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NADIM MOHLE

2026:CGHC:26410

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPL No. 21 of 2023**

Vijay Sahu S/o Bisahuram Sahu Aged About 31 Years R/o Dundri Tahsil Bilaigarh,
District : Balodabazar-Bhathapara, Chhattisgarh. --- **Petitioner**

versus

1 - Secretary And General Manager, Chhattisgarh State Warehousing Corporation
Ring Road Telibandha, Udyog Bhawa, 3rd Floor, Raipur, District : Raipur,
Chhattisgarh

2 - Manager Chhattisgarh State Warehousing Corporation Borai, District : Durg,
Chhattisgarh

--- Respondent(s)**WPL No. 33 of 2023**

1 - Umesh Kumar Tiwari S/o Kripashankar Tiwari Aged About 34 Years R/o.Ward
No. 16, Village Rasmada, Borai, Thana Pulgaon Tahsil And District Durg
Chhattisgarh

--- Petitioner**Versus**

1 - Secretary And General Manager Chhattisgarh State Warehousing Corporation,
Ring Road, Telibandha, Udyog Bhawa, 3rd Floor, Raipur, District Raipur (C G) New
Address - Village - Jhanjh, Sector 24, Atal Nagar, New Raipur Chhattisgarh

2 - Manager Chhattisgarh State Warehousing Corporation, Borai, District Durg
Chhattisgarh

--- Respondent(s)**WPL No. 27 of 2023**

1 - Subhash Yadav S/o Palturam Yadav Aged About 50 Years R/o Village- Kharra,
Post- Darra, Tahsil- Gurur, District- Balod, Chhattisgarh

--- Petitioner**Versus**

1 - Chhattisgarh State Warehousing Corporation Through Manager/director, N-3, Awanti Vihar, Raipur, District- Raipur, Chhattisgarh, New Address- Village- Jhanjh, Sector 24, Atal Nagar, New Raipur, Chhattisgarh

2 - Chhattisgarh State Warehousing Corporation Through The Branch Manager, Branch Balod, District- Balod, Chhattisgarh

--- **Respondent(s)**

WPL No. 29 of 2023

1 - Brijlal Sahu S/o Late Sukhram Sahu Aged About 37 Years R/o House No. 67, Dohra, Paragaon, Village- Sel, Tahsil- Kasdol, District- Balod, Chhattisgarh

--- **Petitioner**

Versus

1 - Chhattisgarh State Warehousing Corporation Through Manager/director, N-3, Awanti Vihar, Raipur, District- Raipur, Chhattisgarh, New Address- Village- Jhanjh, Sector 24, Atal Nagar, New Raipur, Chhattisgarh

2 - Chhattisgarh State Warehousing Corporation Through The Branch Manager, Branch Balod, District- Balod, Chhattisgarh

--- **Respondent(s)**

WPL No. 22 of 2023

1 - Dharmendra Patel S/o Bhekhuram Patel Aged About 32 Years R/o Opp. Naya Ganjmandi, New Shanti Nagar Durg, District : Durg, Chhattisgarh

--- **Petitioner**

Versus

1 - Secretary And General Manager Chhattisgarh State Warehousing Corporation Ring Road Telibandha Udyog Bhawa, 3rd Floor Raipur Chhattisgarh. New Address- Village- Jhanjh, Sector-24, Atal Nagar New Raipur, District : Raipur, Chhattisgarh

2 - Manager Chhattisgarh State Warehousing Corporation Borai, District : Durg, Chhattisgarh

--- **Respondent(s)**

WPL No. 26 of 2023

1 - Yadram Sahu S/o Krishnaram Sahu Aged About 42 Years R/o Village- Piperchhedi, Post- Charvahi, Tahsil And District- Balod, Chhattisgarh

--- **Petitioner**

Versus

1 - Chhattisgarh State Warehousing Corporation Through Manager/director, N-3, Awanti Vihar, Raipur, District- Raipur, Chhattisgarh, New Address- Village- Jhanjh, Sector 24, Atal Nagar, New Raipur, Chhattisgarh

**2 - Chhattisgarh State Warehousing Corporation Through The Branch Manager,
Branch Balod, District- Balod, Chhattisgarh**

--- Respondent(s)

WPL No. 30 of 2023

**1 - Jalam Sahu S/o Hesham Sahu Aged About 44 Years R/o Village- Khairtarai,
Tahsil And District- Balod, Chhattisgarh**

--- Petitioner

Versus

**1 - Chhattisgarh State Warehousing Corporation Through Manager/director, N-3,
Awanti Vihar, Raipur, District- Raipur, Chhattisgarh, New Address- Village- Jhanjh,
Sector 24, Atal Nagar, New Raipur, Chhattisgarh**

**2 - Chhattisgarh State Warehousing Corporation Through The Branch Manager,
Branch Balod, District- Balod, Chhattisgarh**

--- Respondent(s)

For Petitioner(s)	:	Mr. Sudeep Johari, Advocate
For Respondent(s)	:	Mr. Anumeh Shrivastava, Advocate

