

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP (C) No. 4197/2008**

Judgment reserved on: 19.03.2009

% Judgment delivered on: 26.10.2009

On-Dot Couriers & Cargo Ltd., ... Petitioner
Through: Mr. Kiran Suri, Advocate

versus

Anand Singh Rawat, ... Respondent
Through: Mr. Sanjay Ghose, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J.

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1. By way of this petition filed under Art. 226 of the Constitution of India, the petitioner seeks issue of writ quashing the

order dated 01.03.2008 passed by the learned Labour Court so far it relates to grant of Rs. 2,16,000/- as compensation to the respondent no. 1.

2. The brief conspectus of the facts as set out in the petition are as under:

Mr. Anand Singh Rawat, the workman/respondent herein had been working with the management/appellant herein as a clerk since 8.6.1992 and his last drawn salary was @ Rs.4,200/- per month including emoluments. The main work of the workman was to receive the correspondence from Haryana and Punjab branches and to enter the receipts in the register. He also used to maintain the record. The service record of the workman is claimed to have remained clear and management never had any cause of complaint against the workman. Since the day of joining upto two years he had worked at Delhi and thereafter he had been sent to Ambala, where he worked for another period of six years and then from 30.7.1999 till 1.8.1999 he was called back to Delhi, where without assigning any reason, without issuing any notice, charge-sheet, without holding any enquiry, the

management/appellant terminated the services of the respondent/workman. On 6.11.1999 the workman/respondent sent a demand notice to the management vide registered A.D. but instead of receiving the same the management did not reinstate the workman. Claim was filed before the Conciliation Officer but the management did not cooperate in the conciliation proceedings also. Labour Inspector was deputed on 3.2.2000 who advised the management to reinstate the workman. The management took back the workman on duty at 5.00 p.m. on that day but on 4.2.2000 when he again went to join duty, the management refused him work. On the same day on being apprised about these facts, the labour Conciliation Officer gave his report and the dispute was referred to the Labour Court by the Appropriate Govt. The Labour Court answered the reference in favour of the respondent/workman and against the appellant/management. The Labour Court awarded a sum of Rs.2,16,000/- as compensation to the respondent/workman. Aggrieved with the said award the appellant/management has preferred this petition.

3. Ms. Kiran Suri counsel for the petitioner contended that the labour court itself observed in the said order dated 1/3/2008 that the compensation in lieu of reinstatement has been ranging from Rs. 10,000/- Rs. 25,000/- as per the decision of this court and the Hon'ble Apex Court but ignoring the same awarded Rs. 2,16,000/- as compensation on the ground that the judgments of this court and the Hon'ble Apex Court regarding compensation in lieu of reinstatement do not lay down any formula or guideline. In this regard, the counsel relied on various judgments of the Hon'ble Apex court in **Rattan Singh vs. UOI - 1997 (11) SCC 396; State of Rajasthan Vs. Naresh Subey - 2005 (12) SCC 251; Workmen v. Bharat Fritz Werner (P) Ltd.- (1990) 3 SCC 565; Central P & D Institute vs. UOI - 2005 (9) SCC 171; Municipal Council vs. Surinder Kumar - (2006) 5 SCC 173; Municipal Council, Samrala vs. Sukhwinder Kaur - 2006 (6) SCC 516; Haryana Tourism Corpn. Ltd. Vs. Fakir Chand - 2003 (8) SCC 248; State of M. P. Vs. Arjunlal Rajak - 2006 (2) SCC 711 and Haryana State Electronics Development Corpn. Ltd. vs. Mamni - 2006 (9) SCC 434**. The counsel also contended that the labour court failed to appreciate that

