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

+ **LPA 122/2018 & CM APPL.10777/2018 (stay)**

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Judgment reserved on: 24th April, 2019

Judgment pronounced on: 7th May, 2019

M/S BSES RAJDHANI POWER LTD.

....Appellant

Through: Mr.Sudhir Nandrajog, Sr. Advocate with
Mr.Gulshan Chawla, Advocate.

Versus

K L BERWA & ORS.

....Respondents

Through: Mr.Dushyant Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. The present appeal has been filed against the impugned judgment dated 15.12.2017 passed by the Hon'ble Single Judge of this Court whereby the writ petition filed by the Respondent No.1 was allowed holding the finding of the enquiry officer perverse, consequently, the orders dated 23.05.1996 and 31.01.1997 passed by DVB were set aside vide which the petitioner was entitled to reinstatement, if not attained the age of superannuation with 50% back wages with all consequential benefits and if he has attained the age of superannuation, he shall be entitled to 50% back wages till the date of superannuation and thereafter shall be entitled to full pensionary benefits in accordance with the Rules and that the payment be made

within two months failing which the petitioner shall be entitled to 9% interest on the amounts.

2. Brief facts of the case are as under:-

“The respondent No.1 joined the Delhi Vidyut Board on 14.02.1980 as a Meter Reader; that while working as a Meter Reader with the Delhi Vidyut Board during the year 1990-91 with the view to extend undue benefits to the consumer respondent No.1 failed to record the reading of the meter installed against K No.173298 registered in the name of one Balbir Singh at A-141, Deli Extension which was sanctioned for the domestic purpose but was misused for Industrial and Commercial purpose and the LV Mains were illegally and unauthorizedly extended to other premises. That the respondent No.1 failed to issue ST-II and ST-VII to his MSR(D) reporting that the meter was not read and supplied was misused and extended to other premises in violation of office order No.DFO/2/225 dated 29.05.1982 which resulted into financial loss in the undertaking that the respondent No.1 failed to maintain absolute integrity and devotion to duty in violation of Rule 3 of CCS (Conduct) Rules, 1964; that on 12.02.1992, a joint inspection was carried out where the meter in question was reported to be illegally obtained and the misuse of the same was reported; that the respondent No.1 was served with the charge sheet on the above lines; that an inquiry as per law was initiated which was concluded on 13.02.1996. By virtue of which the appellant took the decision to remove the respondent No.1 from his service. That the respondent No.1 was removed from his services by order dated 23.05.1996 by the Disciplinary Authority for not recording the reading against the K.No.173298/DL and not reporting the misuse

of electricity supply for commercial purpose; that the respondent No.1 filed an appeal before the General Manager against the order dated 23.05.1996 which was rejected on 17.06.1996; that the respondent No.1 filed the Writ Petition (Civil) No.1863/1997 against the orders dated 23.05.1996 and 31.01.1997; that on 15.12.2017 the High Court of Delhi allowed the writ petition filed by the respondent No.1 and quashed the order dated 23.05.1996 and 31.01.1997 vide which the petitioner was entitled to reinstatement, if not attained the age of superannuation with 50% back wages with all consequential benefits and if he has attained the age of superannuation, he shall be entitled to 50% back wages till the date of superannuation and thereafter shall be entitled to full pensionary benefits in accordance with Rules and that the payment be made within two months failing which the petitioner shall be entitled to 9% interest on the amounts; that the present LPA has been challenged against the order dated 15.12.2017 passed by the High Court in W.P.(C) No.1863/1997”.

3. Learned senior counsel appearing on behalf of the appellant has contended that the findings of the inquiry officer are findings of fact which cannot be interfered with in the writ jurisdiction and the Court cannot re-appreciate the evidence nor practically sit as a Court of appeal. Relevance is placed on (1) ***“Bank of India & Anr. vs Degala Suryanarayana” AIR 1999 SC 2407*** wherein the Hon’ble Supreme Court held that the Court while exercising jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in the case of malafides or perversity, (2) ***“K.V. Kulkarni vs Bank of India and Ors.” 2015 LLR***

1243, the Division Bench of Delhi High Court has held that the High Court may not normally interference with factual findings unless the same are based either on no evidence or the same were wholly perverse and are legally untenable and (3) **“B.C. Chaturvedi vs Union of India” AIR 1996 SC 484** and in similar case of **“National Housing Bank vs B.C.S. Ballga” 2006 III AD (Delhi) 751** and **“Apparel Export Promotion Council vs A.K. Chopra” AIR 1999 SC 625**, the Court has held that the findings of the inquiry officer are findings of fact which cannot be interfered with in writ jurisdiction.

