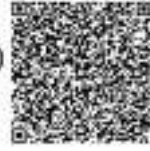


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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-4768-2001

Date of decision: May 12, 2026

PARTAP SINGH

....Petitioner

Versus

PRESIDING OFFICER, LABOUR COURT, GURGAON AND ANOTHER

....Respondents

CORAM:- HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Ms. Malvika Chauhan, Advocate for the petitioner.

Mr. A.P. Setia, Advocate for respondent No. 2.

KULDEEP TIWARI, J. (ORAL)

1. The petitioner-workman, by way of instant writ petition, as cast under Articles 226/227 of the Constitution of India, assails the award dated 18.04.2000 (Annexure P-2), passed by the learned Industrial Tribunal-respondent No. 1, only to the extent that he was awarded only 30% back wages. Further, a prayer is also made for issuance of a *Mandamus* upon the respondents concerned, to pay him full back wages.

2. Learned counsel for the petitioner submits that once the learned Tribunal concluded that termination order was illegal, it ought to have awarded 100% back wages, and no reason whatsoever, has been assigned for granting

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only 30% back wages. It is submitted that the petitioner worked with Management w.e.f. 16.09.1992 till 13.01.1994, when his services were terminated without making compliance of provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947'). She further submitted that the petitioner remained unemployed during the period of his termination from service, therefore, he is entitled to 100% backwages.

3. On the other hand, learned counsel for respondents No. 2 while referring to judgment of Hon'ble the Supreme Court in **Rajasthan State Road Transport Corporation, Jaipur versus Shri Phool Chand (Dead) through LRs, AIR 2018 Supreme Court 4534**, submits that workman cannot, as a matter of right, claim 100% back wages. He further placed reliance upon judgment of Hon'ble the Supreme Court in **U.P.S.R.T.C. Vs. Mitthu Singh, 2006 (7) SCC 180**, wherein, it was held that there cannot be any thumb rule in every case, where order of reinstatement is passed entitled to full back wages:-

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

The Court stated:

"There is no rule of thumb that in every case where the Industrial Tribunal gives a findings that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of actors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision

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regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent dailywage employment though it may be for 240 days in a calendar year."

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

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

Recently, in **U.P.S.R.T.C. Ltd. v. Sarada Prasad Misra, 2006 (2) SCT 626 (SC): 2006 (4) SCC 733: JT 2006 (5) SC 114**, one of us (C.K. Thakker, J.) had an occasion to consider a similar issue. Referring to earlier case-law, it was observed:

"From the above cases, it is clear that no precise formula can be adopted nor 'cast iron rule' can be laid down as to when payment of full back wages should

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be allowed by the court or Tribunal. It depends upon the facts and circumstances of each case. The approach of the Court/Tribunal should not be rigid or mechanical but flexible and realistic. The Court or Tribunal dealing with cases of industrial disputes may find force in the contention of the employee as to illegal termination of his services and may come to the conclusion that the action has been taken otherwise than in accordance with law. In such cases obviously, the workman would be entitled to reinstatement but the question regarding payment of back wages would be independent of the first question as to entitlement of reinstatement in service. While considering and determining the second question the Court or Tribunal would consider all relevant circumstances referred to above and keeping in view the principle of justice, equity and good conscience, should pass an appropriate order.”

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

4. This Court has examined the issue on the angle of above settled law. The learned Tribunal has not considered all the relevant factors, rather has mechanically granted 30% back wages. The learned Tribunal was required to keep in mind several factors, which are set out in the aforesaid judgments. Therefore, the award requires interference only to the extent on the issue of back wages.

5. In the instant case, the petitioner was appointed as a Helper w.e.f. 16.09.1992. However, his services were terminated on 13.01.1994 without serving any charge sheet, inquiry or making compliance of provisions of Section 25-F of the Act of 1947. The learned Tribunal has also recorded the finding that respondent – Management adopted unfair labour practice as they adopted the

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method of appointment for a fixed period so that workman may not complete 240 days. It is nowhere the case of the Management that the petitioner was gainfully employed for this termination period, therefore, all these factors have not been considered by the learned Tribunal.

6. The impugned award dated 18.04.2000 is modified to the extent that the petitioner – Workman is entitled for 50% back wages instead of 30%, as granted by the learned Tribunal concerned.

7. Accordingly, a *Mandamus* is issued upon the respondent - Management to pay the requisite amount of back wages to the petitioner - workman within three months from the receipt of a certified copy of this order.

8. The instant writ petition is **disposed of**, in the above terms.

(KULDEEP TIWARI)
JUDGE

May 12, 2026
Rts

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No