

W. P.A. No. 14592 of 2014

Smt. Saroj Agarwal

Vs.

Union of India and others

Mr. Surajit Samanta, Adv.

Mr. Balai Lal Sahoo, Adv.

Mr. S. P. Roy, Adv.

Ms. Anindita Roy, Adv.

...for the petitioner.

Mr. P. S. Sengupta, Sr. Adv.

Mr. Soumya Majumder, Adv.

Ms. S. Ghosh, Adv.

Mr. S. Bhattacharya, Adv.

Mr. V. Chatterjee, Adv.

... for the respondent nos. 4 to 6.

Mr. Anuran Samanta, Adv.

... for the U.O.I.

25th January, 2021

Rajasekhar Mantha, J.:-

1. The matter was taken up for further hearing pursuant to the order date 13th March, 2020.
2. Mr. Parthasarathi Sengupta, Ld. Senior Counsel on behalf of the Respondent argued as follows:
 - i. Since the petitioner has not been dismissed, 3 months salary in lieu of notice in terms of Clause 5 of the T & C of the Contract for Service has been paid to her vide letter dated 30.04.2014.
 - ii. Referring to the Explanation - Clause (vi) sub-clause (c) & (e), appended to R. 23, pertaining to “Penalties” under the “Conduct, Discipline & appeal Rules” of BBNUL, it is argued that the termination of service was not unjustified. It is argued that the termination of service of an employee appointed under a contract or an agreement is not a penalty, if it is in accordance with the terms and conditions of such contract.
 - iii. That the service was to be governed both by the Service Rules and the agreement in the letter of appointment dated 11th April, 1988 and hence, the averment of the Petitioner, in Para 33 of the WP, that the only ground for termination of an employee could be misconduct, as required under R. 5 Cl. (a)-(u) of the Conduct, Discipline & Appeal Rules is baseless.
 - iv. In cases where misconduct has been alleged, even a limited compliance of the principles of Natural Justice is enough.

v. He argued that there's no malice on the part of his client. Malice has not been proved by the petitioner and the concerned officials of BBUNL ought to have been impleaded.

vi. There is no prayer for back wages hence the petitioner is not entitled to full back-wages. Even if prayer for back wages were there the petitioner not having worked for the said period after the impugned order is not entitled to full back wages. It is also a contended that the petitioner ought to have demonstrated and/or averred that she was not in any gainful employment during the pendency of the writ application.

3. The respondent have relied on the decision of the Hon'ble Supreme Court in the case of ***All India State Bank Officers' Federation v. Union of India, (1997) 9 SCC 151*** on the point that malice cannot be urged unless the person alleged against whom it is alleged, is impleaded in a personal capacity, in the pleadings. The said decision was concerned with a policy decision of the Bank and it was alleged that the Board of Directors framed the policy only to favour the respondent no. 4 & 5. It is in that context that the Supreme Court had held that the CMD and the directors of the Bank ought to have been made parties to the proceedings. In the case at hand malicious and/or mala fide conduct is evident from the documents and the manner in which the petitioner was dismissed from service. It has not been argued or contended by BBUNL the termination and process thereof was erroneous or incorrect on the contrary it is sought to be justified and asserted.

4. On the point of malice Mr. Sengupta relied upon the decision of **State of Bihar Vs. P.P. Sharma reported in 1992 Supp (1) SCC 222**. The said decision was concerned with a case where the High Court quashed a criminal proceeding based on affidavit and documents produced before it, without the same being tested in a regular trial on evidence. The said case has no manner of application to the facts of the instant case.
5. Further the respondent while arguing on the point of proof of malice, averred that general statement of malice is not sufficient to prove malice and cited the judgement of the Hon'ble Supreme court in the case of **State of Punjab Vs. V.K. Khanna, reported in (2001) 2 SCC 330**. In this regard this Court notices **Paragraph 37** which is set out herein:

“37. As noticed above, mala fide intent or biased attitude cannot be put on a strait-jacket formula but depends upon facts and circumstances of each case and in that perspective judicial precedents would not be of any assistance and as such we refrain from further dealing with various decisions cited from the Bar since facts are otherwise different in each of the decisions.”

6. The above decisions cannot come to the aid of the respondents as the facts of the instant case clearly and explicitly demonstrate unfair illegal and draconian manner in which the impugned order was passed. The conduct of the respondents is preposterous even if malice has not been proved. Malice of any particular person towards a wronged employee need not be specifically be proved in every case. This is more so when such malice, vindictiveness, vengeance, victimization, terrorization are writ large in the face of record.

