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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 02nd July 2025

Pronounced on: 31st July 2025

+ **W.P.(C) 9082/2014, CM APPL. 20718/2014 & CM APPL. 7807/2015**

RAMJAS FOUNDATION

.....Petitioner

Through: Mr. S.P. Gautam, Advocate.

versus

UMA SHANKAR GUPTA

.....Respondent

Through: Ms. Surbhi Bagra, Ms. Meghna De and
Ms. L. Gangmei, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This petition has been filed for quashing of order dated 03rd December 2014 (*'impugned order'*) passed by the Deputy Labour Commissioner (Central), NCT of Delhi. By the said impugned order, a recovery certificate was issued for an amount of Rs. 12,64,150/- against *M/s Ramjas Foundation* (*'petitioner'*) for a period from 01st December 1998 to 04th November 2011, in favour of respondent, who is the legal heir and son of *Late Sh. O.P. Gupta*, pursuant to award arising from ID No.545/2004 dated 21st May 2010, passed by the Labour Court. The matter was heard initially on 02nd July 2025. Notice was issued and a stay was granted.



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2. The Labour Department referred the dispute between petitioner/management and respondent/workman with respect to retrenchment of his services w.e.f. 30th November 1998 to the Labour Court for adjudication. Both parties contested the matter and the Labour Court passed award on 21st May 2010, granting relief to the workman.
3. The retrenchment order was set aside and directions were issued for the workman to be continued in service by management "*with all consequential benefits and reliefs arising out of the same*".
4. It was further stated that if, by the time the order was enforced, the workman was found to have attained the age of superannuation and reinstatement was not possible, then the workman was to be given all benefits of superannuation, as if the workman superannuated while being in service, without any effect of the order of retrenchment.
5. Additionally, award of simple interest @6% per annum was awarded on the amount which was due from the date it accrued till the date of realisation.
6. Thereafter, petitioner filed a ***Writ Petition No.6498/2010***, challenging the impugned award.
7. During the proceedings on 19th April 2012, it was informed that the workman *Late Sh. O.P. Gupta* had passed away on 05th November 2011. Consequently, the High Court dismissed the Writ Petition as having abated, since no legal heirs had entered appearance. Subsequently, the legal heirs, i.e.



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respondent herein, had filed an application under Section 33C (1) of Industrial Disputes Act, 1947 (***ID Act***) claiming an amount of Rs.12,64,150/- on account of difference for salary for the period from 01st December 1998 to 31st August 2006, pension from 01st September 2006 to 04th November 2011 and gratuity considering 31st August 2006 as the date of retirement.

Submissions on behalf of petitioner

8. Petitioner's case is that the deceased workman was only entitled to relief of retirement benefits, and no back wages can be claimed by legal heirs. Further, there was no provision of pension with the management and same cannot be claimed by the legal heirs.

9. It was stated, that the award did not provide for back wages, as the same relates to the period of unemployment, and there was no evidence which has been led to show as to whether the workman was alternatively employed in another establishment or not at that stage.

10. Further, it was also contented that the direction regarding the employees who had attained the age of superannuation before enforcement of the relief entitles them only to retirement benefits. For the purposes of reference, relevant *paragraphs 28-31* of the award are extracted as under:

*“28. Following the aforesaid laws laid down by the Hon’ble Supreme Court of India in **Anoop Sharma** (supra) and **Krishna Bahadur** (supra), this court also holds that the retrenchment of the workman in the present matter was **void ab initio** with no consequent disabilities to the workman. The impugned*



retrenchment of the workman by the management was legally defective. It was as good as there was no retrenchment at all. It had followed no consequences.

29. As a corollary of this order the status of the workman would be as no retrenchment order was passed on 30.11.1998 and he continued in service with the management with all consequential benefits and reliefs arising out of the same.

30. This court underlines one more point of overcoming the difficulty which was faced in several other similar orders in case of this Management i.e. Ramjas Foundation. If by the time of enforcement of this order, the workman is found to have attained the age of superannuation and its reinstatement in service is not possible by force of the law then in that case, this workman be given all benefits of superannuation as if this workman superannuated while being in service without any effect of the order of retrenchment dated 30.11.1998.

31. But as a consequence of the management's action the workman had to suffer for more than a decade. The workman is also awarded a simple interest @ 6% per annum on the amount which due to it from the date it accrued till the time of its realization."

