

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Before:

**The Hon'ble Justice T. S. Sivagnanam
and**

The Hon'ble Justice Hiranmay Bhattacharyya

FMA 1468 of 2019

With

IA No. CAN 1 of 2019 (Old No. CAN 10740 of 2019)

Sudin Provat Mallick

vs.

First Industrial Tribunal & ors.

With

WPA 5437 of 2015

M/s. Akzo Nobel India Limited

vs.

First Industrial Tribunal & ors.

For the Appellant : Mr. Sudin Provat Mallick
..(appellant in person)

For the Respondent
in FMA 1468 of 2018 : Mr. L. K. Gupta, learned senior counsel
Mr. Ranjay Deadvocates

For the Writ Petitioner
In WPA 5437 of 2015 :Mr. L.K. Gupta
Mr. Ranjay Deadvocates

For the Private
Respondent in
WPA 5437 of 2015 : Mr. Sudin Provat Mallick(in person)

Heard on : 10.03.2022

Judgment on : 04.05.2022

Hiranmay Bhattacharyya, J.:-

1. This appeal arises out of the judgment and order dated August 21, 2019 passed by a learned Single Judge in WP No. 31941 (W) of 2014 and WP no. 5437 (W) of 2015. The dispute raised by Mr. Mallick for terminating his service was referred to the first industrial tribunal, Kolkata (for short “the Tribunal”) being Case no. VIII – 187 of 1999 for adjudicating the following issues :

“1. Whether the termination of service of Shri Sudin Provat Mallick (Staff Code no. 3061) with effect from 23.02.1999 is justified.

2. What relief, if any, is he entitled to?”

3. The learned Tribunal passed an award dated September 24, 2014 directing the management to pay 75% of the back wages from the date of termination till the date of his superannuation after holding the termination of service of Mr. Mallick to be illegal.

4. Being aggrieved by refusal to grant balance 25% of the back wages by the learned Tribunal, Mr. Mallick filed a writ petition being WP. NO. 31941 (W) of 2014 (for short “WP-1”).

5. Challenging the said award of reinstatement with 75% back wages after setting aside the order of termination, the management filed a writ petition being WP no. 5437 (W) of 2015 (for short “WP-2”).

6. Both the writ petitions WP-1 and WP-2 were heard together by the learned Single Judge and WP-1 was dismissed with liberty to the petitioner to file afresh only for the purpose of getting interest on provident fund account. The learned Single Judge adjourned the hearing of WP-2 till the dispute with regard to validity of transfer order is resolved by the competent industrial tribunal. Being aggrieved, Mr. Mallick preferred the instant appeal.

7. By an order dated 09.11.2021 the writ petition filed by the management was directed to be clubbed along with the appeal filed by the workman to enable a comprehensive decision to be taken in both the matters. Thereafter, WP-2 was clubbed along with the appeal and the writ petition as well as the appeals were heard analogously by this Court.

8. Facts which are necessary for the purpose of deciding the appeal and WP-2 are as follows-

9. M/s. Akzo Nobel India Ltd. is the successor of interest of ICI (India) Pvt. Ltd. Mr. Mallick in the claim statement stated that he joined ICI (India) Pvt. Ltd. on 01.03.1975 as C grade clerk as probationer and was subsequently confirmed in service. The management, in order to achieve their ulterior motive, served a vague, illegal and *mala fide* order dated December 29, 1998 transferring him from Kolkata to

Talcher with effect from 6th January, 1999. Though, he was transferred to Talcher but he was directed to report to Sambalpur. In spite of repeated demands the management did not provide him with the address of Talcher. On 03.02.1999 Mr. Mallick's mother expired and he communicated such fact to the management but during his mourning period he received a letter dated 11.02.1999 directing him to join immediately. He requested the management by a letter dated 01.03.1999 to defer his transfer upto 30.04.1999. He, thereafter, received another registered envelop on 04.03.1999 containing letter dated 23.02.1999 and a cheque of Rs. 78024(Rupees seventy eight thousand twenty four). By the said letter dated 23.02.1999 the management informed him that his service has been terminated with immediate effect and his name is being struck off the rolls of the company. He, further, claimed that he was unemployed since after termination and was facing serious financial crisis. He prayed for setting aside of the order of termination and for reinstatement with full back wages along with consequential reliefs.

