

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.769 of 2025

In

Civil Writ Jurisdiction Case No.7980 of 2015

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1. The Bihar State Power Holding Company Ltd. (erstwhile Bihar State Electricity Board), Vidyut Bhawan, Bailey Road, Patna, through its Chairman.
 2. The Director Administration, Bihar State Power Holding Company Ltd., Patna.
 3. The Chairman-cum-Managing Director, Bihar State Power Holding Company Ltd., Vidyut Bhawan. Bailey Road. Patna.
 4. The Deputy General Manager, North Bihar Power Distribution Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
 5. The Officer on Special Duty (Administration) North Bihar Power Distribution Company Ltd., Patna.
 6. The General Manager-cum-Chief Engineer, PESU Area, Patna.
 7. The Executive Engineer, Electric, PESU Area, Patna.
 8. The Assistant Electrical Engineer, PESU Area, Patna.
 9. South Bihar Power Distribution Company Limited through its Managing Director having its registered office at Vidyut Bhawan, Jawahar Lal Nehru Path, Bailey Road, Patna-800001.
 10. North Bihar Power Distribution Company Limited through its Managing Director having its registered office at Vidyut Bhawan, Jawahar Lal Nehru Path, Bailey Road, Patna-800001.

... .. Appellant/s

Versus

Abhinita, D/o Nakul Prasad Choudhary, resident of Mohalla- Sant Vihar,
Ward No. 13, Aliganj, Behind Thakurbari, P.S. District- Banka

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Y. V. Giri, Sr. Advocate



Mr. Ranjan Kumar Srivastava, Advocate
For the Respondent/s : Mr. Umesh Prasad Singh, Sr. Advocate
Mr. Vaibhava Veer Shanker, Advocate

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)**

Date : 26-05-2026

We have heard Mr. Y. V. Giri, learned Senior Advocate duly assisted by Mr. Ranjan Kumar Shrivastava, learned Advocate for the appellants and Mr. Umesh Prasad Singh, learned Senior Advocate with Mr. Vaibhava Veer Shekhar, learned Advocate for the respondent through virtual mode.

2. The present Letters Patent Appeal is preferred under Clause X, Appendix-E of the Patna High Court Rules against the Judgment and order dated 27.06.2025 passed in C.W.J.C. No. 7980 of 2015 whereby the writ petition was allowed with a direction as follows:

“Accordingly, the order dated 26.06.2013 and 04.02.2015 stands set aside. The concerned Respondent/Competent Authority are hereby directed to reinstate the petitioner with all consequential benefits, including monetary and service benefits within a period of six months from the date of receipt of this order. However,



petitioner shall be reinstated within a period of one month from the receipt of this order.”

3. The short facts, which led to the filing of the present appeal are delineated hereunder:

The writ petitioner was duly appointed and joined as Junior electrical Engineer on 10.09.2011 in the Bihar State Electricity Board, as then was (now Bihar Power Holding Company Limited) and thereafter she was posted in PESU Control Room, Area Patna. While the writ petitioner was posted as a Junior Electrical Engineer in PESU Control Room, a show-cause notice was issued by the General Manager-cum-Chief Engineer, PESU Area, Patna vide letter no. 6185 dated 30.10.2012 for her willful absence from the duties from 20.10.2012 to 28.10.2012 and indiscipline behaviour. In the aforesaid premises, a Committee was constituted by the General Manager-cum-Chief Engineer, PESU Area to conduct an enquiry into the imputation and accordingly the enquiry committee submitted its report on 26.11.2012.

