

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

* * * *

WRIT APPEAL NOS.1928 OF 2017 AND 174 OF 2018

W.A.No.1928 of 2017:

The Depot Manager, APSRTC and another ... Appellants

Vs.

Ch.Suresh Babu and another ... Respondents

W.A.No.174 of 2018:

The Telangana State Road Transport Corporation
Represented by its Managing Director and another ... Appellants

Vs.

K.Narsaiah ... Respondent

Date of Judgment Pronouncement: 14th NOVEMBER, 2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether copies of the judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

M. GANGA RAO, J

* THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

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< Gist:

> Head Note:

! Counsel for APSRTC : Sri P.Durga Prasad
! Counsel for TSRTC : Sri N.Praveen Reddy and
Sri N.Vasudeva Reddy
^ Counsel for respondent No.1 : Sri A.G.Satyanarayana Rao
in W.A.No.1928 of 2017
^ Counsel for respondent No.2 : --
in W.A.No.1928 of 2017
^ Counsel for respondent : Sri V.Narasimha Goud
in W.A.No.174 of 2018

? CASES REFERRED:

1. (2013) 10 SCC 324
2. (2018) 0 Supreme (SC) 896
3. (2018) 0 Supreme (SC) 898
4. (1979) 2 SCC 80
5. AIR 1962 SC 1334
6. (2007) 2 SCC 433
7. (2005) III LLJ 4 SC
8. (2006) I LLJ 496 SC
9. (1983) 4 SCC 491
10. AIR 1984 SC 1361
11. (2014) 11 SCC 85
12. AIR 2016 SC 157
13. (2008) 1 SCC 115
14. (2015) 2 SCC 610
15. (2016) 16 SCC 16
16. (2018) 1 SCC 285
17. AIR 1973 SC 1227

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL NOs.1928 OF 2017 AND 174 OF 2018

COMMON JUDGMENT
(Per Sri Justice Sanjay Kumar)

The Road Transport Corporations of the States of Andhra Pradesh and Telangana are in appeal aggrieved by the common order dated 17.07.2017 passed by a learned Judge of this Court allowing W.P.Nos.16727 and 16833 of 2011. The Depot Manager, Bapatla Depot, Guntur District, and the Regional Manager, Guntur Region, of the Andhra Pradesh State Road Transport Corporation (APSRTC) filed W.A.No.1928 of 2017 against the said common order, in so far as it pertains to W.P.No.16727 of 2011, while the Telangana State Road Transport Corporation (TSRTC) along with its Regional Manager, Nizamabad Region, and the Depot Manager at its Bheemgal Bus Depot in Nizamabad District, filed W.A.No.174 of 2018 against the very same common order in so far as it relates to W.P.No.16833 of 2011.

As the issues arising in both cases are identical, they are taken up for conjoined disposal.

Heard Sri P.Durga Prasad, learned standing counsel for the APSRTC, Sri N.Praveen Reddy, learned counsel representing Sri N.Vasudeva Reddy, learned standing counsel for the TSRTC, Sri A.G.Satyanarayana Rao, learned counsel for the respondent in W.A.No.1928 of 2017, viz., the petitioner in W.P.No.16727 of 2011, and Sri V.Narasimha Goud, learned counsel for the respondent in W.A.No.174 of 2018, viz., the petitioner in W.P.No.16833 of 2011.

The two writ petitions were filed by the respondents herein aggrieved by the Awards passed in their respective I.Ds. to the extent

they were denied backwages thereunder. In W.P.No.16833 of 2011, the petitioner therein also challenged the lesser punishment of withholding of his two increments without cumulative effect visited upon him by the Labour Court-II, Hyderabad, in I.D.No.63 of 2008 and sought a consequential direction to pay him all consequential and notional benefits.

Ch.Suresh Babu, the petitioner in W.P.No.16727 of 2011, entered the service of the APSRTC in January, 1974. He was a Leading Hand at the APSRTC's Bapatla Depot at the relevant point of time. He was served with Charge Memo dated 11.10.2001 in relation to his alleged unauthorized absence. The disciplinary proceedings which followed resulted in imposition of the punishment of removal from service, *vide* order dated 23.07.2002. Aggrieved thereby, he approached the Labour Court, Guntur, by way of I.D.No.204 of 2004. The Labour Court set aside the removal order but denied him backwages applying the principle of 'no work no pay'. He was reinstated in service on 07.07.2008 and retired from service on 28.02.2011, upon attaining the age of superannuation.