10.The company filed the written statement stating that after the workman's name have been struck off the rolls of the company, the workman did neither make any demand for justice to the employer claiming reinstatement in service nor back wages nor consequential reliefs. On the contrary, he encashed the cheque of Rs. 78027 (Rupees Seventy eight thousand twenty seven only) being the compensation money and also accepted and appropriated the three month's notice pay remitted to him by money order. It was specifically stated that

since a vast area was developed as a site at Talcher, the workman was asked to report to the Sales Manager so that he could assign the duties to the workman to be performed at Talcher Bulk site. It was further stated therein that the workman by his conduct made it clear that he was in no mood to report to the transferred place of work and he had chosen to unauthorisedly absent himself from the transferred place of work and as such his service was terminated by letter dated 23.02.1999.

11. Heard the learned advocates for the parties and perused the materials placed. The question involved in this appeal is whether Mr. Mallick is entitled to back wages and if so at what rate.

12. M/s. Akzo Nobel India Ltd. (for short "ANI") is the successor in interest of ICI India Private Limited. Mr. Mallick was appointed at ICI India Private Limited. The terms of offer of appointment provides that Mr. Mallick could be transferred from one place to another.

13. By a letter dated 29.12.1998 ICI India Private Limited decided to transfer Mr. Mallick from Kolkata to Talcher site with effect from January 6, 1999. A reminder letter dated February 11, 1999 was issued by ICI India Limited advising Mr. Mallick to report immediately to the concerned person. The company thereafter issued a letter dated February 23, 1999 thereby terminating his employment with the company and his name was also struck off the rolls of the company with immediate effect. An amount was tendered by money order on account of three month's salary in lieu of notice and an account pay

cheque was also enclosed towards compensation. After receiving the letter of termination, Mr. Mallick made a representation by a letter dated March 08, 1999 asking the authority of ICI limited to withdraw the letter of termination and to allow him to remain at Kolkata till 30.04.1999 and after that he would be in a position to report at Sambalpur since it is not possible for him to report at Sambalpur due to his personal/family problems as his mother expired on 06.02.1999. Since the letter of termination was not withdrawn, Mr. Mallick approached the Labour Commissioner raising the dispute under Section 2(A) of the Industrial Dispute Act, 1947 and challenged the termination as illegal, unjust and void. The dispute was referred for determination by the First Industrial Tribunal giving rise to Reference Case No. VIII-187 of 1999.

14. The issue before the Tribunal was whether the termination of service of Mr. Mallick with effect from 23.02.1999 is justified. The learned Tribunal held that the termination of Mr. Mallick vide letter dated 23.02.1999 amounts to retrenchment under Section 25(F) of the Industrial Disputes Act and in view of non-compliance of preconditions of Section 25(F) the said order of termination is void *ab initio*. The learned Tribunal further held that the termination of service was not at all justified and it is illegal in the eye of law as no domestic enquiry was held.

15. Management did not question the award of the learned tribunal in so far as termination was held to be illegal and void either before the learned Single Judge as well as before this Court. The main challenge

to the award at the instance of the management is with regard to the grant of back wages to Mr. Mallick.

16. Mr. Gupta, learned Senior Advocate contended that the principles relating to grant of back wages has undergone a significant change in the last two decades. He contended that back wages is not an automatic or natural consequence of reinstatement. He submitted that in the case of present nature payment of nominal lump sum compensation would suffice and the learned Tribunal erred in awarding back wages. In support of such contention, he placed strong reliance upon the decision of the Hon'ble Supreme Court of India in the case of *J.K. Synthetics Ltd. vs. K.P. Agarwal & Anr.* reported at (2007) 2 SCC 433. In the said reported decision, it was held that where a charge against the employee in respect of a serious misconduct was proved and the labour court felt that the punishment of dismissal was not warranted and therefore imposed a lesser punishment, award of back wages was not warranted.

17. Mr. Gupta contended that the judgment in case of *J.K.Synthetics Ltd. vs. K.P.Agrawal* reported at (2007) 2 SCC 433 is squarely applicable to the facts of the instant case as Mr. Mallick did not join at the transferred place of posting. He submitted that since such fact is an admitted one, and the act of an employee not joining at his transferred place amounts to misconduct, there was no necessity of initiating any disciplinary proceeding in view of the decision of the Hon'ble High Court of Bombay in the case of *Shubhada Phansekar vs. Travel Corp. (India) Ltd.* reported at 2010 LLR 1087.

