2013 PLRonline 0108

Supreme Court Of India

K.S.P Radhakrishnan Dr A.K Sikri, JJ.

Bharat Sanchar Nigam Limited v. Bhurumal

Civil Appeal No. 10957 of 2013

11.12.2013

Service Matter

Industrial Disputes Act , 1947 Section 25 F – Reinstatement – Lump sum monetary compensation – Where appointment of the employee is not regular and his retrenchment is proved to be illegal for not complying with Section 25-F – Instead of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation.

"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 mala fide and/or by way of victimisation, 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 a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that 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. The 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 regularisation [see State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L and S) 753]]. Thus when he cannot claim regularisation 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.

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 that 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 regularised under some policy but the workman concerned 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.

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 that 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 regularised under some policy but the workman concerned 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."

Ankur Mittal, Advocate, for the Appellant; Ms Geeta Luthra, Senior Advocate [Rohit Bhardwaj and Prabal Bagchi (for D.N Goburdhun), Advocates] for the Respondent.

Judgment,

Dr A.K Sikri, J.— Leave granted. For deciding this appeal, the seminal facts, which required a mention are recapitulated below.

2. The respondent herein raised an industrial dispute alleging his wrongful termination, by approaching the Assistant Labour Commissioner, Faridabad in the year 2000. He claimed that he was working as a lineman on daily wages with the Sonepat Telephone Department, BSNL at Saidpur Exchange and was not paid his wages for the period from October 2001 till April 2002. He further stated that while working he got an electrical shock and because of this accident he was hospitalised. However, he was not allowed to resume his duty which amounted to wrongful termination. Conciliation proceedings commenced after notice was sent to the appellant.

3. The defence of the appellant was that the respondent never worked with the appellant. It was pleaded that there was an agreement dated 18-1-2002 entered into between the appellant and M/s Haryana Securities/Services (Regd.) for supply of security personnel to SSA, Sonepat. The appellant stated that the respondent may have worked as a contract employee with the said contractor and deployed at the establishment of the appellant in that capacity.

4. The conciliation proceedings were not successful, the conciliation officer sent his failure report to the Central Government and on that basis the Central Government made a reference to the Central Government Industrial Tribunal-cum-Labour Court (CGIT), Chandigarh, with the following terms of reference:

“Whether the action of the management of BSNL, Sonepat in terminating the services of Shri Bhurumal, worker w.e.f April 2002 is just and legal? If not what relief is he entitled to?”

5. In the claim statement filed by the respondent before CGIT, the respondent stated that he had been working as a lineman with the appellant from 1-7-1987 and worked in that capacity till 27-4-2002 on daily-wage basis. He also stated that on 17-11-2001, while repairing the fault of a telephone, he suffered electric shock and due to this accident, he sustained injuries. He was admitted in a hospital. He was not paid his salary from August 2001 to April 2002. His services were illegally terminated with effect from 28-4-2002.

6. In the written statement filed by the appellant, the appellant took up the same stand which it had taken in the conciliation proceedings. It was emphasised that as there was a complete ban on recruitment, the Department had employed contractors for carrying out the petty jobs, who in turn had engaged contract workers. The respondent was not issued any appointment/engagement letter by the appellant. The appellant had never made any payment of daily wages to the respondent as he was not the employee of the appellant and was not directly recruited by the appellant and there was no employer-employee relationship between them.

7. Both the parties led their respective evidence. Thereafter, arguments were heard and the proceedings culminated in the award dated 11-4-2011 passed by the learned CGIT. CGIT came to the conclusion that there was clear evidence to the effect that the respondent was working directly under the administrative control of the appellant as a lineman and his services were illegally terminated. Thus, answering the reference in favour of the respondent, CGIT directed reinstatement of the respondent along with back wages.