4. Learned counsel for the appellant further contends that in **“T.N.C.S. Corpn. Ltd. vs K Meerabai”** it has been held that the scope of judicial review in departmental disciplinary matters is limited. Learned senior counsel for the appellant further contends that in the case of **“State of Haryana and Anr. vs Rattan Singh” (1977) 2 SSC 491**, the Supreme Court had allowed the appeal wherein it has been stated that a bus conductor was terminated for not collecting fares from certain passengers and there was simple termination of his services because of his long service and young age.
5. Learned counsel appearing on behalf of the respondent No.1 submitted that the impugned orders dated 23.05.1996 and 31.01.1997 passed by appellant is based on personal bias and prejudice against the respondent No.1. Learned counsel for the respondent No.1 submitted that the appellant initiated the enquiry regarding the incident of May, 1990 in the year 1995 when the charge sheet was served upon the respondent No.1 and the appellant concluded the entire enquiry in a short span of 7 days. It is submitted that the respondent No.1 could

not get sufficient time to place the correct facts before the enquiry officer. Learned counsel for the respondent No.1 further submitted that the appellant failed to summon the witnesses and the records called by the respondent No.1 to prove his case. Learned counsel for the respondent No.1 further submitted that the respondent No.1 was not afforded proper opportunity of being heard by the appellant. Learned counsel for the respondent No.1 further submitted that the appellant has imposed a major penalty of dismissal from service vide the impugned orders which was highly disproportionate to the charges levelled by the appellant and has been rightly set aside by the learned Single Judge.

6. We have heard learned counsel for the parties and perused the record carefully.
7. The short question which arises for consideration in this appeal is whether the Single Judge was justified in awarding 50% back wages with all consequential benefits and if he has attained the age of superannuation, he shall be entitled to 50% back wages till the date of superannuation and thereafter shall be entitled to full pensionary benefits in accordance with Rules.
8. From the perusal of the record we find that the Respondent no. 1 was appointed as Meter Reader in the erstwhile BSES on 14.02.1980. During the period of May, 1990, Respondent no. 1 was entrusted with the meter reading of *Sangam Vihar* and *Devli Extension area* and was assigned Meter Book No. 407. Due to various complaints of electricity theft, a Joint Inspection was carried out by the Vigilance Department of the appellant on 12.02.1992. Respondent no. 1 was

charge sheeted for misconduct and misbehavior. By virtue of the Enquiry report, the Disciplinary Authority vide order dated 23.05.1996 removed Respondent no.1 from his services, for not recording the reading against the K.N. 173298/DL and also for not reporting the misuse of electricity supply for commercial purpose. The Respondent no.1 preferred an appeal against order dated 23.05.1996 which was considered and rejected by the Appellate Authority vide order dated 17.06.1996.

9. At the outset, we deem it appropriate to rummage through the chargesheet issued against the Respondent No. 1 as well the Enquiry report. Relevant portion of the charge sheet reads as under:-

“Shri K.L. Berwa, E. No. 87010 while working as Meter Reader in the officer of AFO (D) NHP during the year 1990-91 malafide intention and with a view to extend undue benefit to the consumer, did not record the reading of meter installed against K. No. 173208 registered in the name of Shri. Balbir Singh at premises No. A-141, Devli Extension, on his reading round in the month of May, 1990. Further the K. No. 173208 sanctioned for domestic purposes, was being misused for industrial Commerical purposes and the LV Mains were illegally /unauthorizedly extended to other premises. Shri K. L. Berwa did not issue ST-II and ST-VII to his MSR (D) reporting that the meter was not read and the supply was being misused and extended to other premises in violation of office order No. DFO/2/225 dated 29.08.1982 and incurred financial loss to the Undertaking.”

10. The Enquiry Officer, while adjudicating upon the Article of Charges relied upon the observation made in the Joint Inspection Report and

held that the charges framed against the Respondent no.1 stood proved. The Enquiry Officer found that the prosecution was able to prove that there was theft of electricity from meter K. No. 173298 registered in the name of Sh. Balbir Singh at premises No. A-141, Devli Extension due to complicity and connivance between the consumer and Respondent No.1. The Enquiry report and the documents, Ex.D/2C and Ex. D/2D produced by Respondent no.1 in support of his contention that he made a report to MSR and also AFO regarding misuse of connection that he made a complaint/report to MSR and also AFO regarding misuse of the connection in question cannot be relied upon as Respondent No. 1 did not produce the original of these exhibits. Further as per the Enquiry report Respondent no. 1 failed to show that he had no malafide intention for recording proper meter reading and not reporting the matter to his senior MSR or AFO stating that there is an extensive misuse of power by resident of *Devli Extension* and *Sangam Vihar* area. Also, as per the Enquiry report, the meter sheet was inserted, the Respondent no. 1 did not record the meter reading correctly with malafide reasons. Relevant portion of the finding of the Enquiry Officer reads as under:-