K.Narsaiah, the petitioner in W.P.No.16833 of 2011, joined the regular service of the erstwhile APSRTC as a Driver on 06.03.1997. Disciplinary proceedings were initiated against him on the ground that he caused an accident on 30.01.2005, resulting in his removal from service, *vide* order dated 02.09.2005. He approached the Labour Court-II, Hyderabad, by way of I.D.No.63 of 2008, assailing his removal from service. In the meanwhile, criminal proceedings were also initiated against him in relation to the accident but he was acquitted by the learned Judicial Magistrate of First Class, Kamareddy, *vide* judgment dated 16.07.2009 in C.C.No.262 of 2005. The Labour Court observed that the erstwhile APSRTC had not produced sufficient material to prove that he had driven

the bus in a rash and negligent manner and held the findings arrived at by the Enquiry Officer in this regard to be perverse. Having held so, the Labour Court, in its wisdom, not only denied him backwages but ordered withholding of his two annual increments without cumulative effect. He was reinstated in service on 08.02.2011. Aggrieved by the denial of backwages and imposition of the lesser punishment by the Labour Court, he filed the writ petition.

By the common order under appeal, the learned Judge opined that as there was no independent finding by the Labour Court in either of the cases holding the writ petitioners guilty of the charges levelled against them, the edict of the Supreme Court in DEEPALI GUNDU SURWASE V/ s. KRANTI JUNIOR ADHYAPAK MAHAVI DYALAYA (D.Ed.)¹ would squarely apply. Quoting at length the principles laid down in the said judgment, the learned Judge concluded that denial of backwages to both the writ petitioners was unsustainable as no proper reasons were cited in the Awards to justify the same. The learned Judge accordingly allowed both the writ petitions and held the writ petitioners entitled to backwages from the date of their removal from service till their reinstatement. In so far as the petitioner in W.P.No.16833 of 2011 is concerned, the learned Judge held him entitled to increments for the entire period without applying the lesser punishment imposed by the Labour Court.

Sri P.Durga Prasad and Sri N.Praveen Reddy, learned counsel appearing for the APSRTC and the TSRTC respectively, would state that award of backwages by the learned Judge is unsustainable in the light of the recent judgments of the Supreme Court in RAJASTHAN STATE ROAD TRANSPORT CORPORATION, JAI PUR V/ s. PHOOL CHAND

¹ (2013) 10 SCC 324

(DEAD) THROUGH L.RS.² and M.L. SINGLA V/ s. PUNJAB NATIONAL BANK³.

On the other hand, Sri A.G.Satyanarayana Rao and Sri V.Narasimha Goud, learned counsel for the respondents, the petitioners in the two writ petitions, would contend that the earlier judgments of the Supreme Court and more particularly, the Three Judge Bench judgment in HINDUSTAN TIN WORKS PVT. LTD. V/ s. THE EMPLOYEES OF HINDUSTAN TIN WORKS PVT. LTD.⁴ would have to prevail and that the later judgments would have to be understood and applied in the context thereof.

In the light of the reliance placed by both sides upon case law, it would be appropriate to examine and analyse the advent of curial wisdom on the issue of award of backwages.

In DEVENDRA PRATAP NARAIN RAI SHARMA V/ s. STATE OF UTTAR PRADESH⁵, a Four Judge Bench of the Supreme Court was dealing with the appellant's claim to salary during the period of his suspension pending enquiry. The State of Uttar Pradesh relied upon Rule 54 of the Fundamental Rules framed by it under Article 309 of the Constitution to assert that it was within its discretion to decide as to what amount should be paid to the employee during the period of suspension even if the order of removal was thereafter set aside. The Supreme Court however disagreed, observing that the Rule undoubtedly enabled the State Government to fix the pay of a public servant whose dismissal was set aside in a departmental appeal but if the order of dismissal was declared invalid in a civil suit, the effect of that decree would be that the appellant was deemed to have never been dismissed from service and the

² (2018) 0 Supreme (SC) 896

³ (2018) 0 Supreme (SC) 898

⁴ (1979) 2 SCC 80

⁵ AIR 1962 SC 1334

order of reinstatement would be superfluous. The Supreme Court held that the effect of adjudication by the Civil Court was to declare that the appellant had been wrongfully prevented from attending to his duties and it would not be open to the authorities to deprive him of the remuneration which he would have earned had he been permitted to work.

