IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO. 13871 OF 2024 (L-TER)

BETWEEN:

MOHAMMED YAKHUB,
S/O IQBAL AHMED,
AGED ABOUT 32 YEARS,
R/A DOOR NO.66, 2ND EDIGAH,
2ND STAGE, B T MILL LAYOUT
BANNIMANTAP, MYSURU-570015.

...PETITIONER

(BY SRI VISHNUKUMAR K, ADVOCATE)

AND:

1. WICKEDRIDE ADVENTURE SERVICES PVT LTD.,
BASEMENT FLOOR, OPP SUBURBAN BUS STAND
MAHARAJA COMPLEX, MYSURU-570001,
REPRESENTED BY ITS MANAGER.

2. WICKEDRIDE ADVENTURE SERVICES
(BOUNCE INFINITY) PVT LTD., ABHAYA HEIGHTS,
7TH FLOOR, 9TH CROSS ROAD,
3RD PHASE, SARAKKI, J P NAGAR
BENGALURU-560078,
REPRESENTED BY ITS MANAGING DIRECTOR,
FIRST AND SECOND RESPONDENT IS A COMPANY
REGISTERED AND INCORPORATED
UNDER COMPANIES ACT 1956.

...RESPONDENTS

(BY MISS SAMEEKSHA PATIL, ADVOCATE FOR
SMT KRUTIKA RAGHAVAN, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH THE AWARD DATED 06/02/2023 IN IID NO.37/2020 PASSED BY LABOUR COURT MYSURU AT ANNEXURE-L AND TO DIRECT THE RESPONDENT TO REINSTATE THE PETITIONER INTO

SERVICE AND PAY FULL BACKWAGES FROM 20/04/2020 BEING DATE OF REFUSAL OF WORK TILL REINSTATEMENT AND FOR CONTINUITY OF SERVICE AND CONSEQUENTIAL BENEFITS ALONG WITH COST.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 20TH JANUARY 2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

CAV ORDER

This petition is filed assailing the award dated 06.02.2023 in I.I.D. No.37/2020 on the file of Labour Court, Mysuru.

2. In terms of the said award, the petition under Section 10(4A) of the Industrial Disputes Act, 1947 (for short 'Act, 1947') is allowed in part, and the I party-workman is granted severance compensation with interest @ 12% per annum from the date of retrenchment order till its realization.

3. The award also directs II party-employer to pay interest @ 18% per annum in case of non-compliance of the aforementioned award.

4. Aggrieved by the said award, the petitioner-workman is before the Court.

5. The respondent-employer has accepted the award and claims that Rs.1,29,354/- is paid to the petitioner-workman. The petitioner - workman claims that, he has received the said amount under protest reserving right to challenge the award. Hence, the petitioner-workman is before this Court.

6. Certain facts are admitted:

The petitioner was employed by respondent with effect from 24.09.2018. On 25.07.2019, the petitioner's salary was revised to Rs.2,58,792/- per annum, with effect from 01.04.2019. Initially, the take home salary was Rs.13,000/- per month as agreed in terms of contract of employment dated 24.09.2018. The appointment letter would also indicate that, the petitioner would be on probation for a period of six months from the date of joining i.e., 24.09.2018.

7. The petitioner alleged that with effect from 20.04.2020, he was denied employment and between 01.05.2020 to 03.05.2020 there were correspondences through Whatsapp between the petitioner and the respondent-employer. On 12.06.2020, the petitioner addressed a letter to the respondent to permit him to continue in employment by

paying the arrears of wages. The petitioner alleges that, there was no response to the said letter and thus raised an industrial dispute.

8. The respondent filed statement of objection and opposed the claim petition and contended that the respondent - Company took a decision to close a part of its business in A2A store in Mysuru due to COVID-19 Pandemic. Respondent contends that the petitioner-workman was given an opportunity to work with Kirana team in the Company and the petitioner-workman turned-down the offer. It is alleged that the petitioner - workman continued to work with the respondent till 30.04.2020. It is further contended that the petitioner refused to work with Kirana Team on the premise that he found a new employment.

