



CGHC010157942014



2026:CGHC:35463

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPL No. 223 of 2014

- Chhattisgarh Infrastructure Development Corporation Through The Divisional Manager, Shastri Chowk, Raipur Chhattisgarh

... Petitioner

versus

- Ramji Tiwari S/o Shri Milan Tiwari Aged About 59 Years R/o Village Kalpa Post Madai Tahsil Nagaur Distt. Satna M.P.
- State Industrial Court Chhattisgarh Raipur Through Its Registrar Raipur Chhattisgarh
- Labour Court Raipur Through Its Registrar Raipur Chhattisgarh

... Respondent(s)

For Petitioner	: Mr. Ashish Shrivastava, Senior Advocate assisted by Mr. Rahul Ambast, Advocate
For Respondent No. 1	: Mr. Trivikram Nayak, Advocate

Hon'ble Shri Justice Rakesh Mohan Pandey

Order on Board

12.08.2026

- The petitioner has filed this petition challenging the order dated 15.07.2014 passed in Civil Appeal No. 03/CGIR Act/A/II/2014, whereby appeal preferred by the petitioner before the learned State Industrial Court, C.G., Raipur was dismissed.
- The facts in brief are that the respondent No. 1 was appointed on the post of Conductor in M.P. State Road Transport Corporation in the year 1975. On 15.05.2002, a surprise checking was conducted by S.K. Pandey and Diwakar Singh and it was found that 25 passengers were traveling without ticket. A

panchnama was prepared and subsequently tickets were issued to those passengers by Mr. Diwakar Singh. On such complaint, article of charge was issued to respondent No. 1 on 08.07.2002. A departmental enquiry was conducted wherein penalty of dismissal from service was passed against the respondent No. 1 on 10.07.2008.

3. An application was filed by respondent No. 1 assailing order dated 10.07.2008 before the learned Labour Court under Chhattisgarh Industrial Relations Act, 1960 on 13.08.2008 and reply was filed by the petitioner herein on 22.01.2009. The learned Labour Court passed an order dismissing the application moved by the respondent No. 1 vide order dated 26.03.2011.
4. The respondent No. 1 preferred an appeal before the learned Industrial Court, which was allowed vide order dated 12.04.2012 and matter was remitted back to the concerned Labour Court to afford an opportunity to the workman to cross-examine witnesses.
5. The learned Labour Court vide order dated 26.05.2012 found the departmental enquiry, conducted against respondent No. 1, valid and proper.
6. The respondent No. 1 preferred an appeal against said order before the learned Industrial Court, which was allowed vide order dated 18.09.2012 and matter was again remitted back to the learned Labour Court.
7. The learned Labour Court vide order dated 28.02.2014 partly allowed the application moved by respondent No. 1 with relief of reinstatement and 50% back-wages.
8. The order dated 28.02.2014 was challenged by the petitioner as well as respondent No. 1 before the learned Industrial Court. The workman challenged said order claiming 100% back-wages. The learned Industrial

Court dismissed the appeal preferred by the petitioner/employer and allowed the appeal preferred by the workman. The petitioner has challenged said order by filing this petition.

9. Learned Senior Advocate appearing for the petitioner would argue that relevant documents were provided to the workman by the management and in the departmental enquiry opportunity of hearing was given. He would submit that the management examined witnesses to prove guilt of respondent No. 1, and therefore, the learned Courts below have recorded a finding that in the departmental enquiry proper procedure was followed. It is also argued that Mr. S.K. Pandey and Mr. Kashikant Pandey were examined and they proved the guilt of respondent No. 1. He would contend that as there is no wisher in the orders passed by the learned Labour Court with regard to inadequacy of penalty inflicted, the order passed by the learned Industrial Court, whereby workman has been reinstated with 100% back-wages is perverse and bad in law. He would further submit that the respondent No. 1 failed to prove the fact that he was not gainfully employed anywhere during said period, and therefore, grant of 100% back-wages is also illegal. He has placed reliance on the judgment passed by the Hon'ble Supreme Court in the mattes of *U.P. State Road Transport Corporation vs. Suresh Chand Sharma with Suresh Chand Sharma vs. State of Uttar Pradesh and Another* reported in (2010) 6 SCC 555, *Regional Manager, RSRTC vs. Ghanshyam Sharma* reported in (2002) 10 SCC 330, *Uttar Pradesh State Road Transport Corporation and Another vs. Gopal Shukla and Another* reported in (2015) 17 SCC 603 and *Uttar Pradesh State Road Transport Corporation vs. Gajadhar Nath* reported in (2022) 3 SCC 190.

