatement has been granted and the award has been implemented and the retrenched workmen have been reinstated in service. The only limited question is whether the Labour Court in the facts and circumstances of this case was justified in awarding full back wages. "*

3.4 From the aforesaid extracts of judgment in **Hindustan Tin Works (P) Ltd.** (supra) it is clear as noon day that controversy before the Apex Court was whether the workmen were entitled to full back wages or not when the termination is held to be illegal and reinstatement is ordered.

3.5 The reading of the Apex court judgment nowhere discloses that the Apex Court was faced with the question whether

alternative course of pecuniary compensation can be adopted in lieu of reinstatement and back wages which ordinarily is the fall out of termination declared as unlawful retrenchment. The Apex court purely and solely dealt with the question of grant of full or part back wages. The controversy of alternative course of pecuniary compensation was neither raised and therefore not decided by the Apex Court and thus in the considered opinion of this court the question which falls for consideration in the instant case cannot be decided on the anvil of law laid down by the Apex Court in **Hindustan Tin Works (P) Ltd.** As a necessary fall out of the aforesaid, the Division Bench judgment rendered on 2/4/2018 in W.A. 60/2018 is further of no assistance to the learned counsel for the workman.

4. Before advertng to the factual scenario, it would be apt to recapitulate various decisions which have been rendered by Apex court in the past, recognizing the changing trend in the field of Industrial Law and cementing the concept of compensation in lieu of reinstatement with or without back wages. Some of the extracts of such decisions rendered by the Apex court are reproduced below:-

(i) **U.P. State of Brassaware Corpn. Ltd. & another Vs. Uday Narain Pandey (2006) 1 SCC 479 :**

“30. In *Panitole Tea Estate v. Workmen* a two-judge bench of this Court while considering the question as

regards grant of relief or reinstatement, observed (1971)1 SCC 742:

"The general rule of reinstatement in the absence of special circumstances was also recognised in the case of Workmen of Assam Match Co. Ltd. v. Presiding Officer, Labour Court, Assam and has again been affirmed recently in [Tulsidas Paul v. Second Labour Court, W.B.](#) In [Tulsidas Paul](#) it has been emphasised that no hard and fast rule as to which circumstances would establish an exception to the general rule could be laid down and the Tribunal must in each case decide the question in a spirit of fairness and justice in keeping with the objectives of industrial adjudication."

32. Yet again, no law in absolute terms had been laid down therein. The court proceeded on the basis that there may be situations where grant of full back wages would be inequitable. In the fact situation obtaining therein, the court, however was of the opinion that there was no impediment in the way of awarding the relief. It is interesting to note that Pathak, J., as His Lordship then was, however was of the view (1980) 4 SCC 443 :

"Ordinarily, a workman who has been retrenched in contravention of the law is entitled to reinstatement with full back wages and that principle yields only where the justice of the case in the light of the particular facts indicates the desirability of a different relief."

The expression 'ordinarily' must be understood given its due meaning. A useful reference in this behalf may be made to a 4-Judge Bench decision of this Court in [Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed and Others](#) (1976) 1 SCC 671 wherein it has been held:

"35. The expression "ordinarily" indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional

cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule. The principles enunciated in the English cases noticed above, are not inconsistent with it."

50. In *Ruby Genera Insurance Co. Ltd. v. P.P. Chopra and Hindustan Steels Ltd. v. A.K.Roy*, this Court held that before granting reinstatement, the court must weight all the facts and exercise discretion whether to grant reinstatement or to award compensation.

53. It was further stated:

"16. We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realised that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at."

(ii) State of M.P. & others Vs. Lalit Kumar Verma (2007) 1 SCC 575:

"21. The legal position somehow was uncertain before the decision rendered by the Constitution Bench of this Court in *Uma Devi* (supra). It has categorically been stated before us that there was no vacant post in the department in which the respondent could be reinstated. The State had also adopted a policy decision regarding regularisation. The said policy decision has also no application in the case of the respondent. Even otherwise, it would be unconstitutional being hit by [Article 16](#) of the Constitution of India.

22. Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that the interest of justice would be sub-served if we direct that any benefit which has already been given to the respondent shall not be recovered. He is also directed to be paid a sum of Rs.1,50,000/- (One lakh fifty thousand) towards compensation and costs for condoning the massive delay in filing the Special Leave Petition.”

