

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 6348 2006**

General Manager, of B.N.C. Mills, Rajnandgaon Now through Officer in Special Duty

---- Petitioner

Versus

1. State Industrial Court of Chhattisgarh Mahanadi Khand, near D.K.S. Bhawan at Raipur (C.G.)
2. Presiding Officer, Labour Court, Rajnandgaon.
3. Latkhor Singh, S/o Man Singh, Stree No. 4, Station Para, Ward No. 9, Rajnandgaon (C.G.)

----Respondents.

For Petitioner : Mr. N.K. Vyas, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/08/2018

(1) The application filed by respondent No. 3-employee for reinstatement along with backwages was rejected by the Labour Court. The respondent No. 3 preferred appeal thereagainst before the Industrial Court.

(2) Learned Industrial Court, vide its impugned order, dated 11.05.2006, partly allowed the appeal holding that petitioner is not entitled for reinstatement as the petitioner-Mill has already been closed but he is entitled for 50% backwages from the date of termination till the order passed by the Labour Court i.e. 20.11.2002, against which instant writ petition has been filed questioning the same.

(3) Learned counsel for the petitioner would submit that the learned Labour Court has not recorded any finding that the respondent No. 3 was not gainfully employed during the

intervening period i.e. from the date of termination from the services, till the order passed by the Labour Court but still backwages to the extent of 50% has been granted to respondent No. 3, which is bad and unsustainable in law.

(4) I have heard learned counsel appearing for the petitioner and perused the material available on record with utmost circumspection.

(5) In a matter of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others**, reported in (2013) 10 SCC 324, their Lordships of the Supreme Court have held as under:-

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

38.1 In case 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 backwages, 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 averment 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 hold 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 court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

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 delays in the disposal of cases. For this the litigants cannot be blamed or penalized. It would amount to give 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

case, 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 (P) Ltd. Vs. Employees*, (1979) 2 SCC 80.

38.7 The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal*, (2007) 2 SCC 433 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 Benchdes 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) In view of the aforesaid legal analysis, the impugned order granting backwages to the extent of 50% is liable to be and is hereby set aside. The matter is remitted to the Labour Court for hearing and disposal afresh in accordance with law on the question of backwages expeditiously preferably within a period of four months from the date of receipt of certified copy of this order.

(7) The writ petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

