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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-1766-2001

Date of Decision:17.11.2025

NAHAR SINGH

-PETITIONER

V/S

STATE OF PUNJAB & ORS.

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. R.K.Singla, Advocate,
for the petitioner.

Ms. Pratibha Bali, AAG, Punjab
for respondents no.1 and 2-managment.

KULDEEP TIWARI, J.(ORAL)

1. The reference, which was sent under clause (c) sub section (1) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'ID Act'), pursuant to a demand notice served by the workman, was partially answered in his favour by the Industrial Tribunal-cum-Labour Court, Bhatinda, (respondent no.3), vide an Award dated 13.08.1999 (Annexure P-1), has filed the instant petition under Article 226/227 of the Constitution of India, as he fetches grievance for not granting back wages to him, for the period w.e.f. 01.10.1993, till the date of his joining, in accordance with rules.

2. Succinctly stated, the petitioner was appointed as a temporary Chawkidar on 29.07.1976 (Annexure P-1), and his services

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were regularised on 08.08.1990 (Annexure P-2). He worked with the respondents-management until 02.11.1993, after which he absented himself from work, and submitted his joining report only on 27.01.1994. As he was not allowed to resume his duties, he raised an industrial dispute by filing a claim statement. The dispute was referred under the provisions of Section 10(1)(c) of the ID Act, by the competent authority, which was finally decided vide the impugned Award, where through, the petitioner-workman, was directed to be reinstated into service, however, the back wages were not granted to him. He fetching grievance from denial of back wages, has filed the instant petition.

3. Learned counsel for the petitioner submits that the petitioner-workman had served the respondent-management for 17 years, prior to his termination, and this material fact was not taken into consideration while denying him the relief of back wages.

4. He further submits the petitioner absented himself on account of his illness, and after a period of three months he submitted his joining report to the respondents-management, which was not accepted. This act of non-acceptance of joining report by respondents-management, was found to be illegal, by the learned Tribunal concerned, and consequently, the Award directing the reinstatement of the petitioner-workman was passed.

5. To substantiate his argument that the petitioner-workman is entitled for full back wages, he placed reliance upon a judgment passed

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by Hon'ble Supreme Court in “**Deepali Gundu Surwase vs. Kranti Junior Adhapak Mahavidyalaya (D.Ed.) and others**” 2013(4) SCT 716.

6. On the other hand, learned State counsel, who is representing respondents-management, submits that it is a case of willful absence on the part of the petitioner-workman. There is no denial on the part of the petitioner-workman that he absented himself w.e.f. 02.11.1993, and reported to join his duties only on 27.01.1994, and he never applied for any sick or causal leave. Thus, it is a clear case of voluntary abandonment of service. Therefore, no order of termination was ever passed by the respondents-management. Hence, for the petitioner-workman's own wrong, the respondents-management cannot be prejudiced by being burdened with the payment of back wages.

7. She further asserted that before adjudicating the issue of entitlement of back wages, certain crucial aspects need to be taken into consideration, such as, manner and method of selection, nature of appointment, i.e. whether *ad hoc*, short term, daily wage, temporary or permanent, length of service etc. Not just that, the issue in question is also required to be evaluated on the anvil of principles of equity, justice and good conscience. In this regard, **he places reliance upon a judgment of the Hon'ble Supreme Court in U.P.S.R.T.C. Vs. Mitthu Singh, 2006 (7) SCC 180**, wherein, it was held that there cannot be any thumb rule in every case, where order of reinstatement is passed

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that the employee is entitled to full back wages:-

*“10. In **General Manager, Haryana Roadways v. Rudhan Singh**, 2005 (3) SCT 559; 2005 (5) SCC 591, this Court held that there is no rule of thumb that in each and every case, where a finding is recorded by Court or Tribunal that the order of termination of service was illegal that an employee is entitled to full back wages. A host of factors must be taken into account.*

The Court stated:

"There is no rule of thumb that in every case where the Industrial Tribunal gives a findings that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of actors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However,

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where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent dailywage employment though it may be for 240 days in a calendar year."

Again, in Allahabad Jal Sansthan v. Daya Shankar Rai, 2005 (2) SCT 699: 2005 (5) SCC 124, after considering the relevant cases on the point, the Court stated:

"We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realized that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at."

