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

**Date of Decision: 18<sup>th</sup> September, 2015**

+ W.P.(C) 1544/2014

RICHPAL SINGH

..... Petitioner

Through: Mr. G. S. Charya, Advocate

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through: Ms. Latika Choudhary, Advocate for Ms.  
Avnish Ahlawat, Advocate

+ W.P.(C) 3425/2014

DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Ms. Latika Choudhary, Advocate for Ms.  
Avnish Ahlawat, Advocate

versus

RICHPAL SINGH

..... Respondent

Through: Mr. G.S. Charya, Advocate

**CORAM:**

**HON'BLE MS. JUSTICE SUNITA GUPTA**

### **J U D G M E N T**

**: SUNITA GUPTA, J.**

1. Challenge in both these writ petitions is to the award dated 23.01.2014 passed by learned Presiding Officer, Labour Court, Karkardooma Courts, Delhi in ID No.02/13 (old ID No. 106/96).

2. Shorn on unnecessary details, it is undisputed case of the parties that the workman Richpal joined the Management of DTC as Conductor in 1972. After serving two years, he was terminated upon which he raised an industrial dispute.

However, the appropriate Government refused to make any reference. He filed a Civil Writ Petition and this Court in the year 1985 reinstated him with full back wages and continuation of service with all benefits. Thereafter, it is the case of the management that on 10<sup>th</sup> March, 1994, the workman while on duty at route No.115 (Wazirpur JJ Colony to Railway Station) in bus No. 6317, was checked by the checking officials Sh. Om Prakash, ATI and Sh.Prem Shankar, ATI at around 17:45 hours at ISBT in the down direction when they noticed that the conductor was collecting the tickets from the passengers already sold by him in the up direction and then re-selling the said tickets to passengers in the down direction. Ticket bearing No.683/23522 was found from a passenger to whom the workman allegedly resold the ticket. The workman admitted his guilt and issued ticket of Rs.2/- bearing No.23530. Apart from this, a ticket bearing No.683/23525 duly punched was found from the hand block. The cash when checked was also found short by Rs.1/-. Consequently, the workman was challaned by Sh. Om Prakash, ATI vide Challan No.179316 which was countersigned by Sh. Prem Shankar ATI and a report pertaining to the misconduct on the part of the workman was sent to the authority. Vide office memo dated 18<sup>th</sup> March, 1994, the workman was placed under suspension w.e.f. 18<sup>th</sup> March, 1994. It is alleged that since the act of reselling already sold tickets on the part of the respondent amounted to misconduct within the meaning of para 19(B) (H) and (M) of S.O. governing the conduct of DTC Employees, the workman was served with the charge sheet on 25<sup>th</sup> March, 1994. A reply was submitted by the workman which was found to be not satisfactory. As such, a departmental enquiry was conducted into the matter. Pursuant to the findings received from the enquiry officer, a show cause notice dated 7<sup>th</sup> September, 1994 was issued to the workman proposing penalty of removal from service. Thereafter, he was removed from the services of the Corporation w.e.f. 28<sup>th</sup> October, 1994 under Clause 15(2)(vi) of the DRTA (Conditions of Appointment & Services) Regulation, 1952. The workman filed a

claim petition before the Conciliation Officer. The Secretary (Labour) GNCT, Delhi thereafter on 16<sup>th</sup> February, 1996 referred the said dispute to the Presiding Officer, Labour Court VII with the following terms of reference:-

*“Whether the removal of Sh. Richpal from his services by the Management is illegal and/or unjustified, and if so, to what relief he is entitled and what directions are necessary in this respect?”*

3. Notice of the reference was issued to both the parties. Workman filed the claim petition wherein he denied the allegations levelled in the chargesheet. He further challenged the enquiry proceedings. Management, however, did not file written statement. On 08.08.1997 following issue was framed:

*“Whether the domestic inquiry was not held according to principles of natural justice and is therefore not proper and valid?”*

4. Both the parties led their evidence. Vide order dated 12<sup>th</sup> July, 2000, Labour Court decided the enquiry issue against the management.