9. The respondent also contends that the decision to close a part of its business was taken to reduce the work force on account of the pandemic and reduction in business, and the petitioner - workman was given 30 days notice for his exit and workman was offered 4 months wages as severance package subject to production of no due certificate, clearance certificate from the Manager. Respondent-Company urged that workman

has not furnished no due certificate as required in terms of the policy of the Company.

10. The Labour Court has held that the petitioner is only entitled to severance compensation and rejected the claim.

11. Learned counsel appearing for the petitioner in addition to narrating the facts referred to above urged that, without there being any charge of misconduct and without following any procedure for retrenchment, the respondent-Company has denied the employment. It is the contention that the Labour Court has not appreciated the petitioner's contention under Section 25-F of the Act, 1947.

12. It is also urged that, the claim relating to severance compensation is also untenable as the petitioner has not signed any agreement for his exit from the Company.

13. The learned counsel for the respondent-Company urged that, having accepted the severance compensation, the petitioner is not entitled to any relief and Labour Court has rightly rejected the claim is the submission.

14. In addition, by referring to the Whatsapp correspondence between the petitioner and the respondent, it

is urged that, the petitioner has agreed to his exit and has not agreed to work in another division of the respondent-Company and that being the position; the petitioner is not entitled to any relief.

15. The Court has considered the contentions raised at the Bar and perused the records.

16. As can be noticed from the statement of objection, the petitioner's employment with the respondent - employer with effect from 24.09.2018 is not in dispute. It is to be noticed that it is not a case of termination from employment for any misconduct. There is no allegation of misconduct against the petitioner. Thus, there is no domestic enquiry.

17. The Labour Court on considering the evidence placed on record by both the parties has concluded that, the petitioner is entitled to severance package. The Labour Court concluded that the respondent - Management has issued notice to the workman. Labour Court has held that the communication sent through whatsapp is to be accepted as valid evidence unless the contrary is proved. It has also come to the conclusion respondent-Company has offered retrenchment

compensation equivalent to 4 months salary as agreed as per the terms of the appointment.

18. It is to be noticed that, the contract of employment is not produced by the respondent-employer to establish that the workman is only entitled to 4 months wages in case of dis engagement. Even if there is any such agreement, the respondent cannot claim immunity from the operation of Section 25-F of the Act, 1947.

19. The Labour Court has come to the conclusion that it is not a case of termination but the retrenchment of the employee under the provisions of Section 25-F of the Act, 1947. The Labour Court is of the view that though the petitioner-workman has not received the retrenchment compensation, it cannot be said that employer has not followed due process of law before retrenching the workman. The Labour Court has held that the payment of 4 months wages to the petitioner disentitles the petitioner to claim any relief.

20. The Labour Court accepted the plea that, the omission on the part of the workman to produce a no-due certificate and other documents is the reason for non-payment of compensation and accordingly answered the issue relating to

illegal termination in the negative, against the petitioner-workman and in favour of the respondent-employer, and consequently directed the respondent to pay the severance compensation.

21. It is to be noticed that the respondent has taken the contention that the petitioner and some other employees have been disengaged from employment pursuant to the exit policy with an intention to reduce the work force. It has to be noticed that no such agreement between the petitioner and the respondent is placed before the Court to take a view that the petitioner has accepted the Company's decision to exit the petitioner from the Company. That being the position, the Court cannot hold that the petitioner has agreed for any such decision allegedly taken by the Company.

22. The Labour Court has held (probably because of the nature of defence raised by the respondent wherein it is urged that compensation is paid) that it is a case of retrenchment.

23. Now, the question is, '*whether the requirement of Section 25-F of the Act, 1947 which provides for retrenchment of an employee, has been followed by the respondent-employer?".*

24. Section 25-F of the Act of 1947 reads as under:

> ***"25-F. 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;*
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> *[* * *]*
>
> *(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*
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> *(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."*

25. The requirement under the aforementioned provision is that, a workman who is put in continuous service for not less than one year under the employer is entitled to retrenchment compensation, and in order to retrench the employee, the employer is required to issue one month's notice in writing indicating the reasons for retrenchment or to pay one month's salary in view of such notice.