In HINDUSTAN TIN WORKS PVT. LTD.⁴, a Three Judge Bench of the Supreme Court observed as under:

‘11. In the very nature of things there cannot be a straight jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage, the Tribunal will exercise its discretion keeping in view all the relevant circumstances.

But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour.

It is not to be arbitrary, vague and fanciful but legal and regular (See *Susannah Sharn v. Wakefield* [1891] AC 173).’

(emphasis is ours)

In J.K.SYNTHETICS LTD. V/ s. K.P.AGRawal⁶, a Two Judge Bench of the Supreme Court stated that even if the Court finds it necessary to award backwages, the question would be whether backwages should be awarded fully or only partially and if so, the percentage. According to the Supreme Court that would depend upon the facts and circumstances of each case and any income received by the employee during the relevant period on account of alternative employment or business would be a relevant factor to be taken note of

⁶ (2007) 2 SCC 433

while awarding backwages, in addition to the several factors mentioned in GENERAL MANAGER, HARYANA ROADWAYS V/ s. RUDHAN SINGH⁷ and U.P. STATE BRASSWARE CORPORATION LTD. V/ s. UDAI NARAIN PANDEY⁸. The Supreme Court held that it would be necessary for the workman to plead that he was not gainfully employed from the date of his termination. The logic cited by the Supreme Court for this requirement was that while a workman cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income and it is only then that the burden would shift to the employer. The Supreme Court however added the caveat that there is no obligation on the terminated workman to search for or secure alternative employment. The Supreme Court thereafter observed that in the event the misconduct is held proved but the Court only interferes with the punishment of dismissal from service being of the view that it is excessive, the said order of dismissal would be valid and remain in force till exercise of the Court's discretion to impose a lesser punishment and therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither backwages nor continuity of service nor consequential benefits follow as a natural or necessary consequence of such reinstatement. The Supreme Court further observed that in a case where the misconduct is held to be proved and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of backwages for the period when the workman has not worked may amount to rewarding him and punishing the employer for taking action for the misconduct committed by the workman. The Supreme Court

⁷ (2005) III LLJ 4 SC

⁸ (2006) I LLJ 496 SC

however added that there were two exceptions to this norm. The observations of the Supreme Court in this regard are apposite of extraction:

'20. But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimize him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back-wages etc. will be the same as those applied in the cases of an illegal termination.'

(emphasis is ours)

In RUDHAN SINGH⁷, the Supreme Court observed as under:

'There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.'

In *UDAI NARAIN PANDEY*⁸, the Supreme Court observed as under:

‘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.

... although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result, but now, with the passage of time, a pragmatic view of the matter is being taken by the courts realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched... The changes (were) brought about by the subsequent decisions of the Supreme Court, probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalization, privatization and outsourcing, is evident.

No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act... While granting relief application of mind on the part of the Industrial Court is imperative. Payment of full back wages cannot therefore be the natural consequence.’

In *SHAMBHU NATH GOYAL V/ s. BANK OF BARODA*⁹, a Three Judge Bench of the Supreme Court was dealing with the question of gainful employment of the workman who was terminated from service. In this regard, the Supreme Court made the following observations:

‘17. The blame for not framing an issue on the question whether or not the workman was gainfully employed in the intervening period cannot be laid on the Tribunal alone. It was equally the duty of the management to have got that issue framed by the Tribunal and adduce the necessary evidence unless the object was to rake up that question at some later stage to the disadvantage of the workman as in fact it has been done. The management appears to have come forward with the grievance for the first time only in the High Court. There is no material on record to show that the workman was gainfully employed anywhere. The management has not furnished any particulars in this regard even before this Court after such a long lapse of time. The workman

