

## HR Law Hotline

June 07, 2023

### EMPLOYMENT TERMINATION IN INDIA - REINSTATEMENT NOT AN AUTOMATIC OPTION

- In a recent case, Delhi High Court (“**HC**”) upheld compensation to be an appropriate remedy for illegal termination of employment where reinstatement is not possible.
- The HC relied on a catena of recent Supreme Court (“**SC**”) judgements to enunciate that reinstatement will not be an automatic option in all cases of illegal termination of employment which are in violation of Industrial Disputes Act, 1947 (“**IDA**”).

“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 IDA?” This question was dealt with in the case *Vikas Kumar v. South Delhi Municipal Corporation*<sup>1</sup>.

In consideration of facts and circumstances surrounding the matter, the HC did not deem it fit to direct reinstatement of the petitioner with the respondent although the petitioner’s termination of employment was not in compliance with IDA. The order of the Labour Court providing for compensation in lieu of reinstatement was upheld, and the HC discussed the circumstances in which compensation may be the appropriate remedy over reinstatement.

### BACKGROUND

The petitioner was a daily wager and a workman under IDA (“**Petitioner**”) employed with South Delhi Municipal Corporation (“**Employer**”). In course of his employment, the Petitioner was arrested by police authorities on allegations of involvement in a murder case. He was thereafter released on bail on May 22, 2004. After his release the Petitioner approached the Employer to resume his employment. However, the Employer informed the Petitioner that his services can only be resumed after final outcome of the trial. On July 7, 2004, the Petitioner was acquitted of the criminal charges filed against him. Post acquittal, Petitioner approached the Employer for resumption of his employment. The Employer informed the Petitioner that his employment was terminated with effect from May 19, 2003. Following this the Petitioner had sent a notice to the Employer demanding reinstatement. Not receiving a response, the Petitioner had filed an industrial dispute under Section 2A of IDA before the labour court in Delhi (“**Labour Court**”).

The Labour Court had ruled that the termination was illegal as the twin conditions under section 25F of IDA were not followed: i. termination for reasonable cause with provision of at least 1 month’s notice or pay in lieu thereof; & ii. payment of retrenchment compensation.

On the question of relief, the Labour Court had observed that while the Petitioner submitted that he was not gainfully employed since his illegal termination and accordingly sought reinstatement, it was not possible to accept that an able-bodied person such as the Petitioner would remain unemployed for such a long time. In light of facts and circumstances, the Labour Court had found it to be in the interest of justice to award compensation to the Petitioner in lieu of reinstatement (and other associated consequential benefits such as back wages).

The Labour Court had directed the Employer to pay compensation to the Petitioner to the extent of 50% of the minimum wages from the date of receiving of reference in the court to the date of award. This compensation was awarded in lieu of his reinstatement and other consequential benefits thereto. Aggrieved by the relief granted by the Labour Court, the Petitioner filed a writ petition before the HC.

### JUDGEMENT

The contention of the parties centred around whether the Petitioner **was eligible for reinstatement as the Employer did not comply with the section 25-F of IDA**.

The HC relied on multiple judgments inter alia including:

1. *Jagbir Singh v. Haryana State Agriculture Mktg. Board*<sup>2</sup>: This case also involved illegal termination of employment of a daily wage worker. The petitioner in this matter also prayed for reinstatement although several years had elapsed since his termination by the time the matter was taken up by SC. The SC ruled as follows:

“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

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The SC further clarified the position on reinstatement in case of illegal termination of employment of daily wagers. In relation to distinction between a permanent employee and daily-wager, the SC had held in this context that “... 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.” Accordingly, the SC took into consideration the nature of engagement of the employee as a major factor in deciding whether reinstatement is an appropriate remedy.

