

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.349 of 2015**

D.R. Yadav, son of Sukalram Yadav, aged about 62 years, R/o Qtr.No.A/16/1, CCI Colony, Akaltara, District Janjgir-Champa, Chhattisgarh

---- Appellant**versus**

1. M/s Cement Corporation of India, Akaltara Cement Plant, through its General Manager, Akaltara, District Janjgir-Champa, Chhattisgarh
2. The Industrial Court, through its Chairman, Raipur, Chhattisgarh
3. The Presiding Officer, Labour Court Bilaspur, District Bilaspur, Chhattisgarh

---- Respondents**Writ Appeal No.359 of 2015**

B.P. Choubey, son of Lalji Choubey, aged about 57 years, R/o Akaltara, Shivrinarayan Marg, District Janjgir-Champa, Chhattisgarh

---- Appellant**versus**

1. M/s Cement Corporation of India, Akaltara Cement Plant, through its General Manager, Akaltara, District Janjgir-Champa, Chhattisgarh
2. The Industrial Court, through its Chairman, Raipur, Chhattisgarh
3. The Presiding Officer, Labour Court Bilaspur, District Bilaspur, Chhattisgarh

---- Respondents**AND****Writ Appeal No.345 of 2015**

R.K. Roy, son of Dasrath Roy, aged about 65 years, R/o Qtr.No.A/11/7, CCI Colony, Akaltara, District Janjgir-Champa, Chhattisgarh

---- Appellant**versus**

1. M/s Cement Corporation of India, Akaltara Cement Plant, through its General Manager, Akaltara, District Janjgir-Champa, Chhattisgarh
2. The Industrial Court, through its Chairman, Raipur, Chhattisgarh
3. The Presiding Officer, Labour Court Bilaspur, District Bilaspur, Chhattisgarh

---- Respondents

For Appellants	:	Shri Aditya Khare, Advocate
For Respondent No.1/Corporation	:	Shri Vinod Deshmukh, Advocate

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

Per Navin Sinha, Chief Justice

20/8/2015

1. The three appeals arise from a common order dated 28.4.2015 passed in three separate writ petitions heard analogous. Learned Counsel for the Respondent has thus waived formal service in Writ Appeal No.349 of 2015 and Writ Appeal No.359 of 2015. Writ Appeal No.345 of 2015 is barred by seven days delay. Considering the duration of delay, it is condoned. I.A. No.1 of 2015 is allowed.

2. The Learned Single Judge set aside the order of the Industrial Court dated 27.3.2004 which had affirmed the order of the Labour Court dated 28.2.2002 holding the termination of the Appellants to be bad. Liberty has been granted to the Respondent for filing an application under Order IX Rule 13 of the Code of Civil Procedure for recall of order dated 28.2.2002 as it was passed ex-parte and the Respondent did not have the opportunity to lead any evidence, simultaneously acknowledging that the Appellants were suffering the termination from 1997.

3. Learned Counsel for the Appellants submits that in the facts of the case, the Learned Single Judge ought not to have allowed the writ petitions granting liberty to the Respondents for filing an application under Order IX Rule 13. No sufficient cause had been shown by the Respondents. The plea that no notice had been served upon them by the Labour Court was rejected by the Industrial Court on merits after perusing the records of the Labour Court. If a party to a case does not appear deliberately after valid service of notice setting aside an ex-parte order essentially is giving an advantage to the wrong doer. The Learned Single Judge has grossly erred in not considering and dealing with the findings regarding valid service of notice upon the Respondents returned by the

Industrial Court.

