

\$~

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

Judgment delivered on: 17th November, 2014

+ **W.P.(C) 1000/2013 & CM Nos.16423/2013 & 3505/2014**

SHRI AITA RAM

..... Petitioner

Represented by: Mr. Colin Gonsalves, Senior
Advocate with Mr. Sarvajeet
Kumar Thakur, Advocate.

Versus

HINDUSTAN TIMES LTD.

..... Respondent

Represented by: Dr. A.M. Singhvi and
Mr. Sandeep Sethi, Senior
Advocate, with Mr. Darpan
Wadhwa, Ms. Meghna Mishra
and Mr. Nakul Sachdeva,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

W.P.(C) 1000/2013

1. The present petition is directed against the order dated 12.10.2012 passed by the Executing Court, whereby the execution petition was dismissed by recording that since the award dated 23.01.2012 passed by the learned Tribunal is silent regarding back wages, therefore, it cannot be presumed that the learned Tribunal has

also granted back wages to the decree holders, therefore, decree cannot be executed regarding the back wages as prayed.

2. It is pertinent to mention here that the petitioner workman has been reinstated in service in terms of award dated 23.01.2012. The relevant portion of the aforesaid award is reproduced as under:-

“89. In view of above factual and legal position of law, workmen/ claimants (except 43 workmen/ claimants, who have settled I.D. No. 207/10/05 Page 49 of 50 their disputes u/s 18(1) of I.D. Act) are entitled to the relief of treating them in continuity of service under terms and conditions of service as before their alleged termination w.e.f. 3.10.04. They will not be entitled to any notice pay or compensation u/s 25 FF of Industrial Disputes Act. The said notice pay or compensation, if any, received by them, will have to be refunded by them.

90. Hence, by way of relief, it is directed that management of M/s Hindustan Times Ltd. will reinstate 272 workmen treating them in continuity of service under terms and conditions of service as before their alleged termination i.e. 03.10.04. Award is passed accordingly.”

3. The workmen have raised the industrial dispute through Union and on failure of the conciliation proceedings, GNCT of Delhi, referred the dispute to the Tribunal for adjudication with following terms of reference:-

“Whether the action of management of M/s Hindustan I.D. No. 207/10/05 Page 1 of 50 Times Ltd. In

transferring the ownership of its Printing undertaking to M/s H.T. Media Ltd. w.e.f. 02.10.04 and terminating the services of workmen whose names are given in Annexure A by invoking the provisions of Section 25FF of Industrial disputes Act 1947 is illegal and/or unjustified and if so, to what relief are the workmen entitled and what directions are necessary in this respect?”

4. Mr. Colin Gonsalves, learned senior counsel appearing on behalf of the petitioner submitted that the petitioner sought relief from the learned Tribunal for quashing the termination order with full back wages, however, the learned Tribunal held that the claimants are entitled to the relief of treating them in continuity of service under terms and conditions of service as existed before the alleged termination with effect from 03.10.2004.

5. Further held they will not be entitled to any notice pay or compensation under Section 25 FF of the Industrial Disputes Act, 1947 (in short ‘ID Act’). The said notice pay or compensation, if any, received by them, will have to be refunded to the respondent.

6. Learned senior counsel submitted that relief of back wages is the appropriate relief, both in terms of legislative intent as enshrined in Articles 43 and 43-A of the Constitution of India, which speak of the right to an adequate means of livelihood, the right to work, humane

conditions of work, living wage ensuring a decent standard of life and enjoyment of leisure and participation of workers in management of industries. The fact of the matter is that an award has come in favour of the workman after a long winded litigation which was placed by the workmen without the wherewithal to survive. Given the financial might of the management, reinstatement with full back wages is the only relief to which the workmen are entitled, especially when their termination from services mainly nine years back was based on a fictitious/sham transaction.