7. Further the facts of the cases cited by the BBUNL are completely different and distinguishable and thus the ratio-decidenti may be considered to be operative in general, but has little relevance in the facts of this case.
8. It is baffling to note that the marketing manager should be expected to fetch order on her own about Rs. 12 crores from other organizations. Admittedly, procurement of these orders involves participation in tenders. A participation in a tender process involves both technical and commercial bids. Technical bids are prepared by the Engineering Department and Financial bids are prepared by the Finance Department. A marketing manager alone cannot be held responsible for procuring competitive bids for the BBUNL.
9. For failing to do the absolutely impossible the petitioner is asked to show cause. On an initial detailed reply being given on 08th April, 2014 (Annexure P-6) the petitioner is warned not to overreact. After giving another reply the petitioner service is terminated even without holding a proper enquiry, throwing the BBUNL Disciplinary and Appeal Regulations to the wind. There is not even a semblance, whisper or even a faint suggestion of the very basic and essential principles of Natural Justice having been followed. The petitioner was in essence, condemned, thrown out of her job and deprived of her sole, livelihood for an act no employee, in civilized world, could have performed. The employer has acted like a nasty brutish dictator and or a trigger happy custodian of a

dangerous weapon, out hunting the writ petitioner. Malice and mala fides are thus evident on the face of record.

10. The respondent have relied on the decision of the Hon'ble Supreme Court judgment ***Karam Pal v. Union of India, reported in (1985) 2 SCC 457 : 1985 SCC (L&S) 471 at page 463, Para 13*** to argue that the petitioner has not challenged the termination clause in the contract itself. The facts of the case are distinguishable from that of the instant case. The Supreme Court was dealing with a case of recruitment and the instant case is concerned with termination from service without due process of law or following the prescribed rules. The petitioner need not have challenged the terms of her service contract as once the BBUNL Conduct, Discipline and Appeal Regulations came into force the conditions of service of the petitioner would be governed by the same. The purported contract of service of the petitioner cannot survive post the Regulations coming into force. The arguments advanced on behalf of the employer rely upon the initial contract of service to justify its disgraceful conduct that reek of "a hire and fire policy" and evil reign of Henry the VIII. It is essentially to curb this tendency in employers that the Supreme Court in the case of **Central Inland Water Transport Corporation Vs. Brojonath Ganguly (1986) 3 SCC 156**

"98. No apter description of Rule 9(i) can be given than to call it "the Henry VIII clause". It confers absolute and arbitrary power upon the Corporation. It does not even state who on behalf of the Corporation is to exercise that power. It was submitted on behalf of the appellants that it would be the Board of Directors. The impugned letters of termination, however, do not refer to any resolution or decision of the Board and even if they did, it would be irrelevant to the validity of Rule 9(i). There are no guidelines whatever laid down to indicate in what circumstances the power given by

Rule 9(i) is to be exercised by the Corporation. No opportunity whatever of a hearing is at all to be afforded to the permanent employee whose service is being terminated in the exercise of this power. It was urged that the Board of Directors would not exercise this power arbitrarily or capriciously as it consists of responsible and highly placed persons. This submission ignores the fact that however highly placed a person may be, he must necessarily possess human frailties. It also overlooks the well-known saying of Lord Acton, which has now almost become a maxim, in the appendix to his "Historical Essays and Studies", that: "Power tends to corrupt, and absolute power corrupts absolutely." As we have pointed out earlier, the said Rules provide for four different modes in which the services of a permanent employee can be terminated earlier than his attaining the age of superannuation, namely, Rule 9(i), Rule 9(ii), sub-clause (iv) of clause (b) of Rule 36 read with Rule 38 and Rule 37. Under Rule 9(ii) the termination of service is to be on the ground of: "Services no longer required in the interest of the Company." Sub-clause (iv) of clause (b) of Rule 36 read with Rule 38 provides for dismissal on the ground of misconduct. Rule 37 provides for termination of service at any time without any notice if the employee is found guilty of any of the acts mentioned in that rule. Rule 9(i) is the only rule which does not state in what circumstances the power conferred by that rule is to be exercised. Thus, even where the Corporation could proceed under Rule 36 and dismiss an employee on the ground of misconduct after holding a regular disciplinary inquiry, it is free to resort instead to Rule 9(i) in order to avoid the hassle of an inquiry. Rule 9(i) thus confers an absolute, arbitrary and unguided power upon the Corporation. It violates one of the two great rules of natural justice — the audi alteram partem rule. It is not only in cases to which Article 14 applies that the rules of natural justice come into play. As pointed out in *Union of India v. Tulsiram Patel* [(1985) 3 SCC 398 : 1985 SCC (L&S) 672] : (at SCC p. 463, para 72) "The principles of natural justice are not the creation of Article 14. Article 14 is not their begetter but their constitutional guardian." That case has traced in some detail the origin and development of the concept of principles of natural justice and of the audi alteram partem rule (at pp. 463-80). They apply in diverse situations and not only to cases of State action. As pointed out by O. Chinnappa Reddy, J., in *Swadeshi Cotton Mills v. Union of India* [(1981) 1 SCC 664] they are implicit in every decision-making function, whether judicial or quasi-judicial or administrative. Undoubtedly, in certain circumstances the principles of natural justice can be modified and, in exceptional cases, can even be excluded as pointed out in *Tulsiram Patel* case [(1985) 3 SCC 398 : 1985 SCC (L&S) 672] . Rule 9(i),

