

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

WP(C).No. 934 of 2010 (N)

AGAINST THE AWARD IN ID 35/2005 of INDUSTRIAL TRIBUNAL, IDUKKI DATED
28.08.2009

PETITIONER:

THE MANAGER,
HARRISONS MALAYALAM LTD., WALLARDIE ESTATE
VANDIPERIYAR.

BY ADVS.SRI.E.K.NANDAKUMAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.P.GOPINATH MENON
SRI.V.J.ANAND
SRI.JAYASANKAR A.K.

RESPONDENTS:

1. THE REGIONAL SECRETARY,
ESTATE STAFF UNION OF SOUTH INDIA, PEERMEDU-685 531.
2. THE INDUSTRIAL TRIBUNAL,
IDUKKI.

R1 BY ADV. SRI.B.ASHOK SHENOY
R1 BY ADV. SMT.C.G.PREETHA
R1 BY ADV. SRI.THOMAS P.MAKIL
R1 BY ADV. SRI.K.V.GEORGE
R1 BY ADV. SRI.P.N.RAJAGOPALAN NAIR

R2 BY GOVERNMENT PLEADER SRI.P.V.ELIAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
24-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE CLAIM STATEMENT IN ID NO.35/2005 DATED
05.01.2006 FILED BY THE FIRST RESPONDENT BEFORE
THE 2ND RESPONDENT.
- EXT.P2 : COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER IN
ID NO.35/2005 DATED NIL BEFORE THE 2ND RESPONDENT.
- EXT.P3 : COPY OF THE AWARD IN ID NO.35/2005 DATED 28.08.2009
INCORPORATING THE PRELIMINARY ORDER PASSED
BY THE 2ND RESPONDENT.
- EXT P4 : COPY OF THE LETTER DATED 02.11.2009 OFFERING
REINSTATEMENT TO SRI. VENUGOPAL ISSUED BY THE PETITIONER.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A.TO JUDGE

sm

ANIL K. NARENDRA, J.

W.P.(C) No.934 of 2010

Dated this the 24th day of July, 2015

JUDGMENT

The petitioner, who is the Manager of M/s. Harrisons Malayalam Limited, a Public Limited Company engaged in plantation industry, having a tea estate namely, Wallardie Estate at Vandiperiyar is before this Court in this writ petition seeking a writ of certiorari to quash Ext.P3 award of the Industrial Tribunal, Idukki dated 28.8.2009 in I.D.No.35/2005, incorporating the preliminary order. He has also sought for a writ of mandamus commanding the Tribunal to re-hear the matter afresh and pass fresh orders on the preliminary issue and pass a final award accordingly.

2. On 12.01.2010, when this writ petition came for admission before this Court, in view of the admitted fact that the delinquent employee has been reinstated in service, no stay of operation of the impugned award in so far as it relates to reinstatement was granted. However, this Court granted an interim stay of Ext.P3 award in so far as it relates to payment of back wages and it was made clear that, the petitioner shall

pay the employee emoluments at the applicable rates, consequent on reinstatement if he reports for duty.

3. Going by the averments in the writ petition, one S.Venugopal was employed as Field Officer under the management. While working as such, disciplinary proceedings were initiated against him on the allegation that, he was instigating the workers and supervisors of No.I Division to indulge in go-slow and strike work in the estate and that, he was advising the staff, not to take initiative to resolve the labour issues on Moongalar and Wallardie estates. Further, he behaved in a very irresponsible manner, when the Senior Manager of the estate Mr.C.D.Singh tried to reason out with him the need to make workers shear. The employee was issued with a show-cause notice asking him to submit explanation as to why disciplinary action should not be taken against him under the Standing Orders applicable to estate staff. On the ground that the explanation submitted by the employee was not satisfactory, the management decided to charge sheet him under clauses 14(a), (b) and (g) of the Standing Orders applicable to estate staff. The management appointed an Enquiry Officer, who conducted enquiry and found that the employee is guilty of misconducts under clauses

14 (a) & (b) of the Standing Order and he was found not guilty of the misconduct under under clause 14(g). Based on the findings in the enquiry report, the management decided to impose the employee the punishment of dismissal from service, and accordingly he was dismissed from service.

4. The Regional Secretary of the Estate Staff Union of South India, the 1st respondent herein, raised an industrial dispute challenging the dismissal of the workman. On failure of conciliation, the said dispute was referred for adjudication to the Industrial Tribunal, Idukki. The issue referred for adjudication was as follows:

“Whether the dismissal of Sri. S. Venugopal, Field Officer by the Management, is justifiable, if not what relief he is entitled to?”

