IN THE HIGH COURT AT CALCUTTA

(CONSTITUTIONAL WRIT JURISDICTION)

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 11391 of 2024
Amulya Ratan Roy

-Versus-

Union of India & Others

For the Petitioner : Mr. A. K. Lahiri.

For the Respondents/UOI : Mr. Chirantan Dawn @ Dan.

Heard on : 18.03.2026

Judgment on : 18.03.2026

Partha Sarathi Chatterjee, J.:-

1. The short issue that falls for consideration in the present writ petition is whether, upon reinstatement in service consequent to the setting aside of the order of dismissal, the petitioner is entitled to full back wages along with other service-related benefits in accordance with the rules governing the establishment of the respondents.

2. The facts, as projected in the writ petition and necessary for effective adjudication thereof, are that, in 2007, while the petitioner was serving in the Central Reserve Police Force (for short, CRPF) as a Peon at its Group Centre, Durgapur, Burdwan, a disciplinary proceeding was initiated against him on the allegation of his involvement in a recruitment racket. It was alleged that, in connivance with two of his colleagues, he managed to procure the question paper of the written examination for the post of CT/GD scheduled to be held on 11.04.2007 and thereafter leaked the same. It was further alleged that certain documents, namely the original mark sheets and certificates of CT Ujjal Prasad and CT Prashant Roy, which had been handed over to him by SI(M) P.K. Roy, were recovered from his possession. According to the respondents, such conduct was unbecoming of a government servant.

3. Upon conclusion of the departmental enquiry, the petitioner was dismissed from service by an order dated 23rd June, 2009. Aggrieved thereby, the petitioner challenged the legality of the said order by filing a writ petition being WP No. 11585 (W) of 2009. The said writ petition was disposed of by a Co-ordinate Bench of this Court by an order dated 7th July, 2009, granting liberty to the petitioner to prefer a statutory appeal before the appellate authority against the order of dismissal.

4. The petitioner assailed the order dated 7th July, 2009 passed in WP No. 11585 (W) of 2009 by preferring an intra-court appeal, being MAT No. 727 of 2009. A Hon'ble Division Bench of this Court, by its order dated 14th September, 2009, set aside the order of dismissal and remanded the matter to the

Disciplinary Authority (for short, DA) with a direction to proceed afresh from the stage of inquiry.

5. Pursuant to the said order, the petitioner was reinstated in service on 17th September, 2009 and a fresh departmental inquiry was initiated against him. Upon conclusion of the said inquiry, the Disciplinary Authority once again held that the charges levelled against the petitioner stood proved and, accordingly, passed a second order of dismissal dated 8th April, 2010, thereby dismissing the petitioner from service for the second time. The petitioner preferred a statutory appeal against the order of dismissal; however, the same was decided against him. The petitioner filed a revisional application but the same was also dismissed.

6. In view of this, the petitioner filed another writ petition, W.P. no. 3412 (W) of 2011, which was disposed of by a Co-ordinate Bench of this Court by an order dated 24th July, 2018 which rejected the inquiry report, order of dismissal, order of the appellant authority and order passed in revision. In addition, the petitioner was directed to be reinstated in service with all benefits, past and present, in accordance with law as if the dismissal never happened.

7. In compliance with the order dated 24.07.2018, the petitioner was reinstated in service with effect from 31st October, 2018 vide. an order dated 17.12.2018 issued by the Deputy Inspector General, Group Centre, CRPF, Durgapur. However, the quantum of pay and allowances payable to him for the intervening period between the date of his dismissal and the date of his reinstatement, that is, from 09.04.2010 to 30.10.2018, was determined at 50% of the wages by invoking FR-54(A)(2)(i).

8. In the aforesaid circumstances, the petitioner has preferred the present writ petition challenging the legality and validity of the order dated 17.12.2018 issued by the Deputy Inspector General and has prayed for issuance of an appropriate writ, direction and/or order setting aside the same in so far as it relates to grant of only 50% of his wages to the petitioner for the period from 09.04.2010 to 30.10.2018. The petitioner has further prayed for a direction upon the concerned respondents to treat the said period as period spent on duty and to release all consequential service benefits, including full pay and allowances for the said period, in favour of the petitioner.

