

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.213

Case No. : LPA No.1839 of 2019

Date of Decision : December 21, 2022

Tarsem Singh (since deceased
through his LRs) Appellants
vs.

Shiromani Gurudwara Prabhandak
Committee and another Respondents

Case No. : LPA No.2055 of 2019

Date of Decision : December 21, 2022

Shiromani Gurudwara Prabhandak
Committee and another Appellants
vs.

Tarsem Singh Respondent

CORAM : HON'BLE MR. JUSTICE G. S. SANDHAWALIA.

HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Kapil Kakkar, Advocate, for the appellants
in LPA-1839-2019 and for the respondent in LPA-2055-2019.

Mr. Mrigank Sharma, Advocate, for the appellants
in LPA-2055-2019 and for the respondents in LPA-1839-2019.

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GURBIR SINGH, J. :

Vide this common order, two appeals i.e. **LPA No.1839 of 2019** and **LPA No. 2055 of 2019** shall be decided as both these appeals have been filed against the judgment dated 03.05.2019, passed in **CWP-58-2009 (O&M)**, by learned Single Judge of this Court, whereby order dated 05.12.2008 was set aside and the delinquent official was directed to be reinstated without any back wages.

Out of these two appeals, one appeal has been filed by Tarsem Singh (since deceased and presently being represented through his LRs) (hereinafter referred to as – the delinquent employee) and the other one has been filed by the Shiromani Gurudwara Prabhandak Committee, the employer (hereinafter referred to as – the Committee).

We have heard learned counsel for both the parties and perused the case files.

The delinquent employee was working as a Store Incharge at Gurudwara Shri Amb Sahib, Mohali. The Store was got checked by the Flying Squad on 30.10.2006. Some items were found in excess and same were not entered into the Stock Register. On the basis of report of Flying Squad, the delinquent employee was placed under suspension vide order dated 24.11.2006 and he was reinstated in service on 09.02.2007.

The delinquent employee was issued charge-sheet vide letter dated 02.01.2008 to the effect that 270 kg of refined oil, in excess of quantity recorded in the register, was found in the Store, on surprise checking by the Flying Squad. The delinquent employee filed reply to the charge-sheet. Vide order dated 05.12.2008, he was dismissed from service.

Faced with this situation, he approached the Court by way of Civil Writ Petition, which was decided on 03.05.2019, whereby the order dated 05.12.2008 was set aside and the Committee was directed to reinstate the delinquent employee without any back wages. It was further directed that he would be entitled to continuity in service without any pecuniary benefits.

Learned counsel appearing for the Committee has argued that the delinquent employee was a habitual offender. He was initially appointed on 23.02.1991 at Gurudwara Keshgarh Sahib, Anandpur Sahib, where complaints were received against him. After conducting inquiry, he was warned and then transferred to Sri Darbar Sahib, Amritsar on 04.11.1996 but he kept on with his delinquent behaviour of drinking liquor, adultery and preparing forged bills. Resultantly, he was terminated vide orders dated 20.05.1997. Thereafter, upon his apology and representation, while giving him a sympathetic hearing, he was given fresh appointment on 23.03.2000 at Gurudwara Chamkaur Sahib, District Ropar and he was transferred to various places.

Even after all this, again there were allegations of adultery, misbehaviour with the officials and disobedience. Therefore, after holding inquiry, he was placed under suspension. Later, he was found guilty of issuing receipts of lesser amount and penalty of fine was also imposed upon him. He was again caught embezzling and misappropriating by the Flying Squad on 30.10.2006. The delinquent employee did not mend his ways. A DDR was also lodged by his son levelling allegations that after consuming alcohol, he had assaulted him. The Chandigarh Police took him into preventive custody and his medical was got conducted wherein it was confirmed that he was under the influence of alcohol.

Since charge-sheet was only with regard to allegation that at the time of surprise checking, 270 kgs of refined oil, in excess of quantity recorded in the register, was found in the Store and previous conduct or the

subsequent conduct of the delinquent employee was not a part of the charge-sheet and delinquent employee could not give reply to the same and could not defend the said allegations, same cannot be taken into consideration for deciding the order of dismissal which was passed on the basis of charge-sheet issued to him on specific allegations.