7. Learned senior counsel further submitted that it is a well settled proposition of law that the court will lift the veil to see the true nature of the order passed by the court below. The form of the order of the language in which it is couched is not conclusive. Applying this test to the award passed by the learned Tribunal, it is clear that the relief of reinstatement along with full back wages has been granted to the workmen, though couched in a milieu of words which do not expressly use the term 'back wages'. Thus, the intention of the learned Tribunal would have to be gathered by orders passed subsequent thereto, at the

time of forwarding the award for the purposes of execution by exercising its judicial powers under Section 11 of ID Act.

8. Learned senior counsel submitted that at the initial stage, the industrial dispute was raised by 272 workmen, who authorised the petitioner, except the names mentioned in the order dated 04.01.2013 passed by the Executing Court.

9. Learned senior counsel submitted that in case the relief of back wages is denied to the workmen, it would tantamount to placing a premium on the fraudulent conduct of the Management which by its order of dismissal has virtually deprived hundreds of workmen of right to life and livelihood. He submitted that about 13 workmen have died fighting for their rights. Some of them, if reinstated today had substantial remaining period of service. Several workmen had lost their family members as they did not have the necessary financial assistance or support to seek medical remedies. The conduct of the Management which was held to be illegal and unjustified and remains unchallenged virtually amounted to signing the economic death warrants of 272 workmen.

10. Learned senior counsel submitted that the learned Executing Court over looked the fact that the term 'back wages' is not a magical incantation which alone, if used, would entitle the workmen to the said relief. The relief of back wages, may be couched in any other language as was done by the learned Tribunal in its award. If the Tribunal had merely passed an award of reinstatement with continuity of service, it could have been argued by the Management that no relief of back wages was in fact granted. The moment, the Tribunal went a step forward and stated that the workmen are entitled to the relief of reinstatement with continuity in service under same terms and conditions as existed before their alleged termination. Therefore, the intent of the learned Tribunal to grant full back wages became clear as also evident from the subsequent actions of the Tribunal.

11. Learned senior counsel submitted that order dated 12.10.2012 passed by the Executing Court declining to execute the award of back wages is erroneous, both on law and facts. Therefore, the impugned order overlooks the fact that the Tribunal which passed the award time and again accepted the contention of the workmen that back wages are implied in the award.

12. Learned senior counsel further submitted that the Executing Court observed that the Tribunal has not passed any specific order regarding the payment of back wages. While recording such finding, the Executing Court failed to notice the submissions of the decree holders that in the application for execution of the decree and in another application seeking forwarding of the award or decree for execution, the Tribunal accepted the contentions raised in the said applications, wherein it was stated that the back wages were implied. However, the Executing Court failed to notice that the Tribunal, in fact, forwarded the computation of back wages to the Court of the learned District Judge for the purposes of execution.

13. To strengthen his arguments, learned senior counsel has relied upon the case of *Hindustan Tin Works Private Limited Vs. Employees of M/s. Hindustan Tin Works Private Limited*, (1979) 2 SCC 80, wherein three judges of the Supreme Court of India categorically held that where the termination of services is held bad, payment of full wages is proper. However, the Executing Court failed to consider the dictum of the Apex Court which is a binding precedent till date.

14. Learned senior counsel further relied upon a case of ***U.P. State Brassware Corporation Limited Vs. Udai Narain Pandey, (2006) 1 SCC 479***, wherein the Apex Court held that though a direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result, a more practical view is taken, especially where the workmen has not pleaded that after his purported retrenchment he was wholly unemployed.

15. It was further held that no precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed and that it would depend upon the facts and circumstances of each case.

16. On this issue, reliance has been placed on the case of ***G.M. Haryana Roadways Vs. Rudan Singh, (2005) 5 SCC 591***, wherein held that if the workman has rendered a considerable period of service and his services have been wrongfully terminated, he may be awarded full back wages.

17. Learned senior counsel for the petitioner further submitted that in case of ***Surendra Kumar Verma & Ors. Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi & Anr., (1980) 4***

SCC 443, the Apex Court held that where Legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions. 'Void ab initio', 'invalid and inoperative' or call it what you will, the workmen and the employer are primarily concerned with the consequence of striking down the order of termination of the services of the workmen. Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been and so it must ordinarily lead to back wages too.