5. Written statement was filed by the Management after the order on enquiry issue was dictated. The Management was given liberty to prove misconduct in the court and following additional issue was framed:

*“As per terms of reference.”*

6. To prove the misconduct Management examined three witnesses. Vide order dated 1<sup>st</sup> November, 2004, the reference was decided in favour of the workman and he was ordered to be reinstated in his service along with full back wages. Thereafter, the Management filed a writ petition 20116/2005 seeking quashing of the aforesaid order of the Labour Court. Vide order dated 16<sup>th</sup> September, 2013, the case was remanded back to the Labour Court for fresh adjudication. Thereafter, after perusing the evidence led by the parties, vide impugned Award dated 23<sup>rd</sup> January, 2014, the Labour Court held that the Management failed to prove the misconduct of the workman and, as such, held the termination of the workman to be illegal. However, relying upon several judicial

pronouncements coupled with the fact that the workman was 67 years of age at that time and, as such, had crossed the age of superannuation, therefore, he could not be reinstated. But due to illegal action of the management coupled with the fact that he could not be put to his original post, a compensation of Rs.5 lacs was awarded in favour of the workman and against the management. The compensation amount was ordered to be paid to the workman within 30 days from the date of publication of the Award failing which the workman was held entitled to future interest @ 8% per annum from the date of award till realization.

7. Feeling aggrieved, the workman filed writ petition bearing No. WP(C) No.1544/2014 under Article 226 of the Constitution of India on the ground that although the workman could not have been reinstated having crossed the age of superannuation but the Labour Court fell in error in not awarding full back wages and pension benefits. During the pendency of the petition, the workman died as such, his legal representatives were brought on record vide order dated 11.08.2014.

8. The Management also filed writ petition bearing 3425/2014 challenging the Award, *inter alia*, on the ground that the Management had duly proved the workman's conduct after examining the witnesses who proved the surrender of unpunched tickets, challan, passengers' statement, charge sheet and other incriminating material. Moreover, a sum of Rs.56,544/- being wages under Section 17B from the date of Award, i.e., 1<sup>st</sup> November, 2004 till 30<sup>th</sup> October, 2006 (date of retirement) already stands paid to the workman.

9. Since both the writ petitions challenges the Award dated 23<sup>rd</sup> January, 2014 passed by the Presiding Officer, Labour Court, Karkardooma Courts in ID No. 02/2013, as such, both the petitions were taken up together.

10. Despite opportunity given to the learned counsel for the parties, they have failed to address arguments. However, on the request of the counsel for the respondent/Management seeking an opportunity to file written synopsis, both the parties were granted liberty to file written synopsis. Despite seeking such an opportunity, the Management did not file any written synopsis but written synopsis has been filed on behalf of the legal representatives of the deceased workman.

**W.P.(C) 3425/2014**

11. This petition has been filed by the Management challenging the impugned award passed by the Labour Court on the ground that the Management duly proved the respondent's misconduct by examining Omparkash, ATI and Prem Shankar, ATI who proved the surrender of unpunched tickets, challan, passengers statement, chargesheet and other incriminating material against the workman. Despite observing that nothing came out in the cross-examination of MW2 and MW3 to disprove the fact that the checking was done by MW2 alongwith MW3 or the tickets were seized during checking from the workman which were of down direction but punched as updirection and the workman also admitted the factum of checking by MW1 and recovery of tickets erroneously decided in favour of the workman. Non-examination of passenger is not fatal to the case of Management if the checking staff duly proves the guilt of the workman as held in ***DTC vs. N. L. Kakkar and Anr.*** 2004 LLR 449, ***State of Haryana and Anr. vs Ratan Singh*** 1977 (34) FLR 264. Misappropriation of government money by conductor is such an offence which does not warrant his continuation in service. No misplaced sympathy should be shown in such cases of cheating by conductors as held in ***Karnataka State Road Transport Corporation vs. B.S. Hullikatti*** (2001) 2 SCC 574 and ***Karnataka State Road Transport Corporation vs. A. T. Mane*** (2005) 3 SCC 254.