26. In addition thereto, the employer is required to pay, at the time of retrenchment, the compensation equivalent to fifteen days' average pay, for every completed year of continuous service or any part thereof in excess of six months.

27. Another condition is issuance of notice in the prescribed manner on the appropriate Government or such authority as specified by the appropriate Government.

28. It is to be noticed that, no notice was issued or served on the petitioner and the appropriate Government or such authority as specified by the appropriate Government.

29. More than anything else, it is not the case of the respondent-employer that, such notice was issued and served.

30. It is not the case of the respondent-employer that in view of such notice, a month's salary was paid to the workman.

31. It is stated that the severance compensation agreed to be paid was required to be paid, subject to the workman furnishing a no-due certificate, and the petitioner did not furnish no due certificate. Whether any amount was due from the petitioner or not, is known to the respondent and for that

the petitioner need not furnish any no due certificate. Thus, the respondent cannot raise a contention that compensation was not paid to the petitioner because of non-compliance of the direction to produce no due certificate. It is not the case of the respondent-employer that the petitioner was in arrears towards the employer.

32. It is also noticed that the respondent has admitted in the statement of objection that, the payment of severance compensation was put on hold and the payment was not made. Thus, severance compensation was not paid when the employment was denied. This being the position, the Court can safely conclude that the retrenchment compensation is not paid and procedure under Section 25-F of the Act, 1947 is not complied.

33. Though, learned counsel for the respondent would urge that, post-award the respondent-employer has paid severance compensation to the petitioner, it is required to be noticed that the petitioner has received the said compensation under protest. This being the position, the petitioner's right to challenge the denial of employment or the alleged retrenchment is not taken away.

34. This Court has perused the communication between the petitioner and the respondent said to have been made through WhatsApp. The said communication does not indicate that the petitioner was called upon to continue in work under the same terms as he was doing before the denial of work. Though, there is some indication in the Whatsapp messages that the petitioner is called upon to work in another division of the respondent-Company, it is to be noticed that no notice was issued to the petitioner alleging that he has not reported to duty to the Kirana Team and there is no formal order by the authorised officer transferring the petitioner to another division. More than anything else, from the Whatsapp messages referred to above, one cannot conclusively hold that the petitioner was offered work in the Kirana team.

35. This being the position, the Court is of the view that the award passed by the Labour Court is not sustainable. The Labour Court failed to take note of the consequence of non-compliance of Section 25-F of the Act, 1947 which is mandatorily to be complied to retrench any workman.

36. Since, the compliance of Section 25-F of the Act, 1947 is not established; the Court cannot hold that denial of employment is legal.

37. The finding of the Labour Court that, the petitioner has accepted the severance compensation cannot be said to be a valid finding without production and proof of an agreement relating to alleged severance.

38. Now the question is, *"whether the petitioner is to be reinstated and if so, on what terms"?*

39. Earlier the view was to reinstate the workman and normally full backwages followed after such reinstatement. The ratio in ***State of Bombay v. Hospital Mazdoor Sabha[1] and others, and Mohan Lal v. Bharat Electronics Ltd.,[2]*** is to the said effect.

40. However, said view has undergone a considerable change. Now there is no automatic reinstatement or award for full backwages. The award for reinstatement and full backwages depends on various factors. Thus, the Court has to consider whether the workman has made out a case for

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[1] ***1960 SCC OnLine SC 44***
[2] ***(1981) 3 SCC 225***

reinstatement and award of full backwages. Or, whether the employer has made out a case for any other alternative relief like compensation instead of reinstatement or reinstatement without backwages or partial backwages.

41. Before deciding the said question the Court has also considered the ratio laid down in ***Jagbir Singh vs Haryana State Agriculture Marketing Board and Another***[3]***.***

42. The relevant paragraphs in the said judgment are extracted as under:

> *"**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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[3] ***(2009) 15 SCC 327***

8. *In U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey the question for consideration before this Court was whether direction to pay back wages consequent upon a declaration that a workman has been retrenched in violation of the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 (equivalent to Section 25-F of "the 1947 Act") as a rule was proper exercise of discretion. This Court considered a large number of cases and observed thus: (SCC pp. 491-92, paras 41-43 & 45)*

> *"41. The Industrial Courts while adjudicating on disputes between the management and the workmen, therefore, must take such decisions which would be in consonance with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically. Rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law.*
>
> *42. A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance.*

43. The changes brought about by the subsequent decisions of this Court, probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing, is evident.