Hon’ble Shri Justice Rakesh Mohan Pandey

Order on Board

29/06/2026

1. In this batch of petitions, the petitioners have claimed back wages. The petitioners approached the Assistant Labour Commissioner against discontinuation of their services. The appropriate Government, after framing questions for determination, referred the matter to the concerned Labour Court. Names of the workmen/petitioners, case numbers and dates of award are depicted as under:-

Sl. No.	Name of the petitioner	Order impugned
1.	Vijay Kumar Sahu (WPL No.21 of 2023)	Award dated 31.03.2022 passed by Id. Labour Court, Durg in 11/2017/ID Act/ref (Annexure P/1)
2.	Dharmendra Patel (WPL	Award dated 31.03.2022 passed by

	No.22 of 2023)	Id. Labour Court, Durg in 13/2017/ID Act/ref (Annexure P/1)
3.	Yadram Sahu (WPL No.26 of 2023)	Award dated 26.02.2022 passed by Id. Labour Court, Durg in 117/ID Act/2018 Civil New No.07/ID Act/2022/ref (Annexure P/1)
4.	Subhash Yadav (WPL No. 27 of 2023)	Award dated 25.02.2022 passed by Id. Labour Court, Durg in 112/ID Act/2018/ Civil New No.02/ID Act/2022/Ref (Annexure P/1)
5.	Brijlal Sahu (WPL No. 29/2023)	Award dated 25.02.2022 passed by Id. Labour Court, Durg in 115/ID Act/2018/ Civil New No.05/ID Act/2022/Ref (Annexure P/1)
6.	Jalam Sahu (WPL No.30 of 2023)	Award dated 26.02.2022 passed by Id. Labour Court, Durg in 120/ID Act/2018/ Civil New No.10/ID Act/2022/Ref (Annexure P/1)
7.	Umesh Kumar Tiwari (WPL No.33 of 2023)	Award dated 24.12.2021 passed by Id. Labour Court, Durg in 10/2017/ID/ Ref. (Annexure P/1)

2. The facts in brief are that the petitioners were working under the respondent(s) as daily wage employees. They worked there for a considerable period and thereafter their services were discontinued. The petitioners filed statements of claim before the concerned Labour Court to the effect that they worked under the respondent(s) for more than 240 days in a calendar year. Their services were discontinued contrary to the provisions of the Industrial Disputes Act. They also pleaded that since the date of discontinuation they remained jobless. The respondent(s) filed replies to the statements of claim before the

learned Labour Court and denied the averments made therein. They pleaded that the petitioners worked as daily wage unskilled labourers and their engagement was temporary in nature. They also pleaded that the engagement of the petitioners was need-based and therefore, they were not entitled for any relief of back wages.

3. Both parties led evidence in their favour, thereafter, the learned Labour Court partly allowed the statements of claim and passed awards of reinstatement in favour of the petitioners, but the claim of back wages was denied in all cases.
4. Learned counsel appearing for the petitioners would argue that the petitioners specifically pleaded in the statements of claim that they remained jobless from the date of discontinuation of their services and, therefore, the learned Labour Court should have granted back wages to them. He has placed reliance on the judgments passed by the Supreme Court in the matter of ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others***, reported in ***(2013) 10 SCC 324***, and the judgment rendered in the matter of ***M/s. Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. And others***, reported in ***(1979) 2 SCC 80***.
5. On the other hand, counsel appearing for the respondent(s) would submit that though in the statements of claim the petitioners claimed reinstatement as well as back wages, and they also pleaded that they remained jobless, but they failed to adduce evidence in this regard. He would submit that the learned Labour Court has considered this aspect and declined the claim of back wages to the petitioners. He would contend that the petitioners were appointed as a casual labourers on need basis, no advertisement was issued and applications from the Employment Exchange were not invited. He would further submit that the petitioners worked for short or intermittent periods, therefore, they

are not entitled for back wages. He would further submit that the petitioners have no right to claim back wages from the employer as a matter of right. He would argue that if the learned Labour Court has directed reinstatement of services of the petitioners, it would not automatically entitle them to back wages. He would further argue submit that the burden lies on the workmen to establish the fact that they were not gainfully employed after dismissal from service; they failed to plead and prove the same. He would also argue that in absence of evidence, the learned Labour Court rightly denied back wages to the petitioners. He has placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of ***Rajasthan State Road Transport Corporation, Jaipur v. Phool Chand (dead) Through Legal Representatives***, reported in ***(2018) 18 SCC 299***.