On being found substance in the allegation, the writ petitioner was transferred from PESU Control Room to the Electric Supply Section, Mahnar, North Bihar Power Distribution Company Limited on an administrative ground vide Notification No. 26 dated 27.11.2012. The writ petitioner,



however, did not join to her new place of posting and this act of indiscipline and defiance of order was added in the charge-sheet. The petitioner was put under suspension vide Office Order No. 965 dated 14.03.2013 after serving the charge memo as well as amended charge memo. The writ petitioner submitted her reply before the enquiry officer and after conclusion of the enquiry, the enquiry officer submitted enquiry report dated 28.05.2013 with the finding that the charges stood proved. A second show-cause notice was issued to the petitioner vide Resolution No. 570 dated 14.06.2013. However, the writ petitioner did not submit any reply thereto. The enquiry report was considered by the Managing Director of the North Bihar Power Distribution Company Limited (in short 'NBPDC'), who proposed for dismissal of the writ petitioner and subsequently referred the order to the Chairman-cum-Managing Director, Bihar Power Distribution Company Limited for approval. Accordingly, the Chairman-cum-Managing Director, Bihar Power Distribution Company Limited approved the dismissal order on 26.06.2013 and communicated the same to the petitioner.

Aggrieved by such order, the writ petitioner has preferred appeal before the Chairman-cum-Managing Director



of Bihar Power Distribution Company Limited, which came to be rejected vide order dated 20.12.2014 and communicated to the petitioner. The order of the Disciplinary Authority as well as order passed by the Appellate Authority were challenged before this Court in C.W.J.C. No. 7980 of 2015. During the pendency of the writ petition, the petitioner also filed interlocutory application seeking amendment of the prayer, inter alia, to quash the Notification No. 26/EB-Patna dated 27.11.2012 whereby the writ petitioner has been transferred from PESU Control Room to Electric Supply Section Mahnar, besides the decision dated 17.01.2013 whereby the departmental proceeding was initiated against her and also the charge-sheet dated 17.01.2013 as well as amended charge-sheet dated 06.03.2013 and the second show-cause dated 14.06.2013.

4. The respondents-appellants herein filed a detailed reply raising the plea of maintainability and delay in seeking such amendment at such belated stage. The matter was finally heard and impugned order/judgment dated 27.06.2025 came to be passed after setting aside the departmental order dated 26.06.2013 and 04.02.2015 and the Competent Authorities were directed to reinstate the petitioner with all consequential benefits, including monetary and service benefits within a



period of six months from the date of receipt of this order.

5. Mr. Y.V. Giri, learned Senior Advocate for the appellants while assailing the impugned order/judgment has submitted that once the impugned orders were set aside on being found that the disciplinary proceeding was not conducted in accordance with the prescribed procedure, particularly, regarding the jurisdiction and competence of the authority initiating the departmental proceeding, the matter ought to have been remanded for re-framing of charges and a fresh enquiry should be ordered. Since the writ petition was allowed solely on a technical ground relating to the competence of jurisdiction, the consequential direction for grant of benefits, including the monetary and service related benefits is not legally sustainable, just and proper. It is further contended that once the initiation of departmental proceeding was not challenged in the original writ petition and was questioned belatedly after 14 years by seeking amendment of the petition, the same was not required to be considered. The delay in filing the said application was strongly objected by the respondents/appellants herein, but not considered by the learned Single Judge. It is further contended that since the writ petitioner has not proved that she was gainfully employed and that she did not earn any income in the



said period, hence the consequential benefits, including monetary and service benefits is wholly unjustified.

6. To support the aforesaid contention reliance has been placed by Mr. Giri, learned Senior Advocate on a decision rendered by the Three Judges Bench of the Hon'ble Supreme Court in the case of ***General Manager, Haryana Roadways Vs. Rudhan Singh: (2005) 5 SCC 591***. Further reliance has also been placed on a decision of the Hon'ble Supreme Court in the case of ***Chairman-cum-Managing Director, Coal India Limited & Others Vs. Ananta Saha & Ors.: (2011) 5 SCC 142*** to buttress his argument that once an order of punishment is quashed on technical grounds, the matter ought to be remanded to the disciplinary authority for initiation of a fresh enquiry/proceeding from the stage where the defect is found out and in such a situation, the employees is not automatically entitled to back wages merely because reinstatement is ordered.

