

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

Reserved on: 14.07.2015
Pronounced on: 14.09.2015

+ CM(M) 368/2013

MANAGEMENT OF HINDUSTAN TIMES LTD. Petitioner
Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. Darpan
Wadhwa, Ms. Meghna Mishra, Mr. Nakul
Sachdeva, Ms.
Ritika Ahuja and Mr. Namon Joshi,
Advs.

Versus

AITA RAM & ORS. Respondents
Through: Mr. Colin Gonsalves, Sr. Adv. with
Mr. Divya Jyoti Jaipurkar & Mr.
Sarvajeet K. Thakur, Advs. for
respondents/workmen.
Mr. Ashwin Vaish and Mr. Vinod
Pandey, Advs. for respondent No. 1 to
248.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This petition challenges the order passed by the learned Additional District Judge (hereinafter "Executing Court") in Execution Petition No. 01/12 dated 4.1.2013 (hereinafter "impugned order"), which recorded that:

"However, it is an admitted fact that the Award dated 23.1.2012 has not been challenged by the Management/JD. It is also an admitted fact that the

workmen have been ordered to be reinstated vide order dated 23.01.2012. The perusal of the Award shows that the refund of notice pay and compensation under Section 25FF of the Industrial Dispute Act is not a pre-condition of the reinstatement of the workmen. Therefore, the Management/JD is bound to reinstate the decree holder/workmen.

Accordingly, it is ordered that Management/JD shall reinstate decree holder/workmen without any further delay.”

2. This order of the Executing Court is impugned on the grounds that it without jurisdiction, is contrary to law and has gone beyond the award dated 23.01.2012.
3. The Execution Petition No. 01/12 arose out of an Award dated 23.01.2012 passed by the learned Presiding Officer, Industrial Tribunal in Industrial Dispute No. 207/10/05. The workmen, who are the respondents in this case, had challenged the termination of service of 362 workmen which was sought to be effected by way of a notice put up on the Notice Board of the petitioner/management in the aforesaid case. The case was referred to the Industrial Tribunal which passed the aforesaid Award directing the management of the Petitioner to reinstate the Respondents, treating the Respondents in continuity of service under the terms and conditions of service as before their alleged termination. The relevant portion of the Award reads as under:

“89. In view of above factual and legal position in law, workmen/claimants (except 43 workmen/claimants, who have settled their disputes u/s 18(1) of I.D. Act) are

entitled to the relief of treating them in continuity of service under terms and conditions of service as before their alleged termination w.e.f. 3.10.04. They will not be entitled to any notice pay or compensation u/s 25 FF of Industrial disputes Act. The said notice pay or compensation, if any, received by them will have to be refunded by them.”

4. Pursuant to passing of this award, the Petitioner has consistently conveyed to the workmen its willingness to reinstate the workmen in the establishment of the Petitioner, to the extent possible, subject to the refund of the retrenchment compensation and notice pay paid to the workmen under Section 25FF of the ID Act. On 12.10.2012, the Execution Court had recorded that *“during the course of arguments, it was submitted by the learned counsel for the JD that the management is ready and willing to reinstate the decree holders. The decree holders be reinstated in terms of the Award dated 23.01.2012”* It was also recorded that the management had not challenged the Award.
5. The workmen had sought payment of back wages in terms of the dicta of the Supreme Court in *Hindustan Tin Works Pvt. Ltd. Vs. Employees of M/s. Hindustan Tin Works Pvt. Ltd* 1979 (2) SCC 80 which held that where termination of services of workmen is held to be illegal, payment of full back wages is warranted. Conversely, the petitioner/management had refuted the said arguments on the basis of the Supreme Court’s judgment in *U.P. State Brassware Corp. Ltd. v. Uday Narain Pandey* 2006 (1) SCC 479 which held that full back wages cannot be presumed or allowed automatically or mechanically only because an order

of termination has been found to be unsustainable. The management also relied upon the dicta of the Supreme Court in *State Bank of India v. Ram Chandra Dubey* (2001) 1 SCC 73 to contend that computation and payment of back wages would not be maintainable where no specific direction has been given in this regard by the Industrial Tribunal and to the extent that the Award in the present case did not specifically mention any consequential monetary benefit, the workmen would not be entitled to back wages.

6. With regard to the issue of back wages, the Executing Court held that as the Award was silent apropos payment of back wages, a presumption in payment of the same could not be made in favour of the workmen and enforcement of a decree in that regard could not be sustained.

