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

+ **W.P.(C) 8255/2010**

% Judgment Reserved on: 30th November, 2017
Judgment Pronounced on: 14th March, 2018

DELHI TRANSPORT CORPORATION Petitioner
Through Mr.U.N.Tiwary & Mr.Sunil
Kumar Ojha, Advocates

versus

GIAN CHAND Respondent
Through Mr.G.S.Charya, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

1. The petitioner has filed the present writ petition under Article 226 read with Article 227 of the Constitution of India, with a prayer to set aside and quash the impugned Order dated 07.03.2008 in I.D. No.224/06/96 passed by the Presiding Officer, POLC, Fast Track-XXI, Karkardooma Courts, Delhi as well as the impugned Award dated 07.02.2009 in ID No.193/08/96 and the order dated 31.07.2009 regarding correction of the said Award, both passed by the Presiding Officer, Labour Court (Central), Karkardooma, Delhi.

2. I have heard the learned counsels for the parties, perused the record and have also gone through the written synopsis filed by them.

3. The verbatim of the claim of the workman and the defence of the Management, as noticed and stated by the Labour Court in the impugned Award in ID No.193/08/96, is as under:-

“CASE OF THE WORKMAN: The workman stated that he was employed as Assistant Store Keeper w.e.f. 18.02.1977 and was confirmed in the year 1979. He was charge-sheeted on 23.09.1982. The allegation was that while he was working with Hari Nagar Depot-III, he did not make correct entries of the receipt of diesel in the documents such as bin cards, diesel register, daily receipt vouchers. He denied the charges. An inquiry was conducted despite objections as time barred. Upon the receipt of enquiry report, the management by an order dated 12.02.1988, removed the workman from services. Hence, the claim on the basis that there was no mistake on the part of the workman in recording the receipt and disposal of the diesel. There is no evidence of mis-conduct against him.

CASE OF THE MANAGEMENT: Management contends that the services of the workman was terminated as there were the charges, duly established against him. There was a second charge regarding wrong entries of HS Diesel in the bin card regarding the consumption and closing balance. There was shortage of diesel which the workman defrauded. Enquiry was conducted in a fair manner. It was prayed by the management that the claim be dismissed.”

4. Learned counsel for the petitioner submitted that the charges against the respondent, an Assistant Store Keeper, are that during the year 1978, he made incorrect entries of receipt of diesel in the bus depot and thereby, defrauded the petitioner-Corporation of 16,500 litres of diesel with *mala fide* intentions. A detailed oral enquiry was held wherein the respondent fully participated. The Enquiry Officer in his report dated

16.05.1986 found the charges proved beyond doubt. Thereafter, the petitioner issued a show- cause notice to the respondent and removed the respondent from the service on 12.02.1988.

5. It is further submitted by the counsel for the petitioner that the Labour Court in I.D. No.224/06/96 vide order dated 07.03.2008 wrongly decided the preliminary issue regarding the validity of the departmental enquiry against the petitioner, holding that the principles of natural justice had been violated since the respondent was not supplied with the copies of certain documents, even though the Enquiry Officer had held that the respondent was free to inspect the documents.

6. It is also submitted by the counsel for the petitioner that the Labour Court, later, again committed error and passed the impugned Award dated 07.02.2009 in favour of the respondent, directing payment of back-wages from the date of termination till 31.12.2004 and his reinstatement to the suitable post, subject to the respondent's medical fitness protecting his pay benefits etc.

7. It is further stated that the order dated 07.03.2008 on the preliminary issue regarding validity of the domestic enquiry is contrary to settled law and the facts on record. The Enquiry Officer had clearly held that the respondent was free to inspect the documents on record but he failed to do so, instead he insisted on his demand for the copies of the documents. The Enquiry Officer Mr. L.C.Goyal was a witness of the Management before the Labour Court, however, no question or suggestion was made by the workman to the said witness regarding supply and/or inspection of the documents which were allegedly not supplied to the respondent. He further

submitted that the respondent has not shown any prejudice that was caused to him on account of non-supply of documents, more so, when the documents forming the basis of the charge and findings, could have been inspected by him. Learned counsel for the petitioner also submitted that the Labour Court has erred in holding that the principles of natural justice were violated and it is a well-settled law that principles of natural justice cannot be applied in vacuum.

