

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****WPL No.475 of 2009**

Bhagwat Paul, aged about 50 years, S/o Brij Paul, at present working as a Driver, S.P. Officer, Dhamtari, R/o. Qtr. No.H-2, New Police Colony, Rudri, District Dhamtari (CG)

**----Petitioner****Versus**

1. Chhattisgarh Infra-structure Development Corporation, Raipur (CG)
2. Presiding Officer, Industrial Court, Raipur, District-Raipur (CG)

**---- Respondents**

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| For Petitioner      | : | Mr.Vishnu Koshta and Mr.Shobhit Koshta, Advocate                    |
| For Respondent No.1 | : | Mr.Anupam Sharma, Advocate on behalf of Mr.Prateek Sharma, Advocate |

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**Hon'ble Shri Justice Sanjay K. Agrawal****Order on Board****31/07/2018**

1. In an application filed by the petitioner under Section 31(3) of the Chhattisgarh Industrial Relations Act, 1960, the petitioner was directed to be reinstated with back-wages by the Labour Court, which was challenged by respondent No.1 before the Industrial Court in an appeal. By the impugned order, the Industrial Court while affirming the order of reinstatement set aside the order granting back-wages. Against which, this writ petition has been filed.
2. Learned counsel for the petitioner would submit that the Industrial Court has committed legal error in setting aside the order granting back-wages. He relies upon the judgment of the Supreme Court in the matter of **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others**<sup>1</sup>.

<sup>1</sup> 2013 AIR SCW 5330

3. On the other hand, learned counsel for respondent No.1 would support the impugned order.
4. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also gone through the records with utmost circumspection.
5. The Supreme Court in **Deepali Gundu Surwase** (supra) has held as under:-

“33. The propositions which can be culled out from the aforementioned judgments are:

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

ii) 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.

iii) 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.

iv) 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.

v) 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.

vi) 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 v. Employees of Hindustan Tin Works Private Limited<sup>2</sup>.

vii) 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. "

6. Reverting to the facts of the present case, it is quite vivid that the petitioner in his statement of claim filed before the Labour Court claimed back-wages, but statement recorded before the Labour Court on 19.9.1996 did not state anything with regard to non-employment or employment and simply claimed back-wages and as such there is no evidence on record to hold that he was not gainfully employed from the date of termination entitling him for back-wages in terms of the judgment of the Supreme Court in **Deepali Gundu Surwase** (supra).

7. In view of that, I do not find any merit in this writ petition. Accordingly, the writ petition is dismissed. No cost(s).

Sd/-

(Sanjay K.Agrawal)  
**Judge**

B/-

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<sup>2</sup> AIR 1979 SC 75