(iii) Sita Ram & others Vs. Motilal Nehru Farmers Training Institute (2008) 5 SCC 75:

“22. Keeping in view the period during which the services were rendered by the respondent (sic appellants); the fact that the respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December, 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be re-instated in service.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor, 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 re-instated in service in cases of this nature would subserve the ends of justice. {See Jaipur Development Authority Vs. Ramsahai and Anr. (2006) 11 SCC 684, M.P. Admn. Vs. Tribhuban (2007)9 SCC 748 and Uttranchal Forest Development Corporation Vs. M.C. Joshi (2007) 9 SCC 353.

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000/- to each of the appellant, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs.”

(iv) **Tapash Kumar Paul Vs. BSNL & another (AIR 2015 SC 357) :**

“5. 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 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.

5. Learned counsel for the workman has submitted that the Labour Court ought to have granted full back wages when the facts disclosed that retrenchment compensation was not paid as per Sec. 25-F (b) of the 1947 Act. In this regard, the decision of the Apex Court in **Gurmail Singh & others Vs. State of Punjab & others** in **AIR 1993 SC 1388** is pressed into service by learned counsel for employer to contend that substantial compliance of Sec. 25-F (b) of the 1947 Act is enough to sustain the termination. It is submitted that retrenchment compensation of Rs. 80,000/- was paid on 2/4/2012 and the salary in lieu of one month notice period to the tune of Rs. 40,000/- was also paid. It is further submitted by pointing out to Annexure P/2 that total

strength of students in the school was reduced from 686 to 486 between the period 2004 to 2010, which led the Board of Governors of the school resolving to abolish the post of Estate Supervisor/Supervisor by resolution dated 14/15th March, 2012 which led to the consequential termination of the workman.

5.1 So far as sec. 25-F (a) is concerned regarding one month notice or salary in lieu thereof, the said provision has been complied with in the instant case but sub-clause (b) of Sec. 25-F appears to be breached as the payment of retrenchment compensation did not precede the date of termination but was paid after 6 days of termination.

5.2 The facts herein disclose that the Board of Governors of the employer took decision to abolish the post held by the workman as a necessary consequence of which the petitioner-workman was informed that his services were no more required.

5.3 In the testimony of the workman, he stated in para 14 that on 31/3/2012 and 27/3/2012 he had received amount from the employer vide Ex.D/7 which reflects that amount of Rs. 85620/- vide cheque No. 077663 dated 31/3/2012 was received by the workman as retrenchment compensation on 2/4/2012 and further amount of Rs. 40674/- was received vide cheque No. 077649 dated 27/3/2012 as notice salary on 2/4/2012. Thus, it is evident that substantial compliance of Sec. 25-F (b) of the 1947 Act was

made by the employer. In this regard para 9 of the judgment of the Apex Court in the case of **Gurmel Singh & others** (surpa) is reproduced below to reveal the ratio that where intention of employer clearly reflects from it's action, intention of paying retrenchment compensation and notice salary at the time of termination of service and the salary actually paid is a few days after the termination and is duly received by the workman, the termination is not invalid due to violation of Sec. 25-F (a) & (b) of the 1947 Act:-

"9. We do not also see any force in the contentions regarding non-compliance with the provisions of Section 25-F of the Industrial disputes Act. It is urged on behalf of the appellants that the State has not furnished the details of the amounts of compensation determined in the case of each employee and that the State had also taken no steps to deliver the payment in respect of each employee at his door by the relevant date. It is submitted that the tender of compensation Under Section 25-F, in order to be valid, should be of the precise amount and should be made simultaneously with termination of the service. This, of course, is correct but the High Court has satisfied itself by looking into the original records, that drafts in respect of individual employees were dispatched in time so as to reach divisional/sub-divisional offices

by 31st of August, 1983. An attempt was made before us to suggest that there was some discrepancy between two affidavits filed by the State Government in this behalf. We have perused the said averments and we find no consistency as alleged. It is true that the amounts were not actually paid or tendered to the workers by the Corporation directly but the Corporation had evolved a method of disbursement of compensation in the interest of the workers' convenience. Instead of making the appellants, spread out all over the State, to come to the head office to collect the compensation at the doorstep of each employee, the Corporation made arrangements whereby the tubewell operators could go to the nearest/sub-divisional office and collect the amount of compensation due to them. It appears that the appellants were not interested in taking the compensation amount. None of them appears to have ascertained whether these amounts had reached the sub-divisional office and whether they were for the correct amounts. No instance has been pointed out to us to show that they were not for the correct amounts. We do not think we need elaborate further on this aspects since the relevant record were brought before the High Court and the High court was satisfied that the individual compensation drafts were sent to the various

sub-ordinate offices ready for distribution to the concerned workers on or before the relevant dates in the circumstances of this case, we agree with the High Court that when individual drafts for the amount of compensation due to the various tube-wells operator were forwarded to the divisional/sub-divisional offices, sufficiently in time to be available to be taken by them by 31st august 1983, there was sufficient compliance with the provisions of clause (b) of Section 25-F."