Recently, in U.P.S.R.T.C. Ltd. v. Sarada Prasad Misra, 2006 (2) SCT 626 (SC): 2006 (4) SCC 733: JT 2006 (5) SC 114, one of us (C.K. Thakker, J.) had an occasion to

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consider a similar issue. Referring to earlier case-law, it was observed:

“From the above cases, it is clear that no precise formula can be adopted nor ‘cast iron rule’ can be laid down as to when payment of full back wages should be allowed by the court or Tribunal. It depends upon the facts and circumstances of each case. The approach of the Court/Tribunal should not be rigid or mechanical but flexible and realistic. The Court or Tribunal dealing with cases of industrial disputes may find force in the contention of the employee as to illegal termination of his services and may come to the conclusion that the action has been taken otherwise than in accordance with law. In such cases obviously, the workman would be entitled to reinstatement but the question regarding payment of back wages would be independent of the first question as to entitlement of reinstatement in service. While considering and determining the second question the Court or Tribunal would consider all relevant circumstances referred to above and keeping in view the principle of justice, equity and good conscience, should pass an appropriate order.”

Thus, entitlement of a workman to get reinstatement does not necessarily result in payment of back wages which would be independent of reinstatement. While dealing with the prayer of back wages, factual scenario and the principles of justice, equality and good conscience have to be kept in view by an appropriate Court/Tribunal.”

8. Before proceeding further with the matter, it would be

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expedient to understand the concept of back wages. Thus, a reference to various precedents on the subject would be inevitable. In this regard, the Hon'ble Supreme Court, in its celebrated judgment in **M/s. Hindustan Tin Works Pvt. Ltd. Vs. The Employees of M/s Hindustan Tin Works Pvt. Ltd. and others, AIR 1979 Supreme Court 75**, has held that, if the workmen were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages, which were legitimately due to them. The relevant observations are extracted hereinbelow:-

“9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to the work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome

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factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigating activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz ., to resist the workman's demand for revision of wages. the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. [Articles 41](#) and [43](#) of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the [U.P. Industrial Disputes Act, 1947](#), the State has endeavored to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it the were forced to litigation upto the apex Court and now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only

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show that the workman were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workman were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. Safai Kamdar Mandal (1971) (1), Lab LJ 508 and a Division Bench of the Allahabad High Court in Postal Seals Industrial Co-operative Society Ltd. v. Labour Court, Lucknow(1971] 1 Lab LJ 327, have taken this view and we are of the opinion that the view taken therein is correct.”

9. The Hon'ble Supreme Court again examined the issue in question in Deepali Gundu Surwase (supra). While following the ratio laid down in Hindustan Tin Works (supra), it was held that in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the trite rule. While adjudicating the issue of back wages, the Court may take into consideration the length of service of the employee/workman, nature of misconduct, if any, found proved against him, the financial condition of the employer, and similar other factors. Further, the Courts/Adjudicating Authorities must always keep 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. **The relevant observations, in this regard,**

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are extracted hereinafter:-

“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 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.*
- 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*

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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 fullback 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

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*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.*

10. On the anvil of the above principle this Court has examined the issue in question. In the present case, the petitioner-workman absented himself for three months. He never applied for any leave, rather, upon joining on 27.01.1994, he submitted an application for seeking *ex post facto* sanction of leave, which was never granted to him.

11. Primarily, it was the petitioner-workman, who was at fault, as he neither informed respondents-management about his illness, nor made any efforts to submit any application seeking medical leave. The only document which was placed on record, is the medical certificate, reflecting that he was advised bed rest. It is not a case, where the

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petitioner was not in a position, at least to intimate the respondents-management in writing. Therefore, for the lapse on his own part, petitioner-workman cannot claim any benefit.

12. Furthermore, from the perusal of the Award, it nowhere comes out that the petitioner-workman, had ever pleaded before the learned Tribunal concerned that he remained unemployed during the said period when he was not allowed to re-join his services.

13. In view of the above, this Court does not find that it is a fit case for granting the benefit of back wages to the petitioner-workman. This Court does not hesitate to hold that the impugned Award has rightly been passed by the learned Tribunal concerned, which requires no interference.

14. Resultantly, the instant petition, is hereby **dismissed**.

15. All pending application(s), if any, also stand **disposed** of accordingly.

November 17, 2025
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No