18.Mr. Mallick, however, placed reliance upon the decision of the Hon'ble Supreme Court of India in the case of *Novartis India Ltd. vs. State of West Bengal and ors.* reported at 2009 LLR 113 to buttress his submission that even when an employee does not join at his transferred place, a disciplinary proceeding was required to be initiated before terminating the service of such employee.

19.In *Shubhada Phansekar* (supra) the workman challenged the transfer order unsuccessfully before the industrial court as well as the high court. Thereafter, the employer asked the employee to join at the transferred place and subsequently a reminder was also issued but the workman did not respond to such communication. On such facts it was held that a departmental enquiry is not necessary. The fact of the case on hand is clearly distinguishable with the facts of the said reported cases and as such *Subhada Phansekar* (supra) has no manner of application in the said case.

20.The Hon'ble Supreme Court in *Novartis* (supra) held that a disciplinary proceeding was required to be initiated even when an employee does not join at his transferred place. It was further held that if an employee is to be dismissed from service on the ground that he had committed a misconduct, he was entitled to an opportunity of hearing in order to give him an opportunity to explain whether there was any compelling reason for not joining at the transferred place. The learned Tribunal held that the order of termination was illegal as no disciplinary proceeding was initiated. Since that part of the order is not under challenge in this appeal as

well as for the reasons indicated hereinbefore, the decision of the Bombay High Court in *Subhada Phansekar* (supra) is not applicable to the facts of the instant case. The learned Tribunal, in our considered view, rightly relied upon the decision in case of *Novartis* (supra)

21. In view of the aforesaid findings, this court is of the considered view that the decision in case of *J.K.Synthetics* (supra) is not applicable to the facts of the case on hand as no disciplinary enquiry was made to prove the alleged misconduct of Mr. Mallick.

22. Mr. Mallick contended that the management acted in gross violation of the statutory provisions as well as the principles of natural justice. He further contended that the management is guilty of victimizing him. He, thus, contended that the learned Tribunal ought to have directed the management to pay full back wages and took aid of the decision of the Hon'ble Supreme Court of India in *Deepali Gundu Surwase vs. Kranti Junior Adhyapak and ors.* reported at 2013 (139) FLR 541.

23. The Hon'ble Supreme Court of India in *Deepali Gundu Surwase* (supra) culled out the following propositions from various judgments with regard to grant of back wages. The Hon'ble Supreme Court held-

“33. The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) 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.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) 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.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal 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 be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give 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.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave

injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.” (emphasis supplied)

24. Thus, in case of wrongful termination of service reinstatement with continuity of service and back wages is the normal rule. However, the adjudicating authority or the Court while deciding the issue of back wages may take into consideration the length of service of employee/workman, the nature of misconduct, if any found proved against the employee/workman, the financial condition of the employer and other similar factors. An employee in order to get back wages is required to plead or at least make a statement before the adjudicating authority or the court of first instance that he 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 lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he was drawing prior to the termination of service.

25. Mr. Gupta, learned Senior advocate for the management relied upon the judgment of the Hon'ble Supreme Court in the case of *Management of Regional Chief Engineer PHED, Ranchi* and submitted that the judgment of the Hon'ble Supreme Court in the case of *Deepali Gundu Surwase* (supra) need not be followed in the instant case as in *Deepali Gundu Surwase's* case relief was granted to the concerned workers on the special facts of that case.

26. In *Management of Regional Chief Engineer P H E D Ranchi* (supra), the Hon'ble Supreme Court directed the employer to pay 50% of the total back wages by modifying the direction of the Courts below awarding full back wages as the Hon'ble Supreme Court was of the view that the High Court did not apply the ratio of the decision in the case of *Deepali Gundu Surwase* (supra) to the facts of the case properly. Thus, this court is unable to accept the submission of Mr. Gupta that *Deepali Gundu Surwase* (supra) need not be followed in the case on hand.