4. The Appellants were working as permanent Diesel Mechanic, Machine Attendant and Senior Security Guard respectively with the Respondent. They were illegally dismissed from service on 10.6.1997 without valid departmental proceedings. Despite opportunity the Respondents neither produced records nor led any evidence of the dismissal being valid. The Labour Court set aside the dismissal on 3.6.1998 as vitiated. On challenge by the Respondents, the Industrial Court on 31.8.2001 set aside the order of the Labour Court as procedurally vitiated and remanded the matter for fresh consideration. The Labour Court issued fresh notice to the Appellants. Despite valid service of notice the Appellants failed to appear and lead evidence in support of a valid dismissal. The Labour Court therefore proceeded ex-parte, recorded the evidence of the Appellants, set aside the termination as vitiated and directed reinstatement with full back wages and other consequential benefits. The Appellants in Writ Appeal No's. 349 of 2015 and 345 of 2015 have superannuated during the pendency of the litigation without having the benefit of reinstatement ordered by the Labour Court. The Appellants have suffered long enough accepted by the Learned Single Judge also. The Respondent Corporation cannot be permitted to misuse the process of law by wrongly prolonging litigation unnecessarily merely because it is financially more capable than the Appellants.

5. Learned Counsel for the Respondent Corporation submits that the order under appeal calls for no interference. Objection had been taken in the writ petitions that there had been no service of notice on it by the Labour Court. The Learned Single Judge was satisfied with regard to no service of notice upon the Respondent. No prejudice shall be caused to the Appellants if the matter is heard on merits. The order of the Learned Single Judge calls for no interference. During the pendency of the matter

the Respondent Corporation has been complying with Section 65(3) of the Industrial Relations Act, 1960 which is similar to Section 17B of the Industrial Disputes Act. Even if the order of the Industrial Court is declined to be interfered, full back wages cannot be granted as a matter of course, but would depend upon the status of the Appellants in the interregnum. The Appellants may be directed to place materials before the Respondent Corporation that they were unemployed all along after which the issue for back wages may be directed to be considered. Two of them have superannuated.

6. We have considered the submissions on behalf of the parties, and perused the orders of the Labour Court, the Industrial Court and examined the order under appeal.

7. The Appellants were working as permanent Diesel Mechanic, Machine Attendant and Senior Security Guard respectively with the Respondent. It does not appear that it was adequately brought to the attention of the Learned Single Judge that the Appellants were in permanent employment. A departmental inquiry was instituted against the Appellants for wrong entries with regard to coal supplied, causing financial loss to the Respondent Corporation pursuant to an audit objection in 1994. It culminated in dismissal on 10.6.1997. The Appellants challenged it before the Labour Court alleging that departmental inquiry was not in accordance with law causing them prejudice rendering the dismissal invalid. The Labour Court called for the original records from the Respondent Corporation to examine the allegations. The records were not produced. An adverse inference was drawn and dismissal was set aside on 3.6.1998. The order was challenged by the Respondent Corporation in appeal before the Industrial Court. By order dated 31.8.2001 the Industrial Court allowed the appeal and remanded the matter to the Labour Court for fresh decision holding that even if records had not been produced as

directed, the Labour Court was required to frame issues, record evidence and then decide.

8. Even though the remand order was passed on an appeal by the Respondent Corporation and in its presence, nonetheless the Labour Court issued fresh notice to it. Despite valid service of notice, the Respondent Corporation did not enter appearance. The Labour Court inter alia framed issues if the departmental inquiry was vitiated on grounds alleged, were the Appellants entitled to reinstatement with back wages. The Appellants led evidence in support of their claims. The Labour Court on 28.2.2002 passed an ex-parte award in favour of the Appellants directing reinstatement with full back wages and consequential benefits holding that the departmental inquiry was not conducted properly and stood vitiated.

9. The Respondent Corporation again challenged the order dated 28.2.2002 on merits before the Industrial Court also contending that no fresh notice had been issued to it after the remand. The Labour Court was required to issue fresh notice. The notice had not been served on the competent authority and that the service report was false and fabricated. The Industrial Court after examining the records of the Labour Court and hearing the parties returned the finding that after remand fresh notice had been issued to the Respondent Corporation. It had been validly served. The acknowledgment by it in proof of service was available on record. It bore the seal of the Corporation. The plea that it was not served on the competent authority merited no consideration. No evidence had been led to demonstrate that the service report was forged and fabricated. On merits, the Industrial Court held that the findings had been arrived at after taking into consideration the evidence led by the workmen. The appeal was consequently dismissed leading to the writ petitions from which the appeals arise.