Contentions Before This Court

7. The learned Senior Advocates for the petitioner, Dr. Abhishek Manu Singhvi and Mr. Sandeep Sethi contended that the order of the Executing Court was erroneous in law, as the Court had exceeded its jurisdiction; that a perusal of the Award, it is evident that the Industrial Tribunal had passed only two directions that were dependent on each other: i) that the workmen be reinstated by the management and ii) that the notice pay/ retrenchment compensation be refunded by the workmen to the management and this being the parameter of the award, the Executing Court ought to have limited its findings to the aforementioned points alone; that the impugned order observed that the award of the Industrial Tribunal is silent on the issue of whether any notice

pay/ compensation had been paid to the workmen; even if the notice pay was deemed to be paid, the award is silent on the quantum paid and whether the refund of notice pay/compensation is a precondition to reinstatement; that the Executing Court exceeded the jurisdiction vested in it by holding that refund of the notice pay/compensation is not a precondition to reinstatement; the Executing Court ought not to have entertained the execution petition, as the relief claimed in the petition was limited to back wages and not reinstatement and the relief was claimed under Order XXI Rule 1 of the CPC whereby only money decrees can be executed and that the relief of reinstatement could be sought for under Order XXI Rule 32 alone; that the workmen ought to have moved the Executing Court under Order XXI Rule 32 CPC, which clearly states that modes of execution may be exercised only after the party, against whom such decree is passed, has had an opportunity to obey the decree and has wilfully failed to obey it. In such circumstances, the learned Senior Counsel submitted that the Executing Court should have adjudicated on whether the management was given an opportunity to comply with the Award. However, no such adjudication was ever done.

8. The learned counsel submitted that in an execution petition, it is vital to plead the context of the relevant order, which the workmen have failed to do. It is argued that the counsel for the workmen have pleaded a different order altogether; that the management could not possibly reinstate the workmen when the Award notes that no printing functions are being carried out. It is submitted that the management cannot be bound to carry out an act of impossibility, which in effect, is the conclusion arrived at

by the Executing Court. Accordingly, the learned Senior Counsel argued that the impugned order is erroneous in directing the management to reinstate the workmen. It is also argued that the Executing Court, despite observing that it was barred from going behind the decree and rewrite the award, held that notice pay/compensation is not a precondition to reinstatement; and in the direction that the management has to reinstate the workmen regardless of the refund of the compensation amount from the workmen, the Executing Court has passed a new Award altogether.

9. The learned counsel for the petitioner contended that the Executing Court has traversed beyond the parameters of the Award by passing the impugned order; that the Executing Court has completely disregarded the reciprocal obligation set in the Award as it is clearly shown that the reinstatement of workmen by the management is contingent to the refund of the notice pay/compensation by the workmen. It is argued that when the Award clearly casts an obligation on both parties, the Executing Court is not at liberty to call upon the management alone to perform its part of the direction and exempt the workmen from refunding the notice pay/compensation paid to them. In support of this argument, relevance was placed on dicta of *Jai Narain Ram Lundia v Kedar Nath Khetan & Ors.*¹ wherein the Supreme Court held :

“19. The relevant part of the decree has already been quoted. It directs that “against payment of tender by the plaintiffs... the said defendants... do execute in

¹ AIR 1956 SC 359
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favour of the plaintiffs proper deed or deeds of transfer of... five annas share in the Marwari Brothers...”

This is not a case of two independent and severable directions in the same decree but of one set of reciprocal conditions indissolubly linked together so that they cannot exist without each other. The fact that it is a decree for specific performance where the decree itself cannot be given unless the side seeking performance is ready and willing to perform his side of the bargain and is in a position to do so, only strengthens the conclusion that that (sic) was the meaning and intendment of the language used. But the principle on which we are founding is not confined to cases of specific performance. It will apply to whenever a decree is so conditioned that the right of one party to seek performance from the other is conditional on his readiness and ability to perform his own obligations. The reason is, as we have explained, that to hold otherwise would be to permit an executing court to go behind the decree and vary its terms by splitting up what was fashioned as an indivisible whole into distinct and divisible parts having separate and severable existence without any interrelation between them just as if they had been separate decrees in separate and distinct suits.”