10. On the other hand, learned counsel appearing for respondent No. 1 would oppose. Mr. Trivikram Nayak, Advocate would argue that in the departmental enquiry there was only one allegation against the respondent No. 1 that 25 passengers were traveling on the Bus without ticket. He would submit that a surprise checking was conducted by Mr. S.K. Pandey and Mr. Diwakar Singh and a panchnama was also prepared, but employer failed to examine those witnesses before the learned Labour Court and that was the reason, the learned Labour Court passed an order of reinstatement with 50% back-wages. He would submit that one Kashikant Pandey, Ticket Inspector, who had prepared panchnama, deposed before the learned Labour Court that the Inspection report was prepared by Mr. S.K. Pandey. He would submit that the learned Courts below have passed orders in favour of respondent No. 1 as the employer failed to examine those witnesses. It is also argued by Mr. Nayak that the Enquiry Officer failed to examine the passengers, who were traveling without ticket and thus, guilt of respondent No. 1 was not proved. Mr. Nayak, with regard to 100% back-wages, would submit that the workman proved the fact that he was nowhere gainfully employed during said period. He would further submit that the petitioner failed to lead evidence in this regard. It is also argued that as the departmental enquiry has been held illegal and bad in law, therefore workman would be entitled for 100% back-wages. He has placed reliance on the judgment passed by the Hon'ble Supreme Court in the matters of *Om Kanwar vs. Delhi Transport Corporation* passed in *Civil Appeal No(s). 11476-11477/2025(arising out of Special Leave Petition (Civil) No. 16345-16346/2016)*, *Mohinder Singh (dead) Through Lrs. vs. Delhi Transport Corporation* passed in *Civil Appeal No. 10926 of 2025, decided on August 20, 2025, Deepali Gundu*

Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others reported in (2013) 10 SCC 324, *Maharashtra State Road Transport Corporation vs. Mahadeo Krishna Naik* reported in (2025) 4 SCC 321, *K.V.S. Ram vs. Bangalore Metropolitan Transport Corporation* reported in (2015) 12 SCC 39, *Ishwarlal Mohanlal Thakkar vs. Paschim Gujarat Vij Company Limited and Another* reported in (2014) 6 SCC 434 and *S. Sangeetha and Others vs. Tmt. P. Ponni* reported in 2026 SCC OnLine SC 1512.

11. I have heard learned counsel for the parties and perused the documents placed on record.
12. Admittedly, the workman was appointed on the post of Conductor in M.P. State Road Transport Corporation in the year 1975 and on 15.05.2002, a surprise checking was conducted by S.K. Pandey and Diwakar Singh, and it was alleged that 25 passengers were travelling without tickets. A departmental enquiry was conducted against respondent No. 1 and he was dismissed from service on 10.07.2008.
13. The judgments quoted by Mr. Ashish Shrivastava, Senior Advocate are summarized herein below :-
 - a) The learned Senior Advocate has relied on the judgment passed by the Hon'ble Supreme Court in the matter of *Suresh Chand Sharma (supra)*. In that case, the High Court of Uttranchal at Nainital reversed the findings recorded by the learned Labour Court and reinstated the employee of U.P. State Road Transport Corporation. The Hon'ble Supreme Court held that *the High Court is under obligation to give not only the reasons but cogent*

reasons while reversing the findings of fact recorded by a domestic tribunal.

