

INCHARGE OFFICER AND ANR.

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v.

SHANKAR SHETTY

(Civil Appeal No. 7213 of 2010)

AUGUST 31, 2010

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[AFTAB ALAM AND R.M. LODHA, JJ.]

*Industrial Disputes Act, 1947: s.25F – Daily wager appointed in 1978 – Worked intermittently for 7 years – Terminated from service in 1985 i.e. about 25 years back – Claim for re-instatement and back wages on account of violation of s.25 – Held: Order of re-instatement would not automatically follow – Instead monetary compensation would subserve the ends of justice – Compensation of Rs. 1,00,000/- in lieu of re-instatement just and equitable – Equity – Compensation.*

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The respondent was engaged as daily wager by the appellants in 1978. He worked for about 7 years. In 1985, he was terminated from service. He raised industrial dispute challenging his termination on the ground that the procedure under Section 25F of the Industrial Disputes Act was not followed. The Labour Court held that Section 25F of the Act was not attracted since the workman failed to prove that he had worked continuously for 240 days in the year preceding his termination. Respondent filed writ petition before the High Court. The High Court directed reinstatement of the respondent into service but without back wages and continuity of service. The employer filed the instant appeal.

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Partly allowing the appeal, the Court

HELD: The High Court erred in granting relief of

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- A reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 years intermittently upto September 6, 1985 i.e. about 25 years back. In such a case, the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. The compensation of Rs. 1,00,000/- in lieu of reinstatement shall be appropriate, just and equitable. [Para 5] [778-C-E]

- C *Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr.* (2009) 15 SCC 327; *Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal & Ors* 2010(6) SCC 773 – relied on.

- D *U.P. State Brassware Corporation Ltd. & Anr. v. Uday Narain Pandey* (2006)1 SCC 479; *Uttaranchal Forest Development Corporation vs. M.C. Joshi* (2007) 9 SCC 353; *State of M.P. & Ors. v. Lalit Kumar Verma* (2007)1 SCC 575; *Madhya Pradesh Admn.v. Tribhuban* (2007)9 SCC 748; *Sita Ram & Ors. v. Moti Lal Nehru Farmers Training Institute* (2008) 5 SCC 75; *Jaipur Development Authority v. Ramasahai & Anr.* (2006)11 SCC 684; *Ghaziabad Development Authority & Anr. v. Ashok Kumar & Anr.* (2008) 4 SCC 261; *Mahboob Deepak v. Nagar Panchayat, Gajraula & Anr.* (2008)1 SCC 575 – referred to.

- F Case Law Reference:

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|---|------------------|-------------|-----------|
|   | (2009)15 SCC 327 | relied on   | Para 2, 5 |
|   | (2006)1 SCC 479  | referred to | Para 2    |
| G | (2007) 9 SCC 353 | referred to | Para 2    |
|   | (2007)1 SCC 575  | referred to | Para 2    |
|   | (2007) 9 SCC 748 | referred to | Para 2    |
| H | (2008) 5 SCC 75  | referred to | Para 2    |

(2006)11 SCC 684	referred to	Para 2	A
(2008) 4 SCC 261	referred to	Para 2	
(2008) 1 SCC 575	referred to	Para 2	
2010(6) SCC 773	relied on	Para 3	B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7213 of 2010.

From the Judgment & Order dated 09.12.2004 of the High Court of Bangalore in W.A. No. 7330 of 2001. C

Sanjay R. Hegde, Ramesh Kr. Mishra, Krutin Joshi, Vikrant Yadav for the Appellants.

The Judgment of the Court was delivered by  
R.M. LODHA, J. 1. Leave granted. D

2. The only question to be considered in this appeal by special leave is with regard to the relief of reinstatement granted to the respondent by the Single Judge of the High Court of Karnataka in his judgment and order dated August 13, 2001 and affirmed by the Division Bench vide its judgment and order dated December 9, 2004 in the writ appeal. 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 Disputes Act, 1947 (for short 'ID Act')? The course of decisions of this Court in recent years has been uniform on the above question. In the case of *Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr.*<sup>1</sup>, 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 Corporation Ltd. & Anr. v. Uday Narain Pandey*<sup>2</sup>; *Uttranchal Forest Development* E F G

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1. (2009) 15 SCC 327.