9. The record reveals that a Co-ordinate Bench of this Court by an order dated 24.06.2024 passed in this writ petition directed the respondent to file a report in form of affidavit stating therein as to why the benefits as directed by the order dated 24th July, 2018 should not be given to the petitioner. In the report, it was contended that during the intervening period between the date of dismissal from service till the date of petitioner's re-instatement i.e. from 9.4.2010 to 30.10.2018 was treated as the period spent on duty; however, the petitioner did not discharge his duties during that period in term of Fundament Rules vide. FR-54(A)(2)(i), quantum of pay and allowance of the petitioner for that period was determined to be 50% of wages. It was also claimed therein that the petitioner had approached the Authority with a request not to prefer any appeal against the order dated 24.07.2018 and with consent given by the petitioner vide. his letter dated 8.11.2018, his pay and allowances were determined to be 50% of wages.

10. Petitioner filed an exception to that report wherein it was contended that the respondents had illegally invoked the FR-54 (A)(2)(i) to determine the quantum

of the petitioner's pay and allowance during that period to the tune of 50% of his wages. The petitioner asserted that his case would be governed by FR-54A(3) and as such, in his view, he is entitled to fully salary for that period. The purported consent given by him has no sanction of law and the respondents had acted illegally in asking such a consent from the petitioner and that consent was given without prejudice to the order dated 24.07.2018 passed by this Hon'ble Court**.** It was specifically denied that the provisions of Section 63 of Indian Contract Act, 1882 and the order passed by this Hon'ble Court cannot be disobeyed and/or bypassed by hovering over the rules.

11. Mr. Lahiri, learned advocate appearing for the petitioner, referring to the operative part of the order dated 24.07.2018 passed in W.P. 3412(W) of 2011, he argues that it was specific order of this Court that the petitioner shall be reinstated in service with all benefits in accordance with law, past and present, as if the dismissal never happened. The order dated 24.07.2018 has not been assailed before the appropriate forum. In compliance with that order, the petitioner has been reinstated; however, all benefits have not been granted to the petitioner.

12. He claimed that in the present case, invoking FR 54A(2)(i) to determine the quantum of pay and allowances of the petitioner to the extent of 50% of wages by an order dated 17.12.208 issued by the Deputy Inspector General. He claims that the order dated 17.12.2018 is arbitrary, illegal and contrary to the applicable service rules as well as the directions of the Hon'ble High Court. According to the him, since the dismissal order was set aside on merits, the case is governed by Fundamental Rule 54-A(3), which provides that where the dismissal or removal

of a government servant is set aside by a court of law on merits, the government servant shall be entitled to full pay and allowances for the period during which he remained out of service.

13. He contends that under the relevant rules the intervening period must be treated as spent on-duty for all purposes, including pay, increments, seniority and other consequential benefits. The petitioner submits that the respondents had no authority or discretion to reduce the back wages to 50% once the Court had directed reinstatement with all consequential benefits. He claims that by taking a consent from an employee, an employer cannot disobey the order of this Court and act contrary to the applicable rule.

14. He contends that during the long period of litigation from 2010 to 2018, he remained without employment and suffered severe financial hardship due to the loss of his livelihood. Despite being exonerated by the Court on merits, the petitioner claims that he has been further prejudiced by the respondents' decision to deny him full back wages for the said period. Being aggrieved by the said order granting only 50% wages, the petitioner has filed the present writ petition seeking a direction upon the respondents to grant 100% back wages and full consequential benefits for the entire intervening period.

15. To invigorate his submission, he cites a decision, reported in AIR 2022 SC 2924 *(Krishna Rai (dead) thr. Lrs& Ors. vs. Banaras Hindu University thr. Registrar & Ors.)* for the proposition that the principle of estoppel and acquiescence would not prevail over statutory service rules. He relies upon a decision, reported in (2015) 11 SCC 628 *(Tata Chemicals Limited vs. Commissioner of Customs (Preventive)*, Jamnagar for the proposition that there