8. Learned counsel for the petitioner also submitted that after the setting-aside of the domestic enquiry by the Labour Court, the petitioner had examined the Depot Manager, V.K. Palta, in order to prove the misconduct, but the Labour Court erredly chose not to rely upon his evidence. The Labour Court committed grave error and failed to appreciate the deposition of the Management's witness (MW-1) who relied upon the documentary evidence, including the enquiry proceedings, the charge sheet, the show-cause notice and the past record to prove the misconduct, which were sufficient enough to prove the charges against the workman. The reasons given by the Labour Court to discard his evidence are untenable in law.

9. It is also stated that the Labour Court, even otherwise, completely erred in awarding full back-wages from the date of removal from service even though the industrial dispute was raised late and the reference was made eight years after the removal of the workman from the services in the year 1988. The petitioner cannot be made to suffer on account of the delay in raising the dispute by the workman as well, for the delay of 8 years in making the reference. Moreover, it is further submitted that the respondent must have been employed during this long period in order to sustain himself

and his family, otherwise, how he and his family would have survived during this time. Learned counsel for the petitioner prayed to set aside the impugned orders as well as the impugned Award.

10. ***Per Contra***, learned counsel for the respondent relied upon the impugned order dated 07.03.2008 in ID No.224/06/96 as well as the Award dated 07.02.2009 and correction order dated 31.07.2009 in I.D. No.193/08/96 passed by the Labour Court.

11. Learned counsel for the respondent also submitted that the respondent has mentioned specifically in his affidavit that he was unemployed from the date of his removal and the onus, thereafter was shifted upon the Management to prove the gainful employment of the workman. However, no such evidence was adduced by the Management to prove gainful employment of the workman/respondent.

12. The Labour Court after completion of the pleadings vide order dated 07.03.2008 framed the issue to the effect:-

“Whether the enquiry was not conducted according to the principles of natural justice and is therefore not fair and valid?”

13. Both the parties led their respective evidence on the aforesaid issue. The workman examined himself as WW1 and proved his affidavit Ex.WW1/A, and documents relied upon by him were Ex.WW1/1 to WW-1/9. On the other hand, the Management examined Sh. L.C. Goyal, Deputy Chief General Manager, as MW1 who proved his affidavit Ex.MW-1/A and the documents relied upon by the Management were Ex.MW-1/1 to Ex.MW-1/7. The Labour Court after going through the

entire record and hearing the parties, including on the issue of non-supply of documents to the respondent and taking into consideration the law on the point, held that the Management had violated the principles of natural justice and the enquiry was not conducted according to the principles of natural justice and was, therefore, not fair and valid. Accordingly, the aforesaid issue was decided in favour of the workman/respondent and against the Management/petitioner.

14. A perusal of the pleadings and proceedings clearly demonstrates and reflects that the respondent asked for the important and relevant documents including Tanker Receipt Register, POL Statement Register, Diesel Proformas and Reconciliation Statements for the months of July, August and September 1978. However, admittedly, these documents were not supplied to the respondent/workman.

15. It has come on record as well as in the findings of the Labour Court that the allegation of the workman that he was not supplied with the documents, is substantiated by the written statement where, in para No.5, it was stated by the Management that *“due to confidential nature, the Management could not supply few documents to which the workman insisted”*.

16. It has been observed by the Enquiry Officer later in his report dated 16.05.1986 (Ex.MW1/7), that:

“D.E. did not produce any D.W. He also failed to produce any oral or documentary proof in his favour. He cross examined Sh. Mohan Dass ASK and Sh. Vinod ASK but could not bring out anything in his favour. Instead of submitting any document to prove his innocence, he

requested to supply of following documents:

- i) Tanker Receipt Register
- ii) P.O.L. Statement Register
- iii) Diesel Tanker Register.

