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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2022

PRONOUNCED ON : 14.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.18785 & 32959 of 2015

In W.P.No.18785 of 2015

M.Pandiyan

... Petitioner

Vs.

1. The Presiding Officer,
Central Government Industrial Tribunal
-cum-Labour Court,
I Floor, B Wing, 26, Haddows Road,
Shastri Bhavan, Chennai-600 006.

2. The Post Master General,
Chennai City Region-Tamil Nadu,
Chennai-600 002.

3. The Director of Postal Services,
Chennai City Region-Tamil Nadu,
Chennai-600 002.

4. The Superintendent of Post Offices,
Vellore Division,
Vellore-632 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the concerned records from the first respondent, quash the award dated 31.03.2015 passed by the first respondent in I.D.No.63 of 2014 insofar as denying 75% of the back wages and consequently direct the respondent No.2 to 4 to give denied 75% of the wages to the petitioner along with interest at the rate of 18% per annum, award cost.

In W.P.No.32959 of 2015

1. The Post Master General,
Chennai City Region-Tamil Nadu,
Chennai-600 002.



2. The Director of Postal Services,
Chennai City Region-Tamil Nadu,
Chennai-600 002.

3. The Superintendent of Post Offices,
Vellore Division,
Vellore-632 001.

... Petitioners

Vs.

1. M.Pandiyan

2. The Presiding Officer,
Central Government Industrial Tribunal
-cum-Labour Court,
I Floor, B Wing, 26, Haddows Road,
Shastri Bhavan,
Chennai-600 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the second respondent in I.D.No.63 of 2014 dated 31.03.2015 and to quash the same insofar as the petitioners are concerned.

For Petitioner : Ms.Kavya
in W.P.18785/2015 & for Mr.Balan Haridas

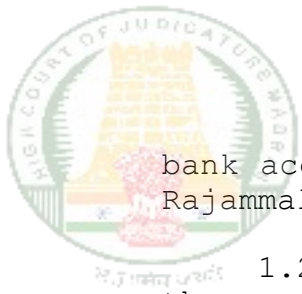
For Respondent-1
in W.P.32959/2015
For Respondent : Mr.V.Balasubramanian,
Nos.2 to 4 Senior Panel counsel
in W.P.18785/2015 &
For Petitioner
in W.P.No.32959/2015

R1(in W.P.No.18785/2015) : Tribunal

R2(in W.P.No.32959/2015) : Tribunal

C O M M O N O R D E R

The workman herein, who was employed as a Branch Post Master at Marudhavallipalayam Branch Post Office, Vellore Postal Divison, was served with a charge-memo dated 19.03.2003 by the Superintendent of Post Offices (Management), alleging that he had failed to record the deposits collected from the savings



bank account of two depositors, namely, Smt. Thangammal and Smt. Rajammal. On enquiry, both the charges were held as not proved.

1.2. However, the Management had differed from the views of the enquiry officer and by an order dated 31.10.2011, imposed the punishment of removal from service on the workman.

1.3. In the Industrial Dispute raised by the workman before the Central Government Industrial Tribunal-cum-Labour Court [CGIT], Chennai, the Management was directed to reinstate the workman into service with 25% back wages, continuity of service and other attendant benefits, through its Award dated 31.03.2015.

1.4. Aggrieved against the same, the Management had preferred the present Writ Petition in W.P.No.32959 of 2015 and challenging the denial of 75% of the back wages, the workman had filed the Writ Petition in W.P.No.18785 of 2015. Both the Writ Petitions are disposed of through this common order.

2. Heard the learned counsel for the parties.

3. Mr. V.Balasubramanian, learned Senior Panel counsel for the Management contended that the stand of proof required in the departmental proceedings is on a preponderance of probability of facts and thus drew attention of this Court to the evidences let in the departmental enquiry which were relied upon by the CGIT and submitted that the evidence of these witnesses establishes the charges, which aspect was not properly appreciated by the CGIT.

4. On the other hand, Ms.Kaviya, learned counsel appearing for the workman submitted that re-appreciation of the evidences before the enquiry officer cannot be done in a Writ Petition. She further submitted that the CGIT had not assigned any reasons for denying 75% of the back wages and therefore he is entitled for full back wages. In support of her contentions, she placed reliance on the decision of a Hon'ble Division Bench in the case of The Management of Addison and Company Ltd., Chennai V. The Presiding Officer, II Additional Labour Court, Chennai and another passed in W.A.No.1946 of 2019.