5.4 The other contention raised for the employer is loss of confidence arising out of subsequent event of offence registered against the workman of sending objectionable digital message to one of the female teachers of the school. It is submitted by learned counsel for employer that employer is running a school with boarding facility where only girl students are imparted school education from Primary to Higher Secondary level. The institute caters to only girls students and therefore it is of paramount importance that employees of the institute are of unimpeachable character and modesty. It is submitted that the workman having indulged in an offence involving moral turpitude where adjudication is in progress in the court of competent jurisdiction, the employer has lost confidence in the workman.

5.5 The aforesaid contention of the learned counsel for the employer cannot be brushed aside merely because the incident of

registration of offence is subsequent in point of time to the issue of termination herein. Looking to the nature of the school run by the employer which caters to only girl students, the employer cannot be compelled to retain a person in employment in whom the employer has lost confidence. In this regard, learned counsel for the employer has placed reliance on the decision of the Apex Court in the case of **Tapash Kumar Paul Vs. BSNL & others reported in AIR 2015 SC 357** (para 5) supra.

5.6 The loss of confidence in the workman weighs heavily in this case and tilts this case against the workman. The reason is not far to see. The employer runs all girls school with hostel facility. The employer thus cannot run the risk of employing a person of doubtful character. The registration of offence though relates to an incident subsequent in point of time to the termination in question but undoubtedly involves moral turpitude. The employer having lost confidence in the workman for reason not attributed to the employer but to the workman this case safely falls within one of the exceptions enumerated in para 5 of the Apex Court in it's judgment **Tapash Kumar Paul (supra)** to enable the Labour Court to adopt the alternative course of compensation in lieu of reinstatement with or without back wages.

5.7 In view of the above, this court deems it appropriate to

accept the contention of the learned counsel for employer that employer cannot be compelled to reinstate and retain in employment an employee in whom the employer does not repose confidence.

6. Now, the only issue left to be decided is the validity and legality of the substituted course adopted by the Labour court for compensation in lieu of reinstatement and back wages.

6.1 When the factual matrix attending the instant case is tested on the anvil of the aforesaid decision of the Apex Court where concept of compensation is paid in lieu of reinstatement with or without back wages is recognized, it is seen that there were sufficient grounds available to the Labour court to have adopted the alternative course. Loosing of confidence of employer in the workman, abolishing of post on which the workman was working prior to termination and mere technique breach of Sec. 25-F (a) & (b) of the 1947 Act where substantial compliance was made, are sufficient reasons for the Labour Court to take the substitutive course of compensation in lieu of reinstatement and back wages.

6.2 However, it is seen from the record that workman served for nearly 12 years, which is a long period of time to harbor feeling of permanency. There is nothing on record to indicate that his services were temporary or seasonal in nature. The record further does not indicate that the workman suffered any blemish

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or taint in his career. More so, the workman is out of employment since 2012. Thus, looking to the period of service rendered by the workman, who was working in substantive capacity, the quantum of compensation awarded by the Labour court appears to be deficient.

6.3 After taking into consideration all the aforesaid factors weighing in favour and against the workman, the amount of compensation deserves to be enhanced from **Rs. 2,00,000/- (Rs. Two Lakhs) to Rs. 4,00,000/- (Rs. Four Lakhs).**

7. Consequently, both the petitions bearing No. 8715/16 & 192/17 stand disposed of and the Award impugned dated 22/10/2016 in COC 58/A/ID Act/2012 (Ref.) passed by the Labour Court No.1, Gwalior is interfered with only to the extent of enhancing the compensation amount from **Rs. 2,00,000/- (Rs. Two Lakhs) to Rs. 4,00,000/- (Rs. Four Lakhs)** with direction to the employer to pay the enhanced amount of compensation within two months from the date of receipt of order of this court. Remaining part of the impugned award is left intact.

No cost.

(Sheel Nagu)
Judge
28/2/2019

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