the respondent was not a workman within the meaning of Section 2 (s) of the ID Act. The counsel also submitted that the letters were sent to the respondent workman to join back his services at the address available with the petitioner even before the notice was received from the Conciliation Officer. The counsel also pointed out that the workman joined on 3/2/2000 at 1700 hrs but later on did not turn up. The counsel also urged that the respondent workman was gainfully employed and therefore, is not entitled to any compensation. In this regard the counsel submitted that according to the recent judgment of the Supreme Court, the burden is on the workman to prove that he was not gainfully employed. The counsel contended that the labour court erred in not considering that the petitioner is having a very small set up at Ambala and could not have afforded to keep the post vacant in the absence of the respondent workman. The counsel submitted that the petitioner agreed to take the respondent on duty and accordingly the Labour Officer directed respondent to join duty w.e.f. 2/2/2000 which in fact was joined by him on 3/2/2000 at 1700 hrs but later on did not turn up for duty on 4/2/2000 and even thereafter. The counsel also pointed out that even earlier from

1/8/1999 till 3/2/2000, the respondent never joined duties. The counsel also maintained that the respondent workman could not prove by way of evidence that he had reported to the petitioner but was not allowed to join his duty. The counsel also urged that writ court can examine all the questions arising in the instant case even though gone into detail by the labour court. The counsel averred that there was no lapse on the part of the management warranting grant of such high compensation in lieu of reinstatement and back wages.

4. Per contra, Mr. Sanjoy Ghose, counsel for the respondent contended that High Court will not reappreciate evidence and finding of facts reached at by the Learned Labour court. The counsel also submitted that letters were sent to the workman only after receipt of notice from Conciliation Officer. The counsel maintained that the respondent workman was not permitted to join back even after the directions to this effect were given by the Conciliation Officer. The counsel urged that the petitioner has not given any explanation for delayed action on its part to send letters to the respondent workman. The counsel relied on following judgments in support of his contentions:

(a) J. U. Akhtar vs. The Management of M/s. Markfed Agro – 2006 VIII AD (Delhi) 33;
(b) M/s. DAV College Managing Committee vs. Sh. Subhash Chander Verma in LPA No. 701/2004 before Delhi High Court; decided on 17/5/2007; &
(c) MCD vs. Asha Ram & Anr. – 2005 II AD (Delhi) 285.

5. I have heard learned counsel for the parties and perused the record.

6. There is no dispute as regards the legal position that the labour court or the industrial tribunal is the final fact finding authority and this court cannot re-appreciate and reassess the finding on facts. It is equally well established that a writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. In this regard in **Harbans Lal v. Jagmohan Saran, (1985) 4 SCC 333**, the Hon'ble Apex Court observed as under:

5. We are satisfied that the High Court travelled outside its jurisdiction in embarking upon a reappraisal of the evidence. The Prescribed Authority as well as the learned Second Additional District Judge concurrently found that Madan Lal was sitting in the shop on behalf of the appellant and deputising for him in carrying on the vegetable selling business. The finding by both authorities rested on evidence, and there was no warrant for disturbing that finding of fact in a writ petition. **The**

limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The writ petition before the High Court prayed for a writ in the nature of certiorari, and it is well known that a writ in the nature of certiorari may be issued only if the order of the inferior tribunal or subordinate court suffers from an error of judisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach findings of fact contrary to those rendered by an inferior court or subordinate court. When a High Court proceeds to do so, it acts plainly in excess of its powers. We are informed that a report of the Commissioner in another suit was not considered by the Prescribed Authority and by the learned Second Additional District Judge, and therefore, it is urged, the High Court was justified in taking that report into consideration and entering into an examination of the material on the record. We have examined the report of the Commissioner and we find that an objection had been filed to that report and the trial court had failed to dispose it of. In other words, the report of the Commissioner is not a final document and cannot be taken into consideration as it stands. It must, therefore, be ignored. That being so, the finding of fact rendered by the Prescribed Authority and affirmed by the learned Second Additional District Judge remains undisturbed. The finding is that Madan Lal sat in the shop conducting the vegetable selling business on behalf of the appellant.

7. Further in **Calcutta Port Shramik Union v. Calcutta River Transport Assn., 1988 Supp SCC 768**, the Hon'ble Apex Court observed as under:

10. The object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a government to an Industrial Tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by

adjudication. In all such cases an attempt should be made by courts exercising powers of judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hypertechnical grounds. Unfortunately the orders of the Single Judge and of the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis."