27. Mr. Mallick relied upon the various judgments of the Hon'ble Supreme Court in the case of *D.K. Yadav vs. J.M.K. Industries Ltd.* reported at (1993)3 SCC 259, *ECIL, Hyderabad & Ors. vs. B. Karunakar & Ors.* reported at (1993) 4 SCC 727 in support of his

contention that before terminating the service of an employee/workman a reasonable opportunity to put forth his case is to be given and domestic enquiry is to be conducted applying the principles of natural justice. He also referred to a decision of the Hon'ble Supreme Court in the case of *S.L. Kapoor vs. Jagmohan and ors.* reported at AIR 1981 SC 136 and contended that merely because facts are admitted it does not follow that the principles of natural justice should not be observed. However, this court does not intend to deal with the decisions cited by Mr. Mallick of these issues as the learned Tribunal already held the termination to be illegal for violation of the principles of natural justice and such part of the award of the Tribunal under challenged by the management either in this appeal or in the writ petition.

28. Mr. Mallick contended that since the management acted in gross violation of the statutory provisions and the principles of natural justice by terminating his service without holding any domestic enquiry, in view of *Deepali Gundu Surwase* (supra) he is entitled to full back wages. In *Deepali Gundu Surwase* (supra) the learned Tribunal held that the action of the management in terminating the service of the employee to be wholly arbitrary and vitiated due to the violation of the principles of natural justice and further found that the allegations levelled against the appellant were frivolous. The Tribunal after taking cognizance of the statements made by the employee that she was not gainfully employed anywhere and the fact that the management had not controverted the same directed her

reinstatement with full back wages. The award of back wages was set aside by the High Court which was ultimately set aside by the Hon'ble Supreme Court by directing that the management shall pay full back wages.

29. From the propositions culled out by the Hon'ble Supreme Court in *Deepali Gundu Surwase* (supra) this court is of the considered view that since the service of Mr. Mallick was terminated wrongfully, he would be entitled to back wages.

30. It is to be now decided whether Mr. Mallick is entitled to full back wages. In *Deepali Gundu Surwase* (supra) it was held that the rule that in case of wrongful termination of service normally there should be reinstatement with continuity of service or back wages is subject to a rider that the adjudicating authority while deciding the issue of back wages may take into consideration the length of service of employee/ workman, the nature of misconduct if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

31. It is well settled that amongst various factors, conduct of the workman also has an important role for determination of the back wages to be paid. In the case on hand transfer is an incident of service. It is well settled that in such case, an employee has no legal right to be posted at any particular place. If an employee fails to join at the transferred place, he commits a misconduct. It is also well settled

that the conduct of an employee in a transfer case is material as he cannot get a premium for his disobedience.

32. The Learned Tribunal, held that the ground assigned by Sri Mallick to defer his joining at the transferred place on account of non furnishing the particulars of the address to be a lame excuse. Tribunal drew adverse inference against Mr. Mallick for not seeking extension of his joining time by straight away disclosing the factum of sufferance of his mother from cancer instead of taking such lame excuse. Tribunal also took note of the conduct of Mr. Mallick in writing a letter dated 12.03.99 to the management challenging only the termination without making any challenge as to the transfer order. Before the Labour Commissioner also, Mr. Mailick raised a dispute only with regard to termination and left the dispute regarding transfer for the Union to agitate. Tribunal also took note of the fact that the transfer of Mr. Mallick is the subject matter of the subsequent reference being Case no. VIII-1/2003 which is still pending before the Tribunal. Though Mr. Mallick claims that the said reference case is at the instance of the Union but the fact remains that the subject matter of the reference is the transfer of Mr. Mallick. Learned Tribunal also took note of the fact that Mr. Mallick received retrenchment compensation to the tune of Rs. 78,024/- in addition notice pay for almost three months pay although one month's notice pay was required.

33. In the instant case Mr. Mallick in the written statement has specifically stated that since termination he remained unemployed and is facing serious financial crisis and is enable to survive with his

family. He also prayed for full back wages along with consequential benefits. In his evidence he also stated that he was not gainfully employed anywhere after termination from service. Thus, Mr. Mallick discharged his onus of proving that he was not gainfully employed anywhere after termination from service and the onus thus, shifted upon the management to prove that Mr. Mallick was gainfully employed and was getting the same or substantially similar emoluments. In the instant case the management failed to prove that Mr. Mallick was gainfully employed. Thus, it cannot be said that Mr. Mallick is not entitled to back wages as contended by the learned senior counsel for the management.

34. The Advanced Law Lexicon defines the word “conduct” to cover both acts and omissions. In cases in which a man is able to show those conduct where in the form of action or of inaction was involuntary, he must not be held liable for any harmful result. In the instant case Mr. Mallick took a conscious decision not to join at the transferred place. Such action cannot be said to be an involuntary one for the court to hold that he must not be held responsible for such decision.