7. On the other hand, Mr. Umesh Prasad Singh, learned Senior Advocate for the writ petitioner-respondent vehemently refuted the aforesaid contentions and submitted that the entire action as well as the disciplinary proceeding initiated against the writ petitioner was tainted with *malafide* and she was subjected to mental and physical harassment in



various ways. Moreover, once the position is admitted that the writ petitioner was appointed on 24.08.2011, so the writ petitioner's appointment made by the Bihar State Electricity Board in accordance with Rules and Procedure as enforced on that date; hence the writ petitioner's appointing authority was the Chairman of the Bihar State Electricity Board. The very initiation of the departmental proceeding is wholly without jurisdiction, as it has not been initiated by the competent authority, hence the order passed by the learned Single Judge suffers from no illegality. Once the learned Single Judge has concluded that the O.S.D. (Admn.) is not the disciplinary authority to the writ petitioner, therefore, whatever action taken by the O.S.D. (Admn.) against the petitioner in a departmental enquiry stands vitiated; besides the finding recorded by the Court that if an order was passed by an incompetent authority, it would go to the root of the matter, therefore, a formal challenge to action or order was warranted and the writ petitioner was extended liberty to file interlocutory application to amend the original writ petition, thus the plea of delay in challenging to the initial order cannot be raised.

Learned Senior Advocate additionally contended that since the impugned order of initiation of disciplinary



proceeding has been found to be wholly without jurisdiction, therefore, the order of dismissal as well as appellate order have no force in law, accordingly, after the orders having been set aside, the writ petitioner is entitled to reinstatement and all the back wages, because she has been deprived from discharging the duty unauthorizedly.

8. To strengthen the aforesaid submissions, reliance has been placed by Mr. Singh, learned Senior Advocate on a decision rendered by the Hon'ble Supreme Court in the case of ***Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigam Limited & Ors.: (2016) 16 SCC 663*** that employer cannot be allowed to press self-serving plea of denying him/her wages on the ground of principles of 'no work no pay' since fault lies with employer if not utilizing service of employee for the period, in question. Reliance has also been placed on a Division Bench decision of this Court in the case of the ***Chairman, Bihar Industrial Area Development Authority & Ors. Vs. Arvind Kumar Singh & Anr.: 2017 (1) PLJR 479*** that in the event of reinstatement, the employee is entitled to full back wages, if he gets exonerated from the charges.

9. After having anxiously heard the learned Senior Advocates for the respective parties and on perusal of the



materials available on record as well as the impugned judgment and order, what we find that the learned Single Judge on being found that the very initiation of the disciplinary proceeding by framing of charge and its continuation by the O.S.D. (Admn.), who was not the disciplinary authority to the petitioner, came to hold that whatever action is taken by the O.S.D. (Admn.) against the petitioner in a departmental enquiry stands vitiated. Besides the aforesaid facts, the learned Single Judge has rendered specific finding that the penalty order has also been passed by the incompetent authority, which would go to the root of the matter. Consequently, the learned Single Judge came to hold that the appellate authority's order and further action of the respondents would vitiate in view of the decision of the Hon'ble Supreme Court in the case of *Ananta Saha* (supra) and accordingly set aside the impugned orders dated 26.06.2013 and 04.12.2015.

10. In view thereof, the issues as culled out from the materials available on record, and require consideration, in the opinion of this Court are in narrow compass and read as follows:

(i) Whether the learned Single Judge has committed an error in law in not directing fresh enquiry to



be conducted in case the disciplinary proceeding has been held to be vitiated merely on technical grounds;

(ii) Whether the writ petitioner-respondent herein is entitled to back wages as a consequence of her reinstatement.

11. To answer the **Issue No.(i)** as formulated hereinabove, we firstly refer the decision rendered by the Hon'ble Supreme Court in the case of ***Managing Director ECIL Hyderabad & Ors. Vs. B. Karunakar & Ors., (1993) 4 SCC 727***, where the Hon'ble Supreme Court has been pleased to hold that where the punishment awarded by the disciplinary authority is quashed by the Court/Tribunal on some technical grounds, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages etc. is determined by the disciplinary authority in accordance with law after the fresh enquiry is concluded.