can be no estoppel against law. If law requires that something be done in a particular manner, it must be done in that manner, and if no done in that manner has no existence in the eye of the law at all. He refers to another decision, reported in 2008(5) Supreme 231 *(M/s. Deepak Agro Foods vs. State of Rajasthan & Ors.)* for the proposition that when an authority lacking jurisdiction makes an order, such order would be without jurisdiction, null, non est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. He relied upon a decision,reported in AIR 2010 SC 3823 *(Ritesh Tewari &Anr. Vs. State of U.P. & Ors.)* for the proposition that a right in law exists only and only when it has a lawful origin. He refers to a decision, reported in AIR 2024 SC 2292 *(Smita Shrivastava vs. State of M.P. & Ors.Etc.)* and AIR 2024 SC 1265 *(Manoj Kumar vs. Union of India & Ors.)* for the proposition that the primary duty of constitutional courts remains the control of power, including setting aside of administrative actions that may be illegal or arbitrary, it must be acknowledged that such measures may not singularly address repercussions of abuse of power. It is equally incumbent upon the courts, as a secondary measure, to address the injurious consequences arising from arbitrary and illegal actions. He cites a decision reported in (2007) 2 SCC (L&S) 748 *(Commissioner, Karnataka Housing Board vs. C. Mudddaiah)* for the proposition that in absence of statutory provision, normal rule is 'no work no pay'. However, in appropriate case, court may hold that employee was willing to work but was illegally and unlawfully was not allowed to do so and, in such conspectus, court may direct to grant all benefits to the employee considering 'as if he had worked'. Mr. Lahiri referring to an unreported decision by a Co-ordinate Bench of this Court in WPA 5956 of 2018 *(Khagendra Barik vs. Union of India & Ors.)* submits that in similar circumstances, the respondents have been directed to disburse full pay and allowances and he claims that acting upon this order, released full pay and allowances in favour of Mr. Barik.

16. Mr. Dan, learned advocate appearing for the respondents submits a written note of argument in addition to advancing oral argument. The main thrust of his argument is that the petitioner had approached the respondents with a request not to prefer any appeal against the order dated 24.07.2018 and accordingly, by a letter dated 8.11.2018 a proposal was given to him to accept 50% of wages. By a letter dated 12.11.2018, the petitioner agreed and consented to that proposal and accepted 50% of his salary for that period. He claims that in the present case, the provisions of Section 63 of the Indian Contract Act shall come in play.

17. Mr. Dan argues that it is a settled principle in service jurisprudence that reinstatement does not automatically entitle an employee to full back wages for the entire period during which he remained out of service. The respondents rely on the principle of "no work, no pay", which implies that wages are ordinarily payable only when an employee has actually rendered service.

18. He contends that during the period from 8 April 2010 to 2018, the petitioner did not perform any duties in the force and therefore the payment of full wages for the entire period would not be justified. He claims that the allegations against the petitioner were of a serious nature involving irregularities in a recruitment process, which could potentially affect the credibility and discipline of the force. According to them, this factor was also taken into account while determining the

financial benefits payable to the petitioner. Taking into consideration the overall circumstances of the case, the competent authority decided that it would be reasonable to grant the petitioner 50% of the pay and allowances for the intervening period, thereby providing partial compensation without disregarding the fact that no actual service had been rendered during the said period.

19. To buttress his submission, he relies upon the decision reported in (1992) 4 SCC 683, *(R.N. Gosain v. Yashpal Dhir)*, for the proposition that the law does not permit a person to both approbate and reprobate. He relies upon the decision reported in (2014) 15 SCC 144, *(State of Punjab v. Dhanjit Singh Sandhu)*, wherein the Hon'ble Supreme Court reiterated that where an individual has accepted an order or scheme and derived benefits thereunder, he is estopped from subsequently challenging the same. He further relies upon the decision reported in (2009) 1 SCC 267, *(National Insurance Co. Ltd. v. Boghara Polyfab Pvt. Ltd.)*, wherein the Hon'ble Supreme Court held that where a party voluntarily executes a discharge voucher or accepts payment in full and final satisfaction, such party cannot subsequently raise further claims. Further, he draws support from (2004) 1 SCC 121, *(Union of India v. Jaipal Singh)*, which lays down that reinstatement following acquittal or a court order does not automatically entitle an employee to full back wages. It was observed that the principle of "no work no pay" may be applied, particularly where the State is not at fault for the intervening period or where the employee did not actually work during that time. Further, he cites (2011) 8 SCC 155, *(Greater Hyderabad Municipal Corporation v. M. Prabhakar Rao)*, wherein it was held that denial of back wages may be justified even after acquittal or reinstatement, by applying the