10. If a Court or quasi judicial authority commits a procedural error causing prejudice to a party, more importantly in deciding a matter to the prejudice of another without issuance of notice and hearing it, there is inherent power in it to recall such an order and decide afresh. The analogy in Order IX Rule 13 could undoubtedly be applied. It stipulates as under: -

13. Setting aside decree ex parte against defendant.—

In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

[Provided further that no Court shall set aside a decree passed *ex parte* merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.]

[*Explanation.*—Where there has been an appeal against a decree passed *ex parte* under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that *ex parte* decree.]

11. The order of the Labour Court dated 28.2.2002 was challenged before the Industrial Court on merits. No application under Order IX Rule 13 had been preferred before the Labour Court for recall of the order dated 28.2.2002 purportedly on the ground that notice had not been served on it. The onus lay on the Respondent to prove that notice had not been served upon it or that despite service of notice it was prevented from appearing by any sufficient cause. Any irregularity in service of summons will not justify non-appearance if it is otherwise found that the Respondent had sufficient notice and time for appearing. An application shall not lie

under Order IX Rule 13 if the ex-parte order had been challenged on merits.

12. In the writ petition against the order of the Industrial Court dated 27.3.2004, a vague plea was taken that no proper notice had been served and not that notice had not been served. There was no challenge to the findings of the Industrial Court from the records of the Labour Court with regard to valid service of notice along with seal of the Respondent in acknowledgement. These facts were not noticed by the Learned Single Judge as also that the order of the Labour Court had been assailed before the Industrial Court on merits. It was therefore not open for the Respondents to now take recourse to Order IX Rule 13.

13. The facts of the case reveal a sorry state of affairs with regard to the conduct of the Respondent. The Appellants who were permanent employees were alleged to have been dismissed after a departmental enquiry. On challenge by the workmen before the Labour Court, the Respondent did not produce the original records regarding the enquiry despite the directions of the Labour Court. Had the original records been produced, the controversy as to whether the departmental proceedings were valid or invalid could well have been given a quietus either ways. Instead of producing the records with no explanation offered for non-production, the matter was carried to the Industrial Court which remanded the matter to the Labour Court for fresh decision. The fresh opportunity provided again to the Respondent Corporation for substantiating that the departmental proceedings were held in accordance with law was wasted away frivolously. Despite valid service of notice, it failed to appear before the Labour Court. No application was filed by it before the Labour Court under Order IX Rule 13 CPC as it was fully aware that it was not in a position to furnish any sufficient cause for non-appearance or any other reasonable explanation for reasons beyond its control. It therefore carried

the order of the Labour Court in appeal to the Industrial Court on merits. The Industrial Court having rejected the appeal on merits, the matter was carried by the Respondent to this Court in a writ petition. The ground taken in the writ petition was that there had been no valid service of notice and not that there had been no service of notice. If a party to a litigation does not appear despite valid service of notice, it cannot urge that it has not been heard. Once the Industrial Court affirmed the order of the Labour Court on merits, the benefit of Order IX Rule 13 CPC was also not available to the Respondent under the Explanation. This aspect of the matter was not considered by the Learned Single Judge while setting aside the order of the Industrial Court granting liberty to the Respondent for filing an application under Order IX Rule 13 CPC.

14. The aforesaid facts reveal that the Respondent turned the situation to its advantage as a litigant's paradise merely because as a body corporate, it had the capability and capacity to continue the litigation dragging the Appellants from one forum to another who haplessly had no option but to fall in line. The submission on behalf of the Respondent that back-wages may not be granted in full under order dated 28.2.2002, shall be considered by us in this background.