(emphasis added)

11. It was further pointed out by petitioner's counsel that management had retrenched 78 workers, and most of the workers had accepted compensation, and there was no dispute with them. Moreover, to the workman *Late O.P. Gupta*, compensation of Rs.92,974/- had been provided; however, there was a discrepancy in the House Rent Allowance and, therefore, matters could not be



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settled. It was pointed out that the termination was held '*illegal*' but not '*unjustified*'.

12. The claim by legal heirs of the workman could be broken down as under:

(i) Difference in salary from 01st December 1998 to 31st August 2006 = Rs.7,22,629/-

(ii) Pension from 01st September 2006 to 04th November 2011 = Rs.3,78,270/-

(iii) Gratuity considering the date of retirement as on 31st August 2006 = Rs.1,63,251/-

13. Effectively, what was argued by the petitioner's counsel was:

firstly, that back wages cannot be awarded automatically and have to be specifically awarded, if so directed while setting aside retrenchment;

secondly, that fact finding is required as to whether the worker was unemployed in the period when he was not with management;

thirdly, that back wages were, therefore, to be proved as per **SBI v Ram Chandra Dubey** (2001) 1 SCC 73, in particular *paragraphs 7 & 8*;

fourthly, that pensionary scheme had never been propounded by management and it cannot be imposed under Section 33C (1) of the ID Act, as there was no pension scheme;

fifthly, that Section 33C of ID Act proceedings relates to the proceedings of an executing court and it cannot interpret the award;



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sixthly, that the relief granted in *paragraphs 29 to 31* of the award dated 21st May 2010 were different in nature and relating to different categories of workman; and

lastly, petitioner had attained the age of retirement on 31st August 2006, during pendency of the trial before the Labour Court and therefore, relief in *paragraphs 29* did not relate to the deceased workman and cannot be claimed by his legal heirs.

Submissions on behalf of respondent

14. Counsel for respondent drew our attention to a previous order passed by the Court in this Writ Petition itself dated 04th March 2020, by a Predecessor Bench, where arguments were recorded of both parties in fair amount and in detail; the Court had noted as under:

“What emanates from the above is that the management was directed to reinstate the workman in service since the retrenchment order was held to be illegal, i.e., as if it did not exist. Therefore, the services of the workman would be treated as continuing till he superannuated. As a logical corollary, all consequential benefits arising there from would be payable to him. This is emphasised further in the aforesaid para 30 where the order says that the workman will be given all benefits of superannuation, as if this workman superannuated while being in service, without any effect of the aforesaid order of retrenchment.

The order leaves no room for doubt as to the nature of relief granted. The recovery certificate was issued after



computing the monies due to the workman. The management submits that the order of the learned Labour Court is erroneous because it directs payment of monies to a retrenched workman whose service, along with many other workman, had been terminated simultaneously, as (i) there was no more work available and (ii) the monies then furnished to the workman, have been duly accepted without any protest. Be that as it may, the order of the learned Labour Court is not under challenge, but the recovery certificate. Therefore, insofar as the primary order itself has not been challenged and stands undisturbed, there can be no occasion to interfere with the recovery certificate or recovery proceedings amount.”

(emphasis added)

15. It was further stated by the counsel for respondent that the award was challenged by petitioner in **Writ Petition No.6498/2010**. Pursuant to the death workman on 05th November 2011, petitioner failed to take any steps to bring Legal Representatives of the workman on record, and, therefore, Writ Petition stood abated and award attained finality.

16. Despite these circumstances, the recovery certificate was issued and management has yet again filed this petition which deserves to be dismissed.

17. Award dated 21st May 2010, was clear and categorical and held that the retrenchment was *void ab initio* and workmen were entitled to reinstatement with all consequential benefits and relief.

18. It was further clarified that the workman who had attained the age of superannuation and its reinstatement is not possible will be entitled to



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retirement benefits as well. There is no statement by the Labour Court that they will not be entitled to consequential benefits of reinstatement.

19. It was contended that if what petitioners claim in the petition was followed, it would lead to punishing the workman for attaining the age of superannuation which could not be the intention of the Labour Court.

20. Once it has been held that retrenchment was *void ab initio* and there was an entitlement to reinstatement with consequential benefits and relief, petitioner cannot be allowed to be exonerated from his liability and read one paragraph of the award in isolation. Reliance was placed on ***Mohanlal v Management of Bharat Electronics Ltd.*** (1981) 3 SCC 225, in particular *paragraphs 16 and 17*.