10. The learned Senior Counsel argued that the reciprocity of obligations would necessarily mean that non performance by

one party would exempt the other party from carrying out its part of the obligation. Reference was made to paragraph 89 of the Award to show that the same lays out a situation wherein the workmen would automatically be reinstated when they have refunded the notice pay/compensation paid to them by the management. It is contended that when the Award lacks any such ambiguity, the Executing Court was barred from arriving at any other conclusion, which in effect leads to rewriting of the Award. The learned counsel relied on *Ramesh Chandra Sankla v. Vikram Cements*² wherein the Supreme Court has held :

“99. In our considered opinion, taking into account facts and circumstances in their entirety, the order passed and direction issued by the Division Bench of the High Court was in furtherance if (sic) justice. Not only has it resulted in miscarriage of justice, in fact it has attempted to out status quo ante by balancing interests and leaving the matter to be decided by a competent authority in accordance with law.

100. Even otherwise, according to the workmen, they were compelled to accept the amount and they received such amount under coercion and duress. In our considered opinion, they cannot retain the benefit if they want to prosecute the claim petitions instituted by them with the Labour Court. Hence, the order passed by the Division Bench of the High Court as to refund amount cannot be termed unjust, inequitable or improper. Hence, even if it is held that a “

² (2008)14 SCC 58
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technical” contention raised by the workmen has some force, this Court which again exercises discretionary and equitable jurisdiction under Article 136 of the Constitution, will not interfere with a direction which is in consonance with the doctrine of equity. It has been rightly said that a person “ who seeks equity must do equity”. Here the workmen claim benefits as workmen of the Company, but they do not want to part with the benefit they have received towards retirement and severance of relationship of master and servant. It simply cannot be permitted. In our judgment, therefore, the final direction issued by the Division Bench needs no interference, particularly when the Company has also approached this Court under Article 136 of the Constitution.

101. For the foregoing reasons, in our opinion, the order passed by the Division Bench of the High Court deserves to be confirmed and is hereby confirmed. The payment which is required to be made as per the said order should be made by the applicants intending to prosecute their claims before the Labour Court, Mandsour. In view of the fact, however, that the said period is by now over, ends of justice would be served if we extend the time so as to enable the applicants to refund the amount. We, therefore, extend the time up to 31.12.2008 to make such payment. We may, however, clarify that the claim petitions will not be proceeded with till such payment is made. If the payment is not made within the period stipulated above, the claim petitions of those applicants will automatically stand dismissed. The Labour Court will take up the claim petitions after 31.12.2008.”

11. It was submitted that the Executing Court has erred in framing an erroneous question i.e., whether the management had paid any notice pay or compensation under section 25FF of the Industrial Disputes Act and the quantum of amount paid to the workmen; that the amount paid as retrenchment compensation is a liquidated amount under section 25 FF of the Industrial Disputes Act and as such needs no determination; that the Executing Court lacked jurisdiction to direct the parties back to the Industrial Tribunal to seek clarification on the issue of quantum of payment made as retrenchment compensation; and that when the Executing Court made a finding that the Award is silent on the aspect of quantification of the retrenchment compensation paid, it ought to have dismissed the execution petition as the Court had become *functus officio*.

12. Refuting the aforesaid contentions, Mr. Colin Gonsalves, the learned Senior Advocate for the workmen, contended that the management, had not challenged the Award. It was submitted that the Award primarily held that:

- i. Hindustan Times Limited (HTL) and Hindustan Times Media Limited (HTML) are one and the same;
- ii. That no transfer letters from HTL to HTML were issued to the workmen;
- iii. That the decision of the HTL to transfer the printing undertaking to HTML was not *bona fide*;
- iv. That the workmen never refused to work in HTML;
- v. That the workmen have not taken their full and final settlement;

vi. That the termination of the services is illegal and unjustified and that therefore the workmen will have to be reinstated.