12. A perusal of the impugned award goes to show that the learned Labour

Court on appreciation of testimony of MW2 and MW3 as well as the workman WW1 observed that it was undisputed case of the parties that the workman was conductor in DTC bus and was on bus no. 6317 going from Railway Station to Wazirpur and the said bus was checked by MW2 and MW3 when bus was going in down direction at ISBT. During checking, tickets bearing Nos. 23522, 23525 and 23530 were recovered from the workman which were of down direction. After scrutinizing the testimony of the witnesses, it was observed that though MW2 testified that the ticket Ex.MW2/4 bearing no. 23522 was punched at down side direction and first issued in upward direction and then sold to some passenger but it was taken back from the said passenger and then used for down direction but the witness admitted in cross-examination that he had not seen the workman selling tickets to the passenger of updirection. Therefore, even presuming that MW2 had seized the said tickets from downward passenger nothing came out against the workman to presume that earlier he had sold the same to passenger of upward direction. So far as ticket no. 23530 is concerned, it was alleged that the said ticket has been given by the workman to the passenger in lieu of ticket no. 23522 when this ticket was collected by checking staff. Although it was alleged that the said ticket was handed over by the workman while accepting his guilt but the workman had stated in his cross-examination that the said ticket was handed over under protest. There was no challenge to this part of the testimony of the workman and even no suggestion was given to the workman in cross-examination that he had accepted his guilt while handing over the said tickets. So far as ticket no. 23525 Ex.MW2/6 is concerned, MW2 Omparkash testified that the same is punched in upward direction and was found in the hand block of the conductor and the conductor had cancelled the updirection punch. Nothing could be made out against the workman by the recovery of the aforesaid ticket as it was not issued to the customer for gaining any pecuniary advantage. Moreover, during the checking Rs.1 was found short in cash. If the workman had sold the tickets to the passenger

of updirection and then took it back and re-sold the same to the passenger of down direction then he must have excess money instead of short money. No explanation in this regard was given by the Management. After considering the facts and circumstances, the Labour Court came to the conclusion that Management has failed to prove that the workman has committed misconduct by selling the same tickets to both upward direction passenger as well as downward direction passenger.

13. Labour Court further observed that mere non-examination of the passenger cannot vitiate the enquiry but the Management is required to prove the misconduct of the workman through testimony of other witnesses. The testimony of MW2 could not prove the misconduct on the part of the Management. Under the circumstances, the termination of workman was held illegal. The evidence available on record was properly appreciated by the Labour Court. Under the circumstances, there is no justification for interfering with the award passed by the Labour Court whereby the termination of the workman was held to be illegal.

14. There is another aspect of the matter. The parameters regarding the scope of interference by a writ court in a finding of fact rendered by a Tribunal/Labour Court is no longer *res integra*. In ***Municipal Corporation of Delhi vs. Asha Ram and Anr.*** 117(2005) DLT 63, the jurisdiction of this Court while dealing with an industrial award has been laid down as under :-

"6. The position of law in respect of interference by Writ Court under Article 226 of the Constitution is well settled in view of the following:- (a) The Supreme Court in para 5 in *Sadhu Ram v. Delhi Transport Corporation*, AIR 1984 SC 1967 observed :

" ..... nor we think that it was right for the High Court to interfere with the Award of the Labour Court under Article 226 on a mere technicality. Article 226 is a device to secure and advance justice and not otherwise. In the result, we allow the appeal, set-aside the judgment of the High Court and restore the Award of the Presiding Officer."