“After going through the Articles of Charges, statement of imputation and allegation, evidence of the P.ws. along with the listed documents for framing the charges, additional documents as required by the defence, alongwith the evidence of one defence witness who is the charged official in this case and also the arguments given by the P.O. and the defence, I recommend the following findings of the case. Shri K.L. Berwa, C.O. in this case, has been charged that with malafide intention and with a view to extend undue benefit to the consumer did not record the reading of the meter against K.No. 173298 registered in the name of Shri Balbir Singh at Premises No. A-141, Devli Extn. on his reading

round in the month of May, 1990. C.O. did not issue Statement II & Statement VII to his MSR (D) NHP reporting that the meter was not read and the supply was being misused and extended to other premises and thus incurring financial loss to DESU. All the five witnesses who have been produced by the Presenting Officer have fully confirmed the observation of the Joint Inspection Report, which clearly states that the bill of the connection installed at premises No. A-141, Devli Extn. was not available at the site, so R/C and K.No. could not be ascertained. Half of the seals of the meter found intact and impression of the monogram was not visible. It was further stated in the joint inspection report that the supply was being misused for commercial purpose. Illegal extension of wires found extended to back side for few residence premises and for construction work. Service lines of 1 of 10 mm² is coming from pole existing near the DDA flats, which is 150 metre away. The joint inspection report was conducted after the investigation report was received in the Vigilance Section. Both corroborate that the C.O. did not take the reading of the meter nor did he report to M.S.R. regarding the misuse of power for commercial use and extending the wire for consumption of electricity by others which is no less a crime than the theft of electricity. As I find from the evidences both oral and documents that there was a large scale misuse and theft of electricity in the Devli Extn. area and also Sangam Vihar. The prosecution has elaborately proved that there was theft of electricity due to the complicity and in connivance between the consumer and the reading staff of DESU. I have given adequate opportunity to the charged official to prove his contention that he could not get the meter sheet inserted in the meter reading book. He has submitted two photo copies as Ex. D/2C and D/2D but he failed to authenticate these two documents by producing the original of them. In this connection, it may be stated that in these two documents he has not specifically mentioned about the K.No. of Shri Balbir Singh, on which basis the charge has been framed against him. It could have been his duty to substantiate his argument by producing the conclusive evidences, that he not only found that the meter book was not having the meter sheet but also he should have given a documentary proof that he made a report in writing to MSR and also AFO regarding the misuse of the above said connection for commercial use. On both these issues he could not produce any documentary proof of the bonafide intention on his part that he could detect the misuse of connection by the consumer and he has also made a report thereof to his superior Officer so that the consumer could have been booked to fine and other charges as per rules, so that the loss as incurred by DESU

due to this irregularity could have been recovered to certain extent. The charged official has shown me the page No. 32 of Diary Register which is Ex. D.1. The entry 4391 dated 19-03-90 gives the IR No. 76709 which has been scored out and a subsequent IR N. 421257 has been written below it. The writing as well as ink are of difference from the scored one I.R. number. A doubt arises that it is a sub sequent entry and not duly authenticated. This entry does not show any movement though other entries on the same page indicate the movements. C.O. also could not give satisfactory reply when he was giving his deposition as D.W. in the Inquiry. C.O. claims to have made a reference to AFO in June/July, 1990, citing therein that there are lot of misuse of power by the domestic user for commercial purposes and also there were lots of illegal and unscheduled connections in that area. The concerned register of diary of AFO, Section (D) NHP does not show anywhere that C.O. has made a reference to AFO (D) NHP regarding the misuse of connection for commercial use. In view of the foregoing, as stated in the earlier paragraphs, I conclude that C.O. has not been able to prove his innocence that he was having no mala fide intention in not giving the proper reading of the meter and also not reporting the matter to his senior MSR or AFO as the case may be stating that there is an extensive misuse of power by the residents of that area in Devli Extn. and Sangam Vihar. On the other hand prosecution has been able to substantiate by oral as well as listed documents the C.O. did not read the meter though the meter sheet was inserted in nor did he report the misuse of energy by the consumers in general of that area especially of one Shri Balbir Singh of A-141 Devli Extn. The charge is proved."