13. In the background of such terms of the Award, Mr. Gonsalves submitted that the Award, had clearly mandated the Management to reinstate the workmen and its decision has obtained finality. Therefore, it would be logical to state that the Management agreed to the terms of the Award. The learned Senior Counsel further submitted that the present petition has become infructuous, as the Management had agreed to reinstate all the workmen. This has duly been recorded by the Executing Court in its order dated 8.11.12 and 4.01.2013. It is submitted that the Management cannot take a plea that it cannot reinstate the workers when submissions to the contrary were made earlier. He further contends that argument of the management apropos refund of the notice pay/compensation is untenable, as the workmen had refused to receive such retrenchment compensation; that the workmen have always wanted reinstatement and therefore had never accepted any amounts in form of notice pay. In such circumstances, there remains no amount to be refunded by the workmen. It was submitted that HTL (Management No.1) transferred its printing department to HTML (Management No.2) and assured that the workers would also be transferred to Management No.2 however, no such offer to transfer was ever acted upon in spite of the workmen willing to be employed. It was submitted that 272 workmen were categorically terminated from their service on a false ground that the workmen had refused to be employed in the newly created entity; that the management cannot be allowed to receive the

benefit of the submission that Management No.1 is completely inoperable, as all functions stand vested with Management No.2. The Award records that Management No.1 and Management No.2 are one and the same. Accordingly, the workmen will be protected by Section 2 (d) of The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 as the said section makes it clear that two or more newspaper establishments under common control shall be deemed to be one newspaper establishment. The logical sequitur would be that the management is bound to reinstate the workmen.

Analysis

14.The case does have a chequered history. However, the fundamental question that draws the attention of this Court is whether the Executing Court has exceeded its jurisdiction in passing the order that is being impugned by the management. It is well settled principle in law that insofar as invoking the supervisory jurisdiction under Article 227 of the Constitution of India is concerned, the High Court will not review or reweigh the evidence upon which the determination of the inferior court or Tribunal in this case purports to be based or to correct errors of law in the decision. The power vested in High Court under the supervisory jurisdiction is not to correct errors in the orders of the court below but to remove manifest and patent errors of law and jurisdiction without acting as an appellate authority. The power of High Courts to exercise its supervisory jurisdiction is limited to certain circumstances.

15. In *Surya Dev Rai v Ram Chander Rai*³ has summed up the circumstances under which the supervisory jurisdiction of the High Court can be invoked. In the aforementioned dicta, the Hon'ble Supreme Court held:

“24. ...proceedings under Article 227 of the Constitution are not original but only supervisory. ...Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamount to overstepping the limits of jurisdiction.”

In *Radhey Shyam and anr. vs Chhabi Nath* 2015 (3) SCALE 88 a larger Bench of three judges the Supreme Court examined the reference by a Division Bench which was *“unable to agree with the legal proposition laid down in Surya Dev Rai that judicial orders passed by a civil court can be examined and then corrected/reversed by the writ court under Article 226 in exercise of its power under a writ of certiorari.”* The larger Bench answered the questions referred to it as follows:

³ (2003)6 SCC 675
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- a. *“(i) Judicial orders of civil court are not amenable to writ jurisdiction under Article 226 of the Constitution;*
- b. *(ii) Jurisdiction under Article 227 is distinct from jurisdiction from jurisdiction under Article 226.*
- c. *Contrary view in Surya Dev Rai is overruled.”*

However the principle of what is to be seen by the High Court in a petition under Article 227 remained unaltered. The Hon’ble Supreme court referred to the dicta in *Radhey Shyam and anr. vs Chhabi Nath* (supra):

“28. Under Article 227 of the Constitution, the High Court does not issue a writ of certiorari. Article 227 of the Constitution vests the High Courts with a power of superintendence which is to be very sparingly exercised to keep tribunals and Courts within the bounds of their authority. Under Article 227, orders of both Civil and Criminal Courts can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law....”

The larger Bench further held:

“We make it clear that though despite the curtailment of revisional jurisdiction under Section 115 CPC by Act 46 of 1999, jurisdiction of the High Court under Article 227

remains unaffected, it has been wrongly assumed in certain quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions including Waryam Singh and Another vs. Amarnath and Another , Ouseph Mathai vs. M. Abdul Khadir, Shalini Shyam Shetty vs. Rajendra Shankar Patil and Sameer Suresh Gupta vs. Rahul Kumar Agarwal.

In Shalini Shyam Shetty, the Hon'ble Supreme Court has observed :

“66. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.”

16.From the preceding discussion it is evident that in its supervisory jurisdiction this Court is not required to review or reweigh the evidence upon which the trial court based its conclusion. Instead all that is to be seen is that i) the impugned order is not without jurisdiction, ii) is based on the material before the court and iii) is not palpably wrong, so as to obviate miscarriage of justice. Thus the exercise of superintendence, in this petition, is to be done within the parameters explained hereinabove.