Relevant para 11, 13, 15 and 16 are reproduced herein-below :-

“11. The Labour Court has considered the matter at length and came to the conclusion that enquiry had been conducted strictly in accordance with law. There has been no violation of the principles of natural justice or any other statutory provision. The employee was given full opportunity to defend himself, cross examined the witnesses examined by the Corporation. The Enquiry Officer has rightly appreciated the evidence and found the charges proved in respect of both the incidents. The Disciplinary Authority has taken a right decision accepting the enquiry report and punishment order was passed after serving second show cause to the employee.

13. The Labour Court recorded a finding of fact that in respect of both the misconducts the passengers were found travelling without tickets and they had already paid fare to the employee/Conductor. Thus, it is not a case where the said employee could not issue the ticket and recover the fare from the travelling passengers, rather the finding has been recorded that after recovering the fare from the passengers, he did not issue tickets to them. Thus, there was an intention to misappropriate the fare recovered from the passengers who were found travelling without tickets at both the times.

15. The High Court has decided the Writ Petition only on the ground that the passengers found

without tickets, had not been examined and the cash with the employee was not checked. No other reasoning has been given whatsoever by the Court.

16. In *State of Haryana & Anr. Vs. Rattan Singh* AIR 1977 SC 1512, this Court has categorically held that in a domestic enquiry, complicated principles and procedure laid down in the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 do not apply. The only right of a delinquent employee is that he must be informed as to what are the charges against him and he must be given full opportunity to defend himself on the said charges. However, the Court rejected the contention that enquiry report stood vitiated for not recording the statement of the passengers who were found travelling without ticket. The Court held as under:

"5.....We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the administrative tribunal. In conclusion, we do not think courts below were right in overturning the finding of the domestic tribunal."

b) The Hon'ble Supreme Court in the matter of *Ghanshyam Sharma* (supra) held that *conduct where the bus conductors carry passengers without ticket or issue tickets at a less rate may amount to dishonesty or gross negligence and that interference with dismissal should not*

ordinarily be made where the misconduct is established. Relevant para 4 and 5 are reproduced herein-below :-

“4. This Court in *Karnataka SRTC v. B.S. Hullikatti* (2001) 2 SCC 574 has held that in such cases where the bus conductors carry passengers without ticket or issue tickets at a less rate than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court was firmly of the opinion that in cases like the present, orders of dismissal should not be set aside.

5. Furthermore, we agree with the observations of the Single Judge in the present case that the Labour Court was not justified in interfering with the punishment of dismissal. Though under Section 11-A the Labour Court has jurisdiction and powers to interfere with the quantum of punishment, however the discretion has to be used judiciously. When the main duty or function of the conductor is to issue tickets and collect fare and then deposit the same with the Road Transport Corporation and when a conductor fails to do so, then it will be misplaced sympathy to order his reinstatement instead of dismissal.”

c) Likewise, in the matter of *Gajadhar Nath* (supra) the Inspector who had conducted the checking was examined and the misconduct was

proved on the basis of the evidence led by the management. Relevant para 10 & 11 are reproduced herein-below :-

“10. We find that the order of the Tribunal and that of the High Court are clearly erroneous and not sustainable in law. The representative of the employer has not been cross-examined on the question that he has not inspected the bus on 12.11.1998. He has deposed that when he tried to record the statements of the passengers, the conductor misbehaved with him and used unruly words. Even that part of the statement has not been disputed in the cross-examination. Therefore, the fact that the Inspector was not able to record the names and addresses of the passengers cannot be said to be unjustified. Since the passengers are low-fare paying passengers, they might have been hesitant to get involved in the issues of any action against the conductor. The Inspector had found that 17 passengers were not issued tickets and such statement of the Inspector has also not been disputed in the cross-examination. The Tribunal or the High Court could not reject the evidence led by the employer in respect of misconduct of the workman before the adjudicator. Still further non lodging of FIR cannot be the circumstance against the witness examined by the employer. The initiation of criminal proceedings against an employee or not initiating the proceedings has no bearing to prove misconduct in departmental proceedings.

