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TRENDS OF REINSTATEMENT AS REMEDY IN CASES WHERE SECTION 25F OF INDUSTRIAL DISPUTE ACT 1947 WAS NOT FOLLOWED

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ABSTRACT

The article examines the judicial trend of reinstatement as a remedy in cases of retrenchment under the Industrial Disputes Act (IDA) of 1947. Retrenchment, the termination of an employee's service by the employer for various reasons, has become a significant issue in recent times due to economic downturns and changes in business strategies. Section 2(oo) of the IDA defines retrenchment broadly, covering all forms of termination except those specifically dealt with by other provisions of the Act. Section 25F of the IDA lays down the conditions that must be followed while retrenching a worker, including providing one month's notice, paying retrenchment compensation, and serving notice to the appropriate government. However, the court has clarified that automatic reinstatement with full back wages is not warranted in every case of illegal retrenchment, especially in the case of daily wage workers.

The landmark case of B.S.N.L vs. Bhurumal (2014) highlighted the shift in the legal position, stating that compensation instead of reinstatement could meet the ends of justice, particularly for daily wage workers. The court acknowledged that reinstatement may not be practical or viable in certain situations, and monetary compensation may be more appropriate to address the loss of employment. However, the court also emphasized that reinstatement could be granted in exceptional cases where there are compelling reasons to do so. The article explores the nuances of the court's decisions and the factors influencing the choice between reinstatement and compensation in cases of retrenchment.

KEYWORDS: Retrenchment, Industrial Disputes Act Section 25f, Judicial Trend in reinstatement, Remedies for retrenchment, reinstatement after retrenchment.

I. INTRODUCTION

Retrenchment, as defined under the Industrial Disputes Act (IDA) of 1947, is the termination of an employee's service by the employer for reasons such as the closure of the establishment, downsizing, or reduction in the workforce. The IDA provides certain safeguards and regulations to protect the interests of workers who may be affected by retrenchment. These provisions aim to ensure fair treatment and compensation for employees during such circumstances.

In recent times, retrenchment has become a significant issue due to various factors, including economic downturns, technological advancements, and changes in business strategies. Many organizations resort to retrenchment as a measure to streamline operations and manage costs. However, the implementation of retrenchment can be a complex and sensitive process, often leading to disputes between employers and employees.

The article does not give a brief explanation of retrenchment rather it restricts itself to find the judicial trend of reinstatement as a remedy in cases of retrenchment.

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II. RETRENCHMENT

Section 2(oo) defines retrenchment as follows "retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include -

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;"[696]

Retrenchment is wide and comprehensive term it covers all aspect of termination of service except those are specifically dealt by other provisions under the act. The supreme court has held that the expression "termination by the employer of the service of a workman for any reason whatsoever emphasizes the broad interpretation to be given to the expression 'retrenchment'. It covers every kind of termination of service except those not expressly hampered by other provision of the act such as sections25ff & 25fff. So here discharge of a workman on the ground of failure of the workman to pass the test which would have enabled her to be confirmed in the service is retrenchment.[697]

III. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN

Section 25f lays out the conditions that has to be followed while retrenching a worker. Section 25f is as follows:

"25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month 's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette."[698]

A perusal reading of section 25f will spell out the essentials of the section which are as follows:

1. The workman must be given one month's notice;
2. The notice must be in writing;
3. The notice must contain reasons for retrenchment;
4. The period of notice must expire;
5. The period of notice must expire or the workman must be paid in lieu of the notice, wages for the period of notice.
6. The workman must be paid retrenchment compensation at the time of retrenchment.
7. The compensation must be equivalent to fifteen days average pay for every completed

[696] THE INDUSTRIAL DISPUTES ACT, 1947 (Act 14 OF 1947), s. 2(oo)
[697] SANTOSH GUPTA Vs. STATE BANK OF PATIALA, AIR 1980 SC 1219
[698] THE INDUSTRIAL DISPUTES ACT, 1947 (Act 14 OF 1947), s. 25f

year of continuous service or any part thereof in excess of six months.