(b) *The Supreme Court in Harbans Lal v. Jag Mohan (1985) 4 SCC 333:*

*" .....The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The Writ Petition before the High Court prayed for a Writ in the nature of certiorari, and it is well known that a Writ in the nature of certiorari may be issued only if the order of the inferior tribunal of subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach finding of fact contrary to those rendered by an inferior court or subordinate court. When a High Court proceeds to do so, it acts plainly in excess of its power."*

(c) *The Supreme Court in Calcutta Port Shramik Union v. Calcutta River Transport Association and Ors., 1988 (Supp.) SCC 768 in para 10 observed:*

*".....The object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to Tribunals for settlement is to bring about industrial peace. Whenever a reference is made by the Government to the Industrial Tribunal, it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases, an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the Awards made by the Industrial Tribunal instead of picking holes here and there in the Awards on rival points and ultimately frustrating the entire adjudication process before the Tribunals by striking down the Awards in hyper technical grounds. Unfortunately, the orders of the Single Judge and of the Division Bench have resulted in such frustration and have made the Award fruitless on an untenable basis."*

(d) *The Hon'ble Supreme Court in Sudhoo v. M/s Haji Lal Mohd. Biri Works and Ors. 1990 Lab. I.C. 1538 in para 8 ruled :*

*"8. We have gone through the statements of two witnesses produced by the appellant before the authority. The findings of the authority are based on appreciation of evidence produced by the parties before the authority. We do not agree with the High Court that the finding recorded by authority are based on no evidence. The High Court should not have interfered with the findings of the fact reached by the prescribed authority on appreciation of evidence."*

*Thus in accordance with the above position of law no interference in findings of facts recorded by the Tribunal is called for. In any event, the petitioner having died and the monetary benefits accruing under the award as per the above claim being confined limited up to the date of the death and payable to his widow, no interference is called for even otherwise under Article 226 of the Constitution.”*

15. Again, in ***M/s Atlas Cycle (Haryana) Ltd. V Kitab Singh***, (2013) 12 SCC 573, the Hon’ble Supreme Court referred to the decision in ***Surya Dev Rai v Ram Chander & Ors.***, (2003) 6 SCC 675 where Supreme Court summarized various circumstances under which the High Court can exercise its jurisdiction under Articles 226 and 227 of the Constitution as under:

*“38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:*

*(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.*

*(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.*

*(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction — by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction — by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.*

*(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.*

*(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.*

*(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.*

*(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.*

*(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.*

*(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."*

16. In view of the aforesaid decisions, it is clear that in exercise of its powers under Article 226 of the Constitution, this Court is not to act as an appellate court. An award can only be set aside if it is based on no evidence or contrary to any substantive law or it is in violation of principles of natural justice. The present award does not fall in any of these categories. Rather, the award is based on the evidence produced before the Trial Court. Under the circumstances, there is no

merit in the writ petition and same is dismissed.

**W.P.(C) No. 1544/2014**

17. The workman feeling aggrieved by the relief clause of the impugned award filed the present writ petition on the ground that after holding the termination of the workman to be illegal and unjustified, although the workman could not have been reinstated having attained the age of superannuation but he was entitled to full backwages and pensionary benefits. Learned counsel for the workman submitted that once the order of removal is set aside as illegal and unjustified, the normal rule is reinstatement with full backwages except in the cases where the workman is gainfully employed. In the present case, the Management has not proved that the workman was gainfully employed whereas the workman and his affidavit had stated that he was unemployed from the date of his removal. The Labour Court did not discuss any ground as to why full backwages were not awarded to the workman but only on the ground that the workman had crossed the age of superannuation and could not be reinstated granted him compensation. The Court should have also awarded pensionary benefits from the date of superannuation of the workman and also other benefits. Reliance was placed on *Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) & Ors. (2013)10SCC324*, *Asha Verma vs. CEAT Ltd. 196 (2013) DLT 287*.