principle of "no work no pay" where the employee had not actually discharged duties during the relevant period. Further, he refers to a decision reported in (2013) 12 SCC 179, *(State of Uttaranchal v. Sri Shiv Charan Singh),* which laid down that a stale or long-standing dispute cannot be revived merely by filing a representation or a writ petition after a significant delay. Further, he refers to a decision reported in (2019) 15 SCC 633, *(Union of India v. C. Girija)*, in which the Hon'ble Supreme Court rejected a claim for inclusion in a promotion panel filed after a long delay, holding that stale claims cannot be entertained by the High Court under Article 226. He also places reliance on a decision reported in (2022) 2 SCC 25, *(Union of India v. N. Murugesan),* for the proposition that delay coupled with acquiescence is a valid ground to dismiss a writ petition. He cites a decision reported in(2006) 5 SCC 311, *(Bhagwati Prasad Pawan Kumar v. Union of India)*, which held that an offeree cannot accept the benefits of an offer while rejecting its conditions; even if accepted "under protest" or "without prejudice," retaining the benefits amounts to full acceptance of the conditions.

20. Heard the learned advocates appearing for the respective parties. Perused the materials placed on record.

21. As noted previously, the writ petition being W.P. no. 3412 (W) of 2011, which was filed, inter alia, assailing the order of dismissal dated 8th April, 2010, order of the Appellate Authority (for short, AA) and order passed in revision, was disposed of by a Co-ordinate Bench of this Court by an order dated 24th July, 2018 on contest which rejected the inquiry report, order of dismissal, order of the appellant authority and order passed in revision. In addition, the petitioner was

directed to be reinstated in service with all benefits, past and present, in accordance with law as if the dismissal never happened.

22. The order dated 17.12.2018, issued by the Deputy Inspector General, whereby the quantum of pay and allowances of the petitioner was determined at 50% of his wages for that intervening period, indicates that such determination was made in invocation of FR-54A(2)(i). To shed light on the issue, it would be apposite to quote the relevant Fundamental Rules, which are as follows:

> "54-A (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of Law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularized and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.
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> (2) (i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of article 311 of the Constitution, and where he is not exonerated on merits, and no further inquiry is proposed to be held, the Government servant shall, subject to the provisions of sub-rule (7) of rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice:
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> (ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of

suspension preceding dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the court shall be regularised in accordance with the provisions contained in sub-rule (5) of rule 54.

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal, or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant."

23. Therefore, it can be safely held that the order of dismissal dated 8.4.2010, issued against the petitioner, was set aside by a Co-ordinate Bench of this Court on the merits of the case, and it is evident that the petitioner was reinstated without any further inquiry. Thus, it goes without saying that, in the present case, Fundamental Rule 54A(3) would come into play and as per this rule, the petitioner was entitled to the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed. Furthermore, by virtue of

the order dated 24.07.2018 passed in W.P. No. 3412(W) of 2011, the petitioner became entitled to full pay and allowances.

24. The respondents have contended that the petitioner had requested the respondents not to prefer an appeal against the order dated 24.07.2018 passed in W.P. no. 3412(W) of 2011 and accordingly, the department had issued a letter dated 8.11.2018 giving an offer to accept 50% of wages quid pro quo and it was alleged that in reply to that letter dated 8.11.2018, the petitioner agreed and consented to grant of 50% of wages in place of full pay and allowances. The respondents contended that based on such consent, the petitioner was granted 50% of wages.

25. In the present case, no document has been produced to demonstrate that it was the petitioner who initially approached the respondents with a request not to prefer an appeal against the order dated 24.07.2018. The record, on the contrary, reveals that by a letter dated 08.11.2018 issued by the DIGP, the petitioner was informed that, considering his physical absence from duty and disengagement from the department for the period from 09.04.2010 to 30.10.2018, the department had decided to grant pay and allowances at the rate of 50% of his wages for the said period. The petitioner was further requested to convey his consent to the said proposal within the stipulated time, upon which an order of reinstatement would be issued. In response thereto, the petitioner, by his letter dated 12.11.2018, stated: *"I do hereby convey my consent, as mentioned in your letter under reference, for immediate reinstatement and release of emoluments. This is without prejudice to the order dated 24.07.2018"*.