17.Having drawn out the limits of this Court while exercising its supervisory jurisdiction, it is vital to analyse the action of the Executing Court in passing the impugned order. The Hon'ble

Delhi High Court recently in a case *Dr. Kavita Chaudhri vs Ms. Evenet Singh & Anr.* reported as 188 (2012) Delhi Law Times 755 has held that it is settled legal position that executing court cannot go behind the decree or order which has come before it for execution. In dealing with an execution petition, the executing court is not supposed to rewrite a fresh judgment.

18. The execution petition was filed in furtherance of the Award passed by the Industrial Tribunal wherein reinstatement of the workmen by the management was directed. The impugned order dated 4.1.2013 has noted that the Award which had directed reinstatement of the workmen had not been challenged. Accordingly, it ordered that the management would reinstate the workmen without any further delay. The Executing Court further held that since the Award did not make refund of notice pay and compensation a pre-condition to reinstatement of the workmen, the management was bound to reinstate decree holder/workmen. From the above, it is clear that the Executing Court had not gone beyond the Award and has not committed any material irregularity which would call for interference by this Court under Article 227 of the Constitution of India and its supervisory jurisdiction. Furthermore, the argument that the workmen could not have claimed a relief of reinstatement under Order XXI Rule 1 but under Order XXI Rule 32 is untenable as mentioning a wrong provision of law would not automatically lead to dismissal of the petition. This Court further agrees with the submission of the learned Senior Counsel for the workmen that the prayer in the execution petition was not limited to back wages alone but also for reinstatement. Furthermore, the entire Award is executable

under Section 11(9) of the Act. Sections 11(9) and (10) of the Act read asunder:

“Section 11(9): Every award made, order issued or settlement arrived at by or before Labour Court or Tribunal or National Tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court under Order 21 of the Code of Civil Procedure, 1908.

Section 11(10) : The Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award, order of settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it.”

19. The Court would note that the application was filed on behalf of the Decree Holder not only under Order XXI but also under Section 11 of the Act for execution of the Award dated 21.2.2012. The application has been filed under Order XXI Rule 11, Col. 7 of which requires the applicant to state about the amounts with interest due upon the decree or other relief granted thereby together with particulars, of any cross decree (emphasis supplied).

20. The workmen had claimed that they had been granted relief of reinstatement with a direction to treat them with continuity of service under the same terms and conditions of service as the alleged termination dated 4.3.2014; therefore, it was implicit that the full back wages be given to them for the period between 3.10.2010 and 21.3.2012, after adjusting the back wages to them

in terms of the order passed by the High Court on 23.3.2007. The workmen had further stated that they received only back wages pursuant to the aforesaid order and no compensation whatsoever was received by them. The Court is of the view that the impugned order has not gone beyond the Award and the learned Executing Court has passed the order under Section 11(9) and (10).

21. The management had also contended about its inability to reinstate the workmen as the printing establishment had been closed down and hence it could not be forced to do an act of impossibility; that it is settled law that a tribunal has no power to issue orders for reinstatement if a company or its branch is closed down and if this closure is genuine and real⁴ or where the entire establishment or the empire is not closed down but only a unit or undertaking is closed down then the reinstatement cannot be granted in the other units⁵. The Court would note that in both the aforesaid cases, the closure was either with respect to the entire company or with respect to the functional integrity of the other units. In this case, the publication of the newspaper continues *albeit* through the subsidiary owned company of Hindustan Times Ltd. The learned trial Court had held in its Award that the endeavour to transfer the ownership of printing undertaking to the new Management No.2, i.e. Hindustan Times Media Ltd., the wholly owned subsidiary of Hindustan Times Ltd. was not *bona fide*. Therefore, the termination of the workmen was illegal and unjustified. In view of the facts of this case, the aforesaid two

⁴ *Workmen of Indian Leaf Tobacco Development Co. Ltd. v. The Management of Indian Leaf Tobacco Development Co. Ltd.* AIR 1970 SC 860

⁵ *District Red Cross Society v. Babita Arora & Ors.* AIR 1970 SC860

cases are clearly distinguished. Likewise, reliance of the petitioners on the dicta in *Hondaram Ramchandra v. Yeshwant Mahadev Kadam* (2007) 14 SCC 277 and the judgment of this Court in *Ramjas Foundation v. Dheer Singh* are impermissible. This Court would note that the continuity of service was sought against Hindustan Times Ltd. and not against the other establishment, i.e., Hindustan Times Media Ltd. The relief was granted against Hindustan Times Ltd. Therefore, the management was directed to reinstate 272 workmen and treat them in continuity of service under the same terms and conditions as before their alleged termination dated 3.10.2014. Therefore, the relief of reinstatement granted by the Industrial Tribunal cannot be enforced or effectuated.