Learned Single Judge, while passing the order dated 03.05.2019, observed that the Committee, while conducting the preliminary inquiry proceedings against the delinquent employee, ought to have examined its own employees who were incharge of the donations and to whom the delinquent employee used to report about the donations, which resulted in excess storage, as per the delinquency attributed to him. The relevant para 5 and para 6 of the order dated 03.05.2019 read as under :-

“5. In view of the aforesaid stand taken by the petitioner, I am of the opinion that the respondent, while conducting the departmental inquiry proceedings against the petitioner, ought to have examined its own employees who were incharge of the donations, vis, Manager and the Gurudwara Inspector, to whom the petitioner reported the donations which resulted in excess storage as per the delinquency attributed to him. In fact, the petitioner has stated that he had observed the excess goods in storage and at the first given opportunity he had informed of the same to Manager and Inspector. Yet, for the reasons best known to SGPC/inquiry officer, neither the Manager nor the Inspector were

examined.

6. *Having gone through the inquiry report (Anneuxre R-2), the same also seems to have been passed in a most summary manner, neither the defence of the petitioner is considered nor even otherwise it seems to be based on any evidence or cogent reasoning. The only reason assigned is that the Inquiry Sub Committee in a meeting held on 13.10.2008 scrutinized the case of the petitioner and that of Manager of the Gurudwara. And after the scrutiny, it arrived at a decision that the petitioner was guilty and therefore, it was recommended that his services be terminated.”*

So, order of dismissal or termination of service of the delinquent employee was rightly upheld to be not tenable and was rightly set aside and we do not see any reason to interfere in the order of the learned Single Judge as it does not suffer from any legal infirmity. Thus, the appeal filed by the Committee i.e. **LPA No.2055 of 2019** stands dismissed.

Now, coming to the appeal filed by the delinquent employee i.e. **LPA No.1839 of 2019**, it is pertinent to mention here that during the pendency of the instant appeal, the delinquent employee expired on 14.05.2021. His LRs have been brought on record and 'Amended Memo of Parties' has also been taken on record vide order dated 28.03.2022.

Learned counsel for the delinquent employee has placed reliance on judgment of Hon'ble Supreme Court in **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and**

others reported as 2013 (10) SCC 324 and has argued that grant of full back wages is a normal rule in cases of wrongful termination of service. The ratio of law laid down in the said case can be pressed into service for the benefit of the LRs of the delinquent employee in the instant case. The proposition of law laid down in the case of Deepali Gundu Surwase (*supra*) reads as under :-

“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.”

In the case in hand, the delinquent employee did not plead in his Writ Petition that he was not gainfully employed after the passing of dismissal order. The delinquent employee was required to plead that he was not gainfully employed after passing of order of dismissal and thereafter, the other party could allege that he was gainfully employed elsewhere, therefore, clause (iii) would come into play. The said judgment has been followed in **SLP (Civil) No.32554 of 2018 – Allahabad Bank & Ors. vs. Avtar Bhushan Bhartiya** dated 22.04.2022 in as much as the Apex Court did not interfere in the award of 50% back wages granted to the employee.

The operative part reads as under :-

*“32. Even if we apply the propositions enunciated by this Court in **Deepali Gundu Surwase** (supra), the Officer-employee may not be entitled to full back wages. This is for the reason that there is nothing on record to show whether he was gainfully employed after his dismissal from service. A careful look at the pleadings in the writ petition W.P. No.1403 of 2013 would show that he has not pleaded about his non-employment. Though in paragraphs 36 to 38 of his writ petition, the employee has pleaded about the sudden set back to his health in the year 2011 and the financial hardships he was facing, there was no assertion about his non-employment. The employee had his pleadings amended after the dismissal of his appeal during the pendency of the writ petition. Even in the amended pleadings, there was no averment relating to his non-employment. Therefore, even if we apply the ratio in **Deepali Gundu Surwase** (supra), the employee may not satisfy the third proposition found in para 38.3 thereof.”*

The Committee is not a commercial unit but a religious organisation. In order to run the affairs of Committee, it is dependent upon donations. That delinquent employee remained out of service for a period of more than 13 years till his death on 14.05.2021 and it is hard to accept the fact that he was not employed elsewhere for such a long period. So, his LRs shall be entitled to only 50% of the back wages along with interest @

8% per annum from the date of dismissal till today. The said amount shall be made available to the LR's within two months from the date of receipt of a certified copy of this order. In case, the said amount is not paid to the LR's of the delinquent employee within the stipulated period, they shall be entitled to interest @ 6% per annum from today till the actual payment.

Both the appeals stand disposed of in the above terms, with no order as to costs.

A photocopy of this order be placed on the file of other connected matter.

(G. S. SANDHAWALIA)
JUDGE

December 21, 2022
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.