8. The main aim of the Industrial Disputes Act as is evident from its preamble and various provisions contained therein, is to regulate and harmonise relationships between employers and employees for maintaining industrial peace and social harmony. The spirit of law is not to be searched in any ideology or philosophy which might have inspired it but it may be found in the experience of the people who made and put it into practice.

9. There is no dispute as regards the legal position that where the termination is held to be illegal, the order removing the workman from service would be rendered as ineffective order. As a consequence, the workman would be deemed to be continued in service with all consequential benefits. Earlier an order of reinstatement was the rule wherever in a case the order of termination was held as illegal following the decision of **Federal**

Court in the case of **Western India Automobiles Association v. Industrial Tribunal** reported in **AIR 1949 FC 111** However, to this rule certain exceptions have been recognized in various legal pronouncements. Re-instatement has not been considered desirable in cases where there have been strained relationships between employer and employee or there is lack of trust or loss of confidence. Reinstatement is also denied when an employee had been found to be guilty of subversive activities or acting prejudicial to the interest of the Industry. Courts have also denied reinstatement with back wages in cases where long time has lapsed or where the industry itself has become sick.

10. But at the same time the Hon'ble Apex Court in plethora of cases including in **Sita Ram v. Moti Lal Nehru Farmers Training Institute,(2008) 5 SCC 75**, cautioned the Industrial courts while exercising discretionary jurisdiction in the following terms:

"Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor 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."

11. Also, It has been held by the Apex Court in **AIR 1979 SC 75 M/s Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s Hindustan Tin Works Pvt. Ltd. and Ors.** that so far as the circumstances which would necessitate departure from the normal circumstances of grant of full back wages are concerned, the party which is objecting to such an order must establish the circumstances which would enable the court to draw the exception.

12. According to Concise Oxford English Dictionary, tenth edition, published by Oxford University Press, compensation means something awarded to compensate for loss, suffering, or injury. Something that compensates for an undesirable state of affairs. From this definition undoubtedly, the inference arises that compensation in labour matters is awarded for loss of income/wage/salary suffered by the workman due to illegal termination or otherwise.

13. Now, coming to the question of computation of compensation, in this regard in **O.P. Bhandari v. Indian Tourism Development Corporation Ltd. and Ors. – AIR 1987 SC 111**; wherein the services of employee were terminated while holding the post of Manager of

Hotel Ranjit, N. Delhi and the said employee was to superannuate within eight years from the date of termination order and thus the Hon'ble Apex Court observed as under:

"7. So far as the facts of this case are concerned, we are satisfied that this is a fit case for granting compensation in lieu of reinstatement, instead of granting 'reinstatement'. For, it cannot be said that the apprehension voiced by the respondent-Corporation as regards the negative consequences of reinstatement is unreasonable. We do not propose to pronounce on the validity or otherwise of the allegations and counter allegations made by the parties in their respective affidavits. Suffice it to say that the relations between the parties appear to have been strained beyond the point of no return. The Trade Union of the employees has lodged a strong protest and even held out a threat of strike, in the context of some acts of the Appellant. Such unrest among the workmen is likely to have a prejudicial effect on the working of the undertaking which would prima facie be detrimental to the larger National interest, not to speak of detriment to the interest of concerned undertaking. We are not impressed by the submission that the Union is virtually a 'company's Union. In any case such disputed questions of facts cannot be resolved in this forum. We are prima facie satisfied that the apprehension is not ill-founded. What is more, reinstatement is perhaps not even in the interest of the appellant as he cannot give his best in the less-than-cordial-atmosphere and it will also result in misery to him, let alone the other side. Neither the undertaking nor the appellant can improve their image or performance, or, achieve success. In fact it appears to us that both sides will be unhappy and miserable. These are valid reasons for concluding that compensation in lieu of reinstatement, and not reinstatement, is warranted in the circumstances of the present case.