12. Now coming to the decision rendered by the Hon'ble Supreme Court in the case of ***Ananta Saha*** (supra), it was held that where an order of punishment is quashed on



account of being suffered from violation of principles of natural justice, the matter may be relegated to the disciplinary authority for initiating de-novo enquiry with effect from the stage where the defect has been pointed out. The Hon'ble Supreme Court further reiterated that the principle of "no work no pay" may apply particularly where the employee was gainfully employed elsewhere and clarified that entitlement to back wages is independent of reinstatement and remains discretionary on the court depending on the facts of the case. The disciplinary authority may reinstate the delinquent for the purpose of conducting a fresh enquiry and even place him under suspension, in which case he would only be entitled to subsistence allowance pending enquiry.

The aforementioned legal position has been settled in series of decisions where the Court underscored and emphasized that once the Court sets aside the order of punishment on the ground that the enquiry was not properly conducted or the enquiry was found to be deficient either procedurally or otherwise, the proper course always is to remand the matter back to the authority concerned to redo a fresh.

However, there may be situations where because of a long time lag or such other supervening circumstances the writ



court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority. This issue has been duly considered and crystallized by the Hon'ble Supreme Court in the case of **Allahabad Bank & Ors. Vs. Krishna Narayan Tewari: (2017) 2 SCC 308**. It would be relevant to recapitulate paragraph nos. 8 and 9 of the said judgement, which would certainly help to answer the issue raised here in the matter.

“8. There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient, either procedurally or otherwise, the proper course always is to remand the matter back to the authority concerned to redo the same afresh. That course could have been followed even in the present case. The matter could be remanded back to the disciplinary authority or to the enquiry officer for a proper enquiry and a fresh report and order. But that course may not have been the only course open in a given situation. There may be situations where because of a long time lag or such other supervening circumstances, the writ court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority. That is precisely what the High Court has done in the case at hand.



9. *The High Court has taken note of the fact that the respondent had been placed under suspension in the year 2004 and dismissed in the year 2005. The dismissal order was challenged in the High Court in the year 2006 but the writ petition remained pending in the High Court for nearly seven years till 2013. During the intervening period, the respondent superannuated on 30-11-2011. Not only that he had suffered a heart attack and a stroke that has rendered him physically disabled and confined to bed. The respondent may by now have turned 65 years of age. Any remand either to the enquiry officer for a fresh enquiry or to the disciplinary authority for a fresh order or even to the appellate authority would thus be very harsh and would practically deny to the respondent any relief whatsoever. Superadded to all this is the fact that the High Court has found, that there was no allegation nor any evidence to show the extent of loss, if any, suffered by the Bank on account of the alleged misconduct of the respondent. The discretion vested in the High Court in not remanding the matter back was, therefore, properly exercised.”*

13. In the case of **Cantonment Executive Officer & Anr. Vs. Vijay D. Wani & Ors.:** (2008) 12 SCC 230, the departmental enquiry was held to be vitiated by the Hon’ble



Supreme Court on the ground of bias. In the meantime, 13 years had passed and the High Court barred the fresh enquiry. Till the time the matter reached up to the Supreme Court, more than 16 years had lapsed. The Hon'ble Supreme Court upheld the High Court's order to bar further enquiry that it would not be fair to proceed afresh in this matter. Thus, directed reinstatement of the respondent (employee). However, while deciding the issue of back wages, the Hon'ble Supreme Court awarded 50% back wages to the employee as 16 years had already passed and the departmental proceeding also had already vitiated on bias without permission to proceed with fresh enquiry in the matter.

14. Before coming to the facts of the case, we would also like to refer one of the decision rendered in the case of *Chairman LIC of India & Ors. Vs. A. Masilamani: (2013) 6 SCC 530*, where the Hon'ble Supreme Court while answering the questions arise for consideration as to whether:

(i) A court/tribunal sets aside the order of punishment imposed in a disciplinary proceeding on technical grounds, i.e., non-observance of statutory provisions, or for violation of the principles of natural justice, then whether the superior court, must provide opportunity to the disciplinary authority, to take up and complete the proceedings, from the



point that they stood vitiated and;

(ii) If the answer to question no.1 is, that such fresh opportunity should be given, then whether the same may be denied on the ground of delay in initiation, or in conclusion of the said disciplinary proceedings.