11. Therefore, we find that the order of removal from service cannot be said to be unfair and unjust

in any manner which would warrant an interference at the hands of the Tribunal and the High Court. The three reasons recorded by the Tribunal are absolutely perverse and not supported by any evidence. The Tribunal had misapplied the basic principles of law and the High Court has thereafter wrongly confirmed the order.”

d) Similarly, in the matter of *Gopal Shukla* (supra) the charge against the conductor that 25 passengers were travelling without tickets was proved on the basis of the evidence available on record. The Supreme Court found that the Labour Court had ignored the evidence and had recorded an unreasonable finding with regard to charge of personal gain. Therefore, the Supreme Court interfered with the concurrent findings of the learned Labour Court and the High Court. Relevant para 22, 23 and 26 are reproduced herein-below :-

“**22.** Thus, the irresistible conclusion has to be that the charge pertaining to personal gain has been proved. We may clearly state that the contrary conclusion would tantamount to ignoring the obvious and, in a way, treating the pinchbeck to be real. Though there is concurrent finding of fact, but the approach being manifestly perverse, the same can be interfered with in exercise of power under Article 136 of the Constitution. It has been so held in *Alamelu v. State*(2011 2 SCC 385), *Heinz India (P) Ltd. v. State of U.P.*(2012 5 SCC 443) and *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*(2012 7 SCC 288).

23. In view of the aforesaid analysis, the

irresistible conclusion is that both the Labour Court and the High Court have fallen in error by imposing a lesser punishment on the respondent-workman whereas the only punishment, on establishment of the charges which have been accepted by the labour court, should have been dismissal and not a lesser one.

26. In the case at hand, as we perceive, the delinquent employee has harboured the notion that when the cancerous growth has affected the system, he can further allow it to grow by covering it like an octopus, with its tentacles disallowing any kind of surgical operation or treatment so that the lesion continues. The whole act is reprehensible and such a situation does not even remotely commend any lenience.”

14. Below is a summary of the judgments cited by Mr. Trivikram Nayak, Advocate :-

a) The Hon’ble Supreme Court in the matter of ***Om Kanwar*** (supra) held that the finding returned by the Tribunal that charge(s) were not proved cannot be held to be perverse as to warrant interference in exercise of the power of judicial review under Article 226/227 of the Constitution of India. Relevant para 11 to 13 are reproduced herein-below :-

“11. We have considered the rival submissions and have perused the record. In the present case what is not in dispute is that the evidence brought on record, either during enquiry or before the Tribunal, did not prove that the bus of which the

appellant was a conductor was stopped in transit and ticketless passengers were found travelling in that bus. The charge against the appellant was based on statement(s) made by few persons (i.e. five in number) that they were not issued tickets despite making payment of Rs. 60 (i.e., Rs.12 per person). From their statement(s), conclusion was drawn that they had travelled ticketless in the bus of which the appellant was a conductor. The material brought on record indicated that there were several buses standing at the spot where such statement(s) were recorded and those statements did not indicate with certainty that those persons traveled in the same bus of which the appellant was the conductor. In such circumstances, it was argued on behalf of appellant punishment cannot be awarded to the petitioner, particularly, when it could not be said with certainty whether those travelers had alighted from the bus of which the appellant was a conductor.

12. The aforesaid plea of the appellant appealed to the Tribunal and, therefore, upon scrutiny of the materials available on record, it held that there was no cogent evidence against the appellant. In our view, in absence of cogent and clear evidence that those persons were travelling ticketless in the bus of which the appellant was the conductor, the finding returned by the Tribunal that

charge(s) were not proved cannot be held to be perverse as to warrant interference in exercise of the power of judicial review under Article 226/227 of the Constitution of India. More so, when it could not be substantiated that the ticketless passengers were found in the bus or were seen alighting from the bus of which the appellant was the conductor and, besides that, there was no charge of the appellant being found with excess cash.