2. (2006) 1 SCC 479. H

- A *Corporation vs. M.C. Joshi*<sup>3</sup>; *State of M.P. & Ors. v. Lalit Kumar Verma*<sup>4</sup>; *Madhya Pradesh Admn v. Tribhuban*<sup>5</sup>; *Sita Ram & Ors. v. Motil Lal Nehru Farmers Training Institute*<sup>6</sup>; *Jaipur Development Authority v. Ramasahai & Anr.*<sup>7</sup>; *Ghaziabad Development Authority & Anr. v. Ashok Kumar & Anr.*<sup>8</sup> and *Mahboob Deepak v. Nagar Panchayat, Gajraula & Anr.*<sup>9</sup> and stated as follows:

C “It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

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F It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year

- G 3. (2007) 9 SCC 353.  
4. (2007) 1 SCC 575.  
5. (2007) 9 SCC 748.  
6. (2008) 5 SCC 75.  
7. (2006) 11 SCC 684.  
8. (2008) 4 SCC 261.  
H 9. (2008) 1 SCC 575.

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". A

3. *Jagbir Singh*<sup>1</sup> has been applied very recently in the case of *Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal & Ors.* (Civil Appeal No. 3815 of 2010) decided on April 26, 2010 wherein this Court stated: B

"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". C D

4. Shankar Shetty - the respondent was initially engaged as daily wager by the appellants in 1978. He worked for 57 days in that year. The respondent had also worked for 316½ days in 1979, 335½ days in 1980, 242½ days in 1981, 33½ days in 1982, 10½ days in 1983, 103 days in 1984 and 50 days in 1985. According to him he was terminated from service on September 6, 1985 without following the procedure prescribed in Section 25 F of the ID Act . He raised industrial dispute relating to his retrenchment which was referred for adjudication to the Labour Court, Mysore but later on the dispute was transferred to the Labour Court, Chickmagalur. The Labour Court, Chickmagalur by its award on December 21, 1994 rejected the respondent's claim. The Labour Court held that Section 25 F of the ID Act was not attracted since the workman failed to prove that he had worked continuously for 240 days in the calendar year preceding his termination on September 6, 1985. The respondent challenged the award passed by the Labour Court by filing a writ petition before the Karnataka High Court. The Single Judge of the High Court overturned the finding of the Labour Court about non- E F G H

- A applicability of Section 25 F and held that Section 25 F of the ID Act was attracted and the procedure provided therein having not been followed, the termination of respondent (petitioner therein) was illegal. The Single Judge, accordingly, vide his judgment and order dated August 13, 2001 directed
- B reinstatement of the respondent into service but without back wages and continuity of service. The present appellants challenged the judgment and order of the Single Judge in writ appeal before Division Bench but without any success. On December 9, 2004, the writ appeal preferred by the present
- C appellants was dismissed by the Division Bench.

5. We think that if the principles stated in *Jagbir Singh*<sup>1</sup> and the decisions of this Court referred to therein are kept in mind, it will be found that the High Court erred in granting relief of reinstatement to the respondent. The respondent was
- D engaged as daily wager in 1978 and his engagement continued for about 7 years intermittently upto September 6, 1985 i.e. about 25 years back. In a case such as the present one, it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the
- E ends of justice. In our considered opinion, the compensation of Rs. 1,00,000/- (Rupees One lac) in lieu of reinstatement shall be appropriate, just and equitable. We order accordingly. Such payment shall be made within 6 weeks from today failing which the same shall carry interest at the rate of 9 per cent per annum.

- F 6. The appeal is allowed to the above extent. Since the respondent has not chosen to appear despite service of notice, there will be no order as to costs.

D.G.

Appeal partly allowed.