8. Counsel for the appellant having forcefully pressed the claim for reinstatement, has contended that in case the Court is disinclined to order reinstatement, the appellant ought to be awarded the full salary and allowances which would have accrued to him till the date of his superannuation which is more than 8 years away. We think it would be unreasonable to award

8 years' salary and allowances, as lump sum compensation in lieu of reinstatement. We consider it unreasonable because :

(i) To do so would tantamount to paying to the appellant EVERY MONTH 20% OVER AND ABOVE what he would have earned if he was continued in service WITH-OUT DOING ANY WORK as the lump sum payment of 8 years' salary invested at 15% interest (it being the current rate of interest) would yield a monthly recurring amount equivalent to his current monthly salary 'plus' 20%;

(ii) To do so would be tantamount to paying to him his present salary etc. plus 20% more every month not only till his date of retirement but till his death (if he lives longer) and also to his heirs thereafter, IN PERPETUITY.

(iii) Besides, the corpus of the lumpsum amount so paid as compensation would remain with him in-tact.

Obvious it is, therefore, that the Court would be conferring a 'bonanza' on him and not compensating him by accepting this formula. The submission, accordingly, deserves to be repelled unhesitatingly.

9. In our considered opinion, compensation equivalent to 3.33 years' salary (including allowances as admissible) on the basis of the last pay and allowances drawn by the appellant would be a reasonable amount to award in lieu of reinstatement taking into account the following factors viz:-

1. The corpus if invested at the prevailing rate of interest (15%) will yield 50% of the annual salary and allowances, In other words every year he will get 50% of what he would have earned by way of salary and allowances with four additional advantages:

(i) He will be getting this amount without working.

(ii) He can work somewhere else and can earn annually whatever he is worth over and above, getting 50% of the salary he would have earned.

(iii) If he had been reinstated he would have earned the salary only upto the date of superannuation (upto 55, 58 or 60 as the case may be) unless he died earlier. As against this 50% he

would be getting annually he would get not only beyond the date of superannuation, for his lifetime (if he lives longer), but even his heirs would get it in perpetuity after his demise.

(iv) The corpus of lump sum compensation would remain intact, in any event."

14. In **Workmen Vs. Bharat Fritz Werner (P) Ltd. and Anr. - (1990) 3 SCC 565**; the Hon'ble Apex Court awarded six months wages for loss of future employment keeping in view the fact that the workmen were skilled and they might not find it difficult to get alternate employment while following the decision in **O.P. Bhandari's case (Supra)** the relevant observations are referred as under:

23. In *O.P. Bhandari v. Indian Tourism Development Corporation Ltd. and Ors.* MANU/SC/0475/1986 this Court has held that compensation equivalent to 3.33 years' salary (including allowances) as admissible on the basis of the last pay and allowances would be a reasonable amount to award in lieu of reinstatement. In that case the Court has taken into consideration the fact that the corpus, if invested at the prevailing rate of interest (15%), will yield 50% of the annual salary and allowances and the workman would get 50% of what he would have earned by way of salary and allowances with four additional advantages :

- (i) He will be getting this amount without working.
- (ii) He can work somewhere else and can earn annually whatever he is worth over and above, getting 50% of the salary he would have earned.
- (iii) If he had been reinstated he would have earned the salary upto the date of superannuation (upto 55, 58 or 60 as the case may be) unless he died earlier. As against this 50% he would be getting annually he would get not only beyond the date of superannuation, for his life time (if he lives longer), but even his heirs would get it in perpetuity after his demise.

(iv) The corpus of lump sum compensation would remain intact, in any event.