11. The Learned Single Judge while dealing with the contention of the parties, in relation to insertion of meter sheet in meter book no. 407, observed that the stand of the Department that meter sheet was inserted in meter book no. 407 does not appeal to reason as no bill was generated till February 1992. He further observed that the statement of Gyan Dev Vats that the sheets had been inserted by him with regard to 10 connections is highly doubtful as Gyan Dev Vats was not examined during the Enquiry proceedings. The non-disclosure of electricity theft by the Respondent no. 1 to MSR and AFO, the learned

Single Judge observed that since no meter sheet was inserted in the meter book no. 407, there was no occasion for him to go to the premises concerned to record the reading. He further observed that the approach of the Enquiry Officer to put the onus on the petitioner to prove, that the meter book no. 407 did not have the meter sheet is erroneous, as in an Enquiry Proceedings the onus to prove the charges against the delinquent is always on the Department.

12. The law with regard to power of High Courts under Article 226 of the Constitution of India has been discussed time and again by the Apex Court and this Court in various judgments. The Hon'ble Supreme Court in ***Surya Devi Rai vs. Ram Chander Rai*** has concluded that under Article 226 of the Constitution, writ is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted: (i) without jurisdiction, by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction – by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.
13. In ***Syed Yakoob verses Radhakrishnan***, it was held that the jurisdiction of the High Court to issue a writ of *certiorari* is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. *An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, howsoever grave it may appear to be.* However, if a finding of fact is

based on ‘no evidence,’ that would be regarded as an error of law which can be corrected by certiorari.

14. In the case of U.P. v. Dr. Vijay Anand Maharaj, AIR 1963 SC 946 the Apex Court held as under:-

“9. Article 226 confers a power on a High Court to issue the writs, orders, or directions mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. This is neither an appellate nor a revisional jurisdiction of the High Court. Though the power is not confined to the prerogative writs issued by the English Courts, it is modelled on the said writs mainly to enable the High Courts to keep the subordinate tribunals within bounds. Before the Constitution, the chartered High Courts, that is, the High Courts at Bombay, Calcutta and Madras, were issuing prerogative writs similar to those issued by the King's Bench Division, subject to the same limitations imposed on the said writs. In Venkataratnam v. Secretary of State for India [(1930) ILR 53 Mad 979] a Division Bench of the Madras High Court, consisting of Venkatasubba Rao and Madhavan Nair, JJ., held that the jurisdiction to issue a writ of certiorari was original jurisdiction. In Ryots of Garabandha v. Zamindar of Parlakimedi [ILR 1938 Mad 816] another Division Bench of the same High Court, consisting of Leach, C.J., and Madhavan Nair, J., considered the question again incidentally and came to the same conclusion and held that a writ of certiorari is issued only in exercise of the original jurisdiction of the High Court. In Ramayya v. State of Madras [AIR 1952 Mad 300] a Division Bench, consisting of Govinda Menon and Ramaswami Gounder, JJ., considered the question whether the proceedings under Article 226 of the Constitution are in exercise of the original jurisdiction or revisional jurisdiction of the High Court; and the learned Judges held that the power to issue writs under Article 226 of the Constitution is original and the

jurisdiction exercised is original jurisdiction. In Moulvi Hamid Hassan Nomani v. Banwarilal Roy [(1947) II MLJ 32, 35] the Privy Council was considering the question whether the original civil jurisdiction which the Supreme Court of Calcutta possessed over certain classes of persons outside the territorial limits of that jurisdiction has been inherited by the High Court. In that context the Judicial Committee observed:

“It cannot be disputed that the issue of such writs is a matter of original jurisdiction.”

15. In C.S. Agarwal v. State, 2011) 125 DRJ 241, the full bench of this Court while discussing the power of High Court under 226 of the Constitution of India reiterated the principles laid down in Umaji Keshao (supra) case and observed as under:-

“18. This position was reiterated by the Supreme Court in the case of Umaji Keshao Meshram v. Smt Radhikabai [1986 Supp SCC 401 : AIR 1986 SC 1272] taking-stock of the gamut of case law including the aforesaid Constitution Bench Judgment. The Court explained that even prior to the commencement of the Constitution, Chartered High Courts were possessed with the power to issue prerogative writs, though in a much restricted form. The provisions in the nature of Articles 226, 227 and 228 were incorporated in the Constitution with an intention to confer the enlarged power upon all the High Courts and not merely three Chartered High Courts. 100. Under Article 226 an order, direction or writ is to issue to a person, authority or the State. In a proceeding under that Article the person, authority or State against whom the direction, order or writ is sought is a necessary party. Under Article 227, however, what comes up before the High Court is the order or judgment of a subordinate court or tribunal for the purpose of ascertaining whether in giving such judgment or order that subordinate court or tribunal has acted within its authority and according to law. Prior to the commencement of the Constitution, the Chartered High Courts as also the