8. He must be in continuous service as defined in Section 25-B for not less than one year. The workman has to show that he has been in continuous service for not less than one year under that employer who has retrenched him from service.

However, all the condition laid down are not mandatory. Clause (c) of section 25-Fcan be treated only as directory and not mandatory.[699] Section 25f imposes in mandatory terms a condition precedent, non-compliance with the said condition would render the impugned retrenchment invalid and inoperative.[700]

IV. REMEDIES

In case of an invalid retrenchment, where an employer has terminated the services of a worker without complying with the provisions of the Industrial Disputes Act (IDA) or other relevant employment laws, the affected worker has certain remedies available to seek redress. These remedies are aimed at providing relief and addressing the injustice caused by the improper or unlawful retrenchment. Some common remedies in such cases include:

Reinstatement: The worker may seek reinstatement to their former position or a comparable position within the organization. Reinstatement restores the worker to their previous employment status, including salary, benefits, and seniority rights.

Back Wages: If reinstatement is not feasible or practical, the worker may be entitled to receive back wages for the period of unemployment caused by the invalid retrenchment. Back wages compensate the worker for the financial losses incurred due to wrongful termination.

Compensation: In addition to back wages, the worker may also be entitled to receive compensation as a form of damages for the mental anguish, loss of reputation, or other adverse consequences resulting from the invalid retrenchment. The compensation amount may vary based on the specific circumstances of the case.

Legal Proceedings: The worker can initiate legal proceedings, such as filing a complaint or a lawsuit, to challenge the invalid retrenchment and seek the appropriate remedies. This typically involves approaching the appropriate labour or employment tribunal or court with jurisdiction over the matter.

However, reinstatement cannot be provided in each case. 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.[701] So, it presents us with a dilemma that in which cases the relief of reinstatement can be provided and in which cases it will be just back wages and compensation. A plethora of supreme cases had contrary judgements where some were too restrictive and some being quite liberal. However, this is not a grey area anymore with the judgement of SC in the case of B.S.N.L Vs. Bhurumal[702].

V. THE JUDICIAL TREND

One notable case is the case of Workmen of M/s Firestone Tyre and Rubber Co. of India (P) Ltd. v. The Management[703], where the Supreme Court of India held that if the retrenchment is found to be illegal, the appropriate remedy would be

[699] Gurmail Singh v. State of Punjab, AIR1993 SC1388
[700] State Of Bombay & Others V. Hospital Majdoor Sabha, AIR 1960 SC 610
[701] State of Karnataka vs. Uma Devi, (2006) 4 SCC 1
[702] B.S.N.L Vs. Bhurumal, 2014 7 SCC 177
[703] Workmen of M/s Firestone Tyre and Rubber Co. of India (P) Ltd. v. The Management 1973 SCR (3) 587

reinstatement with full back wages and continuity of service.

Another significant case is Punjab National Bank v. All India Punjab National Bank Employees' Federation,[704] where the Supreme Court stated that if the retrenchment is found to be illegal, the appropriate remedy would be reinstatement with back wages.

In the case of Telecom District Manager v. Keshab Deb[705], the employee was initially employed as a driver for a short period of time but was later terminated due to misconduct that led to his arrest by the police. The court clarified that automatic reinstatement with full back wages was not warranted in such cases. Instead, the employee was entitled to receive one month's pay in lieu of notice and wages for each completed year of service as prescribed by Section 25-F of the Industrial Disputes Act. The court emphasized that the employee could not be granted regularization or given a temporary status as such schemes were deemed unconstitutional by the court in the many cases[706].

In Telegraph Deptt. V. Santosh Kumar Seal[707], wherein the supreme court stated: "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 the case of BSNL vs. Man Singh[708], the court clarified that if a termination is deemed invalid due to a violation of Section 25-F of the Industrial Disputes Act, the relief of reinstatement is not automatically granted as a matter of right.

In Incharge Officer & Anr. vs. Shankar Shetty[709], the court took up the issue "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 the Industrial Disputes Act, 1947?"

The court answered in the following words: "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.