24. In the instant case these five workmen were dismissed from service on April 7, 1978 and since then they are without employment. In view of the judgment of the Appellate Bench of the High Court they are entitled to half of the back wages for the period from the date of the order of dismissal, i.e. April 7, 1978 till July 27, 1984, the date of the decision of the Appellate Bench of the High Court. Under the order of the Appellate Bench of the High Court they would have been entitled to full wages for the period subsequent to the said decision on their reinstatement. The operation of the said direction with regard to reinstatement has, however, been stayed during the pendency of the appeals in this Court. From the counter affidavit of V. Manoharan dated 10th November 1984 filed in S.L.P.(C) Nos. 10150 to 10153/84(C.A. NOS. 4780-4783(NL) of 1984) it appears that on the date of the said affidavit, except C.L. Rajanna who was aged 32 years, the age of other four workmen was in the range of 42-43 years and that the age of superannuation in the Company is 58 years. At the time of dismissal, the total salary of these workmen was in the range of Rs.925/- to Rs. 1,200/- and at the time of filing of the affidavit in 1984 their salary would have been in the range of Rs. 2,125/- to Rs. 2,700/-. On that basis one half of the back wages of these workmen for the period from 1978 to 1984 would be about Rs. 50,000/- to Rs. 60,000/-. Taking into consideration the salary of the workmen at the time of the passing of the order of Appellate Bench in 1984 and applying the criterion laid down by this Court in O.P. Bhandari's Case (Supra) the amount of compensation in lieu of reinstatement for the loss of future employment that should be payable to each workman would be Rs. 1,00,000/-. If that amount had been paid to the workmen in 1984, they would have earned Rs. 15,000/- per year as interest on the same during the period the appeals have been pending in this Court since 1984. These workmen have received Rs. 60,000/- awarded to them by the learned Single Judge under the interim order passed by this Court on December 3, 1984 and in addition to that they have received Rs. 12,000/- by way of interim relief during the pendency of the appeals before the High Court. In other words these workmen have so far received Rs. 72,000/- in all while they have been without employment since 1978. Taking into consideration the aforesaid facts and the

circumstances we are of the opinion, that these workmen may be awarded Rs. 1,50,000/- each towards back wages and compensation for loss of future employment in lieu of reinstatement in addition to the sum of Rs.72,000/-which has already been received by them.

15. Further, in **DTC Vs. Presiding officer and Anr. – 1999 VI AD**

(Delhi) 723 Division Bench of this court observed as under:

29. The question that now arises is: What is the compensation to be given to the Workman in lieu of reinstatement and back wages?

30. From the record of the appeal paperbook, we find that by an order dated 3rd December, 1982 the Appellant was directed to deposit the entire back wages up to 31st July, 1982. This order appears to have been complied with by the Appellant who deposited Rs. 33,288.75. Out of this amount, the Workman unconditionally withdrew Rs. 8,322/- and the balance was withdrawn on furnishing a security.

31. Thereafter, the Workman moved an application for subsistence allowance and future wages. During the course of hearing of this application, on 1st May, 1986 learned counsel for the Workman stated that his client would be content (for the time being (if a sum of Rs. 10,000/- is paid to him and if this appeal is decided within two years. This amount was given to the Workman (Rs. 5,000/- unconditionally and Rs. 5,000/- on furnishing a security). A further amount of Rs. 10,000/- was later directed to be given to the Workman by an order dated 15th October, 1990 - namely, Rs. 5,000/- unconditionally and Rs. 5,000/- on his furnishing a security.

32. The Workman, therefore, has been granted back wages-compensation of Rs. 33,288.75 (for the period since his termination in October, 1968 till 31st July, 1982) plus Rs. 10,000/- from 1st August, 1982 till 1st May, 1986 and a further

sum of Rs. 10,000/- from 1st May, 1986 till 15th October, 1990. In other words, he has been granted back wages/compensation of about Rs. 54, 000/- for a period of notional service of about 22 years. This works out to an average of Rs. 2,500/- per annum which was thought to be adequate by the various Division Benches of this Court.

33. We have, therefore, to consider the amount of compensation to be given to the Workman from October, 1990 till date. We are of the view that a sum of Rs. 2,500/- per annum is now quite low and it ought to be increased in view of the passage of time and increase in the cost of living. Accordingly, we are of the view that the Workman should be paid an amount of Rs. 50,000/- (which is a little more than Rs. 5,000/- per annum for 9 years from October, 1990 till date) in addition to the amount already directed to be given by this Court, from time to time.

34. Consequently, the appeal is partly allowed and the amounts deposited by the Appellant in this Court (in favor of the Workman) should be released to him unconditionally. The security bonds given by the Workman deserve to be discharged. In addition, the Appellant will compensate the Workman to the extent of Rs. 50,000/- in lieu of reinstatement and back wages.

