

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WA No. 403 of 2016**

1. M.V. Rao (Now Dead) Through L.Rs M. Padmavati W/o Late Shri M. V. Rao, Aged About 53 Years R/o House No.27/631 New Shanti Nagar, Pipe Factory Road, Raipur, District Raipur Chhattisgarh

---- Appellant**Versus**

1. Zonal Manager, Food Corporation Of India Raipur, District Raipur Chhattisgarh.
2. Food Corporation Of India, Through Regional Manager, Regional Office, Vidhan Sabha Marg, Kapa, P.O. Pandri, Raipur, District Raipur Chhattisgarh.
3. District Manager, Food Corporation Of India, Regional Office, Vidhan Sabha Marg, Kapa, P.O. Pandri, Raipur, Distirct Raipur Chhattisgarh

---- Respondent**WA No. 496 of 2016**

1. Executive Director/ Zonal Manager Food Corporation Of India Rajendra Ngar, Dattapada Road, Borivali East Mumbai, Maharastra
2. Senior Regional Manager, General Manager (R) Food Corporation Of India, Chetak Bhawan M.P. Nagar, Bhopal M.P.
3. Area Manager District Manager, Food Corporation Of India Kapa, District Raipur Chhattisgarh

---- Appellants**Versus**

1. Smt. M. Padmawati, W/o Late Shri M.V. Rao Aged About 53 Years R/o House No. 27/631, New Shanti Nagar, Pipe Factory Road, Raipur, District Raipur Chhattisgarh.

---- Respondent

For Employee
For FCI

Shri Anmol Sharma, Advocate
Shri Sunil Pillai, Advocate

Hon'ble Shri Prashant Kumar Mishra, Ag.CJ
Hon'ble Shri Parth Prateem Sahu, J.

Judgment on Board

By

Prashant Kumar Mishra, Ag. CJ

09/04/2019

1. The employer as well as the employee have preferred separate writ appeals against the same judgment rendered by the learned Single Judge allowing the writ petition to set aside the order of termination, but limiting the back wages to the extent of 25%. While the employee would pray for award of full back wages, the employer FCI would assail the order passed by the learned Single Judge on merits.
2. Having heard learned counsel appearing for the parties, it appears the delinquent was inflicted the penalty of removal from service on proof of charges against him. The learned Single Judge found that in the entire enquiry report there was no whisper of the defence raised by the employee, therefore, it was treated to be a document prepared by the prosecution and not that of an enquiry officer.

3. Referring to the law laid down by the Supreme Court in **Anil Kumar v Presiding Officer and Others**¹, the learned Single Judge has allowed the writ petition because neither the disciplinary authority nor the appellate authority considered any of the grounds of defence raised by the employee. The learned Single Judge has found that the entire enquiry was one sided enquiry, as there was no application of mind to the ground of defence raised by the employee.
4. We are in full agreement with the findings recorded by the learned Single Judge as nothing has been brought to our notice, which would bring the findings recorded by the learned Single Judge as perverse. The order passed by the learned Single Judge on merits is, therefore, affirmed.
5. Now coming to the issue of award of back wages, it is settled by the Supreme Court in **Deepali Gundu Surwase v Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others**², that when the order of termination has been set aside on the ground that the enquiry was vitiated, the necessary corollary or consequence of setting aside the order of termination is to award full back wages to the employee.

1 (1985) 3 SCC 378

2 (2013) 10 SCC 324

6. While limiting the back wages only to 25% the learned Single Judge has considered the seriousness of the charges levelled against the employee, however, in our considered view, once the enquiry has been found to be vitiated as the same was one sided without giving opportunity of hearing to the employee, the seriousness of the charge may not work against the employee for reduction of the amount of back wages.
7. For the aforesaid reasons, the writ appeal preferred by the employee, now represented by his widow, i.e. WA No.403 of 2016, is allowed and that of the management of FCI i.e. WA No.496 of 2016 is dismissed.

Sd/-

(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Gowri