6. I have heard learned counsel for the parties and perused the record.
7. In the matter of ***Employees of M/s. Hindustan Tin Works Pvt. Ltd. (supra)***, the Supreme Court has held that the learned Labour Court awarded 75% of back wages to the workman holding that termination of the services was neither proper nor justified and the workman was willing to serve. The workman was, therefore, held entitled to back wages for the said period. It is also held that full back wages would normally be the rule and the party must establish the reason for exercising discretion. Such reasons must be cogent and convincing and must appear on the face of the record. The relevant paragraphs 9, 11 & 17 are reproduced hereinafter:

"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 specter 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 the work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived 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 litigating activity of the employer. If the D employer terminates the service illegally and the termination is motivated as in this case, viz ., to resist the workman'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(l 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 endeavored 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 the were forced to litigation upto the apex Court 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 workman were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workman were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which

were very legitimately due to them. A Division Bench of the Gujarat High Court in *Dhari Gram Panchayat v. Safai Kamldar Mandal*(1), and a Division Bench of the Allahabad (1) 11-971] I Labour Law Journal 508 High Court in *Postal Seals Industrial Co-operative Society Ltd. v. Labour Court 11, Lucknow & ors.*(l), have taken this view and we are of the opinion that the view taken therein is correct.

11. In the very nature of things there cannot to a straight 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 humor. It is not to be arbitrary, vague and fanciful but legal and regular (See *Susannah Sharm v. Workfild* ((1891) AC 173, 179). "g 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 humor. It is not to be arbitrary, vague and fanciful but legal and regular (See *Susannah Sharm v. Workfild* ((1891) AC 173, 179).

17. Now, undoubtedly the appellant appears to have

turned the corner. The industrial unit is looking up. It has started making profits. The workmen have already been reinstated and, therefore, they have started earning their wages. It may, however, be recalled that the appellant has still not cleared its accumulated loss. Keeping in view all the facts and circumstances of this case it would be appropriate to award 75% of the back wages to the workmen to be paid in two equal instalments. ”

8. In the present case, the petitioners failed to prove the fact that they were always willing to serve under the respondent, but they were kept away from their services by the employer. The learned Labour Court exercised its discretion and held that the workmen failed to prove the fact that they remained unemployed during the period after removal from service. The learned Labour Court has assigned sufficient reasons while denying back wages; therefore, the petitioners would not get any help from the said judgment.
9. In the matter of ***Deepali Gundu Surwase*** (*supra*), the Hon'ble Supreme Court held that in cases of termination of service, reinstatement with continuity of service and back wages is normally the rule. While deciding the issue of back wages, the competent authority and Court may take into consideration the length of service of the workman, nature of misconduct and other factors. Ordinarily, an employee/workman whose services were terminated and who seeks back wages is required to either plead or make a statement to the effect that he was not gainfully employed. If the employer wants to avoid back wages, the burden lies on the employer to prove that the employee/workman was gainfully employed and was getting wages equal to the wages drawn prior to termination of services. The Court held that where the punishment is disproportionate to the misconduct,

then it will have discretion not to award full back wages. The relevant paragraph No.38 is reproduced as under:-

“38. The propositions which can be culled out from the aforementioned judgments are:

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

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its

existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the

Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of

fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (*supra*).

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.”

10. In the matter of ***Phool Chand (dead) through legal representatives (supra)***, the Supreme Court held that back wages cannot be awarded by the Court as a matter of right consequent upon setting aside an order of dismissal/termination. It is necessary for the workman in such a case to plead and prove by evidence that after his dismissal from service, he was not gainfully employed anywhere and had no means to maintain himself or his family. The employer is also entitled to prove otherwise. The relevant paragraphs no.11 to 13 are reproduced as under:-

“11. In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his

employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.

12. It is necessary for the workman in such cases to plead and prove, with the aid of evidence, that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.

13. In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial back wages depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions as to how the back wages are required to be decided, what are the factors to be taken into consideration while awarding back wages, on whom the initial burden lies, etc., were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer *res integra*. These cases are, *M.P. State Electricity Board vs. Jarina Bee (Smt.)*, (2003) 6 SCC 141; *G.M. Haryana Roadways vs. Rudhan Singh*, (2005) 5 SCC 591; *U.P. State Brassware Corporation vs. Uday Narain Pandey*, (2006) 1 SCC 479; *J.K. Synthetics Ltd. vs. K.P. Agrawal & Anr.*, (2007) 2 SCC

433; *Metropolitan Transport Corporation vs. V. Venkatesan*, (2009) 9 SCC 601; *Jagbir Singh vs. Haryana State Agriculture Marketing Board & Anr.*, (2009) 15 SCC 327; and *Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors.*, (2013) 10 SCC 324."

11. In these petitions, though the petitioners pleaded that they were not gainfully employed after termination of their services, but they failed to lead evidence to prove this fact. As there was no evidence with regard to gainful employment, there was no occasion for the employer to lead contrary evidence. It is also noteworthy that the petitioners did not state in their evidence that they were always willing to serve but were kept away by the employer. In this case, the learned Labour Court, while denying back wages, assigned sufficient reasons and exercised its discretion. It is also a well-settled principle of law that a workman has no right to claim back wages as a matter of course.
12. The Court should not grant back wages to the workman merely consequent upon setting aside the order of dismissal or termination.
13. Having considered the facts of the present case and the law laid down by the Hon'ble Supreme Court in the above-referred matters, I do not find any good ground to grant back wages to the petitioners. Accordingly, these petitions fail and are **dismissed**.

Sd/-

Rakesh Mohan Pandey

JUDGE