21. Further, it was pointed out in *paragraph xi* of the ***Writ Petition No.6498/2010*** that petitioners themselves had admitted that the Labour Court erred by imposing reinstatement and full back wages despite the retrenchment being justified, and should have instead awarded compensation in lieu of both reinstatement and back wages. The relevant *paragraphs x & xi* are extracted as under:

“x. Because the Labour Court has failed to appreciate that if a less compensation is paid in accordance with Section 25F, the relief in such case should not be burdened with reinstatement and full back wages rather the same should be compensation in lieu of both reinstatement and back wages as the cause of retrenchment was proper and justified and the same stood proved before the Labour Court.



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xi. Because the Labour Court has failed to appreciate that no work is available with the petitioner/management, on the contrary the Labour Court has burdened the petitioner/management with reinstatement and full back wages to the respondent/workman.”

22. In view of the above, petitioner cannot be allowed to approbate and reprobate. Consequently, the inference that back wages could not have been awarded by the Labour Court was inherently incorrect.

Analysis

23. The focus of arguments centers around the interpretation of *paragraphs 29, 30 and 31* of award dated 21st May 2010, which has been extracted in *paragraph 10* above. It may be instructive to assess as to what exactly had been stated in these paragraphs. On one hand, petitioner claims a restrictive interpretation, whereas respondent claims an expansive interpretation in favour of the workman. But, before we deal with the interpretation, there are few important things which must be noted:

i. *Firstly*, that the ***Writ Petition no. 6498/2010***, which was filed by petitioner, did not culminate in any decision in favour of petitioner. The proceedings stood abated primarily because petitioner did not take steps to bring the Legal Representatives on record. It is a settled law that abatement of a petition, therefore, results in an effective dismissal. Concept of abatement is provided categorically in Order XXII Rule 9 of the Civil Code of Procedure, 1908 (***‘CPC’***). The same is extracted below for ready reference:



“9. Effect of abatement or dismissal.— (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal, and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of Section 5 of the 1[Indian Limitation Act, 1877 (15 of 1877)], shall apply to applications under sub-rule (2).

Explanation.— Nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order.”

(emphasis added)

It is quite clear that as per the CPC, if a suit abates no fresh suit can be brought on the same cause of action. It is well settled that provisions of CPC provide fundamental legal principles which may be applied to writ petitions as well as appeals. Therefore, abatement, which the petitioner invited, mostly due to their omission, will preclude them from reopening and re-agitating the issue. Neither is there any resistance from the petitioner's side in this regard nor it can be permitted, considering that petitioner never moved any application for setting aside the abatement. The writ petition, therefore, stood concluded and



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would be treated as dismissed. Abatement has also been dealt with by the Supreme Court in ***Union of India v. Ram Charan (Deceased) through his Legal Representatives***, 1963 SCC OnLine SC 247, where the Apex Court was dealing with an appeal against a money decree and the decree holder died during the proceedings. An application was presented to the High Court on behalf of the appellant under Order XXII Rule 4 CPC praying for legal representatives to be brought on record. The appeal was dismissed as having abated. The Supreme Court while considering the issues focused on abatement, held that the consequence of abatement of the suit against the defendant is that no fresh suit can be brought on the same cause of action. As regard Order XXII Rule 9 CPC, the Supreme Court in ***Mandan Nayak (Dead) by Legal Representatives & Ors. v Ms. Hanshubala Devi & Ors.*** (1983) 3 SCC 50, stated that Order XXII Rule 9 CPC is a specific provision and precludes a fresh suit being brought on the same cause of action;

ii. *Secondly*, it is noted in the order dated 19th April 2021, by which this Court dismissed the petition as being abated, it was recorded that counsel for petitioner had submitted that they would take necessary steps for setting aside of abatement and filing an appropriate application as and when necessary details were available; however, they have failed to bring it on record. Therefore, due to the admitted failure of petitioner, they suffer a consequence of dismissal of the petition;



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iii. *Thirdly*, considering that the petition had been dismissed, prayers in the petition would deem to have, therefore, not been granted. The relief which has been sought in the said ***Writ Petition No.6498/2010*** was to quash the award "*wherein the reinstatement and full back wages are awarded to the respondent no.1*". It was clearly admitted by petitioner in the Writ Petition that the understanding of the award was that it had directed reinstatement with full back wages. Having suffered a dismissal, this aspect cannot be reopened by them by challenging the recovery certificate, which is merely in the form an execution;

iv. *Fourthly*, submissions made in *paragraphs x and xi* of the ***Writ Petition No.6498/2010***, which have been extracted above, are also pertinent. The understanding of petitioner was clear that the award of 2010 had awarded reinstatement with full back wages. The language used in *paragraphs x and xi* in the prayer is so categorical and clear that the Court does not need to enter into the exercise of interpretation.