13. In such view of the matter, once the learned Single Judge of the High Court had refused to in-terfere with the finding returned by the Tribunal, the Division Bench ought not to have interfered with the award. Consequently, these appeals are allowed. The impugned judgment and order(s) of the High Court is/are set aside and the order/award passed by the Tribunal is restored.”

b) The Hon’ble Supreme Court in the matter of ***Mohinder Singh (dead) through Lrs.*** (supra) held that *once that defence was accepted by the Labour Court, in absence of any evidence of passengers who were not issued tickets, the same did not call for interference in exercise of powers of judicial review under Article 226/227 of the Constitution of India.* Relevant para 10 and 11 are reproduced herein-below :-

“10. There is no dispute as regard the fact that the vehicle in which checking was

conducted was traveling from Bareilly to Pilibhit. There would therefore be stoppages in between. The evidence on record is that those who were found ticket less, had boarded from different points. Admittedly, 29 passengers were found with tickets. The defence of the appellant was that he was in the process of issuing tickets to those who boarded from different points. It is not the charge that the appellant was found with extra cash and that he was letting the passengers go without tickets after taking cash from them.

11. In the aforesaid circumstances, the defence taken by the appellant was a plausible defence and once that defence was accepted by the Labour Court, in absence of any evidence of passengers who were not issued tickets, the same did not call for interference in exercise of powers of judicial review under Article 226/227 of the Constitution of India.

c) The Hon'ble Supreme Court in the matter of *Ishwarlal Mohanlal Thakkar* (supra) while dealing with the issue of judicial review in para 18 and 19 held as under :-

18. The power of judicial review of the High Court has to be alluded to here to decide whether or not the High Court has erred in setting aside the judgment and order of the labour court. In the case of *Heinz India Pvt.*

Ltd. & Anr. v. State of UP & Ors.(2012 5 SCC 443), this Court referred to the position held on the power of judicial review in the case of Reid v. Secretary of State for Scotland[1999 2 WLR 28], wherein it is stated that :-

“68.....Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decisions itself it may be found to be perverse or irrational or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or of sufficient evidence, to support it, or through account being taken of irrelevant matter, or through a failure for any reason to take account of a relevant matter, or through some misconstruction of the terms of the statutory provision which the decision maker is required to apply.

But while the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies it is perfectly clear that in case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of evidence.”

19. Therefore, in view of the above judgments we have to hold that the High Court has committed a grave error by setting aside the findings recorded on the points of dispute in the Award of the labour court. A grave miscarriage of justice has been committed against the appellant as the respondent should have accepted the birth certificate as a conclusive proof of age, the same being an entry in the public record as per Section 35 of the Indian Evidence Act, 1872 and the birth certificate mentioned the appellant’s date of birth as 27.6.1940, which is the documentary evidence. Therefore, there was no reason to deny him the benefit of the same, instead the respondent-board prematurely terminated the services of the appellant by taking his date of birth as 27.6.1937 which is contrary to the facts and evidence on record. This date of birth is highly improbable as well as impossible as the appellant’s elder brother was born on 27.1.1937 as per the School Leaving Certificate, and there cannot be a mere 5 months difference between the birth of his elder brother and himself. Therefore, it is apparent that the School Leaving Certificate

cannot be relied upon by the respondent-board and instead, the birth certificate issued by the BMC which is the documentary evidence should have been relied upon by the respondent. Further, the date of birth is mentioned as 27.6.1940 in the LIC insurance policy on the basis of which the premium was paid by the respondent to the Life Insurance Corporation on behalf of the appellant. Therefore, it is only just and proper that the respondent should have relied on the birth certificate issued by the BMC on the face of all these discrepancies as the same was issued on the order of the JMFC.”

d) The Hon’ble Supreme Court in the matter of *S. Sangeetha* (supra) in para 11 held as under :-

11. It is also settled law that mere marking of a document as an exhibit, is not a proof of the contents thereof. A Division Bench of this Court in *LIC v. Ram Pal Singh Bisen* (2010 4 SCC 491) had observed:

“25. We are of the firm opinion that mere admission of a document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law.

31. Under the law of evidence also, it is necessary that contents of documents are required to be proved either by primary

or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the court. Contents of the document cannot be proved by merely filing in a court.”