It would be worth benefiting to bring on record the relevant paragraphs which authoritatively answered the aforementioned question.

“16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : AIR 1994 SC 1074] , Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293 : 2003 SCC (L&S) 1033] , U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264 : 2006 SCC (L&S) 78] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126].

17. The second question involved herein is also no longer res integra. Whether or not the disciplinary authority should be given an



opportunity to complete the enquiry afresh from the point that it stood vitiated depends upon the gravity of delinquency involved. Thus, the court must examine the magnitude of misconduct alleged against the delinquent employee. It is in view of this, that courts/tribunals are not competent to quash the charge-sheet and related disciplinary proceedings, before the same are concluded on the aforementioned grounds.

18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to balance and weigh the same, so as to determine if



it is in fact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated only on the ground of delay in their conclusion. (Vide State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , State of M.P. v. Bani Singh [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514 : AIR 1990 SC 1308] , Union of India v. Ashok Kacker [1995 Supp (1) SCC 180 : 1995 SCC (L&S) 374 : (1995) 29 ATC 145] , Prohibition & Excise Deptt. v. L. Srinivasan [(1996) 3 SCC 157 : 1996 SCC (L&S) 686 : (1996) 33 ATC 745] , State of A.P. v. N. Radhakishan [(1998) 4 SCC 154 : 1998 SCC (L&S) 1044 : AIR 1998 SC 1833] , M.V. Bijlani v. Union of India [(2006) 5 SCC 88 : 2006 SCC (L&S) 919 : AIR 2006 SC 3475] , Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] and Ministry of Defence v. Prabhash Chandra Mirdha [(2012) 11 SCC 565 : (2013) 1 SCC (L&S) 121 : AIR 2012 SC 2250] .”

15. Now coming to the facts of this case in hand, the charges against the writ petitioner was confined to her willful unauthorized absence from her duty for few days with the added charge of not submitting her joining on the transferred place and thus constituting carelessness towards the official duty and



indiscipline.

Undisputedly, the writ petitioner was subjected to departmental enquiry in the year 2012 and on being found prima facie substance in the imputation, charges were framed and the departmental proceeding was initiated with the issuance of Memo of Charge on 16.01.2013 vide Resolution No. 59 dated 17.01.2013. After completion of disciplinary proceeding, the order of punishment of dismissal came to be passed on 26.06.2013. the appeal preferred by the writ petitioner also stood rejected on 20.12.2014. The order of punishment and its affirmance by the Appellate order were questioned before this Court long back in the year 2015 by filing C.W.J.C. No. 7980 of 2015. Notwithstanding the aforesaid fact, the matter kept pending before this Court and in the meantime, 12 years have been passed till the impugned order could be passed by the learned Single Judge on 27.06.2025. It is also not in dispute that the question with regard to initiation of the departmental proceeding by an incompetent person was not raised in the original writ petition and was introduced at a belated stage by filing an interim application seeking amendment in the prayer. There is no quarrel to the settled proposition that the relief not found in the pleading should not be granted. If a Court considers



or grants a relief in which no prayer or pleading was made depriving the respondent of an opportunity to oppose/resist such relief, which would lead to miscarriage of justice.

16. In the case of ***Trojan & Co. Ltd. Vs. RM. N. N. Nagappa Chettiar: AIR 1953 SC 235***, the Hon'ble Supreme Court consider the issue as to whether the relief not asked for by a party could be granted and that too without having proper pleadings, the Court held as under:

“It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.

17. In the case of ***Bharat Amratlal Kothari Vs. Dosukhan Samadkhan Sindhi & Ors.: AIR 2010 SC 475***, the Hon'ble Supreme Court held that though the court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner.

18. The materials available on record clearly suggest



that the initial action of the O.S.D. (Admn.), in so far as initiation of departmental enquiry by framing of charge is concerned, was not assailed and thus the learned Single Judge had rightly opined that in absence of challenge to such action was not appropriate to decide the present matter. However, it has further been observed that if an order was passed by an incompetent authority, it will go to the root of the matter, therefore, liberty was extended to the writ petitioner to challenge the same by filing an interlocutory application and, accordingly, the same was challenged by filing I.A. No. 2 of 2025.