however, is not covered by any of the situations which would justify the total exclusion of the audi alteram partem rule.”

11. The facts of the **Brojonath Ganguly Case (Supra)** bear a striking resemblance to the instant case. The Hon’ble Supreme Court in the said case narrated the facts at paragraph 11 as follows :-

“11. So far as Ganguly, the first Respondent in Civil Appeal No. 4412 of 1985, is concerned, he was promoted to the post of Manager (Finance) in October 1980 and also acted as General Manager (Finance) from November 1981 to March 1982. On February 16, 1983, a confidential letter was sent to him by the General Manager (Finance), who is the third appellant in Civil Appeal No. 4412 of 1985, to reply within twenty-four hours to the allegation of negligence in the maintenance of provident fund accounts. Ganguly made a representation as also gave a detailed reply to the said show cause notice. Thereafter by a letter dated February 26, 1983, signed by the Chairman-cum-Managing Director of the Corporation, a notice under clause (i) of Rule 9 of the said Rules was given to Ganguly terminating his service with the Corporation with immediate effect. Along with the said letter a cheque for three months’ basic pay and dearness allowance was enclosed.”

12. The respondent next relied on the decision of the Hon’ble Supreme Court judgment **Vivekanand Sethi v. Chairman, J & K Bank Ltd., (2005) 5 SCC 337** : at page 345. The said case was dealing with interpretation of a Bipartite settlement ,abandonment of service, and a claim for voluntary retirement under a scheme of the employer. The said decision has no manner of application as the it is seen in the facts of this case that no part or portion of the service regulations were followed by the employer in terminating the service of the petitioner.

13. On the question whether the Writ court can grant this relief of back wages and the criteria for assessment thereof, reliance was placed on

cases of **Managing Director, U.P. Warehousing Corpn. v. Vijay Narayan Vajpayee, (1980) 3 SCC 459, U.P. State Brassware Corpn. Ltd. v. UdayNarainPandey, (2006) 1 SCC 479 and Bharat Singh v. State of Haryana, (1988) 4 SCC 534 at page 542. The cases of National Board of Examinations v. G. Anand Ramamurthy, reported in (2006) 5 SCC 515 at page 518 at Paragraph 7 Chandigarh Admn. v. Laxman Roller Flour Mills (P) Ltd., (1998) 8 SCC 326 at page 327.**

14. The **Vajpayee decision (Supra)** must be noticed in the light of paragraph 14 thereof, which is set out hereunder.

“14. The appellant is a Corporation constituted under the Agricultural Produce (Development and Warehousing) Corporations Act, 1956 (Central Act 28 of 1956) which was subsequently replaced by Warehousing Corporation Act, 1962 (Central Act 58 of 1962). It is a statutory body wholly controlled and managed by the government. Its status is analogous to that of the corporations which were under consideration in Sukhdev Singh case [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619] . The ratio of Sukhdev Singh case', therefore, squarely applies to the present case. Even if at the time of the dismissal, the statutory regulations had not been framed or had not come into force, then also, the employment of the respondent was public employment and the statutory body, the employer, could not terminate the services of its employee without due enquiry in accordance with the statutory regulations, if any in force, or in the absence of such regulations, in accordance with the rules of natural justice. Such an enquiry into the conduct of a public employee is of a quasi-judicial character. The respondent was employed by the appellant Corporation in exercise of the powers conferred on it by the statute which created it. The appellants' power to dismiss the respondent from service was also derived from the statute. The court would therefore, presume the existence of a duty on the part of the dismissing authority to observe the rules of natural justice, and to act in accordance with the spirit of Regulation 16, which was then on the anvil and came into force shortly after the impugned dismissal. The rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross-examine the witnesses

