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

CWP-6475-2017

Date of Decision : 11.03.2026

M/S PROMPT SECURITY SERVICES

.....Petitioner

VERSUS

**PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-II, FARIDABAD & ANOTHER**

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Harsh Aggarwal, Advocate,
for the petitioner.

Mr. Bhupender Singh, Addl.AG, Haryana.

Mr. A.P.Bhandari, Advocate with
Ms. Bhargavi, Advocate,
for respondent no.2.

KULDEEP TIWARI, J. (Oral)

1. Through the instant petition, as cast under Article 226/227 of the Constitution of India, the management has assailed the Award dated 08.07.2016 (Annexure P-1), whereby, learned Industrial Tribunal (respondent no.1), has answered the reference in favour of respondent no.2 (workman), and held him entitled to reinstatement with continuity of service and back wages @ 40% from the date of demand notice.

2. A co-ordinate Bench of this Court while issuing notice of motion vide order 29.03.2017, took a note of the submission, as made on behalf of the management that they are prepared to take the workman



back in service, and thereupon, granted a stay with respect to the payment of back-wages. However, respondent no.2/workman did not initiate any steps for execution of the impugned Award. Resultantly, vide order dated 22.01.2020, specifically, the co-ordinate bench, directed respondent no.2/workman to approach the Labour Inspector of the area within a period of 10 days, who, in turn, was to intimate the petitioner-management to allow him to resume duties. In this regard, the Labour Inspector was directed to submit a compliance report to this Court.

3. As compliance report was filed on 09.12.2025, by the Labour Inspector, subsequently, after stringent directions having been passed by this Court.

4. Though respondent no.2/workman joined his duties with the petitioner-management. However, immediately upon joining, the workman submitted an application seeking leave on the ground of attending a relative's marriage in another State. Despite the leave not having been sanctioned, the workman proceeded on leave and remained absent from duty. Consequently, the management, vide letter dated 14.12.2025, apprised the Labour Inspector of the said facts and further informed that the workman had not reported back for duty thereafter. It appears that the workman might have secured better prospects elsewhere and therefore, did not intend to continue his employment with the petitioner-company.



5. Learned counsel for respondent no.2/workman submits that the services of the workman, were terminated way back on 26.11.2013, and in order to earn bread and butter for his family he had to look for some other alternate sources of earnings. Therefore, learned counsel for respondent no.2/workman, waived off his right with regard to reinstatement, and wants to address arguments only on the issue of 40% back wages as awarded by the learned Tribunal concerned, as recorded vide last order dated 19.12.2025.

6. Learned counsel for the petitioner while joining the issue on back-wages, submits that respondent no.2/workman, is not even entitled for 40% back wages as, the management was always ready and willing to join him into service, and it was him only, who did not join, despite giving such option by the petitioner-management.

7. No other submission was made before this Court.

8. On the other hand, learned counsel for respondent no.2/workman, placed reliance upon '**Deepali Gundu Surwase versus Kranti Junior Adhyapak and others**' [2013 (10) SCC 324] and submits that the issue with regard to back-wages has already been adjudicated by the Hon'ble Supreme Court, in detail, wherein some guidelines have been framed, requiring the Courts to taking into consideration before adjudicating the issue of back-wages.

9. He further submits that the the order of termination of respondent no.2/workman, has already been declared illegal by the



learned Tribunal concerned. Therefore, merely because the petitioner-management alleges that the workman joined employment elsewhere and chose not to rejoin the petitioner-company would not disentitle him from claiming 40% back wages, as awarded to him by the learned Tribunal.

10. He, finally, submits that untill the passing of impugned Award, no evidence, whatsoever, was by the petitioner-management, to establish that respondent no.2/workman, was gainfully employed elsewhere. during the period of his termination till the date of Award. Therefore, in the absence of any evidence, there is no legal reason to interfere into the impugned Award.

11. This Court has heard learned counsel for the parties concerned, and has perused the impugned Award.

12. Before proceeding further to examine the issue in question, it would be expedient to understand the concept of back-wages, and reference to various judicial precedents on the said issue 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 the 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.”

13. The Hon’ble Supreme Court again examined the issue in question in Deepali Gundu Surwase (supra). 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.”.

14. In the judgment (*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.

15. In view of the above, this Court has examined the issue in totality. The learned Tribunal has categorically, held that services of respondent no.2/workman, were illegally terminated. Further, no evidence whatsoever has been led before the Tribunal concerned to establish that the petitioner was gainfully employed elsewhere, from the date of

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termination till the date of Award. Therefore, this Court does not find any reason to interfere into the relief granted to respondent no.2/workman, with regard to 40% back wages.

16. Consequently, the instant petition is, hereby **dismissed**.

17. All pending application(s), if any, also stand **disposed** of accordingly.

March 11, 2026
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No