2. **Delhi Horticulture v. Delhi Administration**<sup>3</sup>: This case involved termination of a casual worker in violation of section 25-F of the IDA. In this judgement, the SC directed the employer to pay a compensation of INR 23,000 in lieu of dismissal as opposed to reinstatement. The SC had recorded following reasons for granting compensation in lieu of reinstatement:

- “(i) the workman had worked only for a brief period of 11 months
- (ii) no junior to the workman was allowed to continue in service
- (iii) the workman was engaged as a casual labour for a brief period on daily wages
- (iv) there was a gap of 8 years computing from the date of removal
- (v) at the time of removal, the workman was only 18-19 years of age and even after 8 years he would be reinstated only as a casual labour on daily wages.”

3. **Triloki v. Ashok Hotel**<sup>4</sup>: In this case it was held by HC that an employee may be reinstated if:

- “(i) he/she joined the service after going through the entire selection process against a sanctioned post, &
- (ii) he/she has remained employed for a sufficient long period.”

It was further pointed out that it may be difficult to define “sufficient long period” but it has to be substantial, i.e., 10/15/20 years.

In reference to this judgment, the HC pointed out that “If the order of reinstatement is made after 15-20 years, it would be impractical and unworkable for both employer and employee. The work culture and atmosphere at working place totally changes. The job requirements also change. An employee who might be suitable for a job around 15-20 years may not be suitable now. The dynamics of functioning have totally changed.”

## CONCLUSION

While arriving at a decision, the HC stated that: “Though workman/employee may not be punished for delay but the courts have to take a pragmatic view” in awarding a remedy.

The HC took into consideration the following factors to arrive at a conclusion in the current case:

1. Petitioner’s nature of employment as daily-wager.
2. The lapsed time between cessation of Petitioner’s employment and the final HC order.

In view of the same and recent SC judgements<sup>5</sup> on similar matters, the HC upheld the award passed by the Labour Court for illegal termination of Petitioner’s employment by the Employer. Accordingly, the provision of compensation in lieu of reinstatement was upheld.

## ANALYSIS

This judgement is notable for the following reasons:

1. It highlights the risk of not complying with applicable laws while terminating employment.
2. It reflects growing awareness of labour laws among Indian employees.
3. It clarifies that reinstatement is not an automatic remedy in all cases of unlawful termination.

Based on judgments referenced by HC, in cases challenging illegal termination of employment, Indian courts have typically focused on an employee’s nature of employment and pragmatic implication of directing reinstatement to decide whether reinstatement is an appropriate remedy.

Courts have sometimes preferred to provide compensation as a remedy for unlawful termination in cases involving permanent employee as well based on facts of the matter. For instance, in cases involving irretrievable breakdown of trust or loss of confidence between employer and employee Indian labour courts have often considered<sup>6</sup> compensation as a preferable remedy to reinstatement.

Needless to say that termination of employment remains the most litigated aspect under India labour law. Any non-compliance with the applicable laws including IDA or state-specific shops and establishments statutes may pose challenges for employers.

—Vivek Ilawat, Sayantani Saha & Vikram Shroff

You can direct your queries or comments to the authors

<sup>1</sup>2023 SCC OnLine Del 274

<sup>2</sup>(2009) 15 SCC 327

<sup>3</sup>(1992) 1 LLN 939,

<sup>4</sup>WP (C) 5227/2012

<sup>5</sup>Mahboob Deepak v. Nagar Panchayat, Gjraula, (2008) 1 SCC 575, M.P. Admn. v. Tribhuban, (2008) 1 SCC (L&S) 264, Sita Ram v. Moti Lal Nehru Farmers Training Institute, (2008) 5 SCC 75, GDA v. Ashok Kumar, (2008) 4 SCC 261

<sup>6</sup>Divisional Controller, KSRTC vs. M.G. Vittal Rao ( 2012 ) 1 SCC 442, U.P. State Sugar Corporation Ltd. v. Kaushal Kumar Sinha 2017 LLR 673, VMware Software India Pvt. Ltd. vs. Ashis Kumar Nath (12.05.2022 - KARHC) : WP No. 8149/2021 (L-RES)

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