The case has been pending since 23.9.1982 and the D.E. has been avoiding the completion of the enquiry. He was free to inspect the documents available on records but he was interested in the supply of the documents just to delay the enquiry procedural. Since he failed to produce any oral or documentary proof to prove his innocence, keeping in view the statement of the P.Ws. the charges as mentioned above are proved beyond doubt.”

17. In the matter of *State of Uttar Pradesh and Ors. v. Saroj Kumar Sinha*, (2010) 2 SCC 772, the departmental enquiry was set aside on finding that there was non-supply of essential documents to the delinquent. The Court also observed that when a departmental enquiry is conducted against the Government servant, it cannot be treated as a casual exercise and procedural fairness is to be shown while conducting the enquiry.

18. In the case of *Shobha Sinha v. The State of Bihar and Ors.*, AIR 2014 SC 862, it was observed that supply of documents is necessary for the appellant to give justification and explain the circumstances.

19. It has been held in *DTC v. Shri Pratap Singh*, (2007) 140 DLT 117 as under:-

“Non supply of documents means violation of principles of natural justice if the documents in possession of the management formed basis of chargesheet against the workman facing charges, such workman is to be mandatorily supplied with the documents, delinquent employee, facing charges must know as to what case he has

to meet with during course of enquiry. Petitioner management failed to give any explanation as to why documents demanded by the respondent was not supplied to him. Management violated the principles of natural justice right at the threshold by not supplying documents relied upon which formed basis of charge-sheet against the workman”.

20. Non-supply of the relevant and relied upon documents by the Management to the workman certainly amounts to violation of principles of natural justice. It was/is mandatory for the petitioner/Management to supply the relevant and relied upon documents along with charge sheet to the respondent/workman at the initial stage itself. The only reason which the petitioner had given in the written statement was that due to confidential nature of the documents, the Management/petitioner could not supply them to the workman/ respondent and that the respondent was free to inspect the documents on record, which he failed to do so, as he insisted on his demand for the copies of the documents, as observed later by the Enquiry Officer. However, I do not find any force in the reasons given by the Management for the non-supply of the documents, since it was the duty of the petitioner to supply the documents along with the charge-sheet to the workman in the beginning itself, to grant him a proper opportunity and also to enable him to give proper reply. The principles of natural justice were violated by the Management at the threshold by not supplying the documents relied upon by it along with the charge-sheet itself. Hence, I do not find any flaw or infirmity in the impugned order dated 07.03.2008 passed by the Labour Court, holding that the documents were not supplied to the respondent/workman, hence, the Management has violated the principles of natural

justice and the enquiry was not conducted according to the principles of natural justice and is, therefore, not fair and valid.

21. It is also submitted by the learned counsel for the petitioner that in order to prove the misconduct, after the setting aside of the domestic enquiry, the petitioner had examined the Depot Manager, V.K. Palta (MW-1) but the Labour Court chose not to rely upon his evidence on the ground that he was not the disciplinary authority at the relevant stage. It is also submitted that the Labour Court failed to appreciate that MW-1 proved the misconduct by relying upon documentary evidence, including the enquiry proceedings, the charge-sheet, the show cause notice and the past record, and there was no reason to discard his evidence.

22. The question of allowing an employer to lead evidence before the Tribunal to justify its action (after the domestic enquiry was found to be defective) was considered by the Supreme Court in ***Bharat Sugar Mills Ltd. v. Shri Jai Singh & Ors.*, (1962) 3 SCR 684**. The Court ruled that it would be appropriate to allow the parties to lead evidence so that the Tribunal could satisfy itself about the alleged misconduct against the workman. This decision was affirmed in ***Manangement of Ritz Theatre (P) Ltd. v. Its Workmen*, AIR 1963 SC 295; *Khardah Co. Ltd. v. Their Workmen*, AIR 1964 SC 719; *Workmen of Motipur Sugar Factory (Private) Limited v. Motipur Sugar Factory*, AIR 1965 SC 1803; and *State Bank of India v. R.K. Jain and Ors.*, (1972) 4 SCC 304.**