18. Learned senior counsel has heavily relied upon a recent judgment of the Apex Court in the case of ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyala (D.ED.) & Ors., (2013) 10 SCC 324***, wherein held as under:-

*“14. The learned counsel for the respondent supported the impugned order and argued that the High Court did not commit any error by setting aside the direction given by the Tribunal for payment of back wages to the Appellant because she had neither pleaded nor any evidence was produced that during the period of suspension and thereafter she was not employed elsewhere. Learned Counsel relied upon the judgments in *M.P. State Electricity Board v. Jarina Bee, (2003) 6 SCC**

141, *Kendriya Vidyalaya Sangathan v. S.C. Sharma* (2005) 2 SCC 363, *U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey*, (2006) 1 SCC 479, *J.K. Synthetics Ltd. v. K.P. Agrawal and Anr.* (supra), *The Depot Manager, A.P.S.R.T.C. v. P. Jayaram Reddy*, (2009) 2 SCC 681, *Novartis India Ltd. v. State of West Bengal and Ors.* (2009) 3 SCC 124, *Metropolitan Transport Corporation v. V. Venkatesan*, (2009) 9 SCC 601 and *Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr.*, (2009) 15 SCC 327 and argued that the rule of reinstatement with back wages propounded in 1960's and 70's has been considerably diluted and the Courts/Tribunal cannot ordain payment of back wages as a matter of course in each and every case of wrongful termination of service. Learned Counsel submitted that even if the Court/Tribunal finds that the termination, dismissal or discharge of an employee is contrary to law or is vitiated due to violation of the principles of natural justice, an order for payment of back wages cannot be issued unless the employee concerned not only pleads, but also proves that he/she was not employed gainfully during the intervening period.

*

*

*

21. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol. II, 3rd Edition, the word "reinstatement" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edition, the word "reinstatement" means to reinstall; to reestablish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word "reinstatement" means establishing in former condition, position or

authority (as) reinstatement of a deposed prince. As per Merriam Webster Dictionary, the word "reinstate" means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black's Law Dictionary, 6th Edition, "reinstatement" means:

“to reinstall, to re-establish, to place again in a former state, condition, or office? To restore to a state or position from which the object or person had been removed.”

22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was

getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

23. A somewhat similar issue was considered by a three Judge Bench in Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd. (supra) in the context of termination of services of 56 employees by way of retrenchment due to alleged non-availability of the raw material necessary for utilization of full installed capacity by the Petitioner. The dispute raised by the employees resulted in award of reinstatement with full back wages. This Court examined the issue at length and held:

“9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is

questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being

told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.

11. In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the Rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular.

(Emphasis supplied)

After enunciating the above-noted principles, this Court took cognizance of the Appellant's plea that the company is suffering loss and, therefore, the workmen should make some sacrifice and modified the award of full back wages by directing that the workmen shall be entitled to 75 % of the back wages.

24. Another three Judge Bench considered the same issue in Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi (supra) and observed:

6.....Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer

but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted. Emphasis supplied)

*

*

*

37. After noticing several precedents to which reference has been made hereinabove, the two Judge Bench observed:

“17. There is also a misconception that whenever reinstatement is directed, "continuity of service" and "consequential benefits" should follow, as a matter of course. The disastrous effect of granting several promotions as a "consequential benefit" to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualised while granting consequential benefits automatically. Whenever courts or tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether "continuity of service" and/or "consequential benefits" should also be directed.....

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

*

*

*

38.7. The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also

against the very concept of reinstatement of an employee/workman.”

19. Without prejudice to the award, learned senior counsel for the petitioner submitted that if this Court comes to the conclusion that relief of back wages is not implied or that even if implied, the same ought to have been granted in clear terms by the learned Tribunal, this Court has ample powers under Article 226 of the Constitution of India to clarify the issue or in the alternative pass any order which should have been made by the lower authority.