5. On receipt of the notice from the Tribunal, the parties entered appearance and filed their respective pleadings. Ext.P1 is the claim statement filed by the Union and Ext.P2 is the written statement filed by the management. After conducting enquiry, the Tribunal found that the employee is a 'workman' under the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). The Tribunal upheld the validity of the enquiry conducted by the management holding that it is a proper enquiry. However, the Tribunal found that the finding of

the Enquiry Officer that the employee is guilty of the charges levelled against him is perverse, and set aside that finding. The Tribunal decided the preliminary issue in favour of the workman and also found that the management has not succeeded in proving the misconduct levelled against the employee. Therefore, the Tribunal by Ext.P3 award ordered reinstatement of the employee with back wages and all other consequential benefits. It is aggrieved by Ext.P3 award passed by the Tribunal, the management is before this Court in this writ petition.

6. I heard the arguments of the learned counsel for the management and also the learned counsel for the Union, representing the employee.

7. The sole issue that arises for consideration in this writ petition is as to the legality or otherwise of Ext.P3 award passed by the Tribunal, in ID No.35 of 2005.

8. A reading of the pleadings and documents on records make it explicitly clear that, the management proceeded against the delinquent employee on the ground that he has committed misconduct under clauses 14(a), (b) and (g) of the Standing Orders applicable to estate staff. Clause 14(a) of the Standing Orders deals with 'willful insubordination or

disobedience whether alone or in combination with another or others of any lawful and reasonable order of the superior'. Clause 14(b) deals with 'striking work or inciting others to strike work in contravention of the provisions of the Industrial Disputes Act or any other enactment or rules in force for the time being'. Similarly, Clause 14(g) deals with 'riotous or disorderly behaviour of workman on the premises of the estate or any act subversive to discipline'.

9. The misconduct alleged against the employee was that, he had been instigating the workers and supervisors of No.1 Division to indulge in go-slow and strike work in the estate and that, he had been advising the staff not to take initiatives to resolve the labour issues on Moongalar and Wallardie estates. It was alleged further that, the delinquent employee had been behaving in a very irresponsible manner when the Senior Manager tried to reason out with him the need to make the workers shear.

10. Before the Tribunal, MW1 to MW6 were examined on the side of the management and Exts.M1 to M14 were marked on their side. On the side of the Union, the employee was examined as WW1 and one workman, namely, P.S.Manoharan was examined as WW2 and Exts.W1 to W15

were marked on his side. Regarding the preliminary issue as to whether the employee who was employed as Field Officer by the Management is a worker or not, the Tribunal after considering the materials on record along with the oral evidence adduced on the side of the Management as well as employee, came to the conclusion that the employee is a 'workman' as defined under Section 2(s) of the Act. A reading of Ext. P3 award would show that, the said finding of the Tribunal is based on the pleadings and evidence on record.

11. On the side of the Management, the Manager of the estate was examined as MW2, who deposed that the employee was employed as a Field Officer and that, his main job was administrative and supervisory in nature. MW2 has also deposed that, the Standing Order of estate staff was applicable to the employee in question and that, the service conditions of the staff in the estate are governed by the settlements between the United Planters of South India (UPASI) and Estate Staff Union of South India (ESUSI). MW2 has also deposed that, the Standing Orders applicable to staff and workers are entirely different. The delinquent employee who was examined as WW1 has deposed that he had worked as Field Officer under the Management in their estate, for the period from

01.07.2003 till 16.06.2005, the date on which he was dismissed from service. According to WW1, he was working under the Senior Manger, the Manager and the Assistant Manager. WW1 has categorically stated that, as Field Officer he was not discharging any administrative or supervisory duties. On the other hand, he had to do clerical work for six to seven hours a day. As Field Officer, he has no authority to take any independent decision and make the workers to do such work and that, he had been working as per the directions of the Senior Manger, the Manager and the Assistant Manager.