⁹ (1983) 4 SCC 491

could have been asked to furnish the necessary information at the earliest stage. The management has not resorted to that course. The workman was not expected to prove the negative. In these circumstances, we do not think that it would be in the interest of justice to prolong any further the agony of the workman whose power to endure the suffering of being out of employment for such a long time and to oppose the management Bank, a nationalised undertaking with all the money power at its disposal in this prolonged litigation is very limited by allowing the Bank to have the advantage belatedly sought in the application dated February 8, 1979 in an industrial dispute which arose so early as in 1965. For the reasons stated above we are of the opinion that the order of the High Court could not be sustained under the facts and circumstances of the case. The appeal is accordingly allowed with costs of the workman quantified at Rs 5000. The High Court's judgment is set aside and the Tribunal's award directing reinstatement of the workman with full back wages and other benefits from the date of his suspension is restored.'

In *A.L.KALRA V/s. PROJECT AND EQUIPMENT CORPORATION OF INDIA LTD.*¹⁰, a Three Judge Bench of the Supreme Court observed as under:

'39. When removal from service is held to be illegal and invalid, the next question is whether: the victim of such action is entitled to backwages. Ordinarily, it is well-settled that if termination of service is held to be bad, no other punishment in the guise of denial of back wages can be imposed and therefore, it must as a necessary corollary follow that he will be entitled to all the back wages on the footing that he has continued to be in service uninterruptedly. But it was pointed out in this case that the appellant was employed as Factory Manager by M/s. KDR Woollen Mills, A-90, Wazirpur Industrial Area, Delhi from where he resigned with effect from August 8, 1983. It was also submitted that he was drawing a salary of Rs. 2500 per month. Now if the appellant had procured an alternative employment, he would not be entitled to wages and salary from the respondent. But it is equally true that an employee depending on salary for his survival when he is exposed to the vagaries of the court litigation cannot hold on to a slender distant hope of judicial process coming to his rescue and not try to survive by accepting an alternative employment, a hope which may turn out to be a mirage. Therefore, the appellant was perfectly justified in procuring an alternative employment in order to keep his body and soul together as also to bear the expenses of litigation to vindicate his honour, integrity and character.

¹⁰ AIR 1984 SC 1361

40. The submission of the respondent that the appellant had accepted employment with M/s. KDR Woollen Mills may be accepted in view of the evidence tendered in the case. Therefore, the appellant would not be entitled to salary for the period he was employed with M/s. KDR Woollen Mills.

41. Even for the rest of the period, the conduct of the appellant cannot be said to be entirely in consonance with corporate culture. As a highly placed officer he was bound to strengthen the corporate culture and he should have acted within the spirit of the regulations both for house building advance and conveyance advance, which are devised to help the employees. There has been lapse in totally complying with these regulations by the appellant though it neither constitutes misconduct to attract a penalty nor substantially good enough for initiation of disciplinary inquiry. Accordingly, having regard to all the aspects of the case, the appellant should be paid 50% of the back wages for the period since his removal from service upto his reinstatement excluding the period for which he had procured an alternative employment. The respondent shall also pay the costs of the appellant quantified at Rs.3000.'

(emphasis is ours)

In DEEPALI GUNDU SURWASE¹, a Two Judge Bench of the Supreme Court considered the issue of award of backwages at length. The conclusions culled out from earlier case law were summed up in para 38 of the judgment, which reads as under:

'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 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 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.

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal 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.'

(emphasis is ours)

Be it noted that the earlier judgment of the Two Judge Bench of the Supreme Court in J.K. SYNTHETICS LTD.⁶ was held to be not good law only on the issue of the employee/workman claiming continuity of service as of right but the other aspect with regard to gainful employment of the workman after his termination from service remained unaltered.