Judicial Committee had held that the power to issue prerogative writs possessed by the Chartered High Courts was an exercise of original jurisdiction (see Mahomedalli Allabux v. Ismailji Abdulali, Raghunath Keshav Khadilkar v. Poona Municipality, Ryots of Garabandho villages v. Zamindar of Parlakimedi and Moulvi Hamid Hasan Nomani v. Banwarilal Roy L.R. [1946-1947] 74 I.A. 120, 130-31; S.C. = A.I.R. 1947 P.C. 90, 98)”

16. Applying the aforesaid law, in the instant case, the Enquiry Officer has not adhered to the basic principles of law and passed the findings against the Respondent no.1 disregarding the law and procedure laid by the Statute. Hence the learned Single Judge as rightly set aside the order passed by the Disciplinary Authority as well as the Appellate Authority.
17. As far as argument of learned counsel for the petitioner with regard to the payment of 50% backwages with reinstatement is concerned, it is settled law that the Courts can decide the issue of backwages while relying on the facts of a particular case. In the case of **“Rajasthan State Road Transport Corporation vs Phool Chand” 2018 SCC Online SC 1583**, the Apex Court held 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 v. Jarina Bee (Smt.), (2003) 6 SCC 141, G.M. Haryana Roadways v. Rudhan Singh, (2005) 5 SCC 591, U.P. State Brassware Corporation v. Uday Narain Pandey, (2006) 1 SCC 479, J.K. Synthetics Ltd. V. K.P. Agrawal, (2007) 2 SCC 433, Metropolitan Transport Corporation v. V. Venkatesan, (2009) 9 SCC 601, Jagbir Singh v. Haryana State Agriculture Marketing Board, (2009) 15 SCC 327) and Deepali Gundu Surwase v. Krnati Junior Adhyapak Mahavidyala (D.Ed.), (2013) 10 SCC 324.

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.”

18. In case of “**G.M. Haryana Roadways v. Rudhan Singh, (2005) 5 SCC 591**, the Apex Court has held as under:-

“8. 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 25-F 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”.

19. In the case of **“U.P. State Brassware Corporation v. Uday Narain Pandey”**, (2006) 1 SCC 479 the Apex Court has held that: -

“17. Before advertting to the decisions relied upon by the learned counsel for the parties, we may observe that 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 court 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.

22. 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.”

20. In the case of “**J.K. Synthetics Ltd. vs. K.P. Agrawal**” (2007) 2 SCC 433, the Apex Court has laid the following criteria while determining backwages: -

“19. But the cases referred to above, where back-wages were awarded, related to termination/retrenchment which were held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the court found that the termination was motivated or amounted to victimization. The decisions relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry, and the court confirms the finding regarding misconduct, but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee. Where the power under Article 226 or section 11A of the Industrial Disputes Act (or any other similar provision) is exercised by any Court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment, and a consequential

direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the dismissal was illegal and invalid. The court is merely exercising its discretion to award a lesser punishment. Till such power is exercised, the dismissal is valid and in force. When the punishment is reduced by a court as being excessive, there can be either a direction for reinstatement or a direction for a nominal lump sum compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution of punishment (in which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed (in which event, there can be a consequential direction relating to continuity of service). What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back-wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where

continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions etc.

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.”

21. In our considered opinion, there is no infirmity in the order passed by the learned Single Judge. The Learned Single Judge has rightly come to a conclusion that the finding of the Enquiry Officer was perverse. The prosecution was not able to substantially establish that meter sheet was inserted in the meter book and the Respondent no.1 intentionally for malafide reasons failed to record proper reading of meter in question. The observation of the Enquiry Officer that the onus to produce documentary proof in relation to Ex.D/2C and Ex. D/2D lies on Respondent no. 1 is based on erroneous premise, to the contrary, it was for the department to prove the charges framed. Moreover, the report of Joint Inspection Report conducted on 12.02.1992 is of no consequence as the Joint Inspection Report fails to confirm the clear position of K. No. 173298 and also the meter book no. 407 at the relevant time i.e. on May 1990.

22. In view of the aforesaid settled proposition of law and also for the reasons stated above, we do not find any infirmity in the impugned order. Accordingly, the appeal stands dismissed.

CM APPL.10777/2018 (Stay)

23. In view of the reasons stated above, the present application is rendered infructuous. Application is accordingly dismissed.

SANGITA DHINGRA SEHGAL, J

G.S.SISTANI, J

MAY 7, 2019

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