12. Though the management produced Exts.M3 to M6 in support of their contention that, the employee had the power to recommend disciplinary action against his subordinates, after perusing Ext.M3, the Tribunal found that it is a report submitted by the delinquent employee to the Manager with respect to the defect in the work of the Supervisor, with a request to take necessary action against the Supervisor. However, as per Ext.M5 reply, the Supervisor made certain complaints with respect to the conduct of the employee and it was in such circumstances, the employee vide Ext.M6 requested the Manager to take disciplinary action against the Supervisor. Therefore, the Tribunal concluded that, the

employee given Ext.M6 to the Manager in the peculiar circumstance that, the Supervisor had raised allegations against him, and as such Ext.M6 alone is not sufficient to conclude that the employee had the power to recommend disciplinary action. The Tribunal noticed that, the Management has not produced any other documents to substantiate its contention that, the employee had recommended disciplinary action against any other worker. The Tribunal noticed further that, the employee is a member of the Estate Staff Union of South India and that, the conditions of the service of the staff members including the Field Officers employed in the estate are governed by the settlement entered into between the the United Planters of South India and Estate Staff Union of South India and that, the disciplinary action initiated against the employee was as per clauses 14(a), (b) and (g) of the certified Standing Orders applicable to estate staff.

13. It was after taking in to account the definition of 'workman' given under Section 2(s) of the Act, and also the principle laid down in the judgment of the Apex Court in **All India Reserve Bank Employees' Association v. Reserve Bank of India (AIR 1966 SC 305)** the Tribunal came to the conclusion that the employee is a 'workman' as defined under

Section 2(s) of the Act. As rightly noticed by the Tribunal, the mere overseeing the work of other employees alone will not be sufficient to hold that an employee is discharging duties in a supervisory capacity. An employee should have at least some limited discretionary power to take independent decision to hold that he is discharging supervisory duties. From the documents and evidence on record, the Tribunal came to the conclusion that, the employee had no power to sanction leave for the workers and supervisors and that, he had no independent power to allocate work to the workers and supervisors and that, he had been working under the immediate control and supervision of Senior Manager, the Manager and the Assistant Manager. It was in such circumstances, the Tribunal in Ext.P3 award concluded that, the Management had been treating the employee as a 'workman', as defined under Section 2(s) of the Act all throughout his employment and therefore, the Management is estopped from contenting that he is not a 'workman'. In support of the aforesaid reasoning, the Tribunal has also relied on the judgment of the Bombay High Court in **S.A.Sarang v. W.G.Forge and Allied Industries Ltd. and others (1996 I LLJ 67)**. The aforesaid finding of the Tribunal, based on the

documents on record and after evaluating the oral evidence adduced by both sides, cannot be termed either perverse or patently illegal, warranting interference of this Court under Article 226 of the Constitution of India.

14. Now the remaining issue that arises for consideration is as to whether the domestic enquiry conducted against the delinquent employee was proper and if so, whether the findings of the Enquiry Officer are sustainable in law.

15. Before the Tribunal, the Enquiry Officer was examined as MW1 and the file containing enquiry proceedings, statement of witnesses, documents, enquiry report, etc., were marked as Ext.M1. The Tribunal, after perusing the enquiry file, concluded that, there is nothing in Ext.M1 to suggest that any prejudice has been caused to the employee in defending himself in the enquiry. It was in such circumstances, the Tribunal held in Ext.P3 award that, the domestic enquiry was conducted properly and in compliance with the principles of natural justice.

16. The first limb of the misconduct alleged against the delinquent employee was that, he had been instigating the workers and Supervisors of No.1 Division to indulge in go-slow and strike work in the estate. The Tribunal found that, the only

evidence adduced by the Management to establish that portion of the allegation is the oral evidence of MW2, who is none other than the Manager of that estate, who has deposed during the enquiry that, on 30.06.2004, when he visited Field No.4 of No.1 Division, he overheard the employee telling the pluckers to continue hand plucking and not to take shears. However, it has come out in evidence that, in the other 4 divisions of estate, all the workers refused to do shear plucking. The workers, who were examined as witness Nos.1 to 6 before the Enquiry Officer, have categorically deposed that, they refused to do shear plucking as per the directions of the Trade Unions and the Field Officer was telling the workers to do shear plucking. Exts.D1,D2 and D3 notices were issued by MW2, addressing all the pluckers of No.1 Division and as per those notices, the pluckers were directed to start shear plucking. It was brought out during the cross-examination of MW2 that, the delinquent employee read out those notices in the muster and also pasted those notices on the notice board in the muster.

17. MW2 has stated during cross-examination that, on 30.06.2004, he had gone to Field No.4 of No.1 Division by motorbike. He parked the bike on the field road and walked on

to the plucking plot. The distance between the road and the plucking plot was about 25 to 28 feet. He overheard the delinquent employee instigating the workers from about a distance of 5 feet. The aforesaid version of MW2 was brushed aside by the Tribunal as one which cannot be relied upon. It was in the absence of any cogent and convincing evidence, the Tribunal came to the conclusion that, the management has not succeeded in proving the first limb of the misconduct alleged against the delinquent employee. The aforesaid finding of the Tribunal, after evaluating the oral as well as the documentary evidence on record, cannot also be termed either perverse or patently illegal, warranting an interference of this Court under Article 226 of the Constitution of India.

