

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 7820/2018

1. Naniya S/o Shri Hema, R/o Pateliya Post Pindarma, Tehsil Bagidora, District Banswara Raj.
2. Kanu @ Kaniya S/o Shri Mogji, R/o Borigama, Tehsil Bagidora, District Banswara Raj.

-----Petitioners

Versus

1. The Judge Industrial Tribunal Cum Labour Court, Udaipur
2. The Chief Engineer, Mahi Bajaj Sagar Project, Banswara At Present The Superintending Enigneer, Construction Zone, Mahi Bajaj Sagar Project, Banswara Raj.
3. The Executive Engineer, Distributary Division- 1St, Left Main Canal Mahi Project Garhi, District Banswara Raj.

-----Respondents

For Petitioner(s)	:	Mr. Ravindra Singh
For Respondent(s)	:	Mr. Milap Chopra

JUSTICE DINESH MEHTA

Order

05/12/2024

1. The instant writ petition has been filed by the petitioners challenging the award dated 25.02.2016 passed by the Judge, Industrial Tribunal and Labour Court, Udaipur in Labour Case No.13/2009.
2. Learned counsel for the petitioners submits that a similar controversy, wherein the award dated 03.11.2001 passed by the Judge, Industrial Tribunal and Labour Court, Udaipur was challenged, has already been decided by a Coordinate Bench of this Court vide order dated 16.04.2007 passed in the case of **Smt. Dhuli Vs. The Judge, Labour Court & Ors.** (S.B. Civil Writ

Petition No.1087/2006) while modifying the award by granting the relief of reinstatement instead of compensation in lieu of reinstatement as awarded by the Labour Court. The said judgment is reproduced herein below:

"By the instant writ petition, the petitioner has challenged the impugned Award Annx.1 dated 3-11-2001 published on 10- 6-2002 vide Annx.2 dated 15-5-2002.

I have heard learned counsel for the parties.

It is contended by the learned counsel for the petitioner that the writ petition filed by similarly situated persons, viz. Ramlal S/o Haliya (SBCWP No.4322/2003) came to be allowed by this Court vide order dated 28-4-2005; and the another writ petition filed by similarly situated person, viz. Nanji (SBCWP No. 2967/2003), reported in 2005 (8) RDD 2846 (Raj.), came to be decided on 22-7-2005, modifying the awards awarding compensation in lieu of reinstatement to that of reinstatement and in pursuance thereof, the aforesaid persons Ram Lal and Nanji have been reinstated in service by the respondent departments. It is contended that the case of the present petitions is akin to these two persons and, therefore, the impugned award may be modified by granting the relief of reinstatement instead of compensation in lieu of reinstatement as awarded by the Labour Court.

In Mohan Lal Vs. The Management of M/s. Bharat Electronics Ltd., AIR 1981 SC 1253, the Hon'ble Supreme Court held as under:-

"The last submissions was that looking to the record of the appellant this Court should not grant reinstatement but award compensation. If the termination of service is ab initio void and inoperative, there is no question of granting reinstatement because there is no cessation of service and a mere declaration follows that he continues to be in service with all consequential benefits. Undoubtedly, in some decisions of this Court such as Ruby General Insurance Co. Ltd. Vs. P.P. Chopra, (1) Lab LJ 63; and Hindustan Steel Ltd.,

Rourkela Vs. A.K. Roy, AIR 1970 SC 1401), it was held that the Court before granting reinstatement must weigh all the facts and exercise the discretion properly whether to grant reinstatement or to award compensation. But there is a catena of decisions which rule that where the termination is illegal, especially where there is an ineffective order of retrenchment, there is neither termination nor cession of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the Courts in the field of social justice and we do not propose to depart in this case."

In M/S/ Tulsi Das Paul Vs. The 2nd Labour Court, (1972) 4 SCC 205; Vikramadity Pandey Vs. Industrial Tribunal, Lucknow, (2001) 2 SCC 423; the Hon'ble Supreme Court held that when the order of termination is found to be illegal, the general rule is to grant reinstatement and compensation should be awarded in exceptional circumstances.

In the instant case, the petitioner was appointed as Class IV employee in the year 1986 as Class IV employee and after serving for nearly ten years, her services were terminated with effect from 1-10-1996. The Labour Court, vide award dated 3-11-2001, found the termination/retrenchment order illegal and invalid, however, instead of granting the relief of reinstatement, the Labour Court awarded compensation of Rs.15,500/- along with interest @ 12% per annum. Therefore, keeping in view of the law culled out in the aforesaid decisions of the Hon'ble Supreme Court and this Court and the fact that the writ petitions filed by similarly situated workmen mentioned hereinabove challenging identical orders, were allowed by this Court modifying the award impugned therein, the impugned award requires modification by modifying the relief of compensation to that of reinstatement.

Consequently, the writ petition is allowed; the impugned Award Annx.1 dated 3-11-2001 and the Notification Annx.2 published on 10-6-2002 are modified to the extent that instead of

compensation, the petitioner is entitled for reinstatement with service; however she will not be entitled for any back wages. The respondents are directed to reinstate the petitioner on the post of Class IV within three months from the date of submission of a certified copy of this order by the petitioner to them. There shall be no order as to costs."

3. Learned counsel for the petitioners, therefore, prays that the present writ petition may also be allowed in light of order *ibid*.
4. Prayer seems to be genuine.
5. Accordingly, the present writ petition is allowed in terms of the order dated 16.04.2007 passed by a Coordinate Bench of this Court in the case of **Smt. Dhuli (supra)**.
6. The order has been passed based on the submissions made in the petition, the respondents would be free to examine the veracity of the submissions made in the petition and only in case the averments made therein are found to be correct, the petitioners would be entitled to the relief sought.
7. All interlocutory application(s) so also stay application stand disposed of, accordingly.

(DINESH MEHTA),J