35. The finding of facts recorded by the learned Tribunal cannot be said to be contrary to the materials on record as rightly observed by the learned Single Judge in the order impugned. The Hon’ble Supreme Court in the case of *Devinder Singh vs. Municipal Council, Sanaur* (Civil Appeal no. 3190 of 2011, passed on 11.04.2022) reiterated the principles laid down in *Syed Yakoob vs. K.S. Radhakrishnan & ors.* reported at 1964 AIR 477 and *Surya Dev Rai vs. Ram Chander Rai &*

Ors. reported at (2003) 6 SCC 675. The Hon'ble Supreme Court held that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. The finding of fact recorded by the Tribunal in the instant case cannot be said to be based on no evidence. It is also not a case that the Tribunal had refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence. The Tribunal after taking into consideration the materials on record and after applying the principles laid down by the Hon'ble Supreme Court for awarding back wages passed an award granting 75% of the back wages to Mr. Mallick. The learned Single Judge while exercising its powers of judicial review rightly refused to interfere with such findings of fact returned by the learned Tribunal.

36. By drawing of inspiration from an observation in *J.K.Synthetics* (supra), Mr. Gupta submitted that award of back wages to Mr. Mallick would amount to rewarding him for the period when he did not render his services for such period. The observation in *J.K.Synthetics* (supra) that on reinstatement the employee/workman cannot claim continuity of service as all right was held to be not a good law by the Hon'ble Supreme Court in *Deepali Gundu Surwase* (supra) as the same was contrary to the judgments of three judge benches of the Hon'ble Supreme Court. Thus, for the reasons as indicated hereinbefore as well as on this ground also this court is of the considered view that the decision in case of *J.K.Synthetics* (supra) cannot be applied in this

case. For the above reasons this court is unable to accept the contention of Mr. Gupta that Mr. Mallick is not entitled to back wages.

37. Mr. Gupta also relied upon the decision of the Gujarat High Court in the case of *Gujarat State Road Transport Corporation vs. Dawoodbhai I Ghanchi* reported at 2012 LLR 200 in support of his contention that wages need not be granted in case of reinstatement. The said decision is not applicable to the facts of the case on hand as in the decision of the Hon'ble Gujarat High Court, there was nothing on record to establish that the workman has led any evidence with regard to unemployment.

38. Let us now deal with the other judgments cited by the parties.

39. In *Madhya Bharat Gramin Bank vs. Panchamlal Yadav* reported at 2021 LLR 681 the workman did not attain the age of superannuation and it was submitted on behalf of the workman that he is entitled to either reinstatement or compensation. On such facts the Hon'ble Supreme Court of India directed the employer bank to pay a lump sum compensation. The said judgment is distinguishable on the facts of the instant case and as such the same do not have any manner of application to the case on hand.

40. In *Collector Singh vs. L.M.L Ltd. Kanpur* reported at 2014(12) Scale 616 a departmental enquiry was held and the workman was found to be guilty of misconduct and he was accordingly dismissed from service of the company. The Hon'ble Supreme Court after taking into consideration the nature of misconduct proved at the enquiry set aside

the punishment of dismissal from service as the same appeared to be harsh and disproportionate. The Hon'ble Supreme Court held that in ordinary course the court would either order reinstatement modifying the punishment or remit the matter back to the disciplinary authority for passing fresh order of punishment but taking into consideration the length of service of the appellant in the establishment and his deprivation of the job over the years and his gainful employment over the years elsewhere, the Hon'ble Supreme Court held that lump sum amount of compensation would meet the ends of justice in lieu of reinstatement, back wages, gratuity etc. In the instant case no domestic enquiry was held. The respondent also could not prove that Mr. Mallick was gainfully employed otherwise since after his termination. Thus, the said judgment has no manner of application to the facts of this case.

41. Moreover, the observation made in *J.K. Synthetics Ltd.* that on reinstatement the employee/workman cannot claim continuity of service as of right was held to be not a good law by the Hon'ble Supreme Court in *Deepali Gundu Surwase* (supra) as the same is contrary to the ratio of the judgments of three judge bench of the Hon'ble Supreme Court.