relied upon by the appellant Corporation and an opportunity to lead evidence in defence of the charge as also a show-cause notice for the proposed punishment. Such an opportunity was denied to the respondent in the instant case. Admittedly, the respondent was not allowed to lead evidence in defence. Further, he was not allowed to cross-examine certain persons whose statements were not recorded by the Enquiry Officer (opposite party 1) in the presence of the respondent. There was controversy on this point. But it was clear to the High Court from the report of enquiry by the opposite party 1 that he relied upon the reports of some persons and the statements of some other persons who were not examined by him. A regular departmental enquiry takes place only after the charge-sheet is drawn up and served upon the delinquent and the latter's explanation is obtained. In the present case, no such enquiry was held and the order of dismissal was passed summarily after perusing the respondents' explanation. The rules of natural justice in this case, were honoured in total breach. The impugned order of dismissal was thus bad in law and had been rightly set aside by the High Court."

It is therefore clear and explicit from the above that the respondents were obliged to hold a regular departmental proceeding to impose any penalty including termination of service against the petitioner.

15. The **Bharat Singh decision (Supra)** was dealing with a Land Acquisition proceeding and the principles to be followed in such cases have no application in the facts of the case. The **Anand Ramamurthy decision (Supra)** was assessing the Legitimate expectation of aspirants in a Super speciality Medical Course and the discretion of the College to defer the examination and hence the observations at paragraph 7 as regards reliefs in writ petitions, have no manner of application here. In the **Chandigarh Administration decision (Supra)**, the Supreme Court was dealing with a case of allotment of an Industrial Land and the cancellation of such allotment when the allottee failed to fulfill the terms and conditions of allotment. The observations of the Supreme Court cannot be applied in the facts of the case.

16. One cannot ignore the dicta of the Supreme Court at paragraph 22, in the case of **Uday Narayan Pandey (Supra)** cited by Mr. Sengupta.

“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.”

17. While it is true that there is no formal prayer for back-wages this court is of the view that the same is an obvious consequence of the main prayer assailing the impugned order of termination of the service of the petitioner. It is equally true that there is no formal averment that the petitioner has been unemployed since after termination. It is however seen that the impugned orders were passed on 8th and 30th of April 2014 and the writ petition was filed on 7th of May 2014. The writ petitioner was 49 years old at that time. The likelihood of the petitioner getting any employment is remote. The petitioner has also averred in C.A.N 7402 of 2019 filed for expediting the hearing of the case, that she was the sole breadwinner of the family and that she is in distress.

18. The facts of the instant case are also different from those in the decisions cited by Mr. Sengupta. It is now a well settled proposition that the ratio of each case must be viewed in the context of its facts. Reference in this regard is made to the decision of the Supreme Court in the case of **Arasmeta Captive Power Co. (P) Ltd. v. Lafarge India (P) Ltd., (2013)**

15 SCC 414. It was held as follows:-

“32. In Ambica Quarry Works v. State of Gujarat [(1987) 1 SCC 213] it has been stated (SCC p. 221, para 18) that the ratio of any decision must be understood in the background of

the facts of that case. Relying on *Quinn v. Leatham* [1901 AC 495 (HL)] it has been held that the case is only an authority for what it actually decides, and not what logically follows from it.

33. Lord Halsbury in *Quinn* [1901 AC 495 (HL)] has ruled thus: (AC p. 506)

“... there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.”

(emphasis supplied)

34. In *Krishena Kumar v. Union of India* [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846] the Constitution Bench, while dealing with the concept of ratio decidendi, has referred to *Caledonian Railway Co. v. Walker's Trustees* [(1882) LR 7 AC 259 : (1881-85) All ER Rep 592 : 46 LT 826 (HL)] and *Quinn* [1901 AC 495 (HL)] and the observations made by Sir Frederick Pollock and thereafter proceeded to state as follows: (*Krishena Kumar* case [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846] , SCC pp. 226-27, para 20)

“20. ... The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or Judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. In the words of Halsbury (4th Edn., Vol. 26, para 573):

‘The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear ... it is not part of a tribunal's duty to spell out

with difficulty a ratio decidendi in order to be bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi.”

(emphasis supplied)

19. Taking a cumulative view of the facts of the instant case and applying the dicta of the decision of the Supreme Court in the **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalay** reported in **(2013) 10 SCC 342, Pr 38 and** particularly 38.5 this court finds complete non compliance of the Service Regulations and a clear suggestion of an attempt to victimize the petitioner. Paragraph 38 is set out.

“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 averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. *The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but 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 victimising 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 finalisation 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 (P) Ltd. v.*

Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] .

38.7. The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* [(2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] 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 [*Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53*] , [*Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443 : 1981 SCC (L&S) 16*] 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.”