22. This Court is not persuaded by the said contention for the reason that the management has been aware of the relief of reinstatement since the Award was passed and if it felt unable to perform the direction given in the Award, the management ought to have challenged the Award. But it chose not to. This Court cannot, while exercising its supervisory jurisdiction, reconsider the facts and arguments made before the Tribunal as it would amount to this Court acting as an Appellate Court. The Award is based on the facts and materials placed before it. The Industrial Tribunal has awarded the relief of reinstatement after concluding that M/s Hindustan Times Ltd. and M/s Hindustan Times Media Ltd. were one and the same and that the termination of the workmen from M/s Hindustan Times Ltd. was illegal. This Court cannot sit in appeal and re-appreciate facts when the Tribunal has acted well within its powers. As mentioned above, the High Court's

jurisdiction under Article 227 of the Constitution of India is limited and it places a duty on the High Court to adjudicate with great caution. The circumstances when the Supervisory jurisdiction of the High Court can be invoked are sufficiently explained through a rich stream of judgments. Therefore, this Court is not inclined to entertain arguments that would reach beyond the supervisory powers of the High Court.

23. Before the Executing Court the management had said on 12.10.12 that they were ready and willing to reinstate the workmen. The Executing Court then directed that they be reinstated in terms of the Award dated 23.01.12. It was held that since the Award was silent regarding back wages, it could not be presumed that the Industrial Tribunal had also granted back wages. Hence, the Executing Court declined to execute the decree/award against back wages. This Court is of the view that the impugned order was limited to paras 89 and 90 of the Award which held inter alia that the workmen were not entitled to any notice pay or compensation. Accordingly, refund of any monies that may have been received by any workman under the said nomenclature was ordered, but it was not directed in the Award that the said refund would be a precondition to the reinstatement of the workmen. Just as the payment of back wages could not have been presumed by the Executing Court, it could also not be presumed that the refund of the monies was a precondition to their reinstatement. Insofar as the impugned order has limited itself to the Award as well as in terms of the submissions made on behalf of the management, the impugned order does not suffer from any material irregularity. It has limited itself to the material

on record and no interference is called for in the present proceedings. It cannot be said that the impugned order suffers from either lack of jurisdiction or is not based on the record or suffers from material irregularity or would lend to palpable miscarriage of justice. There is no reason to interfere with the impugned order.

24. However, the workmen's claim for execution/payment of back wages which was rejected by the Executing Court on 12.10.12 was impugned by them in this Court through a writ petition bearing WP(C) No.1000/2013. The writ petition was allowed and the learned Single Judge held that the reinstatement directed in the Award was to be read as reinstatement with full back wages. However, pending adjudication of this petition, in the management's appeal (LPA NO. 6/2015) against the judgement in the writ petition a Division Bench of this Court has held that:

“24. Thus, it has to be held that the workmen were not held entitled to the payment of any back wages, and as regards the reasoning of the learned Single Judge that since the workmen were directed to refund the money they had received from the management, one could infer that in the mind of the Tribunal there was an intention that back wages should be paid, overlooks the fact that the workmen who had received the compensation was in terms of Section 25(FF) of the ID Act, 1947, and one has a serious doubt whether in law the Tribunal could have given any benefit to such workmen who took the compensation envisaged by Section 25(FF) of the ID Act, but since the award has attained finality, we need not delve on this issue, except to hold that obviously the workmen who had taken the compensation could not have retained the same and additionally claimed a right of reinstatement. The return of the compensation to the management was thus linked to the

relief of reinstatement and had nothing to do with the idea of back wages.”

25.The Executing Court did not have the benefit of the above view of the Division Bench hence the impugned order cannot be faulted. But now, it having been adjudicated that the return of compensation to the management is linked to the relief of reinstatement, the parties will be at liberty to pursue the logical corollary thereto.

26.The petition is disposed off in the above terms.

NAJMI WAZIRI, J

SEPTEMBER 14, 2015/rtm