

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).2451 OF 2015
(Arising out of SLP(C)Nos. 15294/2005)

STATE OF U.P.

APPELLANT(S)

VERSUS

PARVEZ AKHTAR

RESPONDENT(S)

WITH

CIVIL APPEAL NO(s).2452 OF 2015
(Arising out of SLP(C)No(s).22035/2005)

CIVIL APPEAL NO(s).2453 OF 2015
(Arising out of SLP(C)No(s). SLP(C) No. 22036/2005)

CIVIL APPEAL NO(s).2454 OF 2015
(Arising out of SLP(C)No(s).22037/2005)

CIVIL APPEAL NO(s).2455 OF 2015
(Arising out of SLP(C)No(s). 22090/2005)

CIVIL APPEAL NO(s).2456 OF 2015
(Arising out of SLP(C)No(s). 22096/2005)

CIVIL APPEAL NO(s).2457 OF 2015
(Arising out of SLP(C)No(s). 22161/2005)

CIVIL APPEAL NO(s).2458 OF 2015
(Arising out of SLP(C)No(s). 22163/2005)

CIVIL APPEAL NO(s). 2459 OF 2015
(Arising out of SLP(C)No(s). 22171/2005)

CIVIL APPEAL NO(s).2460 OF 2015
(Arising out of SLP(C)No(s). 22177/2005)

CIVIL APPEAL NO(s).2461 OF 2015
(Arising out of SLP(C)No(s). 22190/2005)

CIVIL APPEAL NO(s).2462 OF 2015
(Arising out of SLP(C)No(s). 22711/2005)

O R D E R

Delay in filing and refiling the special leave petition(s), if any, is condoned.

Delay in filing the application(s) for substitution, if any, is condoned.

Application(s) for substitution, if any, is/are allowed.

Leave granted.

Heard learned counsel for the parties to the *lis*.

In these appeals filed by the State of Uttar Pradesh, common question of law has arisen for consideration. The respondents in these appeals were engaged on daily wage/*ad-hoc* basis.

Their services were dispensed with after certain period. These workers raised industrial dispute questioning the validity of their termination, which was referred to the labour court(s) for adjudication. In all these cases, the labour court(s) found that they had worked for more than 240 days and as no retrenchment compensation or notice (or notice pay in lieu thereof) was paid, their termination was without compliance of the mandatory provisions contained in Sections 6-N, 6-P and 6-Q of the U.P. Industrial Disputes Act, 1947, inasmuch as even the junior persons to these workmen were allowed to continue when their services were terminated.

The awards in each of these cases were rendered holding the termination to be illegal. As a consequence, the labour court(s) directed reinstatement of their services. The said awards were challenged by the appellant by filing writ petition in the High Court. The High Court has dismissed the writ petitions confirming the findings of the labour court(s) in the awards.

It is how these appeals have landed up in this Court challenging the orders passed by the High Court dismissing the writ petitions filed by the appellant.

At the time of hearing, learned counsel for the appellant produced the particulars in respect of each of these workers, which are as under:

S.No.	Name of Employee	Date of Termination	ID No. (Before Labour Court)	SLP No.	Claimed Period of Service
1	Subhash Chandra	01.10.1988	153/1990	22037/2005	01.12.1985-30.09.1988
2	Inder Singh	30.04.1984	154/1990	22090/2005	01.02.1973-30.04.1984
3	Ram Ajore	31.08.1987	24/1991	22711/2005	01.01.1982-31.08.1987
4	Kamal Kumar Kushwaha	31.08.1987	26/1991	22177/2005	29.01.1983-31.08.1987
5	Ashok Kumar Dubey	01.02.1987	44/1991	22035/2005	17.04.1980-31.01.1987
6	Surya Naraiyan Pandey	04.10.1986	57/1991	22096/2005	01.05.1973-05.04.1984
7	Awadhesh Naraiyan Pandey	01.08.1990	116/1991	22171/2005	18.01.1981-31.07.1990
8	Parvez Akhtar	01.08.1990	117/1991	15294/2005	01.01.1980-31.07.1990
9	Mohd. Juned Hussain	01.08.1990	118/1991	22161/2005	01.01.1980-31.07.1990
10	Sunil Kumar Shrivastava	22.08.1990	115/1991	22163/2005	15.01.1980-22.08.1990
11	Madan Lal	22.08.1990	119/1991	22190/2005	18.02.1980-22.08.1990
12	Karan Singh	04.10.1986	60/1991	22036/2005	08.08.1982-04.10.1986

Learned counsel for the appellant could not dispute that for want of compliance of the mandatory provisions of Sections 6-N, 6-P and 6-Q of the U.P. Industrial Disputes Act, 1947,

termination of the services of these respondents was bad in law. He, therefore, confined his arguments to the relief that is granted by the labour court(s). His submission was that since these employees were terminated long ago, the labour court(s) should not have granted relief of reinstatement and only compensation should have been awarded in their favour. In support of his submission, he referred to the judgment of this Court in the case of *Bharat Sanchar Nigam Limited v. Bhurumal*, (2014) 7 SCC 177, and particularly the following passages therein:

"33. 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.