(emphasis supplied)

[See also: *Sait Tarajee Khimchand v. Yelamarti Satyam*(1972 4 SCC 562), *Narbada Devi Gupta v. Birendra Kumar Jaiswal*(2003 8 SCC 745), *Vijay v. Union of India*(2023 17 SCC 455)]

e) The Hon’ble Supreme Court in the matter of ***Deepali Gundu Surwase*** (supra) held that once the employee shows that he was not gainfully 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. It is further held that 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. It is held that where the employer has grossly violated statutory provisions or principles of natural justice, or has victimised the employee/workman, the Court or Tribunal would be justified in awarding full back wages. In such circumstances, superior

courts should not interfere merely because another view on back wages is possible. Since, in cases of illegal termination, the employer is the wrongdoer and the employee is the sufferer, the employer should not be given any advantage or relief from paying the employee his legitimate dues.

“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 averment 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 victimising the employee or workman, then the court or tribunal concerned 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 keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a 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.”

f) The Hon’ble Supreme Court, in the matter of ***Mahadeo Krishna Naik*** (supra), reiterated the law laid down in ***Deepali Gundu Surwase*** (supra) and held that *after the employee pleads his non-employment and if the employer asserts that the employee was gainfully employed between the dates of termination and proposed reinstatement, the onus of proof would shift to the employer to prove such assertion having regard to the cardinal principle that "he who asserts must prove"*.

Relevant para 48 and 49 are reproduced herein-below:-

“48. After the employee pleads his non-employment and if the employer asserts that the employee was gainfully employed between the dates of termination and proposed reinstatement, the onus of proof would shift to the employer to prove such assertion having regard to the cardinal principle that "he who asserts must prove". Law, though, seems to be well settled that if the employer by reason of its

illegal act deprives any of its employees from discharging his work and the termination is ultimately held to be bad in law, such employee has a legitimate and valid claim to be restored with all that he would have received but for being illegally kept away from work. This is based on the principle that although the employee was willing to perform work, it was the employer who did not accept work from him and, therefore, if the employer's action is held to be illegal and bad, such employer cannot escape from suffering the consequences. However, it is elementary but requires to be restated that while grant of full back wages is the normal rule, an exceptional case with sufficient proof has to be set up by the employer to escape the burden of bearing back wages.

49. We hasten to add that the courts may be confronted with cases where grant of lump sum compensation, instead of reinstatement with back wages, could be the more appropriate remedy. The courts may, in such cases, providing justification for its approach direct such lump sum compensation to be paid keeping in mind the interest of the employee as well as the employer.”

15. Bearing in mind the aforesaid factual position and the legal principles established by the Apex Court, we will now advert to the facts of the case.

16. With regard to the contention made by the learned Senior Counsel that no finding was recorded with regard to the departmental enquiry conducted by the employer, perusal of order passed by the learned Labour Court would make it clear that the learned Labour Court had framed a specific issue as to

whether the departmental enquiry conducted against respondent No. 1 was bad in law and after considering the material available, held that the departmental enquiry conducted against respondent No. 1 was illegal. The finding recorded by the learned Labour Court that the charge against respondent No.1 was not proved cannot be said to be perverse rather the said finding is based upon the material available on record and has been affirmed by the learned Industrial Court. In view of the law laid down by the Hon'ble Supreme Court in ***Om Kanwar*** (supra), this Court, while exercising jurisdiction under Articles 226/227 of the Constitution of India, cannot substitute its own view for the concurrent findings of the learned Labour Court and the learned Industrial Court merely because another view may be possible. Therefore, the contention advanced by the learned Senior Counsel cannot be accepted.

17. The Hon'ble Supreme Court in ***Mohinder Singh (dead) through LRs.*** (supra) held that *once that defence was accepted by the Labour Court, in absence of any evidence of passengers who were not issued tickets, the same did not call for interference in exercise of powers of judicial review under Articles 226/227 of the Constitution of India.* In the present case also, though Mr. S.K. Pandey and Mr. K.K. Pandey were examined before the Enquiry Officer, but Mr. Diwakar Singh and any of the passengers who were allegedly travelling without tickets were not examined. The learned Labour Court upon consideration of the evidence available on record accepted the defence of the workman and found the charge not proved and those findings have subsequently been affirmed by the learned Industrial Court. Thus, in the absence of any evidence of the passengers allegedly found travelling without

tickets, and particularly when the finding recorded by the Labour Court is not shown to be perverse, the same does not call for interference in exercise of jurisdiction under Articles 226/227 of the Constitution of India.