19. The learned Single Judge have rightly come to the conclusion that the penalty order was passed by an incompetent authority, which goes to the root of the matter and consequently the appellate order as well as the further action of the Respondents would vitiate.

Hence, this Court is of the opinion that there was inherent deficiency in the procedure to be adopted by the disciplinary authority and since the very enquiry or the proceeding was conducted by an authority having no jurisdiction, normally, the matter should be remanded to the disciplinary authority for initiation of a fresh proceeding with



effect from the stage of framing of the charge where it stood vitiated because of the reason aforementioned. To the utmost regard to the learned Single Judge, since the infirmity pointed out by the learned Single Judge in all circumstances, a patently procedural defect, the matter ought to be remanded to the disciplinary authority for initiation of a fresh proceeding; albeit this Court is not oblivious of the settled position that the facts and circumstances of the case, in question, have to be examined taking into consideration the gravity/magnitude of the charge involved therein, as also the fact that now 13 years have been lapsed, in the meantime. Any remand to the competent authority for initiation of a fresh proceeding, at this stage, would thus be harsh and would practically denied to the writ petitioner any relief, thus considering all the aspect of the matter, in the light of the settled legal proposition, we answered the issue no.(i) accordingly.

20. The **Issue No.(ii)** is whether the writ petitioner-respondent herein is entitled to back wages as a consequence of her reinstatement.

In consequence to the setting aside of dismissal order as also the entire departmental proceeding, the natural corollary is the reinstatement of the writ petitioner. Now the question as



has arisen before this Court to be answered as to whether the writ petitioner-respondent herein is entitled to back wages as consequence of her reinstatement.

21. In *U.P. S.R.T.C. Ltd. Vs. Sarada Prasad Misra & Anr.:* (2006) 4 SCC 733, the Hon'ble Supreme Court held that no precise formula or 'cast iron rule' can be laid down regarding grant of full back wages, as entitlement thereto depends upon the facts and circumstances of each case. The Court clarified that reinstatement and back wages are independent reliefs and mere reinstatement upon finding the termination illegal does not automatically entitle the employee to full back wages. While determining the entitlement to back wages, the Court or Tribunal must adopt a flexible and realistic approach rather than a rigid or mechanical one, and consider all relevant circumstances in the light of the principles of justice, equity and good conscience before passing an appropriate order.

The Hon'ble Supreme Court in the aforementioned case further held that while considering the question of back wages, several relevant factors are required to be weighed and balanced where an employee had rendered long years of service and wrongful termination adversely affect his prospects of future employment, full or partial back wages may be justified.



However, in cases involving short term or daily wage employment, award of full back wages for the entire intervening period may be wholly inappropriate. The Hon'ble Supreme Court also noted the shift in judicial approach from the earlier position where reinstatement with full back wages was ordinarily granted setting aside the dismissal order. It observed that with the passage of time, the Courts have adopted a more pragmatic approach recognizing that compelling the employer to pay wages for a prolonged period during which no service was rendered may not always be just or equitable. Accordingly, although an employee may succeed in establishing illegality in termination and become entitled to reinstatement. The question of back wages must still be separately determined after considering all surrounding circumstances and balancing the equities between the parties.

22. In *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak & Ors.: (2013) 10 SCC 324*, the Hon'ble Supreme Court allowed the appeal and set aside the impugned judgment of High Court stating that the High Court agreed with Tribunal that the action taken by the Management was illegal, but choose to set aside the award of back wages on the ground that she had not proved the factum of non-employment during the



intervening period. The Hon'ble Supreme Court granted full back wages to the employee and directed that on account of failure of payment within the stipulated time, 9% interest will be added to the same. The Hon'ble Supreme Court upon taking note of series of judgments, culled out the proposition in para. 38.1 to 38.7 of the aforementioned judgment.

“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 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. 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 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.”