35. The Appellant will also pay to the Workman litigation costs of Rs. 5,000/-.

16. Furthermore, following the above mentioned decision in **DTC Vs. Presiding Officer**, the single bench of this court in **Nehru Yuva Kendra Sangathan vs. UOI & Ors. – ILR (2000) II Delhi 164**, observed as under:

“18. In this case the Division Bench had granted compensation at the rate of Rs. 5,000/- per annum from the date of termination till the date of decision by the Court. Although it

noticed that in some of the earlier cases, various Division Benches of this Court had granted compensation at the rate of Rs. 2,000/- per annum, however, that figure was found to be quite low and it was thought fit to make it Rs. 5,000/- per annum keeping in view the increase in cost of living with the passage of time. I adopt the same yardstick and Award a sum of Rs. 60,000/- to be given to the workman by the petitioner in lieu of reinstatement and back wages. In addition, the workman shall also be entitled to a sum of Rs. 10,000/- towards litigation expenses. The award of the Labour Court is modified to the aforesaid extent and the writ petition is disposed of accordingly."

17. Further in **Pramod Kumar & Anr. Vs. The Presiding Officer & Anr. in LPA No. 692 of 2002 decided on 9/9/2005**; this Court held as under:

13. Regarding the quantum of compensation, the learned single Judge after having examined the above facts and also noticing that the two appellants herein had worked for 581 and 569 days awarded compensation of Rs.50,000/- each to both of them. Keeping in view the facts stated above, we feel that quantum of compensation awarded is reasonable. The question of computation of compensation in such cases has been examined by the Supreme Court in the case of Workmen vs. Bharat Fritz, Werner(P) Ltd & Anr reported in (1990) 3 SCC 565. In the said judgment, after referring to another decision of the Supreme Court in the case of O.P.Bhandari vs. India Tourism Development Corporation Limited reported in (1986) 4 SCC 337, certain broad parameters have been laid down for computation and payment of compensation in lieu of reinstatement and back wages. On examining the said judgment we find that the Hon'ble Supreme Court had also taken into consideration interest payable on the compensation which was made payable from the date of the Order passed by the appellate Court. We, therefore, following the said judgment feel that in the present case equity and justice demands that the respondent No.2 should pay interest on Rs.50,000/- at the rate of 8% per annum from the date of the award i.e. 1.12.1994 till the sum of Rs.50,000/- was paid to the appellants. The respondent

Corporation is therefore directed to compute the said interest from the date of the award i.e. 1.12.1994 till the date of Rs.50,000/- was paid to the appellant-workmen and pay the same within a period of two months from the date of this order.

18. The doctrine of precedent is a well-accepted principle. A ruling is generally considered to be binding on lower courts and this principle is enshrined in Article 141 of the Constitution of India. Consistency, certainty and uniformity in the field of judicial decisions are considered to be the benefits arising out of the "Doctrine of Precedent". The precedent sets a pattern upon which a future conduct may be based. One of the basic principles of administration of justice is, that the cases should be decided alike. In Dias Jurisprudence, 5th Edn., p. 136, the doctrine of precedence has been explained in the following terms:

A precedent influences future decisions. Every decision is pronounced on a specific set of past facts and from the decision on those facts a rule has to be extracted and projected into the future. No one can foresee the precise situation that will arise, so the rule has to be capable of applying to a range of broadly similar situations against a background of changing conditions. It has therefore to be in general terms and 'malleable' ... No word has one proper meaning, nor can anyone seek to fix the meaning of words for others, so the interpretation of the rule remains flexible and open-ended.