8. A perusal of the award of CGIT would disclose that in support of his case, the respondent had filed two diaries in which he had entered all the jobs undertaken by him on different dates in the Telephone Department. CGIT too found that these diaries were maintained in an ordinary course of business and were reliable piece of evidence, particularly before the Tribunal, which works on the basis of equity, just and good conscience. The findings that the respondent was directly under the administrative control of the management, were recorded in the following manner:

“If all these facts are considered and implemented in the present case, it is evidently clear that the workman was directly working under the administrative control of the management. The documents filed by the workman which have not been seriously challenged by the management prove beyond doubt that the workman was working with the management as lineman. Moreover, the diaries which have been filed by the workman and were prepared in the ordinary course of business also prove this fact that the workman was working directly under the administrative control of the management. For daily waged

worker nature of initial appointment is immaterial. Shri Bhurumal worked with the management for almost 15 years as a daily-waged worker. Thus, the nature of initial appointment cannot be challenged by the management to justify the illegal termination. It is also established that while working as a lineman the officers of the management have helped him socially, emotionally and financially at the time of accident but after the termination of the services of the workman they tried to become hostile. It is the function of the Tribunal to reach to the truth. Accordingly, the demeanour of every witness which was recorded by the Tribunal in detail this demeanour is very well available and in the evidence of every witness. Only one witness dares to deny the fact of accident. Rest two witnesses only showed the ignorance. If the evidence of all the witnesses is taken jointly and cumulatively, it is established that the workman was electrocuted while working as a lineman."

9. CGIT also discussed the demeanour of the witnesses on the basis of which it chose to accept the version of the respondent as against that of the appellant. CGIT also observed that photocopies of the documents were filed by the respondent, originals thereof were in the possession of the appellant and the appellant failed to produce them. Therefore, adverse inference had to be drawn. This part is discussed in the following manner:

"From the above discussions it is clearly established that the workman was directly engaged by the management as a lineman. He has worked for substantial period (almost for 15 years) with the management. His services were illegally terminated. The management which is the government department is supposed to be a role model employer in the society. But, the act of the management in this case is otherwise. The management has not disputed the fact that the workman has worked for more than 240 days in the preceding year from the date of his termination. The management has denied his very existence in the Department without any proof. Photocopies of the relevant documents were filed by the workman. Originals were summoned. The management failed to provide the originals. There is no doubt in the genuineness and correctness of the documents filed by the workman. As the management has failed to provide the originals, even after direction of the Tribunal, adverse inference will be taken. The nature of adverse inference shall be that it shall be considered that the workman has completed 240 days of work in the preceding year from the date of his termination. Undisputedly no notice or one month's wages in lieu of notice and retrenchment compensation was paid to the workman. This makes his termination illegal and void."

10. The appellant preferred a writ petition against the aforesaid award in the High Court of Punjab and Haryana. This writ petition was dismissed by the learned Single Judge vide judgment dated 27-7-20111 holding the same as bereft of any merit. Reasons given in the said order virtually echo the reasons which were recorded by CGIT in support of its award, as is clear from the following discussion in the judgment of the learned Single Judge:

"After hearing the counsel for the petitioner, it is not disputed that the workman had worked for almost 15 years as a daily-wage workman as lineman. The documents filed by the workman beyond doubt proved that he had been working with the petitioner management as a lineman. The entries, which have been filed by the workman, were

prepared in an ordinary course of business and proved that the workman was working directly under the administrative control of the management. It is established before the Tribunal that the workman had met with an accident while working in the office hours of the management. He was socially, emotionally and financially helped at the time of accident. The management has not proved the contract agreement with the contractor. The contractor was not summoned in the Court as a witness. The management failed to prove that the consolidated amount was paid to the contractor and the contractor used to pay the wages to the workman. Even in the documents relating to his treatment he has been shown by the Government Medical College as government servant. It is not disputed by the management that he had worked for 240 days in the office before the date of termination. Despite direction by the Tribunal the management failed to prove the original agreement with the contractor tendered by it. All these above facts go to prove that the workman was working under the direct control of the petitioner management for the last 15 years. After he met with the accident he was unceremoniously terminated and not allowed to join the duty on 28-4-2002."

11. The learned Single Judge held that the appellant had not proved contract agreement with the contractor and even the contractor was not summoned as a witness and nothing was produced to show to the Court that consolidated amount was paid to the contractor and the contractor used to pay the wages to the workman.