20. Reliance is placed on the decision of the Apex Court in ***Gujarat Steel Tubes Ltd. & Ors. Vs. Gujarat Steel Tubes Mazdoor Sabha & Ors. (1980) 2 SCC 593***, wherein held as under:-

“79. Dual jurisdictional issues arise here which have been argued at some length before us. The position taken up by Sri Sen was that the High Court could not, under Article 226, direct reinstatement, and even if it felt that the Arbitrator had gone wrong in refusing reinstatement, the Court could only demolish the order and direct the Arbitrator to reconsider the issue. What belonged, as a discretionary power, to a Tribunal or other adjudicatory body, could not be wrested by the writ Court. To put it pithily, regarding the relief of reinstatement the Arbitrator could but would not and the High Court would but could not. (We will deal later with the point that the Arbitrator had himself no power under Section 11A of the Act but did have it in view of the wide terms of reference.)”

21. On the other hand, Mr.A.M.Singhvi, learned senior counsel submitted that the Executing Court has rightly held that award dated 23.01.2012 is silent on the point of back wages and, therefore, back wages cannot be implied and accordingly the said award cannot be executed with regard to back wages. The workmen vide the present writ have prayed for setting aside the order dated 12.10.2012 passed by the Executing Court. In alternative, direction was sought to be given to the learned Presiding Officer to clarify the award dated 23.01.2012 on the issue of back wages.

22. Mr. Singhvi, further submitted that the application for clarification of the award filed by the petitioner before the learned Tribunal was withdrawn unconditionally. As the learned Presiding Officer had made it clear that there was no full back wages implicit in the award. It may be appreciated that the said application was filed on 14.02.2012, i.e., within 30 days of the award and accordingly, the learned Tribunal had the power to clarify the award under Section 17 of ID Act, however, the petitioner chose to withdraw the said application unconditionally.

23. Mr.Singhvi further submitted that the execution petition for the first time was listed before the learned District Judge on 04.04.2012 on which date the learned Court was of the opinion that since award did not contain any determined amount, the file was sent back to the learned Tribunal.

24. The aforementioned order dated 04.04.2012 was appealed before this Court which was disposed of vide consent order dated 08.05.2012 by observing that the learned District Judge shall decide the execution petition in accordance with law.

25. Learned senior counsel submitted that the back wages cannot be implied unless specifically directed by the learned Tribunal. Vide award dated 23.01.2012, the learned Tribunal directed reinstatement of workmen in service as they were before the termination. Had the Tribunal was of the opinion that the back wages be granted in favour of the workmen, the learned Tribunal would have specifically directed for the same in the award. If the back wages have not specifically been granted while passing the award, in that case, the same cannot be implied to have been granted.

26. To strengthen his case, learned senior counsel for the respondent has relied upon the case of ***State Bank of India Vs. Ram Chandra Dubey & Ors., (2001) 1 SCC 73***, wherein the Apex Court held that:-

“7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

8. The principles enunciated in the decisions referred by either side can be summed up as follows:

“Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33C(2) of the Act. The benefit sought to be enforced under Section 33C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered, just

and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33C (2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself" conferred right for claim of back wages."

27. Also relied upon a case of ***State of Uttar Pradesh & Anr. Vs. Brijpal Singh***, (2005) 8 SCC 58, wherein the Full Bench of the Supreme Court of India agreed to and accepted the law propounded in ***Ram Chandra Dubey's*** case (supra) and held that in a reference

concerning the question of validity of termination of service and consequential relief, the Industrial Tribunal found the concerned workmen to be entitled to reinstatement from the date of termination. However, no finding with regard to payment of back wages was made. An application was filed by the workmen under Section 33C (2) for computation of back wages on the basis of such an award, however, the Hon'ble Court held that the same was not maintainable. It was categorically held that the Labour Court's award directing the reinstatement from the date of termination, but remaining silent on the issue of back wages, cannot be presumed to have impliedly granted back wages.

28. Mr.Singhvi, learned senior counsel submitted that the term "treating them in continuity of service" does not amount to granting of back wages as the said term is not unique and it does not mean that back wages have been granted.