19. In the instant case, the tribunal considering that the respondent workman was out of employment for 9 years and obviously would have been working somewhere decided to award lumpsum

compensation equivalent to the full back wages in lieu of reinstatement and computed the same at Rs. 2,16,000/- by relying upon the decision in **J. U. Akhtar (Supra)**, wherein this court after sifting through plethora of judgments of the Apex Court and this court observed as under:

“28. In the light of the principles of law laid down by the Apex Court repeatedly in the aforementioned judgments, in all fairness, the workman was entitled to at least such compensation which would commensurate with the denial of his reinstatement into service. To my mind, in the given facts, the only relief which could have been granted to the workman would have been compensation equivalent to the full back wages with effect from the date of termination of service till the date he would have superannuated.”

20. In **J.U. Akhtar's case (supra)**, this court although mentioned that the petitioner therein relied on the decision in **O.P. Bhandari's case**, but it did not discuss the ratio of the case and ignoring the same this court upon facts of the case awarded compensation equivalent to the full back wages. But the tribunal herein, applied the same principle without considering the facts of the instant case. It is no more res integra that the judgments of the higher court are not to be applied like Euclid's theorem without considering the facts and circumstances in which the decision being relied upon was given by the higher court.

In this regard in **Union of India v. Amrit Lal Manchanda,(2004) 3 SCC 75**, the Hon'ble Apex Court observed as under:

15. Cases involving challenges to orders of detention before and after execution of the order stand on different footings. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* (AC at p. 761) Lord Macdermott observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge...."

21. Therefore, for the purpose of administration of justice, the tribunal ought to have followed the principles as discussed by the Apex Court in **O.P. Bhandari's case (Supra)**; and **Bharat Fritz Werner (P) Ltd. and Anr. (Supra)**. In the decision in **O.P. Bhandari's case (Supra)**, which was followed by the Apex Court in **Bharat Fritz**

Werner (P) Ltd. and Anr. (Supra) and by the Division Bench of this court in **Pramod Kumar & Anr. (Supra)**, the Apex Court has held that compensation equivalent to 3.33 year's salary (including allowances) as admissible on the basis of the last pay and allowances would be a reasonable amount to award in lieu of reinstatement. In that case the Court took into consideration the fact that the corpus, if invested at the then prevailing rate of interest (15%), will yield 50% of the annual salary and allowances and the workman would get 50% of what he would have earned by way of salary and allowances with four additional advantages:

(i) He will be getting this amount without working.

(ii) He can work somewhere else and can earn annually whatever he is worth over and above, getting 50% of the salary he would have earned.

(iii) If he had been reinstated he would have earned the salary upto the date of superannuation (upto 55, 58 or 60 as the case may be) unless he died earlier. As against this 50% he would be getting annually he would get not only beyond the date of superannuation, for his life time

(if he lives longer), but even his heirs would get it in perpetuity after his demise.

(iv) The corpus of lump sum compensation would remain intact, in any event.

22. In the case at hand, considering that as per the award dated 1.3.2008 the total emoluments of the respondent was to the tune of Rs. 4200/- per month in July, 1999 and he worked with the respondent for nine years and applying the aforesaid discussed ratio of the Apex Court in **O.P. Bhandari's case (supra)**, it comes out that the Tribunal arrived at an amount of compensation as per the dicta in **O.P. Bhandari's case (supra)** and not as per the decision in **J.U. Akhtar's Case (Supra)**. Principally, the Tribunal was incorrect in its approach but arrived at the correct compensation amount.

13. In view of the foregoing discussion and considering the decisions of the Apex Court in **O.P. Bhandari's case (Supra)** and **Bharat Fritz, Warner (P) Ltd.'s case (Supra)** and decision of the Division Bench of this Court in **Pramod Kumar's case (supra)** the award passed by the learned Labour Court directing payment of compensation amount of Rs. 2,16,000/- in lieu of reinstatement and

backwages is confirmed. But since the respondent has suffered during the pendency of the present writ, the ends of justice demands that the petitioner should be burdened to pay interest @ 8% p.a. from the date of the Award i.e. 1.3.2008, till the date of payment on the said amount of Rs. 2,16,000/-. The said amount should be paid by the petitioner to the respondent within a period of two months from the date of this order.

24. With the above directions, the present petition is dismissed being devoid of any merit.

26th October, 2009

KAILASH GAMBHIR, J.