12. Even the intra-court appeal filed by the appellant i.e letters patent appeal (LPA) has been dismissed by the Division Bench of the High Court vide judgment dated 2-11-20112 holding that the concurrent finding of facts recorded by CGIT as well as the learned Single Judge did not warrant any interference.

13. The learned counsel for the appellant, at the outset, submitted that though the respondent had alleged that he had been working with the appellant for 15 years, he had not produced any documents in support of this assertion. He also argued that onus to prove that the respondent was employed by the appellant, was on the workman but he did not produce any documents either in the form of appointment letter/engagement letter or any other proof which could prove that he was employed by the appellant. He did not even produce a single wage slip to show that wages were paid to him by the appellant. His further submission was that diaries produced by the respondent were self-serving documents allegedly maintained by him and no evidentiary value could be attached thereto.

14. In an attempt to find potholes in the award of the Tribunal, the learned counsel argued that the Tribunal wrongly recorded that the documents filed by the workman had not been "seriously challenged" by the appellant. He referred to the cross-examination of the respondent as well as the management evidence to show that there was serious challenge to the veracity of those documents, namely, diaries produced by the respondent. The learned counsel also submitted that it was totally wrongful on the part of CGIT to draw adverse inference for not producing any original of those documents, photocopies whereof were filed by the respondent. The submission was that when the genuineness of the documents filed by the respondent itself was questioned by the appellant and the appellant

categorically stated that these are bogus and self-made documents, there was no question of producing the originals thereof and, thus, no adverse inference could be drawn. According to the learned counsel, these findings were totally perverse and this aspect was categorically argued before the High Court but the High Court also fell into the same error.

15. Another submission of the learned counsel qua the High Court judgment was that a serious error occurred by presuming certain facts to be admitted facts. Drawing attention to that portion of the judgment of the learned Single Judge, which is already extracted above, it was argued that the learned Single Judge proceeded on the basis that the appellant had not disputed that the respondent had worked for almost 15 years in the capacity as a lineman. He emphasised that this was precisely the dispute not only in the pleadings but in the evidence led by the appellant. The appellant had stated that the respondent had not worked with the appellant at all, much less for a period of 15 years, as claimed by him, and never worked as a lineman.

16. The learned counsel for the appellant also submitted that even when these infirmities in the order of CGIT as well as the learned Single Judge were pointed out to the Division Bench in the LPA, the Division Bench did not, at all, advert to these arguments, and by a short and cryptic order dismissed the LPA by simple observation that there were concurrent findings of facts reached by the courts below. His submission, therefore, was that the orders of the courts below are based on perverse findings which warranted interference by this Court.

17. In the alternative, the learned counsel further submitted that it was not a case where reinstatement should have been given by CGIT and at the most some monetary compensation in lieu of reinstatement and back wages should have been awarded. He referred to a few judgments of this Court including orders dated 14-10-20113 passed in respect of some other employees of the appellant itself.

18. The learned counsel for the respondent, on the other hand, supported the decision by relying upon the reasons given in the impugned judgment. He laid much emphasis on the diaries produced by the respondent which were kept in the normal course. He also submitted that, in addition, the respondent had produced various other documents, Exts. C-15 to C-40 to show that he was in the employment of the appellant. He further argued that since the attendance record or the wage slips/register, etc. are maintained by the employer and remained in its custody, it was not possible for the respondent to produce those documents and in these circumstances the Labour Court rightly drew adverse inference against the appellant in not producing the originals of the documents.

19. We have considered the aforesaid submissions. From the award of CGIT, as upheld by the High Court, it is clear that CGIT has given the award after arriving at the following findings:

19.1 It is held that the respondent herein directly worked under the appellant and was not a contract employee.

19.2 It is also held that the respondent had worked for almost 15 years i.e 1-7-1987 to 27-4-2002.

19.3 He worked in the capacity as a lineman on daily-wage basis.

19.4 On 17-11-2011, while repairing the fault of a telephone, the respondent suffered an electric shock because of which he sustained injuries and was admitted in a hospital. At that time officers of the appellant had not only shown sympathy with him but got him admitted in the hospital and helped him in receiving the medical treatment.