Following DEEPALI GUNDU SURWASE¹, a Two Judge Bench of the Supreme Court in BHUVNESH KUMAR DWIVEDI V/ s. HINDALCO INDUSTRIES LTD.¹¹, observed as under:

'40. Therefore, on the basis of the legal principle laid down by this Court in *Deepali Gundu Surwase case*, the submission of the respondent that the appellant did not aver in his plaint of not being employed, does not hold since the burden of proof that the appellant is gainfully employed post termination of his service is on the respondent. The claim of the respondent that the appellant is gainfully employed somewhere is vague and cannot be considered and accepted. Therefore, we hold that the appellant is entitled to full back wages from the date of termination of his service till the date of his reinstatement.'

¹¹ (2014) 11 SCC 85

In *SHOBHA RAM RATURI V/s. HARYANA VIDYUT PRASARAN NIGAM LIMITED*¹², a Two Judge Bench of the Supreme Court upheld the award of full backwages by the High Court opining that once the order of retirement was set aside, the appellant would be entitled to all consequential benefits as the fault lay with the respondents in not utilising his services for that period. The Supreme Court observed that had the appellant been allowed to continue in service, he would have discharged his duties and having restrained him from rendering services, the respondents could not be allowed to press the self-serving plea of 'no work no pay' to deny him backwages for the period in question.

It is in the light of the aforestated precedential history that the later judgments now relied upon by the APSRTC and the TSRTC would have to be considered.

In *PHOOL CHAND (DEAD)*², a Two Judge Bench of the Supreme Court observed as under:

'13. In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages is required to be decided, what are the factors to be taken into consideration awarding back wages, on whom the initial burden lies etc. were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer res integra. These cases are, *M.P. State Electricity Board vs. Jarina Bee (Smt.)*, (2003) 6 SCC 141, *G.M. Haryana Roadways vs. Rudhan Singh*, (2005) 5 SCC 591, *U.P. State Brassware Corporation vs. Uday Narain Pandey*, (2006) 1 SCC 479, *J.K. Synthetics Ltd. vs. K.P. Agrawal & Anr.*, (2007) 2 SCC 433, *Metropolitan Transport Corporation vs. V. Venkatesan*, (2009) 9 SCC 601, *Jagbir Singh vs. Haryana State Agriculture Marketing Board & Anr.*, (2009) 15 SCC 327 and *Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors.*, (2013) 10 SCC 324.

¹² AIR 2016 SC 157

14. The Court is, therefore, required to keep in consideration several factors, which are set out in the aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages and, if so, to what extent.'

It is therefore clear that it was not the intention of the Supreme Court to deviate from the law laid down in the judgments referred to. Similar is the case with the later judgment of the very same Two Judge Bench in M.L.SINGLA³. Again, reference was made to the earlier case law, including RUDHAN SINGH⁷, J.K.SYNTHETICS LTD.⁶ and DEEPALI GUNDU SURWASE¹. Therefore, by no stretch of imagination can these two judgments be said to have laid down a principle contrary to that laid down in the earlier judgments. The observations made in these two judgments on the individual facts of those particular cases would not have the effect of deviating from or diluting the principles laid down in the earlier case law and more particularly, the Larger Bench judgments. The settled legal principle that still holds the field is that if the termination from service is shown to be illegal and the employee/workman concerned was regularly appointed and had put in substantial service, he would be entitled to full backwages subject to his not having been gainfully employed after his wrongful termination from service.

On facts, it is stated by Sri P.Durga Prasad, learned counsel, that Ch.Suresh Babu, the petitioner in W.P.No.16727 of 2011, did not state in his claim petition filed in I.D.No.204 of 2004 that he was not employed after his termination from service. Perusal of the petition and the annexure filed in I.D.No.204 of 2004 demonstrates that there was no categorical statement made by Ch.Suresh Babu to the effect that he was not gainfully employed after his termination from service on 23.07.2002. He however made a specific prayer for reinstatement in service with