***Delhi Cloth and General Mills Co. v. Ludh Budh Singh*, (1972) 1 SCC 595**, was also a case where the Supreme Court held that where an employer failed to hold an enquiry before dismissing a workman, it could

produce relevant evidence before the Tribunal to show that the action was justified. In another case titled as *The Management of Ram Lal Anand College v. The Workman Sh. C.L. Yadav & Anr.*, 2006(3) SLJ 251 Delhi, decided by this Court on 31.1.2006, it was held as under:

“53. The jurisdiction of the High Court in industrial matters is not appellate; it is of judicial review over the findings of a tribunal. The scope of jurisdiction under Article 226 in appreciating the merits of an award were spelt out in H.S. Chandra Shekara Chari v. Divisional Controller, KSRTC, (1999) 4 SCC 611, where the Supreme Court held as follows:

"Once the Tribunal had found that the charges against the appellant were not established, it was not open to the learned Single Judge, who had rightly refused to reappraise the evidence, to say that with better proof the charges could have been established. The learned Single Judge had no jurisdiction, not even under Section 11-A of the Industrial Disputes Act, 1947, to enter into the question whether the charges could have been established by better or further evidence. That is not the function of the court or any quasi-judicial authority."

In the judgment reported as P.G.I. of Medical Education and Research v. Raj Kumar, (2001) 2 SCC 54, the position was reiterated, in the following manner, by the Supreme Court:

“It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however the finding of fact is based on any mis-appreciation of evidence, that would be deemed to be an error of law which can be corrected by a writ of

certiorari. The law is well settled to the effect that finding of the Labour Court cannot be challenged in a proceeding in a writ of certiorari on the ground that the relevant and material evidence adduced before the Labour Court was insufficient or inadequate though, however, perversity of the order would warrant intervention of the High Court. The observation, as above, stands well settled since the decision of this Court in Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477.”

This approach was endorsed in the decision reported as Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan, (2005) 3 SCC 193, where it was held as follows:

“Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere has he come to the conclusion that the finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no

justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.””

23. Now, reverting back to the case, the Management in order to prove the misconduct of the workman in the Court has examined only one witness MW-1, V.K. Palta, Depot Manager on 11.07.2008. The workman, in rebuttal evidence, examined himself on 29.08.2008.

24. The charges, as per Ex.WW1/4 are as under:

- (a) That during the year 1978 while you were posted as ASK in HND III you did not make correct entries of the receipt of diesel in the depot and in the relevant documents such as Bin-Cards, Diesel Register and Daily receipt vouchers.
- (b) That you made wrong entry as of HND in the Bin Cards on 15.7.78 and 20.11.1978. On 17.7.78, you have shown 14802 as opening balance, 3555 litres of diesel as day's consumption and 6247 as closing balance instead of 11247 litres causing thereby shortage of 5000 litres of HSD. Similarly, you showed wrong balances in the Bin Cards on 8.8.78 and 26.9.78, causing thereby a shortage of 500 litres and 11000 litres of HSD, respectively.

25. It was observed and held by the Labour Court that, in order to prove the misconduct, the Management has not examined the crucial witness, Jagmal Singh, Assistant Store Keeper. It was also observed that the enquiry was conducted by one L.C. Goyal. Hence, to prove the misconduct before the Court, it was expected from the Management to summon the witnesses, who had deposed to the misconduct in the domestic enquiry. However, they are not examined. It was also observed that one V.K. Palta, who was examined as MW-1, in his cross-examination, admitted that he was not the

disciplinary authority and he did not have the personal knowledge regarding the misconduct. It was also observed by the Labour Court that, at least, it was expected from the Management to have examined the disciplinary authority, which they have not done. Hence, it cannot be held that the misconduct is proved.