* * *

45. The Court, therefore, emphasised that while granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages, therefore, cannot be the natural consequence."

***9**. This Court in Uttaranchal Forest Development Corpn. v. M.C. Joshi held that relief of reinstatement with full back wages were not being granted automatically only because it would be lawful to do so and several factors have to be considered, few of them being as to whether the appointment of the workman had been made in terms of statute/rules and the delay in raising the industrial dispute. This Court granted compensation instead of reinstatement although there was violation of Section 6-N of the U.P. Industrial Disputes Act, 1947 (equivalent to Section 25-F of the 1947 Act). This is what this Court said: (SCC p. 356, para 9)*

"9. Although according to the learned counsel appearing on behalf of the appellant the Labour Court and the High Court committed

an error in arriving at a finding that in terminating the services of the respondent, the provisions of Section 6-N of the U.P. Industrial Disputes Act were contravened, we will proceed on the basis that the said finding is correct. The question, however, would be as to whether in a situation of this nature, relief of reinstatement in services should have been granted. It is now well settled by reason of a catena of decisions of this Court that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration, one of them being as to whether such an appointment had been made in terms of the statutory rules. Delay in raising an industrial dispute is also a relevant fact."

10. *In State of M.P. v. Lalit Kumar Verma this Court substituted the award of reinstatement by compensation. In yet another decision in M.P. Admn. v. Tribhuban this Court reversed the High Court's order directing reinstatement with full back wages and instead awarded compensation. It was opined: (SCC p. 755, paras 12-13)*

"12. In this case, the Industrial Court exercised its discretionary jurisdiction under Section 11-A of the Industrial Disputes Act. It merely directed the amount of compensation to which the respondent was entitled had the

provisions of Section 25-F been complied with should be sufficient to meet the ends of justice. We are not suggesting that the High Court could not interfere with the said order, but the discretionary jurisdiction exercised by the Industrial Court, in our opinion, should have been taken into consideration for determination of the question as to what relief should be granted in the peculiar facts and circumstances of this case. Each case is required to be dealt with in the fact situation obtaining therein.

13. We, therefore, are of the opinion that keeping in view the peculiar facts and circumstances of this case and particularly in view of the fact that the High Court had directed reinstatement with full back wages, we are of the opinion that interest of justice would be subserved if the appellant herein be directed to pay a sum of Rs 75,000 by way of compensation to the respondent. This appeal is allowed to the aforementioned extent."

11. *In Sita Ram v. Moti Lal Nehru Farmers Training Institute this Court considered the question as to whether the Labour Court was justified in awarding reinstatement of the appellants therein: (SCC p. 81, paras 21-25)*

"21. The question, which, however, falls for our consideration is as to whether the Labour

Court was justified in awarding reinstatement of the appellants in service.

22. *Keeping in view the period during which the services were rendered by the respondent (sic appellants); the fact that the respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.*

23. *Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefore were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.*

24. *This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice.(See JaipurDevelopmentAuthority v. R amsahai, M.P.Admn. v. Tribhuban and Uttaranchal Forest Development Corpn. v. M.C. Joshi.)*

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs."

12. *In GDA v. Ashok Kumar this Court again considered the question whether the Labour Court was justified in awarding the relief of reinstatement with full back wages in favour of the workman and held: (SCC pp. 264-65, paras 18-22)*

"18. The first respondent was admittedly appointed on a daily wage of Rs 17 per day. He worked for a bit more than two years. It has not been disputed before us that sanction of the State of U.P. was necessary for creation of posts. The contention of the appellant before the Labour Court that the post was not sanctioned after 31-3-1990 by the State was not denied or disputed. If there did not exist any post, in our opinion, the Labour Court should not have directed reinstatement of the first respondent in service.

