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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-8617-2020
Date of Decision : 11.05.2026**

PAWAN KUMAR

.....Petitioner

VERSUS

**MANAGING DIRECTOR/GENERAL MANAGER PEPSU ROAD
TRANSPORT CORPORATION AND OTHERS**

.....Respondents

CWP-30940-2019

**MANAGING DIRECTOR/GENERAL MANAGER PEPSU ROAD
TRANSPORT CORPORATION AND OTHERS**

.....Petitioner

VERSUS

**THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATIALA
AND OTHERS**

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Ravi Gakhar, Advocate,
for petitioner-workman in CWP-8617-2020
for respondent no.2 in CWP-30940-2019

Mr. Anil Sharma, Advocate,
for the petitioner-management in CWP-30940-2019
for respondent no.2-workman in CWP-8617-2020

KULDEEP TIWARI, J.(Oral)

1. Both these petitions, are amenable to be decided together, as the common Award dated 21.05.2019 (Annexure P-1), wherethrough, the



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reference was partially answered in favour of the workman, thereby, granting them the relief of compensation of Rs.1 lakh, instead of granting reinstatement, even after coming to a finding that the act of termination of service was illegal. For the sake of brevity the facts are being taken from CWP-8617-2020.

2. Learned counsel for the petitioner-workman submits that, the only ground for relieving the workman from service was that he was suffering from HIV, and, on account thereof, he had developed some physical disability, due to which, he was allegedly unable to discharge his duties effectively.

3. He further submits that, instead of extending the benefit of the provisions of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (hereinafter referred to as the 'Act of 2017'), the services of the petitioners were illegally terminated. It is contended that that Section 3 of the *ibid* Act, specifically, prohibits an employer from terminating the services of an employee on the ground of HIV status, and such action of the respondent-management is in clear violation thereof, which, in fact, attracts a penalty to be imposed upon the respondent-management.

4. He, further, submits that the aforesaid aspect has not been considered in its right perspective by the learned Industrial Tribunal, while answering the reference.



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5. He next submits that at this stage, the petitioner-workman is not able to perform his duties/task, therefore, he confines his prayer only to the extent of granting him adequate compensation, proportionate to the length of service rendered by him with the management, i.e. 01.02.2005 to 01.06.2014.

6. *Per contra*, learned counsel for the respondent-management submits that the petitioner-workman was reverted to the outsourcing agency, hence, his services were never terminated by the management. If any liability exists *qua* the petitioners, the same can be fastened upon the outsourcing agency alone.

7. This Court does not find any merit in the submissions, as made by learned counsel for respondent-management, for the reason that returning the services of the petitioner-workman to the outsourcing agency, solely on account of him being HIV positive, would, in effect, tantamount to termination of service. The respondent-management has, in fact, acted in contravention of Section 3 of the Act of 2017, which is extracted hereinafter:-

“No person shall discriminate against the protected person on any ground including any of the following, namely:—

(a) the denial of, or termination from, employment or occupation, unless, in the case of termination, the person, who is otherwise qualified, is furnished with—

(i) a copy of the written assessment of a qualified and independent healthcare provider competent to do so that such protected person poses a significant risk of transmission of HIV to other person in the workplace, or is unfit to perform the duties of the job; and



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(ii) a copy of a written statement by the employer stating the nature and extent of administrative or financial hardship for not providing him reasonable accommodation;
(b) the unfair treatment in, or in relation to, employment or occupation;
(c) the denial or discontinuation of, or, unfair treatment in, healthcare services;
(d) the denial or discontinuation of, or unfair treatment in, educational, establishments and services thereof;
(e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public, whether or not for a fee, including shops, public restaurants, hotels and places of public entertainment or the use of wells, tanks, bathing ghats, roads, burial grounds or funeral ceremonies and places of public resort;
(f) the denial, or, discontinuation of, or unfair treatment with regard to, the right of movement;
(g) the denial or discontinuation of, or, unfair treatment with regard to, the right to reside, purchase, rent, or otherwise occupy, any property;
(h) the denial or discontinuation of, or, unfair treatment in, the opportunity to stand for, or, hold public or private office;
(i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a person may be;
(j) the denial of, or unfair treatment in, the provision of insurance unless supported by actuarial studies;
(k) the isolation or segregation of a protected person;
(l) HIV testing as a pre-requisite for obtaining employment, or accessing healthcare services or education or, for the continuation of the same or, for accessing or using any other service or facility;
Provided that, in case of failure to furnish the written assessment under sub-clause (i) of clause (a), it shall be presumed that there is no significant-risk and that the person is fit to perform the duties of the job, as the case may be, and in case of the failure to furnish the written statement under sub-clause (ii) of that clause, it shall be presumed that there is no such undue administrative or financial hardship. ”

8. In view of the above, this Court has no hesitation in holding that the action of the management, in returning the services of the petitioner-workman to the outsourcing agency, specifically, after he had



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rendered more than ten years of service, is totally illegal and unsustainable in the eyes of law.

9. The next question which arises for consideration is, as to whether, the compensation awarded to the petitioner-workman by the learned Industrial Tribunal is just, fair, and adequate in the facts and circumstances of the present case.