42. In *Om Pal Singh vs. Disciplinary Authority* reported at 2020(2) Scale 58 the issue was whether the workman was entitled to payment of salary for the period of suspension. In that case the delinquent was not exonerated of the charge but the punishment was reduced from dismissal to reduction in pay. The Hon'ble Supreme Court on such

facts and applying the ratio of the judgment in the case of *J.K. Synthetics Ltd.* (supra) held that if reinstatement was 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. Since such observation of the Hon'ble Supreme Court in *J.K. Synthetic* (supra) was held to be not a good law in *Deepali Gundu Surwase*, the Judgment of the Hon'ble Supreme Court in the case of *Om Pal Singh* (supra) cannot be applied in the instant case.

43. The judgment of the Hon'ble Supreme Court dated 11.01.2016 in Special Leave to Appeal(C) No. 29125 of 2008 (*M/s. Sciemed Overseas Inc. vs. BOC India Limited & ors.*) was pressed into service by Mr. Mallick in support of his contention that filing of a false affidavit should be effectively clubbed with a strong note. The said decision of no manner of assistance for deciding the issue involved in the instant appeal.

44. There is also no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in the judgment dated 28.01.2002 in Appeal (Civil) 607 of 2002 (*Haryana Financial Corporation & Anr. vs. M/s. Jagdamba Oil Mills & Anr.*) wherein it was held that one additional or different fact may make a world of confidence between conclusions in two cases and it is not appropriate to dispose of cases by blindly placing reliance on a decision. The said judgment is of no assistance to the appellant in the instant case.

45. By placing reliance upon the judgment of the Hon'ble Supreme Court in the case of *Shalini Shyam Shetty and another vs. Rajendra Shankar Patil* reported at (2010) 8 SCC 329 Mr. Mallick contended that the High Court while exercising its power under Article 226 will follow the principles laid down by the Hon'ble Supreme Court as well as the High Courts. However, we are satisfied that the learned Single Judge while exercising its power under Article 226 followed the principles laid down by the Hon'ble Supreme Court and the High Courts in this regard.

46. The decision of the Hon'ble Supreme Court in the case of *Oshiar Prasad and ors. vs. Employers in Relation to Management of Sudamdih Coal Washery of M/s. Bharat Coking Coal Limited, Dhanbad, Jharkhand* reported at (2015) 4 SCC 71 was pressed into service by the appellant in support of his contention that the tribunal while answering the reference as to confine its enquiry to the question(s) referred and as no jurisdiction to transfer beyond the question(s) or/and the terms of the reference while answering the reference. In the case on hand the tribunal while answering the reference as confined its enquiry to the question(s) referred to it. Thus, the said decision is of no assistance to the petitioner in the instant appeal.

47. In *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota vs. Mohan Lal* reported at 2013 LLR 1009 the Hon'ble Supreme Court while dealing with the case of a workman working as a work charge employee who worked for a total period of 286 days during his employment and the service of such workman

was termination, the Hon'ble Supreme Court held that interest of justice will be subserved if any lieu of reinstatement a lump sum compensation is paid by the employer to the workman. The said decision is distinguishable on facts and as such the same has no manner of application to the case on hand.

48. Learned Tribunal held that the order of termination is illegal and such finding was not challenged by the management in its writ petition. This court has already held that grant of 75% back wages to Mr. Mallick in the facts and circumstances of the case should not be interfered with.

49. The subject matter of the pending reference before the tribunal is the transfer of Mr. Mallick by the management. Though it is contended by Mr. Mallick that the same is at the instance of the Union yet no useful purpose will be served in keeping the same pending as the same has now become academic in view of the fact that the dispute between Mr. Mallick and the management has been finally decided by the Tribunal and this court does not find any reason to interfere with such finding. The Learned Single Judge, in our considered view, was not justified in keeping WP-2 pending till the reference at the instance of the Union is disposed of by the Tribunal.

50. For the reasons as aforesaid this court unable to accept the contention of Mr. Gupta that Mr. Mallick is not entitled to back wages. Accordingly, W.P. No. 5437(W) of 2015 is liable to be dismissed.

51. In course of his submission Mr. Mallick drew the attention of the court to the order dated January 27, 2016 passed in MAT 1884 of 2015 and submitted that by the said order liberty was granted to the appellant to raise the issue with regard to non-payment of his dues. He further submitted that learned single judge while passing the order impugned failed to take note of the directions contained in the said order. He submitted that a substantial sum of money on account of interest on provident fund amount is due to the appellant and a direction is to be passed upon the respondent company to pay such amount. According to him a sum of Rs. 5, 76, 718 was due as on September, 2015 and the said amount has also increased in the meantime.

