

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Acting Chief Justice Sujoy Paul
And
The Hon'ble Justice Partha Sarathi Sen

WPCT 231 of 2025

Bithika Choudhury and others

-Vs-

The Steel Authority of India Limited and others

For the respondent petitioners: Mr. Indranath Mitra, Adv.
Mr. Siddhartha Ruj, Adv.

For the respondents : Mr. N. C. Bhattacharjee, Adv.
Mr. L. K. Paul, Adv.

Heard on : 02.12.2025

Judgment on : 02.12.2025

JUDGMENT (ORAL)

SUJOY PAUL, A.C.J. : -

1. In this petitioner filed under Article 226/227 of the Constitution of India, the basic question is whether dependants of the deceased employee who was dismissed from service with effect from 10.05.2008 are entitled to get back wages when his termination order was set aside because the departmental enquiry was held to be illegal and because of death, the matter could not be remitted back for conducting further enquiry.

2. The relevant facts for adjudication of this matter are that husband of the petitioner no.1 and father of petitioner nos.2 and 3 was working as 'Sampler' in Alloy Steel Plant, Durgapur. The charge-sheet dated 18.01.2008 was issued to him. Since charges were denied, an enquiry officer was appointed. The enquiry officer found charges as proved. After receiving the petitioner's representation, the disciplinary authority imposed punishment of dismissal from service on 10.05.2008. The delinquent employee unsuccessfully challenged the dismissal order by filing appeal and after exhausting departmental remedies, he filed a writ petition being WP 17735(W) of 2008 before this court. The said petition was transferred to Central Administrative Tribunal, Kolkata Bench and was renumbered as T.A. No.3/2013.
3. In the year 2018, the delinquent employee expired and accordingly the present writ petitioners got themselves substituted as legal representatives.
4. The admitted facts are that the Tribunal heard the parties at length and by impugned order found fault in the procedural part of the departmental enquiry and accordingly set aside the final punishment order dated 10.05.2008 and appellate order dated 17.06.2008. Since the delinquent employee expired in the meantime, the Tribunal opined that remitting the matter back for further enquiry would be a futile exercise. Hence, the legal representatives were held to be entitled to

the retiral benefits except salary for the period the delinquent employee remained out of employment.

5. The present petition assails only this portion of the order whereby salary/back wages for the said period was denied. Admittedly, the employer has not chosen to challenge the said order of Tribunal whereby the disciplinary proceedings were held to be vitiated and punishment and appellate orders were set aside.

Contention of the petitioners:

6. Learned counsel for the petitioners submits that in para 44 of the petition before the Tribunal, it was categorically pleaded that delinquent employee after his dismissal from service was not gainfully employed anywhere. Since he was out of employment, he was entitled to get the back wages. The respondents partly denied it but could not rebut it by relying any material to show that delinquent employee was indeed working anywhere.
7. Learned counsel for the petitioner in support of his prayer for grant of back wages placed reliance on the judgments of Supreme Court in the cases of **Pradip Kumar vs. Union of India and others** reported in **(2012) 3 SCC 182**, **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others** reported in **(2013) 10 SCC 324** and **Anantdeep Singh vs. High Court of Punjab and Haryana at Chandigarh and another** reported in **2024 SCC OnLine SC 2449**.

8. *Per contra*, learned counsel for the employer fairly submitted that as a sympathetic gesture, the department did not challenge the order of the Tribunal because during the pendency of the said case, the delinquent employee died. However, the grant of back wages is no more a general rule. It also depends on the conduct of delinquent employee as to whether he is entitled for back wages or not. If he had not rendered any services in intervening period, the principle of “no work no pay” would be applicable which is evident by the judgment of Supreme Court in the case of **Vijay Singh vs. Union of India and others** reported in **(2007) 9 SCC 63**.

9. We have heard the parties at length and perused the record.

Findings:

10. Indisputedly, the employee died during the pendency of the case before Central Administrative Tribunal and in lieu thereof legal representatives/present petitioners were substituted. By the impugned order, the Tribunal opined that the departmental enquiry, punishment and appellate orders were bad-in-law and accordingly, set them aside. The retiral dues were directed to be given to the dependants except salary. Thus, singular question before us is whether in a case of this nature, the back wages can be granted.

11. The learned counsel for the Department has placed heavy reliance on the judgment of **Vijay Singh** (*Supra*) to bolster his submission that nature of misconduct is a relevant ingredient for the purpose of

deciding the question of grant of back wages. The Apex Court in the case of **Deepali Gundu Surwase** (*Supra*) considered a catena of judgments and culled out the principles for the purpose of grant of back wages. Para 38.2 reads thus:

“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 taken 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.”

(Emphasis Supplied)

12. A plain reading of this Para shows that misconduct *if proved* can be a reason for denying the back wages. This is trite that a person can be held guilty only when charges are duly proved against him. In the instant case, the departmental enquiry and punishment order of delinquent employee were set aside and therefore, by no stretch of imagination, it can be said that he was guilty of any misconduct. The further enquiry, because of his death was not possible. Since, we are unable to hold that delinquent employee was guilty of misconduct, in the light of judgment of Supreme Court in the case of **Deepali Gundu Surwase** (*supra*), the argument of learned counsel for the department must fail.
13. We are not oblivious of the fact that the Fundamental Rules and CCS (CCA) Rules, 1965 are not applicable to the respondent department. However, for the purpose of analogy, it is profitable to quote the relevant FR which deals with treatment of a period when Government

employee dies before conclusion of the proceedings. The same reads thus:

“Treatment of the Suspension Period (FR 54-B(2)): If a government servant under suspension dies before the conclusion of proceedings, the period from suspension to death is treated as duty, and the family is entitled to full pay and allowances after adjusting the subsistence allowance paid.

Eligibility for Death/Retirement Gratuity and Family Pension: The family is eligible for normal death and pensionary benefits, as if the death occurred in regular service, and the inquiry does not typically hinder these claims.

No Recovery of Pecuniary Loss from Family Benefits: Generally, any recovery for pecuniary loss due to misconduct is not made from benefits awarded to the deceased employee’s family.”

(Emphasis Supplied)

14. For the purpose of analogy, we may draw inspiration from this provision which is applicable to the civil post holders of Central Government. Since, delinquent employee was not held guilty of any misconduct and enquiry and punishment are set aside, it will not be proper to deny the benefit of back wages to the dependants. The Apex Court in the case of **State of Uttar Pradesh vs. Mohd. Sharif (Dead)** reported in **(1982) 2 SCC 376** recorded as under:

“We are satisfied that the dismissal order has been rightly held to be illegal, void and inoperative. Since the plaintiff has died during the pendency of the proceedings the only relief that would be available to the legal heirs of the deceased is the payment of arrears of salary and other emoluments payable to the deceased.”

(Emphasis Supplied)

15. In the light of this judgment also, we are inclined to modify the impugned order of learned Tribunal dated 08.09.2025 to the extent back wages/salary was denied to the dependants/delinquent employee. Resultantly, impugned order of Tribunal is partially quashed to that

extent. As a consequence, the dependants shall get the benefit of back wages from the date of termination till the date of death of the employee.

16. The petition is **allowed** to the extent indicated above.
17. Urgent Photostat certified copy of this judgment, if applied for, be given the parties upon compliance of all necessary formalities.

(Sujoy Paul, A.C.J.)

I agree.

(Partha Sarathi Sen, J.)

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