



CWP-15185-2015 (O&M) -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(233)

CWP-15185-2015 (O&M)
Date of Decision : 13.01.2026

M/S Kumar Printers Pvt. Ltd.

...Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon and
another ...Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Sachin Mittal, Punjab and
Mr. Arnav Mittal, Advocate
for the non-applicant/petitioner.

Ms. Saloni Sharma, Advocate
for the applicant/respondent No.2.

KULDEEP TIWARI, J.(ORAL)

CM-13661-CWP-2025

This is an application seeking vacation of stay, viz-a-viz
awarding of full back wages, as granted by a Coordinate Bench, vide order
dated 28.07.2015.

Learned counsel for the contesting parties are *ad idem* that
instead of pressing this application, they would address the arguments in the
main case itself. Accordingly, on their oral request, the main case is taken on
board today itself.

Main case

1. The petitioner-Management, by way of instant writ petition, cast
under Article 226/227 of the Constitution of India, assails the award dated
05.05.2015 (Annexure P-10), whereby, the reference was answered in favour
of the workman, thereby holding him entitled for reinstatement with



continuity of service and full back wages from the date of his termination, i.e. 30.12.2005.

2. To begin with, it is imperative to mention that at the time of issuance of notice of motion, learned counsel for the petitioner submitted that since there were no pleadings with regard to gainful employment of the workman, during the period of termination of his services, the learned Labour Court ought not to have granted full back wages to him. In this backdrop, the notice of motion was issued. And, the operation of the impugned award was also ordered to be stayed, but with regard to the full back wages only. It is informed by learned counsel for the petitioner that in pursuance of the order (supra), the respondent-workman was duly reinstated by the petitioner-Management on 01.10.2018, and since then, he has been working. In response, learned counsel for the respondent-workman also admits the abovesaid stand set out on behalf of the petitioner-Management.

3. Learned counsel for the petitioner-Management submits that in view of the abovesaid conceded position, the only issue, which remains for determination by this Court, is qua the relief of full back wages. In this direction, he submits that the matter at hand is of abandonment of job by the workman himself and not of termination. So much so, he nowhere pleaded in his demand notice that he was not gainfully employed, during the period of termination. He further submits that the respondent-workman cannot be permitted to take an advantage of his own wrong, since he voluntarily abandoned the job, and therefore, he is not entitled for any amount as wages, for the period he had not worked with the petitioner-Management. Furthermore, it is urged that even before the learned Labour-cum-Conciliation

Officer, the petitioner-Management opened an offer to the workman to join



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the duty. However, he chose not to accept the said offer, and thereafter, he even did not opt to appear before the learned Labour-cum-Conciliation Officer. Not just that, even the amount of Rs.25,777/- was offered to him towards full and final settlement, but to no avail. While concluding his submissions, learned counsel for the petitioner places reliance upon a verdict rendered in **Deepali Gundu Surwase versus Kranti Junior Adhyapak and others [2013 (10) SCC 324]**, to assert that the Hon'ble Supreme Court has already laid down certain parameters for granting back wages, within which, the respondent-workman does not fall, and thus, is not entitled for back wages.

4. Conversely, learned counsel for the respondent-workman vehemently submits that it is nowhere pleaded that respondent-workman was gainfully employed, during his termination period. Further, while referring to the averments set out in written statement, "**he is unemployed during the termination period and never employed anywhere else**", it is submitted that no evidence, whatsoever, was led by the Management to substantiate that the workman was, indeed, gainfully employed. She asserts that, it needs to be highlighted that the respondent-workman was subjected to an exhaustive cross-examination, which continued up to 9 P.M, however, nothing could be elicited to support the vague plea of gainful employment. She rests her arguments, while urging that, even a specific affidavit was filed before this Court to the effect that the respondent-workman never remained under any gainful employment, during his termination period, which, as a matter of record, has not been rebutted, for obvious reasons.

5. This Court has heard the rival submissions advanced by the learned counsel for the parties, and has also gone through the record.



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

“9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to the work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which



would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigating activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workman's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavored to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation upto the apex Court and now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workman were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workman were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. Safai Kamdar Mandal (1971) (1), Lab LJ 508 and a Division Bench of the Allahabad High Court in Postal Seals Industrial Co-operative Society Ltd. v. Labour Court, Lucknow (1971) 1 Lab LJ 327, have taken this view and we are of the opinion that the view taken therein is correct.”

7. The Hon’ble Supreme Court again examined the issue in question

in **Deepali Gundu Surwase (supra)**. While following the ratio laid down in



Hindustan Tin Works (supra), it was held that in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. While adjudicating the issue of back wages, the Court may take into consideration the length of service of the employee/workman, nature of misconduct, if any, found proved against him, the financial condition of the employer, and similar other factors. Further, the Courts/Adjudicating Authorities must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman, and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages. The relevant observations, in this regard, are extracted hereinafter:-

“33. The propositions which can be culled out from the aforementioned judgments are:

- i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
- ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*
- iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact*



lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of fullback wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the



*disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in **Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited** (supra). ”*

*vii) The observation made in **J.K. Synthetics Ltd. v. K.P. Agrawal** (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman ”.*

8. Adverting to the facts of the present case, the learned Industrial Tribunal rightly came to the conclusion that the workman did not abandon the service voluntarily, but, indeed, terminated by the Management. So far as the correspondences (Exhibits M8-M18), which were placed on record by the petitioner-Management, to establish that it was a case of abandonment, are concerned, the witness of the Management itself confessed that the same were received back in the company itself. Meaning thereby, the correspondences never reached the workman. Further, the learned Tribunal unequivocally observed that plea of the petitioner-Management regarding the offer being made to the workman to re-join the duty, also carried no weight, as no such offer was ever made before the learned Labour-cum-Conciliation Officer. In this regard, the learned Labour-cum-Conciliation Officer specifically prepared



a report in the negative. Pertinently, if, for the sake of argument, it is assumed that the workman did not report on duty, even then, the petitioner-Management failed to refer to any document/communication, which was written to him to join the duty or explain the reason for his absence. Not only that, no enquiry was ever initiated, in this regard. In this view of the matter, this Court is also of the affirmed view that the matter at hand is an open and shut case that respondent-workman had not abandoned the job voluntarily, rather, he was thrown out of the service by the petitioner-Management.

9. On the anvil of the settled legal position of law, as referred to above, when it is proved that the workman was wrongly terminated by the petitioner-Management, the relief of full back wages cannot be denied to him. Suffice it to say, the parameters carved out in *Deepali Gundu Surwase (supra)*, squarely covers the case of the respondent-workman.

10. In conspectus of the position sketched out above, this Court has no hesitation to conclude that the learned Industrial Tribunal committed no error, while passing the impugned award. Consequently, the instant writ petition, being bereft of any merit, is hereby **dismissed**.

(KULDEEP TIWARI)
JUDGE

January 13, 2026
Manpreet/AK Sharma

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