5. I have given careful consideration to the submissions made by the respective counsels.

6. The entire submission of the learned Senior Panel counsel for the Management is to the effect that the CGIT had not properly appreciated the evidences let in before the enquiry officer, particularly, the oral statements of the account holders namely, Smt.Thangammal and Smt. Rajammal. The scope of



interference to an Award of the CGIT or a Labour Court has been consistently dealt with in various judgments of this Court, including that of the Hon'ble Supreme Court. In the case of The Management, M/s. British Airways, Haryana & Another V. The Presiding Officer, The Central Government Industrial Tribunal-cum-Labour Court, Chennai & Another passed in W.P.No.13603 of 2016 & batch etc., dated 08.02.2022, I had an occasion to consider such a scope, by following the decisions of the Hon'ble Supreme Court. The relevant portion of the order reads as follows:-

"6. It is the settled proposition of law that the scope of interference to an award of the Industrial Tribunal or Labour Court will not be normally interfered by the High Court exercising its powers under Article 226 of the Constitution of India, but for certain exceptions like correcting errors of jurisdiction or extending the jurisdiction or violation of Principles of Natural Justice or Award based on "no evidence", etc. While demarcating such exceptions, it is also been held that the Tribunal or Labour Court cannot reopen or question the appreciation of evidence in Writ Proceedings.

7. In Syed Yakoob V. K.S. Radhakrishnan and Others reported in AIR 1964 SC 477, such a proposition was held in the following manner:-

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the



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Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of tact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was 'insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque(1), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam(2), and Kaushalya Devi v. Bachittar Singh (3)."

8. A similar view was taken in the case of Indian Overseas Bank V. Indian Overseas Bank Staff Canteen Workers' Union and Another reported in 2000 (4) SCC 245, wherein it has held as follows:-

"17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally re-appreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful,



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though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a Judicial Officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly be taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned Single Judge and in ordering restoration of the Award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned Single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the Writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of re-assessing the evidence and arriving at findings of ones own, altogether giving a complete go-bye even to the facts specifically found by the Tribunal below."

Thus, in accordance with the aforesaid decisions, this Court exercising its powers under Article 226 of the Constitution of India, will be not in a position to re-appreciate the evidences let in before the CGIT for the purpose of interfering with the Award and none of the exceptions for interference on the findings of CGIT, have been raised as a ground by the Management.

7. This apart, the CGIT had placed reliance on the oral evidences of Smt. Thangammal and Smt. Rajammal and categorically held that such oral evidences were not recorded in the enquiry and further pointed out that, both these witnesses had deposed



that they did not know the contents of their statements or the person, who had recorded the statements. It is in this background, the CGIT had held that since Rule 14 of Central Civil Services (Classification, Control & Appeal) Rules, 1965 [CCS (CCA) Rules] of the Central Government mandates that, recording of evidence of the witnesses should be read over to the witnesses at the oral enquiry, which was not done, the proceedings itself was vitiated and not in conformity with the Rule 14 of CCS (CCA) Rules.

8. While that being so, it cannot be said that the Award was passed on the "no evidence". Since the only ground raised by the Management was by way of re-appreciation of the evidences in the enquiry, which is impermissible, in view of the aforesaid judgment in M/s.British Airways's case (supra), there are no merits in the contention of the Management.

9. Insofar as the Writ Petition filed by the workman challenging the denial of 75% of the back wages is concerned, the law has been settled by the Hon'ble Supreme Court in Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D. ED.) and Others reported in 2013 (10) SCC 324, to the effect that, in all cases of unlawful termination and consequent reinstatement, the concerned workman would be entitled for full back wages, which has been followed by this Court in the case of B.Palaniswamy Vs. The Presiding Officer, I Additional Labour Court, City Civil Court Campus, High Court Buildings, Chennai-600 104 and another in W.P.No.11094 of 2017 dated 24.01.2022, holding that in cases of wrongful termination, reinstatement with continuity of service and "full back wages" is the normal rule. The relevant portions of the order reads as follows:-

"6. In the case of Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others reported in 2013 (10) SCC 324, the Hon'ble Supreme Court had held that in cases of wrongful termination, reinstatement with continuity of service and back wages is the normal rule. The relevant portion of the order reads thus:-

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

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



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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."

7. Likewise, in Raj Kumar Dixit Vs. Vijay Kumar Gauri Shanker, Kanpur Nagar reported in 2015 (9) SCC 345, the Hon'ble Supreme Court had held that, once the termination is held to be bad in law, compensation in lieu of reinstatement is impermissible and that such a workman will be entitled for all the benefits. The relevant portion of the order reads as follows:-

19. Awarding compensation to an amount of Rs. 2 lakhs to the workman by the High Court in lieu of reinstatement of the appellant-workman along with 50% back wages is once again contrary to the well settled principles of law as has been laid down by this Court in a catena of cases, particularly, the case of Punjab Land Development and Reclamation Corporation. Ltd. v. Presiding Officer, Labour Court, [1] wherein the Constitution Bench held that the order of termination simpliciter has to be held bad in law for non-compliance of the mandatory requirements provided under the Act and further held that the order of termination will be rendered void-ab-initio in law and therefore, the workman is entitled for all benefits for which he is legally entitled to in law.