19.5 Services of the respondent were terminated by the appellant w.e.f 28-4-2002. Since the respondent had worked for more than 240 days in the preceding year from the date of his termination, and before terminating his services, no notice or one month's salary in lieu thereof and retrenchment compensation was paid to the respondent, such a termination was illegal and void.

19.6 On the aforesaid findings, award of reinstatement with back wages given in favour of the respondent.

20. It is apparent that the aforesaid findings are findings of fact. Such findings are not to be interfered with by the High Court under Article 226 of the Constitution or by this Court under Article 136 of the Constitution. Interference is permissible only in case these findings are totally perverse or based on no evidence. Insufficiency of evidence cannot be a ground to interdict these findings as it is not the function of this Court to reappreciate the evidence. It was because of this reason that the learned counsel for the appellant made frontal attack on the findings of the courts below and endeavoured to demonstrate that there was perversity in the fact-finding by CGIT which was glossed over by the High Court as well.

21. We start with the discussion as to whether the respondent was the employee of the appellant or was he a contract employee.

22. One thing is clear, namely, the respondent had worked for the appellant. It becomes apparent from the diaries produced by the respondent. These diaries were perused and examined by CGIT on the basis of which it is observed that the diaries were maintained in an ordinary course of business and were genuine. There is no reason to disbelieve these diaries and argument of the learned counsel for the appellant that these are self-serving documents does not cut any ice. It is a matter of common knowledge that the period in question was a period when frequent disruption in the functioning of the telephones was a normal feature and the Telephone Department used to receive numerous such complaints. Linemen were deputed to visit the places where the telephones had gone out of order to attend those complaints. There was a practice of giving one lineman various telephone numbers which he was supposed to attend. (Though all that has changed because of advancement in technology resulting in drastic reduction in such complaints and most of the complaints can even be rectified sitting in the exchange itself with the aid of computers.) The respondent had maintained the diaries where he noted down those numbers, and attended the same on day-to-day basis. The diaries for the last 2 years i.e 2001 and 2002 have been produced. These diaries prove that the respondent had been doing the work for the appellant and that too as a lineman.

23. The next question is as to whether the respondent did this work as a contract employee or was employed by the appellant directly.

24. Once we come to the conclusion that the respondent had been doing the work of the appellant, it was for the appellant to prove as to who was the contractor to whom the work was awarded and that the contractor had recruited the respondent. No such evidence is produced by the appellant. Moreover, the appellant has itself accepted the fact that the work of a lineman was not given on contract basis.

25. We, thus, find that there is no perversity in the finding of CGIT, as upheld by the High Court, that the respondent had worked with the appellant on daily-wage basis.

26. It would also be pertinent to mention that the respondent produced documents proving that he met with an accident on 17-11-2001 while repairing the fault of Telephone No. 65033. For repairing the said telephone it had to climb a pole where electricity wires with 11,000 electric volts were hanging as this telephone was installed in a factory. Due to this reason he got an electric shock. He was admitted in the hospital by JTO Dilbagh Singh, posted at SDO, Group Saidpur and another officer of the appellant viz. Naresh Malik got him admitted in Randhir Nursing Home at Kharkhoda on 17-11-2001. When he was shifted to Dr Sethi Hospital, Mr Jatinder Kumar SDO, Group Sonepat visited there. He was referred to Medical Hospital, Rohtak on 19-11-2001. More pertinently, he was shown as a government employee and all these records to this effect in the form of Exts. C-5 to C-8 have also been produced. All this evidence shows that when the respondent suffered the electric shock, officers of the appellant came to the spot of occurrence and ensured his medical treatment. This would not have happened if the respondent was not in the employment of the appellant.