15. We are of the considered opinion that the matter must be given a complete quietus now. Two of the Appellants have already superannuated in the meantime without having the benefit of reinstatement ordered. The question for grant of back-wages has undergone a paradigm shift. Yet the issue remains in the realm of discretion by the Court to be exercised on the facts of each case. No strict or rigid formula can be enunciated either for grant or refusal which will depend on the facts of each case for the manner in which discretion is to be exercised. The Appellants have tenaciously been contesting their illegal termination since 10.6.1997 back and forth from one

forum to another being dragged by the Respondent. The opportunity granted by the Industrial Court to the Respondents was wasted away recklessly.

16. The Madhya Pradesh Industrial Relations Act is a piece of social welfare legislation intended to protect the rights of the workmen. It will therefore have to be interpreted to advance the purpose and not to stultify the same. The Appellants were dismissed on 10.6.1997. The Respondent Corporation did not produce the original records before the Labour Court leading to the order for reinstatement dated 3.6.1998. At the behest of the Respondent the matter was remanded by the Industrial Court in appeal on 31.8.2001. Despite valid service of notice, the Respondent did not appear before the Labour Court leading to the order for reinstatement and back wages on 28.2.2002. The Industrial Court in appeal by the Respondent declined to interfere on 27.3.2004. The Learned Single Judge himself held that the Appellants were suffering since long. Two of them have already superannuated without having the benefit of the order dated 28.2.2002.

17. In (1993) 3 SCC 214 (Central Cooperative Consumers' Stores Limited v. Labour Court), the employee had been illegally terminated. Despite the order for reinstatement, making it an ego issue she was dragged from one forum to another by the authorities. The defence that delay occurred because of the dilatory adjudicatory process was termed obstinacy because of the litigation being funded without any personal involvement and money squandered in such litigation observing as follows:

“5. Public money has been wasted due to adamant behaviour not only of the officers who terminated the services but also due to cantankerous attitude adopted by those responsible for pursuing litigation before one or the other authority.....Working life of opposite party has been lost in this tortious and painful litigation of more than 20 years. That for such thoughtless acts of its officers the petitioner-society has to suffer and pay an amount exceeding three lacs is indeed pitiable. But considering the agony and suffering of the opposite-party that amounts

cannot be a proper recompense....We however leave it open to the society to replenish itself and recover the amount of back wages paid by it to the opposite-party from the personal salary of the officers of the society who have been responsible for this endless litigation including the officer who was responsible for terminating the services of the opposite-party..."

18. Similarly, in (2009) 3 SCC 124 (Novartis India Ltd. v. State of West Bengal) it was observed as follows:

"36. ...The fact that they survived and did not die of starvation itself could not be a ground for denying back wages to them. Even an unemployed person has a right to survive. He may survive on his past savings..."

19. In (2009) 9 SCC 597 (C.N.Malla v. State of J&K) the Labour Court drew an adverse inference for granting relief due to non production of records by the employer. We find no reason to take any other view of the matter in the facts of the case.

20. In (2013) 10 SCC 324 [Deepali Gunduu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.)], on the issue of back-wages, it was observed as follows:

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

...

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 case of the 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.”

21. More recently, in (2015) 7 SCC 222 (K.S. Ravindran v. Branch Manager, New India Assurance Company Limited), upholding the order drawing adverse inference against termination due to non-production of relevant records allowing back wages, Deepali Gunduu Surwase (supra) has been followed.

22. The order under appeal is therefore set aside. The principle of 'no work no pay' has no application. The fact that sufficient time may have gone by in luxury litigation by the Respondent is considered inconsequential. The Appellants are held entitled to back-wages as ordered by the Labour Court on 28.2.2002 from the date of dismissal till the date of superannuation with consequential benefits in accordance with law in so far as those who have superannuated are concerned. The third Appellant is directed to be reinstated with full arrears of back-wages and continuity of service for all purposes. Needless to state that the payments made to the Appellants during the pendency of the writ petitions and appeals shall be adjusted against the payable dues.

23. All three appeals are allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(Chandra Bhushan Bajpai)
JUDGE