20. The High Court has exceeded in its jurisdiction in setting aside the Award passed by the Labour Court in awarding reinstatement of the appellant-workman in his post along with 50% back wages which is erroneous in law as the High Court has not noticed the fact that the appropriate Government has referred the dispute to the Labour Court for its adjudication on the points of dispute referred to it. Since, there was non-compliance of the mandatory requirements as provided under the provisions of the Act by the respondent-firm at the time of passing an order of termination against the appellant-



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workman, therefore, the same has been held to be bad in law and as such it should have awarded full back wages to the workman from the date of termination till the date of passing the Award unless the employer proves that the workman was gainfully employed during the aforesaid period which fact is neither pleaded nor proved before the Labour Court.

8. If and when the aforesaid principles laid down by the Hon'ble Supreme Court is applied to the facts in the present case, the reasoning adopted by the Labour Court in denying reinstatement and ordering for compensation, particularly, when it had categorically established and found that the Management had not proved the misconduct of the petitioner, cannot be sustained. Rather, the appropriate award ought to have been for reinstatement with all service and monetary benefits."

10. The learned counsel for the workman had also placed reliance on the judgment of Addison and Company's case (supra), in which the Hon'ble Division Bench had also relied on the decision of the Hon'ble Supreme Court in Deepali Gundu Surwase's case (supra) and held that in case of wrongful termination, the concerned workman would be entitled for full back wages. The relevant portion of the order reads as follows:-

"9. There is no straight jacket formula for awarding the relief of back wages. If a person has been wrongfully terminated and prevented to work and he does not get any other employment, then normal rule is payment of full back wages. Unless there are circumstances which would compel the labour Court to deviate from the normal rule. The idea of reinstatement in case of wrongful/illegal termination is to restore an employee to the position which he held before dismissal. This implies that the Courts must ensure that employee must be restored to the same position and this can be done only if the internal back wages are paid provided the employee was not gainfully employed elsewhere whereby he was able to sustain himself and was not really affected monetarily by the termination of service. Courts never intended to give double advantage to an employee which would enable him to earn from two sources. The learned Single



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Judge, has placed reliance on the judgment of the Hon'ble Supreme Court in DEEPALI GUNDU SURWASE V. KRANTI JUNIOR ADHYAPAK MAHAVIDYALAYA, (2013) 10 SCC 324, wherein the Hon'ble Supreme Court has laid down the parameters of granting backwages. Paragraph 22 and 38 which are relevant read as under:-

"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. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. 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



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and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

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



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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.



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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 herein above and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

10. The judgment of the Hon'ble Supreme Court made in DEEPALI GUNDU SURWASE V. KRANTI JUNIOR ADHYAPAK MAHAVIDYALAYA, (2013) 10 SCC 324, has been quoted with approval in a subsequent judgment of the Hon'ble Supreme Court in JASMER SINGH Vs. STATE OF HARYANA AND ANOTHER (2015) 4 SUPREME COURT CASES - 458."

Thus, this Court is of the affirmed view that when the termination itself, has been held to be illegal by the CGIT, the workman would be entitled for full back wages, while awarding reinstatement.



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11. In the light of the above discussions, the following order is passed:-

i) the Writ Petition filed by the Management in W.P.No.32959 of 2015 stands dismissed;

ii) the Award of the CGIT dated 31.03.2015, insofar as it orders 25% of the back wages, is modified into one of "full back wages". All other observations and findings of the CGIT in the Award, are confirmed and the Writ Petition filed by the workman in W.P.No.18785 of 2015, stands allowed; and

iii) the Superintendent of Post Office, Vellore Division shall pass appropriate orders, reinstating the workman back into services, together with full back wages, continuity of service and all other service and monetary benefits, within a period of four weeks from the date of receipt of a copy of this order. There shall be no orders as to costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Presiding Officer,
Central Government Industrial Tribunal
-cum-Labour Court,
I Floor, B Wing, 26, Haddows Road,
Shastri Bhavan, Chennai-600 006.
2. The Post Master General,
Chennai City Region-Tamil Nadu,
Chennai-600 002.
3. The Director of Postal Services,
Chennai City Region-Tamil Nadu,
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4. The Superintendent of Post Offices,
Vellore Division,
Vellore-632 001.

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+4ccs to Mr.V.Balasubramanian, Advocate, S.R.No.9084 & 9085

+1cc to Mr.Balan Haridas, Advocate, S.R.No.9417

W.P.Nos.18785 & 32959 of 2015

RSV(CO)
SU(23/02/2022)