52. A learned Single judge by an order dated 10.12.2014 passed an interim direction upon the respondent authority to release provident fund dues in favour of Mr. Mallick within a specified time. Since such direction was not complied with a contempt application was filed being WPCRC 316 (W) of 2015 and on such application an order was passed by learned single judge on 28.09.2015 directing the company to pay simple interest at the rate of 8% per annum. Mr. Mallick preferred an appeal being MAT 1884 of 2015 contending that as per the statute he is entitled to higher rate of interest than 8%. The Hon'ble Division Bench by an order dated 27.01.2016 reserved the liberty to Mr. Mallick to seek such enhancement of interest at the time of final consideration of the writ petition on merits.

53. The grievances of Mr. Mallick is that in spite of the fact that he raised such issue before the learned single judge at the time of hearing the writ petition but the learned single judge by the order impugned instead of deciding the said issue observed that he shall be entitled to file afresh only for the purpose of getting interest on provident fund amount if so advised, in accordance with law if it is available.

54. In course of hearing of the appeal Mr. Mallick filed a statement of interest on accumulated provident fund of Rs. 4,29,900/- (Rupees four lakh twenty nine thousand nine hundred) lying to his credit as per the rates declared by the government from August, 2000 to September, 2015. It appears from the said statement that the sum of Rs. 5, 76, 718/- (Rupees five lakh seventy six thousand seven hundred eighteen) is lying due and payable and, according to him, such calculation was made on the basis of rate of interest declared by the Government of India from time to time. Apart from the said statement no other material was placed by the parties at the time of hearing of this appeal for this court to arrive at a finding as to the amount which is still due to the petitioner on account of interest on accumulated provident fund. The provident fund authority is also not a party to this proceeding as this proceeding arises out of an award passed by the Tribunal for adjudication of the issue referred before it as to whether the termination of service of Mr. Mallick was justified and other reliefs which he is entitled. The issue relating to interest on accumulated provident fund was not raised before the Tribunal and

thus, there could not have been any adjudication of such issue by the Tribunal. A writ court exercising powers under judicial review is to consider only whether the learned Tribunal was justified in passing the award. However, in view of the liberty granted to Mr. Mallick by a co-ordinate bench to raise such issue, this court made an endeavour to decide the same but is unable to render any conclusive finding with regard to Mr. Mallick's entitlement on account of interest on accumulated provident fund due to lack of materials in this regard. In view thereof the impugned order passed by the learned single judge in so far as liberty was granted to Mr. Mallick to file a fresh writ petition for the purpose of getting interest on provident fund amount is required to be modified.

55. This Court is of the considered view that the interest of justice would be subserved if liberty is granted to Mr. Mallick to make a detail representation before the appropriate provident fund authority with regard to his claim for interest on accumulated provident fund.

56. For the reasons as aforesaid, award of the learned Tribunal dated 24.09.2014 directing the management to pay back wages is not interfered with by this Court. Consequently, WP No. 5437(W) of 2015 also stands dismissed. The order of the learned Single Judge granting liberty to the appellant herein to file a fresh writ petition for interest on provident fund is modified by granting liberty to Mr. Mallick to make a detailed representation before the appropriate provident fund authority with regard to his claim for interest on accumulated provident fund. If such representation is made before

the appropriate authority, the said authority shall consider the representation of the petitioner and dispose of the same by passing a reasoned order as expeditiously as possible but positively within a period of four weeks from the date of submission of such representation after giving an opportunity of hearing to the petitioner and the management. The pending reference being Case No. VIII-1/2003 also stands disposed of in terms of this order. The part of the impugned order passed by the learned Single Judge granting liberty to Mr. Mallick to renew his prayer for full back wages after the Tribunal takes a decision on the reference case arising out of the transfer order also stands set aside. The order of the learned Single Judge dated 21.08.2019 is modified only to the extent as indicated hereinbefore. The appeal along with the connected application accordingly stand disposed of. There shall be, however, no order as to costs.

57. Registry is directed to communicate this order to the learned Tribunal forthwith to enable the Tribunal to take appropriate steps in Reference Case No. VIII-1/2003.

58. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis.

I agree.

(T.S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)