18. The second limb of the misconduct alleged against the delinquent employee is that, he had been advising the staff not to take initiative to resolve the labour issues on Moongalar and Wallardie estates under the Management. Here also, the Management is heavily relying on the evidence of MW2 to establish that portion of the allegation. The evidence of MW2 is to the effect that, when he came to the Group Office on 26.06.2004, he heard the delinquent employee talking to MW5 that, the staff community should not stick their necks out in

trying to solve the labour issues. Again, on 27.06.2004, while MW2 was discussing the strategy for the next day with MW4, the Assistant Field Officer, at Pattumalai Division, the delinquent employee made a phone call to MW4, enquiring whether shearing was going on in Pattumalai Division. The reply was yes, shearing was going on, to which the delinquent employee told MW4, why should the staff take interest to try to sort out the issue and expose themselves to threats. MW3, the Executive Personal of Soorianelle Estate has also deposed that, when he was having discussion with MW4 at Pattumalai Division a phone call from the delinquent employee came to MW4 and the delinquent employee told MW4 that the staff community should stand with the striking workers and should not support the Management. MW3 has also deposed that, on 28.06.2004, while he was going to the office, the delinquent employee told him that, when the Manger and the Group Manager asked him to restart shear plucking, he told them that it was not his duty and he would not take any steps to restart shear plucking. MW4 and MW5 have also deposed that, the delinquent employee told them that it was not their duty to make the workers to do shear plucking.

19. The Tribunal noticed that, what was stated by the

delinquent employee to MW2, MW3, MW4 and MW5 was during the course of his discussions with them, which cannot be regarded as misconduct, as contemplated under clause 14(a), (b) and (g) of the Standing Orders. As noticed by the Tribunal, it has come out in evidence that, in the other 4 divisions of estate as well, all the workers refused to do shear plucking. The workers, who were examined as witness Nos.1 to 6 before the Enquiry Officer, have deposed that, they refused to do shear plucking as per the directions of the Trade Unions and the Field Officer was telling the workers to do shear plucking. It was brought out during the cross-examination of MW2 that, the delinquent employee read out Exts.D1,D2 and D3 notices issued by MW2, addressing all the pluckers of No.1 Division to start shear plucking, and the delinquent employee read out those notices in the muster and also pasted those notices on the notice board in the muster. Therefore, it was in the absence of any cogent and convincing evidence, the Tribunal came to the conclusion that, the Management failed to prove the misconduct alleged against the employee, as contemplated under clauses 14(a), (b) and (g) of the Standing Orders. The aforesaid finding of the Tribunal, after evaluating the oral as well as the documentary evidence on record, cannot also be

termed either perverse or patently illegal, warranting an interference of this Court under Article 226 of the Constitution of India.

20. The last limb of the misconduct alleged against the delinquent employee is that, he behaved in a very irresponsible manner with MW6, the Senior Manager, when MW6 tried to reason out with him the need to make the workers shear. However, MW6 has not stated about any irresponsible behaviour on the part of the delinquent employee. No other witnesses examined on the side of the Management have stated any irresponsible behaviour on the part of the delinquent employee. Therefore, it was in the absence of any cogent and convincing evidence, the Tribunal came to the conclusion that, the Management has not succeeded in proving the misconduct alleged against delinquent employee. The aforesaid finding of the Tribunal, after evaluating the oral as well as the documentary evidence on record, cannot also be termed either perverse or patently illegal, warranting an interference of this Court under Article 226 of the Constitution of India.

21. Relying on the judgment of the Apex Court in **State of Haryana and another v. Rattan Singh (1977 (2) SCC**

491) the learned counsel for the petitioner would contend that, in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. Para.4 of the judgment reads thus;

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender or independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunals cannot be held good. However, the courts below misdirected themselves, perhaps in insisting that passengers who had come in and gone out should be

chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halbsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamenlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

22. In Rattan Singh's case (supra) the Apex Court has also held that, departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. The Apex Court held further that, absence of any evidence in

support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record.