v. *Fifthly*, even by interpretation of *paragraphs 29, 30 and 31* of the award, it is quite clear that:

- (i) the retrenchment had been declared to be illegal;
- (ii) the situation would be reverted as if there was no retrenchment at all;
- (iii) retrenchment would have no consequences;
- (iv) workman would be continued in service with management;



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- (v) all consequential benefits and reliefs arising would be granted;
- (vi) if age of superannuation had been reached all relief would be given as if the workman had been superannuated by "*while being in service*" and "*without any effect of the order of retrenchment*".

24. *Ex facie*, the award has clarified that the retrenchment was *void ab initio*, and all consequences would follow as if the workman was in service from the date of retrenchment. It would automatically mean that back wages would have to be given and any retirement benefits as they would have applied. Certainly, this was the understanding of petitioner as well, as noted above and crystallized in their Writ Petition.

25. Petitioner's counsel has raised an issue that award of back wages would not be automatically imposed by an executing court under Section 33C proceedings, since several factors have to be considered *inter alia*, whether the workman is entitled to back wages, and to what extent, and which would be within remit of a reference under Section 10 of the ID Act. Relying upon ***SBI v. Ram Chandra Dubey*** (supra), where it was held that the High Court cannot presume that the award of the Labour Court, for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred the right.

26. However, the facts in ***Ram Chandra Dubey*** (supra), are distinguishable. In that case, it is noted that the reference was made under



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Section 10 of ID Act relating to termination of services and to what relief workmen were entitled. The Tribunal passed an award that workmen were entitled to be reinstated in service but was silent in with regard to payment of back wages. In the challenge by management, a contention was raised by workmen that they were entitled to back wages which was refuted by management. The High Court did not go into this question since there was no challenge to the award on that ground and, therefore, dismissed the petition pursuant to which a Section 33C (2) was filed.

27. Respondent in that case relied upon previous decisions of the Supreme Court contending that ordinarily reinstatement would be followed by award of back wages and there was no reason to deny the same. The Supreme Court, however, noted that when a reference is made on the issue of termination being justified or not and whether the relief would require examination of the question that reinstatement should be with full or partial back wages, this question was one of the fact depending on the evidence produced before the Tribunal. The relevant paras of ***Ram Chandra Dubey*** (supra) are as under:

“7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not



reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

8. The principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C (2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum



wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages.”

28. On the other hand, in **Mohanlal** (supra), the workman was employed with management and was terminated abruptly, pursuant to which an industrial dispute arose. Reference was heard *ex parte* management, and the Labour Court directed reinstatement with continuity of service and full back wages. Subsequently, upon restitution, the Labour Court set aside the award on the ground that the termination did not constitute retrenchment.

29. In appeal against award, the Supreme Court held that termination of services would, in fact, constitute retrenchment. The Supreme Court stated that if termination of service is *void ab initio*, and inoperative, there is no question of granting reinstatement, as there is no cessation of service and a mere declaration follows that the workman continues to be in service with all consequential benefits. It was further noted that there is a catena of decisions which hold that a termination is illegal, especially when there has been an ineffective order of retrenchment. In such cases, there is neither termination



nor cessation of service, and a declaration follows that if the workman concerned continues to be in service will be entitled to all consequential benefits. The relevant paras are extracted as under:

“16. Appellant has thus satisfied both the eligibility qualifications prescribed in Section 25-F for claiming retrenchment compensation. He has satisfactorily established that his case is not covered by any of the excepted or excluded categories and he has rendered continuous service for one year. Therefore, termination of his service would constitute retrenchment. As pre-condition for a valid retrenchment has not been satisfied the termination of service is ab initio void, invalid and inoperative. He must, therefore, be deemed to be in continuous service.