27. There may be some dispute as to whether the respondent in fact worked for 15 years. The appellant may be correct that observations of the learned Single Judge in this behalf, namely, that it was an undisputed fact, are incorrect. However, nothing turns on this as the outcome is not dependent on this aspect. The fact remains that the respondent had produced some other documents to show that he had been working for quite some time. He had categorically asserted that he worked from July 1987. The case of the appellant before CGIT was not that the respondent did not work for 15 years but worked for lesser period. On the contrary, the stand of the appellant was that of complete denial, namely, that the respondent never worked with the appellant at all. Once that stand is proved to be false, there is no reason to interfere with the findings of CGIT. In any case, the award is passed on the basis that the respondent had worked for 240 days in the preceding 12 months' period prior to his termination and therefore it is a clear case of violation of Section 25-F of the Industrial Disputes Act. The termination is, thus, rightly held to be illegal. We do not find any perversity in this outcome.

28. The only question that survives for consideration is as to whether the relief of reinstatement with full back wages was rightly granted by CGIT.

29. The learned counsel for the appellant referred to two judgments wherein this Court

granted compensation instead of reinstatement. In Bharat Sanchar Nigam Limited v. Man Singh., this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In Incharge Officer v. Shankar Shetty 2010 9 SCC 126, it was held that those cases where the workman had worked on daily-wage basis, and worked merely for a period of 240 days or 2 to 3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.

30. In this judgment of Shankar Shetty, this trend was reiterated by referring to various judgments, as is clear from the following discussion: (SCC pp. 127-28, paras 2-4)

“2. Should an order of reinstatement automatically follow in a case where the engagement of a daily-wager has been brought to an end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short ‘the ID Act’)? The course of the decisions of this Court in recent years has been uniform on the above question.

3. In Jagbir Singh v. Haryana State Agriculture Mktg. Board Jagbir Singh v. Haryana State Agriculture Mktg. Board, 2009 15 SCC 327, 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 Corpn. Ltd. v. Uday Narain Pandey 2006 1 SCC 479, Uttaranchal Forest Development Corpn. v. M.C Joshi. 2007 9 SCC 353, State of M.P v. Lalit Kumar Verma 2007 1 SCC 575, Madhya Pradesh Administration v. Tribhuban 2007 9 SCC 748, Sita Ram v. Moti Lal Nehru Farmers Training Institute 2008 5 SCC 75, Jaipur Development Authority v. Ramsahai 2006 11 SCC 684, GDA v. Ashok Kumar 2008 4 SCC 261 and Mahboob Deepak v. Nagar Panchayat, Gajraula 2008 1 SCC 575 and stated as follows: (Jagbir Singh case, SCC pp. 330 & 335, paras 7 & 14)

‘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. 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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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.’

4. Jagbir Singh has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal 2010 6 SCC 773, wherein this Court stated: (SCC p. 777, para 11)

‘11. 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.’”

31. In Deptt. of Telecommunications v. Keshab Deb 2008 8 SCC 402 the Court emphasised that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one month’s pay in lieu of one month’s notice and wages of 15 days of each completed year of service as envisaged under Section 25-F of the Industrial Disputes Act. He could not have been directed to be regularised in service or granted/given a temporary status. Such a scheme has been held to be unconstitutional by this Court in A. Umarani v. Registrar, Coop. Societies 2004 7 SCC 112 and State of Karnataka v. Umadevi (3) 2006 4 SCC 1.

32. It was further submitted by the learned counsel for the appellant that likewise, even when reinstatement was ordered, it does not automatically follow that full back wages should be directed to be paid to the workman. He drew the attention of this Court to Coal India Ltd. v. Ananta Saha 2011 5 SCC 142 and Metropolitan Transport Corporation v. V. Venkatesan 2009 9 SCC 601.

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 mala fide and/or by way of victimisation, 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 a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that 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. The 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 regularisation [see State of Karnataka v. Umadevi (3)]. Thus when he cannot claim regularisation 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.

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 that 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 regularised under some policy but the workman concerned 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.

36. 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 linemen in the Telephone Department has been 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.

37. In Man Singh which was also a case of BSNL, this Court had granted compensation of Rs 2 lakhs 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. The award of CGIT is modified to this extent. The appeal is disposed of in the above terms. The respondent shall also be entitled to the costs of Rs 15,000 (Rupees fifteen thousand only) in this appeal.