26. It must be noted that at this stage, this Court is not looking into the matter and the findings of the Labour Court as an Appellate Court. It has to be kept in mind that when the domestic enquiry was set aside by the Labour Court on the ground that the enquiry was bad in law and was contrary to the principles of natural justice, the burden to prove the alleged misconduct lies on the Management. In that eventuality, the Management was duty-bound to produce all the relevant witnesses and then to prove the alleged misconduct in the Court.

27. I do not find any flaw in the observations and the findings of the Labour Court in this regard. The Management, admittedly, did not take any steps or made any efforts to examine the crucial witnesses Jagmal Singh and/or the Enquiry Officer, L.C. Goyal, who conducted the enquiry or any other witness. It was certainly the duty of the Management to at least have summoned the witnesses, who had and/or could depose about the misconduct in support of the charges levelled by the Management against the workman. The petitioner/Management neither cited them as witnesses nor summoned them nor examined them in support of the charges levelled by it against the workman. The deposition of MW-1 does not inspire any confidence and also does not prove the case of the Management as well as the charges levelled against the workman, more so, when he had specifically

admitted in cross-examination and stated before the Labour Court that he did not have the personal knowledge regarding the misconduct and that he was not the disciplinary authority at that point of time. The Management, certainly, as observed, could have at least examined the disciplinary authority, for whose examination no steps were taken by it in the Court. The Management has failed to produce the best evidence before the Labour Court to prove the charges against the workman.

28. I also do not find any flaw or infirmity in the reasoning or in the approach or in the findings of the Labour Court while passing the Award, holding that the misconduct was not proved by the Management, in view of the reasoning given by the Labour Court. The findings of the Labour Court in this regard, cannot be said to be perverse or based on evidence or reasoning which is not legally acceptable, warranting exercise of power under Article 226 or Article 227 of the Constitution of India.

29. Now, turning back to another question regarding the delay in raising the industrial dispute and its effect on the back-wages. It is stated by the learned counsel for the petitioner that the Labour Court ought to have taken note of the delay in initiating the proceedings by the workman. The petitioner cannot be made to suffer on account of the delay in initiating the dispute by the workman and the reference thereof after 8 years to the Labour Court as well as for the time consumed by the Labour Court in passing the impugned Award. Moreover, the respondent must have been employed over this long period in order to sustain himself and his family. The Labour Court has completely erred in awarding full back-wages to the workman from the date of termination of his services till 31.12.2004.

30. It is on the record that the respondent/workman was served with the charge-sheet dated 23.09.1982 regarding the allegations of having committed certain acts in the year 1978. On the basis of that charge-sheet, an enquiry was initiated against the workman. The Enquiry Officer gave his report on 16.05.1986. The respondent/workman was removed from service vide letter dated 12.02.1988 and a dispute was raised by the workman after which the GNCTD made a reference thereof vide reference dated 13.08.1996. It is stated that the respondent/workman now stands superannuated.

31. The Labour Court, after discussing and taking into consideration various factors, held that the removal of the respondent was illegal and unjustified. It also directed that the Management would pay the back- wages from the date of termination till 31.12.2004 and the Management was directed to reinstate the workman on a suitable post, subject to the medical fitness protecting his pay benefits. It was also directed that the workman would not be eligible to claim the allowances which are incidental to physical presence and working, like the earned leave, medical leave, conveyance allowance and bonus as part of the back-wages.

32. It is submitted and admitted by the learned counsel for the parties that on the application of the respondent seeking various reliefs under Section 17-B of the Industrial Disputes Act, 1947, the respondent vide order dated 24.07.2012 was granted minimum wages from the date of the impugned Award till the date of his superannuation or till the pendency of the present petition, whichever is earlier, subject to the respondent furnishing an undertaking before this Court that, in case the petitioner succeeds, he would

refund the excess amount to the petitioner. However, so far as the impugned Award is concerned, the same was stayed by this Court by order dated 14.12.2010.