26. Therefore, a conjoint reading of the aforesaid two letters clearly indicates that the department imposed a pre-condition upon the petitioner to convey his consent for reinstatement and for release of his ‘emoluments’, despite being fully aware that a Constitutional Court had directed that all past and present benefits be extended to the petitioner as if the order of dismissal had never been passed. Such a direction left no scope for the respondents to unilaterally determine or curtail the quantum of the petitioner’s pay and allowances. Consequently, the said letter of the petitioner cannot be construed as a complete waiver of his rights flowing from the statutory service rules and the order dated 24.07.2018 passed in W.P. No. 3412(W) of 2011.

27. In service jurisprudence, the employer-employee relationship, particularly in public employment, transcends mere contract law. While it begins with a contract, it is primarily governed by statutory service rules, constitutional provisions (Articles 14, 16), and administrative law. Public service involves a "status" where rules, not consent, dictate service conditions. It is well settled principle that although the appointment process may start with a contract, a government servant acquires a status upon appointment. Consequently, rights and obligations are no longer determined by the consent of both parties but by statute or statutory rules.

28. In the decision of Krishna Rai (dead) thr. Lrs& Ors. *(supra)*, it was ruled that the principle of estoppel and acquiescence would not prevail over statutory service rules. In the judgment of Tata Chemicals Ltd. (*supra*), it was held that there cannot be any estoppel against law. Therefore, principle of estoppel and acquiescence cannot override the statutory provisions of the FR-54A(3). Thus, for

the aforesaid reasons, it can be held that the doctrine of approbate and reprobate has no application in the present case, and consequently, the decisions relied upon by the respondents on this issue are inapplicable.

29. In the present case, if one looks beyond the surface labels, it would appear that a disciplinary proceeding was initiated against the petitioner, a Group-D staff (peon), in 1997, culminating in the issuance of the first order of dismissal in 2009. Thereafter, a second order of dismissal was passed in 2010, which came to be set aside by an order dated 24.07.2018 passed in W.P. No. 3412(W) of 2011. Thus, the petitioner remained under a cloud from 2007 to 2018, i.e., for a period of about 11 years. In such circumstances, the employer was evidently in a dominant position, possessing superior bargaining power. Undoubtedly, an official superior is in a position to dominate the will of a subordinate, and by virtue of such position, any undertaking or consent could easily be obtained from an employee who had remained out of employment for nearly 11 years.

30. Even assuming that any request or consent was given, whether orally or otherwise, the same cannot be construed as a valid agreement whereby the employer purportedly agrees to forgo its right to prefer an appeal against an order passed in favour of the employee, particularly when such consent is alleged to have been obtained under the duress of a prolonged dismissal and in circumstances marked by unequal bargaining power. Consent, in its true sense, partakes the character of an agreement. It is, therefore, indeed surprising that the respondents, who are expected to act as model employers, would enter into such an arrangement so as to not implement, in its entirety, an order passed by a Constitutional Court

31. It is well settled that a waiver brought about by economic compulsion or inequality of bargaining power is invalid. Moreover, a statutory right cannot be waived by an employee even by entering into an agreement. It is a settled principle of law that no person can, by contract, exclude himself from the protection of the courts.

32. The Hon'ble Supreme Court, in *Central Inland Water Transport Corporation Limited and Anr. v. Brojo Nath Ganguly and Anr.,* (1986) 3 SCC 156, held that concepts which are unconscionable, arbitrary, and opposed to public policy are void. Their Lordships further held that such agreements would be violative of Articles 14, 16, 38, 39, and 43 of the Constitution of India. It was also observed that an unconscionable bargain or contract is one which is irreconcilable with what is right or reasonable, or the terms of which are so unfair and unreasonable that they shock the conscience of the Court. In the said decision, it was further observed that even legislation has, in many cases, intervened to prevent one party to a contract from taking undue or unfair advantage of the other, for instance, through laws regulating the hours of work, conditions of service of workmen, and protection against unfair discharge from service.