34. 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 serve any purpose."

No doubt, in the aforesaid case, after taking into consideration the ratio of *Uma Devi's* case (supra) and other judgments, it was held that where the services of a casual worker were terminated long ago, normally there should not be

an order of reinstatement. However, certain exceptions were also taken note of where reinstatement would be permissible, including in those cases where juniors were retained in service, as is clear from the following paragraph in *Bharat Sanchar Nigam Limited* (supra):

"35. 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.

In the present case, we find that there is a specific finding that when the services of the respondents were terminated, juniors to them were retained. We also find that many had worked for much longer period when their services were

terminated.

Having regard to the above and the peculiar facts and circumstances of this case, we dispose of the civil appeals with the following directions:

- (a) Those respondents who have worked for nine years and above shall be reinstated into service with continuity of service and other service benefits, provided they have not attained the age of superannuation. They shall also be entitled to a sum of Rs.2,00,000/- each in lieu of back wages for the intervening period.
- (b) Those respondents who had worked for nine years and more before their services were dispensed with, but have now attained the age of superannuation, shall be given a sum of Rs.5,00,000/- each, by way of compensation, in lieu of their claim of reinstatement and back wages.
- (c) Those respondents who worked for less than nine years shall not be entitled to

reinstatement. Instead, they shall be given compensation of Rs.5,00,000/- each in lieu of their claim of reinstatement and back wages.

(d) Insofar as reinstatement is concerned, the order shall be implemented with immediate effect and, in any case, within fifteen days from the date of receipt of a copy of this order.

(e) Insofar as payment of back wages/ compensation is concerned, that amount shall be paid in three equal monthly instalments, starting from April 01, 2015.

.....CJI.
(H.L. DATTU)

.....J.
(A.K. SIKRI)

.....J.
(ARUN MISHRA)

NEW DELHI;
FEBRUARY 17, 2015.

ITEM NO.7

COURT NO.1

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).15294/2005

(Arising out of impugned final judgment and order dated 10/03/2005 in CMWP No. 19347/2001 passed by the High Court of Judicature at Allahabad)

STATE OF U.P.

Petitioner(s)

VERSUS

PARVEZ AKHTAR

Respondent(s)

(With appln.(s) for modification of Court's order, prayer of interim relief, and office report)

WITH

SLP(C) No. 22035/2005

(With prayer for interim relief and Office Report)

SLP(C) No. 22036/2005

(With appln.(s) for exemption from filing O.T. and Interim Relief and Office Report)

SLP(C) No. 22037/2005

(With appln.(s) for modification of court's order and Interim Relief and Office Report)

SLP(C) No. 22090/2005

(With prayer for interim relief and Office Report)

SLP(C) No. 22096/2005

(With prayer for interim relief and Office Report)

SLP(C) No. 22161/2005

(With appln.(s) for modification of court's order and Interim Relief and Office Report)

SLP(C) No. 22163/2005

(With prayer for interim relief and Office Report)

SLP(C) No. 22171/2005

(With prayer for interim relief and Office Report)

SLP(C) No. 22177/2005

(With prayer for interim relief and Office Report)

SLP(C) No. 22190/2005
(With prayer for interim relief and Office Report)

SLP(C) No. 22711/2005
(With appln.(s) for modification of court's order and Office Report)

SLP(C) No. 6258/2009
(With Office Report)

Date: 17/02/2015 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ARUN MISHRA

For Petitioner(s) Mr. Kavin Gulati, Sr. Adv.
Mr. Vivek Vishnoi, Adv.
Mr. M. R. Shamshad, Adv.

SLP(C) 6258/2009 Mr. Garvesh Kabra, Adv.
Mr. Amit Singh, Adv.
Mr. Adarsh Upadhyay, Adv.

For Respondent(s) Ms. Rachana Srivastava, Adv.
Mr. Utkarsh Sharma, Adv.

Ms. Mukti Chowdhary, Adv.
Mr. Ramesh Babu M. R., Adv.

Mr. K. L. Janjani, Adv.

Mr. C. D. Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

SLP(C) Nos. 15294/2005, 22035/2005, 22036/2005, 22037/2005,
22090/2005, 22096/2005, 22161/2005, 22163/2005, 22171/2005,
22177/2005, 22190/2005 and 22711/2005

Delay in filing and refiling the special leave
petition(s), if any, is condoned.

Delay in filing the application(s) for
substitution, if any, is condoned.

Application(s) for substitution, if any, is/are allowed.

Leave granted.

The civil appeals are disposed of in terms of the signed order.

SLP(C) No. 6258/2009

The special leave petition is dismissed both on the grounds of delay as well as on merits.

(Neetu Khajuria)
Sr.P.A.

(Vinod Kulvi)
Assistant Registrar

(Signed order is placed on the file.)