10. In order to adjudicate the issue (*supra*), it would be apposite to refer to certain authoritative pronouncements on the subject. In **“Jagbir Singh v. Haryana State Agriculture Marketing Board and another”, 2009 (3) SCT 790**, the Hon’ble Supreme Court held that 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. Further held that compensation instead of reinstatement would meet the ends of justice. Moreover, 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 was not found to be proper and instead compensation was awarded. The relevant observations are extracted hereunder:-

“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



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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.

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. 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.

Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages. As a matter of fact, in all the judgments of this Court referred to and relied upon by the High Court while upsetting the award of reinstatement and back wages, this Court has awarded compensation.

16. While awarding compensation, the host of factors, inter- alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances. In a case such as this where the total length of service rendered by the appellant was short and intermittent from September 1, 1995 to July 18, 1996 and that he was engaged as a daily wager, in our considered view, a compensation of Rs. 50,000/- to the Appellant by Respondent No. 1 shall meet the ends of justice. We order accordingly. Such payment should be made within six weeks from today failing which the same will carry interest @ 9% per annum.”

11. The ratio laid down in **Jagbir Singh’s** case (*supra*) was reiterated by the Hon’ble Supreme Court in **“Incharge Officer & Anr. v. Shankar Shetty”, 2010 (4) SCT 261**, wherein, instead of reinstatement with full back wages, compensation of Rs. 1,00,000/- was awarded. The relevant paragraph is reproduced hereunder:-

“5. We think that if the principles stated in Jagbir Singh and the



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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 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 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.”

12. The principle (*supra*) was again followed in “**Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal & Ors.**”, AIR 2010 SC 2140, wherein the Hon’ble Supreme Court declined reinstatement and back wages to workmen engaged as daily wagers decades earlier, and awarded instead compensation of Rs.40,000/- to each workman. The relevant findings are reproduced hereinafter:-

“6. In last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate, (See U.P. State Brassware Corpn. Ltd. & Anr. v. Uday Narain Pandey; Uttaranchal Forest Development Corpn. v. M.C. Joshi; State of M.P. & Ors. v. Lalit Kumar Verma; Madhya Pradesh Administration v. Tribhuban; Sita Ram & Ors. v. Moti Lal Nehru Farmers Training Institute; Jaipur Development Authority v. Ramsahai & Anr.; Ghaziabad Development Authority & Anr. v. Ashok Kumar & Anr. and Mahboob Deepak v. Nagar Panchayat, Gajraula & Anr.).

7. In a recent judgment authored by one of us (R.M. Lodha, J.) in the case of Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr., the aforesaid decisions were noticed and it was stated :

“7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow.



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

* * * * *

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee”.

8. 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. In our considered view, the compensation of Rs. 40,000/- to each of the workmen (respondent nos. 1 to 14) shall meet the ends of justice. 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.”

13. All the judgments (*supra*) were subsequently followed by the Supreme Court in case titled “**B.S.N.L. Vs. Bhurumal**”, 2014 AIR (SCW) 528, wherein it was held that where termination of a daily wage worker is found illegal solely due to procedural infirmities such as non-compliance with Section 25-F of the I.D. Act, reinstatement with back wages is not automatic and monetary compensation may be an appropriate remedy. However, it was clarified that where termination is actuated by unfair labour practice or in violation of the principle of “last come, first go”, reinstatement should ordinarily follow unless there are



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some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In that case, considering the long lapse of time, short tenure of service, and diminished requirement of manpower owing to technological advancements, only compensation was granted. The paragraphs containing the apposite observations read as under:-

“23. It is clear from the reading of the aforesaid judgments that 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, this Court is consistent in taking the view 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. Rationale for shifting in this direction is obvious.

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



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serve any purpose.

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 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.

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 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 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 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 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.”

14. From the facts it reflects that the petitioner-workman has worked for about 10 year, i.e. from 01.02.2005 to 01.06.2014. It is not



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under dispute that it has been almost 12 years, that the workman is contesting litigation, since the date of his termination. Therefore, this Court finds that it is not a case where the relief of reinstatement can be granted, rather, the ends of justice would be adequately met by modifying the impugned Award, by granting suitable lump-sum compensation to the petitioner-workman in lieu of reinstatement.

15. Consequently, the impugned Award is modified to the extent that the petitioner-workman, shall be entitled to a lump sum compensation of **Rs.10.00 lakhs**.

16. Since an amount of Rs.1.00 lakh has already been paid by the respondent-management, which is lying deposited with Registry of this Court in the shape of a demand draft, the balance amount of Rs.9.00 lakhs shall be transferred in bank account of the petitioner-workman i.e. A/C No.65072651808, IFSC: SBIN0050265, SBI, Dudhan Saidan Branch, Patiala, within a period of eight weeks from the date of receipt of a certified copy of this order. Failing which the said amount shall carry interest at the rate of 9% per annum.

17. The Registry is directed to release the aforesaid demand draft of Rs.1.00 lakh forthwith, in favour of the petitioner-workman, upon him filing an apposite application, in this regard.

18. At this stage, learned counsel for the respondent-management insists that a liberty may be afforded to the management to recover the aforesaid amount, from the outsourcing agency/contractor.



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19. This issue has not been considered, as this Court is only adjudicating the legality of the impugned Award. However, in case the management has a right to recover the aforesaid amount, it may do so, by taking an apposite legal remedy.

20. **Disposed of** accordingly.

21. All pending application(s), if any, also stand **disposed of** accordingly.

22. A photocopy of this order be placed on the file of the connected case.

May 11, 2026
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No