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

CWP-37773-2025**Date of Decision : 18.02.2026****PUNJAB AND SIND BANK AND ANR.****.....Petitioners*****VERSUS*****PRESIDING OFFICER INDUSTRIAL TRIBUNAL - CUM-
LABOUR COURT-I AND ORS.****.....Respondents****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Gaurav Goel, Advocate and
Mr. Deepak Sonak, Advocate,
for the petitioners.

Mr. H.C. Arora, Advocate and
Mr. Gagandeep Sandhu, Advocate,
for respondent no.2.

***********KULDEEP TIWARI, J.(Oral)**

1. Through the instant writ petition filed under Article 226/227 of the Constitution of India, an Award dated 02.07.2025 (Annexure P-16), passed by the learned Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh (respondent no.1), has been put to challenge by the petitioner-management, whereby respondent no.2-workman, has been ordered to be reinstated into service with all consequential previous benefits from the date of his dismissal from service.

2. Learned counsel for the petitioner-management submits that the aforesaid Award has been assailed on the ground that the evidence



already adduced by the petitioner-management before the learned Tribunal ought to have been considered as fresh evidence, and thereafter, the legality of the termination order passed by the petitioner-management ought to have been tested. However, the same has not been done. Therefore, the impugned Award warrants interference by this Court.

3. He further submits that at the time of granting 100% back wages, no reasoning has been assigned in the impugned Award. To substantiate his arguments, he placed reliance upon '*Deepali Gundu Surwase versus Kranti Junior Adhyapak and others*' [2013 (10) SCC 324] and submits that Hon'ble Supreme Court has already laid down the parameters for providing back wages, and therefore, the workman in the present case is not entitled for 100% back wages. However, no such exercise was done in the light of the said judgment. Therefore, on this aspect as well, the impugned Award requires interference.

4. On the other hand, learned counsel for respondent no.2-workman, strongly opposed the submissions, as made by learned counsel for the petitioner-managements, and submits that the preliminary issue regarding validity of the departmental inquiry has been comprehensively adjudicated by the learned Tribunal, and it was held that the inquiry has not been conducted legally, and in accordance with law. He also submits that the learned Tribunal, had given sufficient opportunity to the petitioner-management, to lead fresh evidence to substantiate the charges levelled against respondent no.2-workman. However despite such opportunity, no evidence was led by the petitioner-management, thereby,

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leaving the learned Tribunal with no other option except to proceed further to decide the issue on the basis of the material available on record.

5. Finally, he submits that once the termination of respondent no.2-workman, has been found to be illegal, the workman, is entitled to 100% back wages, specifically, when there is nothing on record to prove that he was gainfully employed during the interregnum period.

6. Succinctly stated, respondent no.2-workman, filed a claim statement, which was subsequently, treated as a reference under Section 10(1)(c) of the Industrial Disputes Act, 1947, and referred it to the Tribunal concerned, for adjudication on question of legality of the termination of his services. As per the claim statement, respondent no.2-workman, joined the service with petitioner-management, as apprentice trainee in August, 1978, and after successful completion of the training period, his services were regularised w.e.f. 17.03.1979, as Clerk-cum-Cashier. In September, 2004, he was posted as Special Assistant of Branch Office No.22, Phatak Patiala. He was also put under suspension w.e.f. 31.08.2006, and thereupon, he was served with the a show cause notice dated 04.11.2006, to which, he replied on 09.12.2006. However, finally, he was chargesheeted on dated 18.12.2006. In his reply he denied all the charges, as levelled against him. A departmental enquiry was initiated by appointing an enquiry officer. The enquiry was concluded and a report was submitted before the disciplinary authority, and the workman was given second show cause notice on 31.01.2008, against the proposed punishment.

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7. Further, the case of respondent no.2-workman, is that he had filed a civil suit against the petitioner-management, and in the said suit proceeding an order dated 12.02.2008 for compulsory retirement from service was served upon him by the petitioner-management without paying him the difference between full pay, and the subsistence allowance, to him. However, in a Civil Revision No.2186 of 2008 the suit proceeding before Civil Court was stayed by this Court, and finally it was directed to respondent no.2-workman to file his case with appropriate authority. Thereupon, the said civil suit was withdrawn by respondent no.2-workman, and against the order of the petitioner-management, an appeal was filed before the appellate authority concerned, which was rejected vide order 04.05.2009. Thereafter, after failure of conciliation proceeding, and demand raised by respondent no.2-workman before Assistant Labour Commissioner (Central) Chandigarh, a report was sent to Ministry of Labour, Government of India, upon which a reference was made to the learned Tribunal concerned.

8. Upon notice, the petitioner-management, caused appearance before the learned Tribunal concerned, and filed its reply, and contested the claim statement.

9. Learned Tribunal, vide its order dated 27.09.2018 declared the departmental enquiry to be unfair, and in violation of the principles of natural justice. Thereupon, the petitioner-management was afforded opportunity to prove the charges against respondent no.2-workman, by



leading fresh evidence. However, the petitioner-management, opted not to lead any fresh evidence. Instead, the petitioner-management, filed an affidavit to consider the already adduced documentary evidence as a fresh evidence. The learned Tribunal, upon consideration, found that the petitioner-management had failed to substantiate the charges levelled against respondent no.2-workman, and accordingly, returned the findings against the petitioner-management. Thus, the reference was answered in favour of respondent no.2-workman, and consequential relief as record above, was granted to him.

10. Further, learned counsel for the petitioner-management, is unable to point out any perversity or illegality in the factual findings, as recorded by the learned Tribunal, vide the impugned Award. Learned Tribunal had granted specific opportunity to the petitioner-management to lead evidence to substantiate the allegations, as levelled in the chargesheet, however, no such evidence was lead. Therefore, in these circumstances, the learned Tribunal concerned, has rightly concluded that petitioner-management failed to prove the charges levelled against respondent no.2-workman.

11. Accordingly, this Court does not find any illegality or perversity, requiring any interference into the well reasoned Award.

12. Now, the second issue arises consideration for this Court, is regarding granting of 100% back wages to respondent no.2-workman.

13. Before proceeding further to examine the aforesaid issue, 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.”

14. 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.”

15. On the anvil of the above settled principle of law, this Court has examined the impugned Award, and finds that it does not carry any reason, whatsoever, for granting full back wages. The learned Tribunal concerned, was required to take into consideration all the parameters, as set up by the Hon'ble Supreme Court in the judgment (*supra*), however, the said exercise has not been done. Therefore, this Court deems it appropriate to modify the impugned Award, by reducing, the full back wages, as awarded, to 75% back wages. However, it will not affect the retiral benefits and other pensionary benefits of respondent no.2-workman.

16. **Disposed of** accordingly.

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

February 18, 2026
dharamvir

(KULDEEP TIWARI)
JUDGE

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