33. Over time, both the courts and the legislature have shown a growing concern to protect weaker parties from harsh and one-sided contracts. It has been recognised in judicial decisions that the concept of distributive justice, though of relatively recent origin, has had a significant influence on the law of contracts. This concept broadly seeks to reduce economic inequalities and to correct the imbalance that often arises in dealings between parties who are not on an equal

footing. Another important development in this area is the emphasis on the test of reasonableness or fairness of contractual terms, especially in situations where there is a clear inequality of bargaining power between the parties.

34. Needless to state that the scope of judicial review is founded on well-recognized grounds such as illegality, irrationality (including Wednesbury unreasonableness), and procedural impropriety. In appropriate cases, the doctrine of reasonableness also gives way to the more nuanced doctrine of proportionality. Judicial review of administrative action is essentially intended to prevent arbitrariness, irrationality, unreasonableness, bias, and mala fides. The fundamental mandate of Article 14 is to ensure fairness in State action. Therefore, where a decision is found to be irrational, it squarely falls within the ambit of judicial review.

35. As noted earlier, in the present case, it appears wholly irrational that a model employer would obtain consent from an employee under the duress of a long-standing dismissal, or enter into an arrangement with an employee placed in a weakened and vulnerable position, with a view to avoiding implementation of a solemn order of a Constitutional Court as well as its own statutory service rules. Such conduct cannot withstand the scrutiny of judicial review.

36. In the present case, the respondents have also raised the plea of delay, contending that the petitioner challenges the determination of pay and allowances made in 2018 only in 2024. It is, however, well settled that no rigid limitation period governs the exercise of writ jurisdiction, and delay by itself is not an absolute bar. While an unexplained or inordinate delay may justify refusal of relief, the Court may still intervene where the ends of justice so demand. In the

facts of the present case, the delay does not warrant rejection of the writ petition, and the same deserves to be entertained in the interest of justice.

37. Admittedly, payment of back wages on reinstatement is not automatic; however, when termination and/or order of dismissal has been proved to be illegal, then it would be presumed that the employee had not been allowed to work illegally and as such, his right to work has been infringed. In the present case, a Constitutional Court had set aside the order of dismissal, order of appellate authority, the order passed in revision and even enquiry report while disposing a writ petition on contest and directed to pay all benefits, past and present, considering as if no order of dismissal had ever been passed.

38. Thus, in the present case, the principle of 'no work, no pay' is inapplicable. In *Jayantibhai Raojibhai Patel v. Municipal Council, Narkhed & Ors.* (2022) 2 SCC (L&S) 676, it was held that there can be no straightjacket formula for grant of back wages. Relying upon *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*, (2013) 10 SCC 324, it was further observed that where an order of dismissal is found to be illegal, denial of back wages would amount to penalizing the employee for no fault of his and rewarding the employer by relieving it of its obligation to pay wages.

39. In the present case, a Co-ordinate Bench of this Court, upon adjudication on merits, set aside the order of dismissal and directed reinstatement with all consequential benefits as if the dismissal had never occurred. In such circumstances, payment of full pay and allowances under FR 54A(3) is justified, and the decisions relied upon by the respondents on the principle of 'no work, no pay' have no application.

40. If, in similar circumstances, the same benefits are extended to similarly situated employees, but the petitioner is subjected to different treatment, the same would amount to discriminatory conduct on the part of the employer, which is not expected of a model employer.

41. There is no scintilla of doubt regarding binding precedent of the decision cited by the respondents, proposition of which have been discussed in the preceding paragraph no. 19; however, those decisions shall come in aid of the respondents in the factual matrix of the case at hand. In *Bharwati Prasad Pawan Kumar* (*supra*), the issue pertained to railway consignments, which was purely contractual in nature; hence, the said decision is clearly distinguishable on facts.

42. Therefore, based on the discussions made in the foregoing paragraph, the order dated 17.12.2018 issued by the Deputy Inspector General in so far as it directed grant 50% of wages in favour of the petitioner is set aside. The writ petition is disposed of, directing the respondents to disburse full pay and allowances for the period commencing from 9.4.2010 to 30.10.2018 deducting the amount already paid to the petitioner. Such payment shall be made positively within a period of 8(eight) weeks from the date of receipt of a copy of this order.

(Partha Sarathi Chatterjee, J.)