18. It is a trite law that the relief of reinstatement with back wages would not necessarily follow even if the dismissal of an employee from his service is held to be illegal. The relief of reinstatement and backwages is not an automatic remedy in case termination of an employee is held to be illegal. In certain cases, compensation instead of reinstatement would be an appropriate relief. The exact nature of relief and remedy would depend upon the facts and circumstances of each case.

19. The matter came up for consideration before the Supreme Court in ***Jagbir Singh vs. Haryana State Agriculture Marketing Board and Anr.*** AIR 2009 SC 3004, where it was observed as under:-

*“7. It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way 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 in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.*

*8. In U.P. State Brassware Corporation Ltd. v. MANU/SC/2321/2005 : Uday Narain Pandey (2006)ILLJ496SC , the question for consideration before this Court was whether direction to pay back wages consequent upon a declaration that a workman has been retrenched in violation of the provisions of the Section 6N of the U.P. Industrial Disputes Act, 1947 (equivalent to Section 25F of `the Act, 1947') as a rule was proper exercise of discretion. This Court considered a large number of cases and observed thus:*

*41. The Industrial Courts while adjudicating on disputes between the management and the workmen, therefore, must take such decisions which would be in consonance with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically. Rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law.*

*42. A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance.*

*43. The changes brought about by the subsequent decisions of this Court, probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing, is evident.*

*44. ...*

*45. The Court, therefore, emphasised that while granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages, therefore, cannot be the natural consequence.*

*9. This Court in the case of Uttaranchal Forest Development Corporation v. MANU/SC/7166/2007 : M.C. Joshi (2007)2LLJ390SC held that relief of reinstatement with full back wages were not being granted automatically*

only because it would be lawful to do so and several factors have to be considered, few of them being as to whether appointment of the workman had been made in terms of statute/rules and the delay in raising the industrial dispute. This Court granted compensation instead of reinstatement although there was violation of Section 6N of the U.P. Industrial Disputes Act, 1947 (equivalent to Section 25F) of the Act, 1947. This is what this Court said:

9. Although according to the learned Counsel appearing on behalf of the appellant the Labour Court and the High Court committed an error in arriving at a finding that in terminating the services of the respondent, the provisions of Section 6N of the U.P. Industrial Disputes Act were contravened, we will proceed on the basis that the said finding is correct. The question, however, would be as to whether in a situation of this nature, relief of reinstatement in services should have been granted. It is now well settled by reason of a catena of decisions of this Court that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration, one of them being as to whether such an appointment had been made in terms of the statutory rules. Delay in raising an industrial dispute is also a relevant fact.

10. In the case of *State of M.P. and Ors. v. Lalit Kumar Verma* AIR2007SC528, this Court substituted the award of reinstatement by compensation.

11. In yet another decision in the case of *M.P. Administration v. Tribhuwan* MANU/SC/1950/2007 : (2007) 9 SCC 748, this Court reversed the High Court's order directing reinstatement with full back wages and instead awarded compensation. It was opined:

12. In this case, the Industrial Court exercised its discretionary jurisdiction under Section 11A of the Industrial Disputes Act. It merely directed the amount of compensation to which the respondent was entitled had the provisions of Section 25F been complied with should be sufficient to meet the ends of justice. We are not suggesting that the High Court could not interfere with the said order, but the discretionary jurisdiction exercised by the Industrial Court, in our opinion, should have been taken into consideration for determination of the question as to what relief should be granted in the peculiar facts and circumstances of this case. Each case is required to be dealt with in the fact situation obtaining therein.

13. We, therefore, are of the opinion that keeping in view the peculiar facts and circumstances of this case and particularly in view of the fact that the High Court had directed reinstatement with full back wages, we are of the opinion that interest of justice would be subserved if the appellant herein be directed to pay a sum of Rs. 75,000 by way of compensation to the respondent. This appeal is allowed to the aforementioned extent.