23. In the case on hand, it was in the absence of any cogent and convincing evidence, the Tribunal came to the conclusion that, the Management has not succeeded in proving the misconduct alleged against delinquent employee. It was on a careful evaluation of the materials on record, the Tribunal arrived at such a conclusion, which is neither perverse nor patently illegal, warranting an interference by this Court under Article 226 of the Constitution of India.

24. On the question of reinstatement of the delinquent employee with back wages, the Tribunal noticed that, the employee as WW1 has deposed that he was not alternatively employed during the period he was kept out of the service of the Management and that, he has no other means of earning and was living with the salary received by his wife, who had retired two years back. Thereafter, he is living with the pension received by his wife. It was after a careful evaluation of the evidence on record, the Tribunal arrived at a conclusion that, the delinquent employee is eligible to be reinstated in service with back wages. The aforesaid finding is neither perverse nor

patently illegal, warranting an interfere of this Court under Article 226 of the Constitution of India.

25. In **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others (2013 (10 SCC 324)** the Apex Court held that, if the order of termination is void ab initio, the workman is entitled to full back wages. Paras.38 and 39 of the judgment read thus;

"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.

39. Reverting to the case in hand, we find that the management's decision to terminate the appellant's service was preceded by her suspension albeit without any rhyme or reason and even though the Division Bench of the High Court declared that she will be deemed to have rejoined her duty on 14.3.2007 and entitled to consequential benefits, the management neither allowed her to join the duty nor paid wages. Rather, after making a show of holding inquiry, the management terminated her service vide order dated 15.6.2007. The Tribunal found that action of the management to be wholly arbitrary and vitiated due to violation of the rules of natural justice. The Tribunal further found that the allegations levelled against the appellant were frivolous. The Tribunal also took cognizance of the statement made on behalf of the appellant that she was not gainfully employed anywhere and the fact that the management had not controverted the same and ordered her reinstatement with full back wages."

26. Relying on the judgment of the Apex Court in

Metropolitan Transport Corporation v. V.Venkatesan

(2009 (9) SCC 601), the learned counsel for the petitioner would contend that there has been a shift in the legal position regarding reinstatement and payment of full back wages on the dismissal order having been found invalid and that in a long line of cases, the Apex Court has consistently taken the view that the relief of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is held to be in contravention of the prescribed procedure. But it has to be noticed that in the above judgment relied on by the learned counsel for the petitioner, the Apex Court was dealing with the question of reinstatement of a person with Law degree, who was selected to the post of Superintendent (Legal) in the Metropolitan Transport Corporation. A reading of Para.17 of the said judgment would show that the delinquent employee did not dispute the fact that he was enrolled as an Advocate on 12.12.2010 and continued to be so until the date of his reinstatement. But he contended that he had no earning from the profession and therefore no amount should be deducted from the back wages. It was in that factual matrix, the Apex Court came to the conclusion that a reasonable deduction needs to be made while determining the

back wages to which the delinquent employee may be entitled. Therefore, the judgment of the Apex Court in **Metropolitan Transport Corporation's case (supra)** is on an entirely different factual matrix and as such the principle laid down therein cannot be made applicable to the facts of the present case.

27. It is pertinent to note that the judgment of the Apex Court in **Deepali Gundu Surwase's case (supra)** was after noticing its earlier judgment in **Metropolitan Transport Corporation's case (supra)**. A reading of Para.14 of the judgment in **Deepali Gundu Surwase's case (supra)** would show that after referring to the various judgments of the Apex Court including that in **Metropolitan Transport Corporation's case (supra)**, it was argued before the Apex Court that the rule of reinstatement with back wages propounded in 1960s ad 1970s has been considerably diluted and the Courts/Tribunals cannot ordain payment of back wages as a matter of course in each and every case of wrongful termination of service. It was also contended that an order for payment of back wages cannot be issued unless the employee concerned not only pleads, but also proves that he or she was not employed gainfully during the intervening

period.

28. In the case on hand, the specific case of the delinquent employee as WW1 was that, he was not employed during the period he was kept out of service of the Management and that he has no other means of earning. The Management has absolutely no case either before the Tribunal or before this Court that the delinquent employee was gainfully employed during the period during which he was kept out of the service. In such circumstances, the reasoning of the Tribunal in Ext.P3 award that, the delinquent employee is entitled for reinstatement in service with back wages cannot be termed either perverse or patently illegal warranting an interference of this Court under Article 226 of the Constitution of India.

In the result, I find absolutely no grounds to interfere with Ext.P3 award passed by the Tribunal and the writ petition is dismissed. No order as to costs.

Sd/-
ANIL K. NARENDRA,
JUDGE

sm/dsn