*17. The last submission was that looking to the record of the appellant this Court should not grant reinstatement but award compensation. If the termination of service is ab initio void and inoperative, there is no question of granting reinstatement because there is no cessation of service and a mere declaration follows that he continues to be in service with all consequential benefits. Undoubtedly, in some decisions of this Court such as *Ruby General Insurance Co. Ltd. v. Shri P.P Chopra*. (1969) 3 SCC 653, (1970) 1 LLJ 63 and *Hindustan Steels Ltd. v. A.K Roy* (1969) 3 SCC 513, AIR 1970 SC 1401, (1970) 3 SCR 343 it was held that the court before granting reinstatement must weigh all the facts and exercise discretion properly whether to grant reinstatement or to award compensation. But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment,*



there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the courts in the field of social justice and we do not propose to depart in this case.”

(emphasis added)

30. Useful guidance is given by the Supreme Court in **Deepali Gundu Surwase v Kranti Junior Adhyapak Mahavidyalaya** (2013) 10 SCC 324, which involved the issue of reinstatement of worker, who was a teacher, whose termination was declared wrongful and illegal. The High Court denied full back wages upon reinstatement, where originally it has been awarded by the Tribunal on the ground that the workman had not proved the factum of non-employment during the intervening period. This finding was set aside by the Supreme Court, which held 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 and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

(emphasis added)

31. Reference may also be made to decision rendered the Supreme Court in ***Hindustan Tin Works v Employees*** (1979) 2 SCC 80, where question involved was of reinstatement and it was found to be an appropriate relief that should be the guiding consideration for awarding full or partial back wages. The Apex Court stated in *paragraph 9*, as under:

“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 work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the 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 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 litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen'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 endeavoured 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 they were forced to litigation up to the Apex Court 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 show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an 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 LLJ 508 (Guj) and a Division Bench of the Allahabad High Court in *Postal Seals Industrial Cooperative Society Ltd. v. Labour Court II, Lucknow* (1971) 1 LLJ 327 (All) have taken this view and we are of the opinion that the view taken therein is correct.”*

(emphasis added)

32. Notably, the Supreme Court has stated that the workman was always ready to work but was kept away on account of an invalid act of the



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employer; there is no justification for not awarding full back wages as legitimately entitled.

33. Therefore, not only it is a fundamental principle that reinstatement pursuant to a retrenchment being held as invalid *void ab initio* would necessitate a grant of relief of back wages as a matter of a principle of industrial jurisprudence, it is also clear that petitioner's understanding was also that full back wages had been awarded to the workman by the award as exemplified from the averments in their earlier Writ Petition itself.

34. Now, for the petitioner to take a second shy after having failed to take steps to implead the legal heirs and having suffered the dismissal of the said Writ Petition, the issue, therefore, cannot be agitated again. The Labour Court award, therefore, became conclusive in all respects and the contentions of the petitioner to somehow dilute the Labour Court award is not merited. The Labour Court award being legally crystallized, Section 33C (2) of ID Act proceedings are merely a consequence and the petitioner cannot be seen to re-agitate issues of proof of unemployment/employment at this stage.

35. Accordingly, there is no reason for this Court to interfere and allow the present Writ Petition. The Writ Petition is, therefore, dismissed.

36. Pending applications, if any, are rendered infructuous.

37. The impugned Recovery certificate issued is, therefore, valid, and further steps may be taken in this regard.



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38. However, one factual aspect remains to be considered. Counsel for petitioner stated that without prejudice to their overall plea there was no provision for payment of pension, which had never been instituted by management and, therefore, aside from back wages and gratuity the aspect of pension cannot be awarded in any event.

39. Petitioner also stated that they had objected to this in their submissions before the Assistant Labour Commissioner when the Section 33C application was being considered and their averment is noted as under:

“vii. That the management had no provision for payment of pension neither the same is a retirement benefit, which is not awarded to the workman in the award dated 21.05.2010, hence the claim filed is beyond the relief awarded and is liable to be dismissed alone on this preliminary objection.”

40. In this regard, this query was put to the counsels for parties as to what would be the figure if pension is excluded from the calculation sheet. Counsel for respondent gave a figure of Rs.8,85,880/- in this regard.

41. To ensure that the issue is not again agitated on this factor, the Court directs that the impugned order is modified to the extent that the amount of "Rs.12,64,150/-" will be read as "Rs.8,85,880/-".

42. Considering that 10 years have elapsed since the impugned order was passed in 2014, it would be in the interest of justice that petitioner pays some interest on the said amount @6% per annum (the same rate of interest as was awarded in the Labour Court's Award) from the date of the impugned order.



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43. The said amount shall be paid within a period of *3 months* to respondent, failing which respondent shall be entitled to institute contempt proceedings against petitioner.

44. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

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