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."[710]

VI. Case analysis of B.S.N.L Vs. Bhurumal[711]

FACTS

The respondent workman claimed to have worked as a Lineman on daily wages at the Sonipat Telephone Department, BSNL at Saidpur Exchange for 15 years. He alleged that his services were unlawfully terminated from April

[704] Punjab National Bank v. All India Punjab National Bank Employees' Federation AIR 1960 SC 160
[705] Telecom District Manager v. Keshab Deb (2008) 8 SCC 402
[706] A. Umarani v. Coop. Societies, (2004) 7 SCC 112
[707] Telegraph Deptt. V. Santosh Kumar Seal, (2008) 8 SCC 402
[708] BSNL vs. Man Singh, (2012) 1 SCC 558
[709] Incharge Officer & Anr. vs. Shankar Shetty, (2010) 9 SCC 126
[710] Incharge Officer & Anr. vs. Shankar Shetty, (2010) 9 SCC 126
[711] B.S.N.L Vs. Bhurumal, (2014) 7 SCC 177

28, 2002, after he suffered an electrical shock and was hospitalized, during which he was not paid wages. The appellant argued that there was an agreement with a securities/services agency for the supply of personnel, and the respondent may have worked as a contract employee deployed at their establishment. They maintained that the respondent was not directly recruited by the appellant, no appointment or engagement letter was issued, and there was no employer employee relationship.

Conciliation proceedings took place following a notice sent to the appellant. However, these proceedings failed, resulting in the Conciliation Officer submitting a failure report to the Central Government. Based on this report, the Central Government referred the matter to the Central Government Industrial Disputes-cum-Labour Court (CGIT) in Chandigarh.

ISSUE

"Whether the action of the management of BSNL, Sonipat in terminating the services of Sh. Bhurumal worker w.e.f. Arpil 2002 is just and legal? If not what relief he is entitled to?"

HELD

After analyzing the preceding judgments, it is evident that the standard principle of granting automatic reinstatement with full back wages for illegal terminations is not universally applied. While this principle may be applicable in situations where regular/permanent employees are unlawfully terminated due to malice, victimization, or unfair labour practices, a distinct stance is taken in the case of daily wage workers. When the termination of a daily wage worker is deemed illegal due to a procedural flaw, specifically a violation of Section 25-F of the Industrial Disputes Act, the court consistently maintains the perspective that automatic reinstatement with back wages is not appropriate. Instead, the court consistently emphasizes providing the worker with monetary compensation that aligns with the principles of justice. The rationale for this shift in direction is clearly discernible.

Thus, when workman 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.

However, the court further held that "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 wee 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".

Applying the aforementioned principles, according to the court the present case involves a respondent who was working as a daily wager. It is worth noting that the termination occurred more than 11 years ago. Although the respondent claims to have worked for 15 years, there is a lack of direct evidence supporting this assertion. The majority of the respondent's documents pertain to a two-year period, specifically 2001 and 2002. Consequently, the absence of concrete evidence regarding the claimed 15-year work

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history becomes relevant when considering the appropriate relief.

Moreover, it is pertinent to take judicial notice of the fact that the demand for linemen in the telephone department has significantly decreased due to technological advancements. This observation suggests that reinstating the respondent may not be a viable solution in the present circumstances.

Considering these factors, it is the view of the court that granting compensation in lieu of reinstatement would serve the ends of justice. This means that instead of reinstating the respondent, they would be provided with monetary compensation to address the loss of employment. So, the court granted a relief of 3 lakh instead of reinstatement.

VII. CONCLUSION

So, reinstatement as a remedy to invalid retrenchment is not a right rather depends upon the facts of the case. Though earlier the court favoured reinstatement as a remedy now it is settled that the mitigating circumstances has to be taken in consideration to answer weather reinstatement is the justified remedy or not. There cannot be a list of exhaustive situations where reinstatement can be denied but some of the factors that can be taken into consideration are:

- The time elapsed between the date of determination and date of granting of remedy by the court
- Relevancy of workmen if reinstated
- Appropriate understanding of facts and circumstances of reinstatement

Hence reinstatement as a remedy to invalid retrenchment will differ from case to case according to the facts and circumstances of the case.

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