23. After having carefully gone through the judgment and considering the principles to be taken into account while considering the back wages, the Hon'ble Supreme Court unequivocally held that if it is found that the employee is not guilty at all of any misconduct or charges placed by the employer, then this would create ample justification for award of full back wages. The cases, in which the competent Court finds that employer has acted in gross violation of natural justice or statutory provisions, they will be justified in directing payment of full back wages and in all these cases superior Court should not exercise power under Article 226 or 136 of the Constitution of India merely because of possibility of forming different opinion on entitlement as the employer should not be relieved on his burden by giving him premium.

24. In ***Pradeep S/O Rajkumar Jain vs Manganese Ore(India) Limited: (2022) 3 SCC 683***, the Hon'ble Supreme Court while agreeing that the question regarding entitlement of



back wages needs to be considered, as per the conditions provided in ***Deepali Gundu Surwase*** case (supra). However, in cases where employee was not found at fault and yet terminated and such termination was found illegal, then it would be unfair to deny him the fruits of his employment which he would have enjoyed, but for the illegal/malafide termination. The Hon'ble Supreme Court further held that effort of the Court in such cases should be to restore the status quo in manner which is appropriate in the facts of each case. The matters, the Court needs to take into consideration while making such decision will be the nature of charges, the exact reason for the termination as evaluated and whether the employee was gainfully employed.

25. Similarly, in the case of ***Gowramma C (Dead) by LRS Vs. Manager (Personnel) Hindustan Aeronautical Limited & Anr.: 2022 SCC Online SC 310***, the Hon'ble Supreme Court while answering such issue held that if the employee is not at all fault and she was kept out of work by reasons of the decision taken by the employer, then to deny the fruits of her being vindicated at the end of the day would be unfair to the employee and in such circumstances, no doubt, the question relating to alternative employment that the employee may have resorted to becomes relevant. Keeping in mind the



discretion to be exercised by the Court relying on the fact of each case, the Hon'ble Supreme Court noticed the fact that there was no charge against the employee except that of having produced false caste certificate, found it fit in the interest of justice to enhance the payment of back wages from 50% to 75%.

26. After having discussed the legal proposition, we are of the view that once the Court sets aside the order of dismissal/removal/termination and the employee is reinstated without holding any further enquiry, the period of absence from duty not only be regularized, he should be paid all the salary and allowances admissible to him/her. On the contrary, if the Court sets aside the order of punishment on the ground that the enquiry was not properly conducted or there was deficiency either procedural or otherwise, the proper course is to remand the matter back to the authority concerned to redo the same, however, the entitlement of back wages is independent of the reinstatement and will remain discretionary on the Court depending on the facts of the case. The disciplinary authority may also reinstate the delinquent for the purpose of conducting a fresh enquiry and even placing under suspension in which case the employee would be entitled to subsistence allowances



pending enquiry and the final decision with respect to back wages shall be taken after conclusion of such enquiry.

Accordingly, we answer the issue no.(ii).

Conclusion

27. In the case at hand, we find that the order of dismissal was set aside on the ground of disciplinary proceeding had been initiated by an incompetent person and, as such, there was an inherent procedural defect, thus the matter ought to have been remanded to the disciplinary authority to proceed afresh from the stage where the defect has been pointed out. However, considering the nature of the charges and the time that has lapsed during the intervening period as well as the infirmities crept in the departmental proceeding, we find and held that any remand to the competent authority for initiation of fresh proceeding would harsh and would practically deny any relief to the writ petitioner and undue premium to the appellants. Hence, the interest of justice would be served if the writ petitioner-respondent herein would be reinstated, as has already been done and is granted 50% of the salary and other allowances due for the period in which she remained out of service.

28. In view of the settled legal proposition and the discussions made hereinabove, we partly modify the order of the



learned Single Judge dated 27.06.2025 passed in C.W.J.C. No. 7980 of 2015 to the extent indicated hereinabove.

29. The present Letters Patent Appeal stands partly allowed. However, there shall be no order as to cost.

(Harish Kumar, J)

Sangam Kumar Sahoo, CJ: I agree

(Sangam Kumar Sahoo, CJ)

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