20. The aforesaid decision has been cited with approval by the Supreme Court in the case of **Jayantibhai Raojibhai Patel Vs. Municipal Council Narkhed reported in 2019 SCC Online SC 1071**. Paragraphs 11, 12 and 13 are set out hereinbelow.

“11. The Court further clarified that while the payment of full back wages would be the normal rule, there can be a departure from it where necessary circumstances have been established: (*Hindustan Tin Works case [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53]* , SCC p. 86, para 11)

“11. In the very nature of things there cannot be a straitjacket 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 Sharp v. Wakefield* [*Susannah Sharp v. Wakefield, 1891 AC 173 (HL)*]).”

Taking note of the financial problems of the appellant Company, the Court granted compensation to the extent of 75%

of back wages. The principle laid down in *Hindustan Tin Works [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53]* has been followed by other decisions of this Court. [*PGI of Medical Education & Research v. Raj Kumar, (2001) 2 SCC 54 : 2001 SCC (L&S) 365; Indian Railway Construction Co. Ltd. v. Ajay Kumar, (2003) 4 SCC 579 : 2003 SCC (L&S) 528; Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324 : (2014) 2 SCC (L&S) 184*]

12. In *Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443 : 1981 SCC (L&S) 16]*, the termination of the services of the appellants was held to be in contravention of Section 25-F of the Industrial Disputes Act by the Labour Court, but the appellants were denied the payment of back wages. In appeal, a three-Judge Bench of this Court observed: (SCC p. 447, para 6)

“6. ... Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.”

13. In *Deepali Surwase [Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324 : (2014) 2 SCC (L&S) 184]*, the appellant had been employed as a teacher in a primary school run by a trust. The services

of the appellant had been terminated by the management of the school pursuant to an ex-parte inquiry proceeding. The School Tribunal quashed the termination of the appellant's services and issued a direction for the grant of full back wages. In appeal, the High Court affirmed [Kranti Junior Adhyapak Mahavidyalaya v. State of Maharashtra, 2011 SCC OnLine Bom 1296 : (2012) 1 Mah LJ 370] the view of the Tribunal that the termination was illegal, but set aside the direction for grant of back wages. In appeal, a two-Judge Bench of this Court laid down the following principles: (SCC p. 344, para 22)

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. ... The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

(emphasis supplied)

21. The respondents have not attempted demonstrated that they are in any poor financial condition. The relief of back wages even if argued orally by Counsel for the petitioner could be considered. A writ Court under Article 226 of the Constitution of India can definitely mould relief to a petitioner. Even in Paragraph 38.1 of the **Surwase decision (supra)** it was held that in case of wrongful termination, reinstatement with continuity of service and back wages is the normal rule.

22. In summary the reasons for awarding full backwages, applying the principles laid down in the **Surwase decision (supra)** are follows:

- a) The employer BBUNL has acted in gross violation of statutory provisions and is guilty of victimizing the writ petitioner as found in Paragraph 8 and 9 hereinabove.
- b) This Court has found complete non-compliance or any part or portion of disciplinary appeals regulations by the BBUNL while terminating the writ petitioner.
- c) The termination of the petitioner was wrongful and illegal and by denying backwages to the petitioner, a premium would be put on the illegal conduct of BBUNL.
- d) There was no delay or latches on the part of the petitioner as she filed writ petition within a month of the passing of the impugned order of the dismissal.
- e) The pendency of the proceedings in this Court cannot be attributed to the writ petitioner. The petitioner has filed CAN 7402 of 2019 seeking expeditious disposal of the writ petition.
- f) The gross illegality in passing the impugned order is sufficient to warrant payment of full backwages and full service benefits even without actual proof of malice against any individual official of the employer.

g) There is a clear attempt by the BBUNL employer to victimize the petitioner.

23. For the reasons stated hereinabove the arguments advanced by Mr. Sengupta and Mr. Mazumdar cannot be accepted. The impugned orders are quashed and set aside. The writ petitioner who has superannuated during the pendency of the writ petition shall be entitled to full back wages and all benefits from the date of termination i.e. from 30th April, 2014 till superannuation and all retirement benefits and all service benefits as she would get had the impugned orders were never passed.

24. The 3rd sentence at page 27 of the order dated 13.03.2020 shall stand deleted. The writ petition is hereby allowed and disposed of.

25. There shall be no order as to costs.

26. All parties are directed to act on a server copy of this order on usual undertaking.

(Rajasekhar Mantha, J.)

Later:

After pronouncement of order in open Court, the Counsel for the respondent employer prays for stay. The same is considered and refused.

(Rajasekhar Mantha, J.)