backwages, continuity of service and attendant benefits. Despite his making a claim in this regard, the APSRTC did not advert to his entitlement to backwages on the ground that he was gainfully employed after he was removed from service. On the other hand, in para 22 of the counter, the APSRTC, speaking through the Depot Manager of its Bapatla Depot, stated that the petitioner was put to strict proof that he remained unemployed ever since the date of his removal and could not secure alternative employment. This is directly in conflict with the observations of the Supreme Court in para 38.3 in DEEPALI GUNDU SURWASE¹, extracted *supra*. Therefore, given the aforesaid pleadings and counter pleadings in I.D.No.204 of 2004 on the file of the Labour Court, Guntur, the failure would tilt more towards the APSRTC in adducing evidence of gainful employment of Ch.Suresh Babu after his termination from service. Admittedly, no such evidence was produced. Be it noted that the Labour Court, Guntur, held the finding of the Enquiry Officer that the charge levelled against Ch.Suresh Babu was proved to be incorrect and therefore, his very termination from service was rendered unsustainable in law.

In so far as W.P.No.16833 of 2011 filed by K.Narsaiah is concerned, Sri N.Praveen Reddy, learned counsel, would contend that the Labour Court-II, Hyderabad, exceeded its jurisdiction in re-appreciating the evidence, having held the domestic enquiry instituted by the erstwhile APSRTC to be valid and proper. He placed reliance on U.P. STATE ROAD TRANSPORT CORPORATION V/ s. VINOD KUMAR¹³, UNION OF INDIA V/ s. P.GUNASEKARAN¹⁴, MANAGEMENT OF TAMIL NADU STATE TRANSPORT CORPORATION (COIMBATORE) LIMITED V/ s.

¹³ (2008) 1 SCC 115

¹⁴ (2015) 2 SCC 610

M.CHANDRASEKARAN¹⁵, and MANAGEMENT OF BHARAT HEAVY ELECTRICALS LIMITED V/ s. M.MANI¹⁶.

It is however to be noticed that a Two Judge Bench of the Supreme Court in THE WORKMEN OF FIRESTONE TYRE AND RUBBER CO. OF INDIA (PVT.) LTD. V/ s. THE MANAGEMENT¹⁷, categorically held that the Labour Court/Industrial Tribunal would have the power to reappraise the evidence for itself and hold that the misconduct itself is not proved or that the misconduct proved did not warrant the punishment of dismissal or discharge. The Supreme Court further held that Section 11-A of the Industrial Disputes Act, 1947, gives full power to the Labour Court/Industrial Tribunal to go into the evidence and satisfy itself on both these points. In the light of this judgment, the contention of Sri N.Praveen Reddy, learned counsel, that the Labour Court-II, Hyderabad, ought not to have reappraised the evidence cannot be countenanced. The other judgments cited by him with regard to the High Court undertaking such an exercise have no application, as the learned Judge has not done so and we do not propose to do so either. It is an admitted fact that despite the clear finding of the Labour Court-II, Hyderabad, that the finding recorded in the enquiry against K.Narsaiah, the petitioner in W.P.No.16833 of 2011, was perverse, the erstwhile APSRTC and its successor-in-interest, the TSRTC, did not choose to assail the said finding by laying a challenge to the said Award. This finding has therefore attained finality. In the light of this finality, there is no justification on the part of the Labour Court-II, Hyderabad, in imposing a lesser punishment by directing withholding of two annual increments of K.Narsaiah without cumulative effect. No reasons whatsoever are

¹⁵ (2016) 16 SCC 16

¹⁶ (2018) 1 SCC 285

¹⁷ AIR 1973 SC 1227

forthcoming from the Award as to why the Labour Court deemed it appropriate to impose this punishment, having held the finding of the Enquiry Officer to be perverse. Setting aside of this lesser punishment by the learned Judge was therefore well justified.

On the above analysis, as the termination from service was wholly unjustified in both the cases and was set aside on that count, this Court finds no grounds to interfere with the common order under appeal. The principle of entitlement to full backwages, being the normal rule, was squarely applicable. Given the fact that both the writ petitioners were regular employees and the length of their service was not meagre and as the erstwhile APSRTC failed to adduce any evidence to prove that either of them was gainfully employed after their termination from service, there were no mitigating circumstances warranting reduction in the payment of full backwages. The common order passed by the learned Judge holding to this effect therefore does not brook interference either on facts or in law.

The writ appeals are devoid of merit and are accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

14th NOVEMBER, 2018
L/R copy to be marked - Yes
B/o PGS