12. In the case of *Sita Ram v. Moti Lal Nehru Farmers Training Institute* (2008) IILLJ688SC, this Court considered the question as to whether the Labour Court was justified in awarding reinstatement of the appellants therein:

21. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding reinstatement of the appellants in service.

22. Keeping in view the period during which the services were rendered by the respondent (sic appellants); the fact that the respondent had stopped its operation of bee farming, and the services of the appellants were terminated in December 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be reinstated in service.

23. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefore were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job, etc. should weigh with the court for determination of such an issue.

24. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be reinstated in service in cases of this nature would subserve the ends of justice.

(See *Jaipur Development Authority v. MANU/SC/8589/2006* : Ramsahai (2006) 11SCC684, M.P. Admn. v. Tribhuban *MANU/SC/1950/2007* : (2007) 9 SCC 748 and Uttaranchal Forest Development Corporation v. *MANU/SC/7166/2007* : M.C. Joshi (2007) 2LLJ390SC )

25. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000 to each of the appellants, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs.”

20. It would be, thus, seen that by a catena of decisions in recent time, it has been clearly laid down that even if an order of termination is set aside, the award of reinstatement with full backwages should not be automatically passed. In *Deepali Gundu Surwase* (*supra*), however, a contrary view was taken in the facts and circumstances of the case appearing in that case. Similarly, in *Asha Ram* (*supra*) relied upon by learned counsel for the petitioner, the Trial Court had awarded only Rs.1.75 lacs as compensation which was found to be too inadequate and, therefore, the petitioner was ordered to be paid full backwages from the date

of termination till the date of superannuation. On the other hand, ***Mohd.Shakir vs. Sunder Lal Jain Hospital*** (2010) ILLJ 245 Del. was a case where the termination order was held to be illegal and unjustified. The Labour Court instead of granting reinstatement, granted one time compensation which was challenged by the appellant. The learned Single Judge held that merely because the termination/dismissal of a workman is held to be illegal and unjustified *ipso facto* does not result in reinstatement of the workman. The Single Judge took note of the fact that the Labour Court, in exercise of its power under Section 11(A) of the Industrial Disputes Act, 1947 can grant one time compensation in lieu of granting benefit of the reinstatement. The Labour Court was cognizant of the long history of litigation and acrimony between the parties leading to a trust deficit and consequently, had come to the conclusion that reinstatement may not be the appropriate remedy. The LPA preferred by the appellant was dismissed on the ground that there was no warrant for interference. ***Management of Aurofood Pvt. Ltd. vs. S.Rajulu*** (2008) 14 SCC 608 was again a case where the termination took place about 20 years ago and as such, instead of reinstatement, the workman was held to be entitled to payment of compensation.

21. In the instant case also, the case has a chequered history as the workman was appointed as conductor in the year 1972. He was terminated in the year 1974. A writ petition was filed by him before this Court whereupon he was directed to be reinstated in the year 1985. Again he was terminated on 28.10.1994. Thereafter pursuant to a reference made by the government the matter was referred to the Labour Court. Initially an award was passed on 01.11.2004 directing the management to reinstate the workman with full backwages. The same was challenged by the management and the matter was remanded back to the Labour Court. Thereafter a fresh award was passed on 23.01.2014. The Labour Court took into consideration the fact that the workman had crossed the age of superannuation, therefore, he could not be reinstated. The parties had been on

litigating terms for a long time and the relationships had become strained, therefore, compensation of Rs.5 lacs was awarded to the workman which cannot be termed to be a meagre amount which warrants any interference. That being so, the writ petition is dismissed. The management is directed to pay the amount of compensation as per award to the legal representatives of the workman within 30 days failing which, the legal heirs will be entitled to interest @ 8% p.a from the date of award till realisation.

22. Both the writ petitions alongwith pending applications, if any, stand disposed of.

Trial court record be sent back.

**(SUNITA GUPTA)**  
**JUDGE**

**SEPTEMBER 18, 2015**  
**rs/mb**