



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

CWP-28680-2017 (O&M)

Date of decision: 22.01.2026

Principal, Government Senior Secondary School, Dasuya and another
....Petitioners

Versus

Madan Lal and another
....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Ms. Pratibha Bali, AAG, Punjab,
for the petitioners.

Mr. Bhriugu Dutt Sharma, Advocate,
for respondent No.1.

KULDEEP TIWARI, J. (Oral)

1. Through the instant writ petition, as cast under Articles 226/227 of the Constitution of India, an award dated 24.04.2017 (Annexure P-2) is put to challenge, vide which, the petitioner-Management was directed to reinstate the respondent-workman on the same post, with continuity of service and full back wages @ Rs.1300/- per month for the intervening period.

2. Learned State counsel submits that, at the time of issuance of notice of motion, vide order dated 19.03.2018, petitioners were directed to comply with Section 17-B of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947'). Accordingly, she submits that in adherence thereto, the requisite wages from 2017 till 2021 were paid to the workman, and the workman attained the age of superannuation in the year 2022. However, she fairly submits that the back wages only for the period of four months are yet to be paid to him.

3. On the other hand, learned counsel for the respondent-workman vehemently contends that the impugned award is founded on the factual aspects of the matter, and therefore, no interference is warranted therewith. However, he fairly submits that the workman would



be satisfied, if an adequate compensation, towards full and final settlement, is awarded to him.

4. This Court has heard the rival contentions raised on behalf of the parties, and perused the record.

5. So far as the principal grievance is concerned, since the workman, as informed by learned Stated counsel, has attained the age of superannuation, therefore, the same has been rendered infructuous. As a consequence, the only issue which requires adjudication by this Court is, with regard to full back wages.

6. Indisputably, the workman had joined the petitioner-School on 09.07.1990, and continued to render his services up till May, 2010. Thus, he worked for about 20 years. Further, the learned Industrial Tribunal, after analyzing the evidence proved on record, categorically held that evidently, the petitioner-Management failed to comply with Section 25-F of the Act of 1947, which is one of the key factors to extend the relief of reinstatement, with other consequential benefits. At this stage, the fact which needs to be highlighted is that, though much water has flown under the bridge, as the petitioner has attained the age of superannuation, but it is equally true that Management has not been able to justify the termination of his services. Further, it is not the case of the Management that the workman, at any stage, ever showed his disinclination to continue with the job.

7. In this regard, the Hon'ble Supreme Court, in its celebrated judgment, **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.”*

8. The Hon'ble Supreme Court again examined the issue in question in **Deepali Gundu Surwase versus Kranti Junior Adhyapak and others [2013 (10) SCC 324]**. 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”.

9. Considering the totality of the abovesaid factual position of the matter, particularly, that the petitioner has attained the age of superannuation, and taking strength from the ratio laid down in the abovesaid verdicts (*ibid*), this Court is of the considered view that ends of justice would be met, if a lump sum compensation is awarded to the workman. Consequently, petitioner-Management is directed to pay an amount of Rs.2,50,000/- to the respondent-workman within eight weeks from the receipt of a certified copy of this order, failing which workman shall be entitled to 9% interest per annum, from the date of filing of this petition. Accordingly, the impugned award stands modified to the extent indicated above

10. The instant writ petition is **disposed of**.

Pending application, if any, shall also stand disposed of.

(KULDEEP TIWARI)
JUDGE

22.01.2026
Ak Sharma

Whether speaking/reasoned	Yes
Whether reportable	Yes/No