33. It is important to examine, in view of submissions of the learned counsel for the petitioner, the validity of awarding back-wages from the date of termination till 31.12.2004. The findings of the Labour Court regarding the back-wages are such which seems to have been arrived at without any legal evidence or material in this regard on the record of the Labour Court. The Labour Court in view of the facts as well as the relevant law would and could not have come to the conclusion that the Management shall pay the back-wages from the date of termination till 31.12.2004. In ***Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota v. Mohan Lal***, (2013) 14 SCC 543, the Supreme Court had moulded the relief by denying the workman some part of the back-wages on account of admitted delay. This Court, in case titled as ***The Management of Ram Lal Anand College (supra)***, has similarly held as under:-

“59. The Industrial Tribunal, in this case, directed reinstatement, after setting aside the penalty of removal and also the penalty of dismissal from service. The facts show that the workman was out of employment, from 15th October 1980. He had worked for seven years, before that. The industrial dispute, raised by him was referred for adjudication in 1982. The final award was made in 1998. This court directed payment of minimum wages, further to the application under Section 17-B of the Act, after the writ petition was entertained. The workman attained the age of superannuation on 30th April, 2002; after that date, the payment of amounts, as per Section 17-B, ceased.

60. *The logical consequence of setting aside a penalty of dismissal would be a direction to pay full backwages, on the premise that the court restitutes him, to as nearly a position, as existing if the dismissal had not taken place. Other than such a direction, the workman has recourse to no other legal remedy, and any employment obtained by him during the interregnum period, would be for subsistence. A restitutionary order is the logical consequence if an aggrieved party approaches and successfully establishes legal injury by the defendant; such orders, whether by way of compensation, damages, or direction to pay interest, can be seen in all branches of law.*

61. *In the case of industrial disputes, where the Tribunal holds that a penalty was imposed unjustifiably, this logical consequence is not an invariable thumb rule. The Supreme Court has emphasized the need to balance the equities, particularly in view of the long pendency of disputes, and likely adverse financial impact if full backwages are directed.*

62. *In Haryana State Coop. Land Development Bank v. Neelam,(2005) 5 SCC 91, the position was explained as follows:*

“The Industrial Courts like any other court must be held to have some discretion in the matter of grant of relief. There is no proposition of law that once an order of termination is held to be bad in law, irrespective of any other consideration the Labour Court would be bound to grant relief to the workman. The Industrial Disputes Act does not contain any provision, which mandates the Industrial Court to grant relief in every case to the workman. The extent to which a relief can be moulded will inevitably depend upon the facts and circumstances obtaining in each case. In the absence of any express provision contained in the statute in this behalf, it is not for the court to lay down a law which will have a universal application.”

In an earlier judgment, reported as M.P. SEB v. Jarina Bee, (2003) 6 SCC 141 the Supreme Court held as follows :

“7. In P.G.I. of Medical Education and Research v. Raj Kumar, (2001) 2 SCC 54, this Court found fault with the High Court in setting aside the award of the Labour Court which restricted the back wages to 60% and directing payment of full back wages. It was observed thus: (SCC p. 57, para 9)

“9. The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect.”

Again at para 12, this Court observed: (SCC p. 58)

“12. Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no strait-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety.”

8. The position was reiterated in Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya, (2002) 6 SCC 41, and Indian Rly. Construction Co. Ltd. v. Ajay Kumar, (2003) 4 SCC 579.

9. Applying the legal principles, the inevitable conclusion is that the High Court committed an error in holding that the award of full back wages was the natural consequence.”

63. *In a case, where the direction to reinstate was upheld, but the management was in acute financial crisis, and the workman had attained the age of superannuation, the Supreme Court upheld the findings on facts, but directed 50% backwages, with gratuity, and all other consequential retrial benefits, in Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan,(2005) 3 SCC 193 in the following terms:*

“We have anxiously considered the argument addressed by both sides in regard to the quantum of back wages to be paid to the workman. It is an undisputed fact that the workman had since attained the age of superannuation and the question of reinstatement does not arise. Because of the award, the respondent workman will be entitled to his retrial benefits like gratuity, etc. and accepting the statement of the learned Senior Counsel for the appellant Mills that it is undergoing a financial crisis, on the facts of this case we think it appropriate that the full back wages granted by the Labour Court be reduced to 50% of the back wages. In addition the respondent workman will also be entitled to all other retrial benefits as if he was in service throughout the period when his services were discharged.”