29. Also relied upon ***Rajasthan State Transport Corporation & Ors. Vs. Shyam Bihari Lal Gupta (2005) 7 SCC 406***, wherein the Apex Court held that:-

"2. Factual position in a nutshell is as follows:

Challenging the order of termination passed by the appellant-Corporation, the respondent (hereinafter referred to as 'the Employee') filed a suit for declaration that the termination is bad. The suit was decreed on 03.05.1987. It was held that the order of termination was void ab-initio and non est and that the plaintiff-respondent is in continuity of service of the Corporation. The respondent-employee filed two execution applications. The first one was for salary for the period from January, 1982 to May, 1987. The subsequent execution application was for salary from July, 1987 to March, 1988. It is only the legality of the execution proceedings for the period from April, 1988 to March, 1997 which is in dispute. According to the appellant-Corporation, there was no direction for back wages and merely because the plaintiff managed to get some amount by executing a decree for the previous period, that will not entitle him in law to get back wages for a period during which he had not worked and there was nothing in the decree so far as back wages are concerned. The plea was not accepted by the executing court and the revision petition under Section 115 of the Code of Civil Procedure, 1908 (in short 'the CPC') was also rejected by the High Court by the impugned order.

3. According to learned counsel for the appellant-Corporation, the decree is absolutely silent so far as the back wages are concerned. The decree in essence contains only a declaratory relief without any consequential payment for monetary benefits. That being so, the executing court and the High Court were not justified in granting the relief sought for. Learned counsel for the respondent on the other hand submitted that when the decree clearly indicated that the termination was illegal non est, as a natural corollary, the plaintiff was entitled to the back wages.

4. In an almost identical case, this Court in *Rajasthan State Road Transport Corporation and Anr. v. Ladulal Mali* [1996]2SCR143 held that the decree does not contain payment of back wages. Only declaratory relief of the nature granted in the present case was granted. Further, in *A.P.S.R.T.C. and Anr. v. S. Narsagoud* (2003)ILLJ816SC, this Court held as follows:

"9. We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earning during the period of absence. In our opinion, the employee after having been held guilty of unauthorized absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorized absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service."

5. Of course, the above noted case related to the question of granting increments notionally. But the principles laid down relating to specific non-mention about any monetary benefit are relevant. As was noted in the *Rajasthan State Road Transport Corporation's* case (*supra*), there was no decree for grant of any monetary benefits."

30. Learned senior counsel further submitted that vide statement of claim jointly preferred by the workmen, following reliefs were specifically prayed for:-

- (i) Reinstatement
- (ii) Back Wages
- (iii) Continuity of Service
- (iv) Consequential Benefits.

31. Learned senior counsel submitted that it is evident from the terms of reference mentioned above that the Industrial Tribunal was to specifically grant the relief, if any, in case the same was warranted in view of the mandate of the Law. Moreover, in the joint statement of claims, four reliefs were distinctly prayed for. While deciding the reference, the learned Tribunal has specifically granted the relief of reinstatement with continuity of service. The learned Tribunal has also specifically directed the workmen to refund the retrenchment compensation/notice pay. Therefore, there is no question of implied relief or implied direction, including any so called back wages. No other relief features in the said award, including that of back wages, and the same is deemed to have been declined in the said award.

32. On the aforementioned submissions, learned senior counsel has relied upon the decision rendered by the Double Bench of this Court in

W.P.(C) No. 916/2012 in the case titled as “**Dalip Kumar Vs. UOI &**

Ors.” dated 06.05.2013, wherein held as under:-

“3. Declining emoluments to be paid between the date of Dalip Kumar’s services being terminated and he being reinstated, unfortunately the Tribunal did not indicate as to whether the period interregnum would be treated as spent on duty for purposes of pensionary benefits, service rendered for purposes of promotion and in particular whether Dalip Kumar would be entitled to notional increments for the period in question. With the implementation of the Assured Career Progression Scheme in the year 1999, issue pertaining to Dalip Kumar being entitled to an in situ promotion on rendering 12 years service was also not touched upon.