19. A statutory authority is obligated to make recruitments only upon compliance with the equality clause contained in Articles 14 and 16 of the Constitution of India. Any

appointment in violation of the said constitutional scheme as also the statutory recruitment rules, if any, would be void. These facts were required to be kept in mind by the Labour Court before passing an award of reinstatement.

20. *Furthermore, public interest would not be subserved if after such a long lapse of time, the first respondent is directed to be reinstated in service.*

21. *We are, therefore, of the opinion that the appellant should be directed to pay compensation to the first respondent in stead and in place of the relief of reinstatement in service.*

22. *Keeping in view the fact that the respondent worked for about six years as also the amount of daily wages which he had been getting, we are of the opinion that the interest of justice would be subserved if the appellant is directed to pay a sum of Rs 50,000 to the first respondent. The said sum should be paid to the respondent within eight weeks from date, failing which the same shall carry interest at the rate of 12% per annum. The appeal is allowed to the aforesaid extent. However, in the facts and circumstances of this case, there shall be no order as to costs."*

43. It is noticed that in ***Jagbir Singh*** *(supra)* the Apex Court has awarded compensation to the workman as the said workman was a daily wager and not on the roll of a Government employee.

44. In the instant case, the respondent/workman was a permanent employee. Another factor that requires consideration before directing to reinstatement is, '*whether the employer is still running the business?*" It is not the case of the respondent-employer that its operations are closed or business is reduced at this juncture. Though the reasons cited for denial of work or shifting the petitioner to another division (which contention is not proved) is said to be a challenging business circumstance during Covid-19 pandemic, said situation prevailed only for a short period. Even in the said period, the respondent employer claimed, though unsuccessfully, that the respondent - employer offered employment to the petitioner in another division of the respondent- Establishment. This would suggest that there were jobs to be performed during that period. Thereafter, nothing is brought on record to suggest that the business is reduced or there is no vacancy. This being the position, the Court is of the view that the petitioner is entitled to reinstatement.

45. The next question is. *"Should the petitioner be awarded full backwages?"*

46. In the claim statement, the petitioner has stated that he is unemployed since denial of work. He has also led evidence on the same lines. In the cross-examination, the employer has suggested that the workman is working or that he is not unemployed. The workman has denied the suggestion. There is no positive evidence to show that the workman is gainfully employed elsewhere. However, that by itself may not be sufficient to award full backwages in the facts of the present case, the reason is, the workman was denied employment during Covid-19 pandemic which was a very unusual challenging situation. Thus, the denial of employment may not be termed as malafide or to victimize the workman.

47. The Court has also taken note of the fact the respondent - Company has taken a stand that, it has offered employment in the other division of the respondent - Establishment. Though the said stand is not conclusively proved to hold that the workman refused employment, the Court is of the view that, in the peculiar facts of the case, a case is made out to deny certain percentage of backwages. Taking into

consideration the nature of the job the workman performed with the respondent - Company, it is quite possible that the petitioner was in some kind of employment after denial of work by the respondent. Under these circumstances, the petitioner is entitled to 50% backwages from the date of denial of employment i.e., 24.09.2018 till the date of reinstatement.

48. Since it is an admitted fact that post award passed by the Labour Court the petitioner has received severance compensation (under protest) the said amount has to be deducted from the 50% backwages payable to the petitioner. Hence, the following:

ORDER

(i) The Writ Petition is ***allowed in part***.

(ii) The impugned award dated 06.02.2023 in IID No.37/2020 on the file of Labour Court, Mysuru is set-aside.

(iii) The petitioner is to be reinstated by the respondent.

(iv) The petitioner is entitled to 50% backwages from the date of denial of employment i.e., 24.09.2018 till the date of reinstatement.

(v) The respondent is entitled to deduct the amount paid towards severance compensation while computing 50% backwages.

(vi) The petitioner is entitled to all other consequential benefits.

(vii) The order has to be complied within 45 days from today. If not, the respondent is liable to pay 6% interest per annum on the amount payable.

(viii) No order as to cost.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

GVP