18. With regard to next contention, Mr. S.K. Pandey and Mr. Kashikant Pandey were examined before the Enquiry Officer, but employer failed to examine Mr. S.K. Pandey and Mr. Diwakar Singh before the learned Labour Court. As per law laid down by the Hon'ble Supreme Court in the matter of *S. Sangeetha* (supra) *mere marking of a document as an exhibit, is not a proof of the contents thereof*. The petitioner was required to prove contents of documents either by primary or by secondary evidence. The employer examined only one witness Mr. Kashikant Pandey before the learned Labour Court. Mr. Kashikant Pandey deposed that Vehicle Logbook and Inspection report were prepared by Mr. S.K. Pandey and subsequently tickes were issued by Mr. Diwakar Singh. Since surprise checking was conducted and the reports were prepared by Mr. S.K. Pandey and Mr. Diwakar Singh, it was necessary for employer to examine them as witnesses before the learned Labour Court. Further it was alleged that 25 passengers were traveling without ticket, but the petitioner/employer failed to examine any of them.

19. Judicial review is concerned with the legality and decision-making process and not with substituting the Court's own view for that of the competent adjudicatory authority on appreciation of evidence. As observed by the Hon'ble Supreme Court in *Ishwarlal Mohanlal Thakkar* (supra), judicial review does not permit the Court to reappreciate evidence with a view to forming its own opinion on the merits of the case.

20. In the matter of ***Suresh Chand Sharma*** (supra) the Supreme Court interfered with the order of the High Court as the High Court had reversed the finding of facts recorded by the Labour Court without assigning cogent reasons. In that case, the charge was found proved, whereas in the present case, the learned Labour Court after appreciating evidence, found charge not proved and findings recorded by learned Labour Court have been affirmed by the learned Industrial Court.
21. Likewise, in the matter of ***Gajadhar Nath*** (supra), the evidence of the Inspector who had conducted the checking was found to be reliable and remained undisputed. In the present case, the learned Labour Court after considering the evidence found the charge not proved. Similarly, in the matters of ***Ghanshyam Sharma*** (supra) and ***Gopal Shukla*** (supra) the misconduct was found to be established. In the present case, the charge itself was not found proved by the Labour Court and said finding has been affirmed by the Industrial Court.
22. So far as the question of back wages is concerned, respondent No.1 specifically deposed that he remained unemployed since date of his dismissal and despite making several attempts to secure alternative employment, he could not obtain any employment. His statement on this aspect remained uncontroverted. In view of the law laid down by the Hon'ble Supreme Court in ***Deepali Gundu Surwase*** (supra) and reiterated in ***Mahadeo Krishna Naik*** (supra), once the workman pleads non-employment, the burden shifts upon the employer to establish that the workman was gainfully employed during the relevant period. The petitioner-employer failed to discharge such burden.

Furthermore, the dismissal of respondent No.1 has been found to be illegal and the charge of misconduct has not been proved, thus, the case falls within the law laid down in *Deepali Gundu Surwase* (supra), wherein the Hon'ble Supreme Court has held that in cases of wrongful termination, reinstatement with continuity of service and back wages is the normal rule, subject to the facts and circumstances of the case. The petitioner has not been able to demonstrate any circumstance warranting interference with the award of 100% back wages.

23. In view of the aforesaid discussion and the law laid down by the Hon'ble Supreme Court in the judgments referred to herein-above, I do not find any good ground to interfere with the concurrent findings recorded by the learned Labour Court and affirmed by the learned Industrial Court.

24. In result, this petition is **dismissed**.

25. No order as to costs.

Sd/-
(**Rakesh Mohan Pandey**)
JUDGE