*

*

*

8. The destination reached by the Tribunal is obvious. The Tribunal has held that in OA No.2487/1997 while praying for a direction to be issued to reinstate him in service, Dalip Kumar had prayed for all consequential benefits including pay and allowances, continuity of service, seniority and promotion. These prayers were neither accepted nor rejected save and except prayer for pay and allowances was specifically rejected; and thus the Tribunal opined that the others would be deemed to be rejected and law declared in Ram Chandra Dubey’s case (supra) would be attracted.

9. Contention urged by learned counsel for the petitioner is that order dated September 14, 2000 disposing of OA No.2487/1997 only rejects the prayer for grant of emoluments for the period between the date services of Dalip Kumar were terminated till he was reinstated and thus the other prayers are required as deemed to be allowed.

10. No rule of law or a precedent has been shown to us by learned counsel for the petitioner that if four prayers are made and one is granted; one is specifically rejected and the other two are neither accepted nor specifically rejected, the other two would be required to be deemed to have been allowed.

11. On the contrary the law is that if a prayer is made and the same is not allowed, it shall be deemed to have been rejected. This would mean that if four prayers are made, out of which one is specifically granted and the second is specifically denied and as regards the third and the fourth the judicial verdict is silent, the third and the fourth would be deemed to have been denied, and to this extent we do not find any fault with the reasoning of the Tribunal.”

33. Mr.Singhvi, further submitted that the question in the instant writ petition is a limited question concerning the jurisprudence relating to execution petitions. The workmen have admitted in this petition that the award dated 23.01.2012 has not been challenged and has attained finality. The present writ have been arisen from an order of the Executing Court dated 12.10.2012, whereby the Executing Court has refused to go behind or over and above the decree. Accordingly, the scope of the writ petition is very limited and to that extent, there is no immunity in the impugned order dated 12.10.2012.

34. Mr. Singhvi further submitted that back wages could not have been granted for the reason no issue qua back wages was framed

despite detailed issues having been framed on two separate dates. Nor it was stated in the evidence by way of affidavit filed by the workmen that they were not gainfully employed. In view of the abovementioned facts, back wages have been rightly denied to the workmen by the learned Tribunal.

35. Further submitted that the intention of the learned Tribunal was not to grant any back wages, therefore, the learned Tribunal has specifically directed the workmen to refund the retrenchment compensation/notice pay. It may be appreciated that in case the learned Tribunal had any intention of giving back wages, then there was no question of directing the workmen to refund the retrenchment compensation/notice pay.

36. Learned senior counsel for the respondent submitted that the relief prayed for in execution petition is beyond the award dated 23.01.2012. Vide Paras 5 and 6 of the execution petition, it was prayed that the Executing Court to imply full back wages in the award dated 23.01.2012 and furthermore adjust the amount already received by the petitioners. However, vide award dated 23.01.2012, the learned Tribunal has not directed for any set off or adjustment and the

petitioners/workmen have not been granted back wages at all. Moreover, the Executing Court cannot go behind the decree/award and grant a relief which has already been denied by the Court of first instance.

37. I have heard learned counsel for the parties.

38. Initially, the industrial dispute was raised by 272 workmen, who authorised the petitioner, except the names mentioned in the order dated 04.01.2013 passed by the Executing Court. The learned Tribunal vide award dated 23.01.2012 held that the claimants are entitled to the relief of treating them in continuity of service under terms and conditions of service as existed before the alleged termination with effect from 03.10.2004. They will not be entitled to any notice pay or compensation under Section 25 FF of the Act. The said notice pay or compensation, if any, received by them, will have to be refunded to the respondent establishment.

39. In case of *Deepali Gundu Surwase (supra)*, the Apex Court held as under:-

“21. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English

Dictionary, Vol. II, 3rd Edition, the word "reinstate" means to reinstall or re-establish (a person or thing in a place, station, condition, etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edition, the word "reinstate" means to reinstall; to reestablish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word "reinstatement" means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam Webster Dictionary, the word "reinstate" means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black's Law Dictionary, 6th Edition, "reinstatement" means:

“to reinstall, to re-establish, to place again in a former state, condition, or office? To restore to a state or position from which the object or person had been removed.....”

40. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been if the illegal action has not taken place. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is *ultra vires* to the relevant statutory provisions or the principles of natural justice, would be a cause of action to claim full back wages. If the employer wants to deny back wages to the employee

or contest his entitlement to get subsequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

41. A similar issue was considered by a three Judge Bench in ***Hindustan Tin Works Private Limited Vs. Employees of M/s. Hindustan Tin Works Private Limited, (1979) 2 SCC 80***, wherein held that in breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation and now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper

nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.

42. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record.

43. The removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is, as if, the termination order has never been passed and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed

down or might be in severe financial doldrums; the court may deny the relief of reinstatement where the reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. If the back wages have not specifically been granted while passing the award, in that case, the same cannot be implied to have been granted, whereas in the present case, the learned Tribunal specifically directed that workmen are entitled to the relief of treating them in continuity of service under terms and conditions of service as existed before the alleged termination with effect from 03.10.2004.

44. In case of *Shyam Bihari Lal Gupta (supra)*, employees were held guilty of unauthorized absence from the duty. Therefore, monetary benefits were not granted to the workmen. Whereas in the present case, the termination order issued by the respondent establishment against the workmen has been held to be illegal,

therefore, the aforesaid case is not applicable in the facts and circumstances of the case in hand.

45. It is not in dispute that the petitioner sought relief from the learned Tribunal to quash the termination order with full back wages, accordingly, the learned Tribunal held that the claimants are entitled to the relief of treating them in continuity of service under terms and conditions of service as existed before the alleged termination with effect from 03.10.2004.

46. It is trite that relief of back wages is the proper relief, in terms of legislative intent as enshrined in Articles 43 and 43-A of the Constitution of India, which speak of the right to an adequate means of livelihood, the right to work, humane conditions of work, living wage ensuring a decent standard of life and enjoyment of leisure and participation of workers in management of industries. By considering the financial position of the management, reinstatement with full back wages is the proper relief to which the workmen are entitled, especially when their termination from services mainly nine years back was based on a fictitious/sham transaction. The form of the order of the language in which it is couched is not conclusive. Applying this test to the

award passed by the learned Tribunal, it is clear that the relief of reinstatement along with full back wages has been granted to the workmen, though couched in a milieu of words which do not expressly use the term 'back wages'. In case the relief of back wages is denied to the workmen, it would tantamount to placing a premium on the fraudulent conduct of the Management which by its order of dismissal has virtually deprived hundreds of workmen of right to life and livelihood.

47. It is pertinent to mention here that 13 workmen have already died fighting for their rights. Some of them, if reinstated today had substantial remaining period of service. Several workmen had lost their family members as they did not have the necessary financial assistance or support to seek medical remedies.

48. The relief of back wages, may be couched in any other language as was done by the learned Tribunal in its award. The moment, the Tribunal went a step forward and stated that the workmen are entitled to the relief of reinstatement with continuity in service under same terms and conditions as existed before their alleged termination, the intent of the learned Tribunal to grant full back wages becomes clear.

49. It is pertinent to mention here that the learned Tribunal has also specifically directed the workmen to refund the retrenchment compensation/notice pay. This itself shows the intention of the learned Tribunal was that as the workmen will get the full back wages, therefore, if any amount was received by them on account of retrenchment compensation/notice pay, that has to be paid by the workmen in favour of the respondent establishment.

50. In view of the above discussion and the settled law, I am of the considered opinion that the learned Tribunal has granted reinstatement with full back wages vide its award dated 23.01.2012.

51. Consequently, the order dated 12.10.2012 passed by the Executing Court is hereby set aside.

52. Accordingly, the present petition is allowed with no order as to costs.

CM Nos.16423/2013 & 3505/2014

With the disposal of the present petition, both these applications have become *infructuous*. The same are accordingly dismissed.

**SURESH KAIT
(JUDGE)**

NOVEMBER 17, 2014/sb/jg