64. *In view of the facts of this case, and having regard to relevant circumstances, including the service of the workman, the pendency of the industrial dispute, I am of the opinion that direction to pay full back-wages was not a proper or sound exercise of discretion. The impugned final award requires to be modified to that certain extent.*

65. *In view of the above findings, the following directions are issued:*

1) The findings in the first impugned order, dated 21.3.1996 as well as the final award dated 4.3.1998, of the Industrial Tribunal-I are upheld;

2) The direction to pay full back-wages, contained in the final award dated 4-3-1998 is hereby modified, to the extent, that instead of 100% back-wages, the

respondent workman shall be entitled to 60% back-wages, for the period 1-12-1980 to 30-4-2002.

3) The directions contained in the final award regarding continuity and consequential benefits are left undisturbed;

4) The respondent-workman shall be entitled to payment of gratuity and provident fund, on the basis of the above directions; he shall also be entitled to pension, on the basis of such pay-fixation;

5) All the amounts payable to the respondent workman, as per this judgment shall be disbursed to him, within six weeks from today.”

34. In the matter of ***U.P. State Brassware Corporation Ltd. and Anr. v. Udai Narain Pandey***, **JT 2005 (10) SC 344**, the Supreme Court held as under:-

“32. 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.

33. 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.

34. x x x x x

35. x x x x x

36. 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.”

35. In the matter of *M/s D.S.I.I.D.C. v. Pravin Kumar Sharma*, 2012 LLR 718, the Supreme Court has held that Award of reinstatement with full back-wages should not be granted mechanically when termination is held to be illegal. Lump-sum compensation of a reasonable amount in lieu of reinstatement with back-wages is justified.

36. There is no doubt that there was a considerable delay in raising the dispute by the respondent/workman. The workman has barely stated in his affidavit that he was unemployed from the date of his termination and had not been able to find any job despite his best efforts. Nothing is proved on record regarding the efforts made by the workman for getting a job in some other establishment or to make earnings to sustain himself and his family. On the other hand, the Management has also not been able to prove that the workman was gainfully employed from the date of his termination till 31.12.2004. Though the Management has failed to prove the gainful employment of the workman during the aforesaid period, but, on the other hand, it does not absolve the workman to adduce and produce the evidence regarding the efforts made by him for a job and/or employment. He could have applied for the job at least at some places and/or could have enrolled himself with the Employment Exchange but no such documents were proved by the workman on the record.

37. Hence, taking into consideration the aforesaid position, the Award regarding the back-wages in this case from the date of termination till 31.12.2004 is not tenable in law. Therefore, having regard to the aforesaid

discussions and the circumstances, I am of the opinion that the direction to pay back-wages from the date of termination till 31.12.2004 was not proper or sound exercise of discretion and the impugned Award dated 07.02.2009 and the correction order dated 31.07.2009 requires to be modified to a certain extent in this regard. Accordingly, I deem it appropriate that the interests of justice would be sub-served if directions regarding payment of back-wages from the date of termination till 31.12.2004 are modified to the extent that instead of full back-wages, the respondent/workman shall be entitled to 50% of back-wages, for the period, i.e. from the date of termination till 31.12.2004. Ordered accordingly. The rest of the findings and directions contained in the final Award dated 07.02.2009 and the correction order dated 31.07.2009 are upheld and left undisturbed. The amount payable to the respondent/workman shall be disbursed to him within eight weeks from the date of receipt of this order by the petitioner/Management. However, it is also clarified that the wages granted to the respondent/workman, in compliance of the order under Section 17-B of the Industrial Disputes Act, 1947 would not be refunded back to the petitioner.

39. The petition is accordingly disposed of, leaving the parties to bear their own costs.

CHANDER SHEKHAR, J

MARCH 14th, 2018/b/tp