



2026:DHC:249-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 07th JANUARY, 2026

IN THE MATTER OF:

+ **LPA 431/2023 & CM APPL. 24797/2023**

P K JAIN

.....Appellant

Through: Mr. Jaswinder Singh and Ms. Shipra Shukhla, Advs.

versus

VICE CHANCELLOR & ORS.

.....Respondents

Through: Mr. Vasanth Rajasekaran, Senior Standing Counsel, JNU with Mr. Karan Prakash, and Mr. Harshvardhan Korada, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The present Appeal is preferred by the Appellant challenging the Judgement dated 02.12.2022 passed by the learned Single Judge of this Court in W.P.(C) 8149/2013 (*hereinafter referred to as 'Impugned Judgment'*), limited to the extent of denial of back wages to the Appellant. The learned Single Judge reinstated the Appellant to his service, along with continuity of service, without loss of seniority, however, declined back wages.
2. Shorn of unnecessary details, the facts leading to the filing of the present Appeal are as follows:



- a) The Appellant was appointed to the post of Executive Engineer (Civil) w.e.f. 27.01.2003 by the Executive Council (hereinafter referred to as 'EC') of Jawaharlal Nehru University/Respondent No. 3 (hereinafter referred to as 'JNU').
- b) In 2011, a proposal for urgent repair of a damaged sewer line in the JNU campus was processed. During this period, two duplicate requisitions for purchase of materials were signed by the Appellant on 22.07.2011 and 25.07.2011.
- c) On 01.08.2011, a Show Cause Notice was issued upon the Appellant, alleging 'attempt to commit fraud'. The Appellant issued a reply to the said Show Cause Notice on 04.11.2011. Thereafter, disciplinary proceedings were initiated against the Appellant, during the pendency of which, he was placed under suspension.
- d) A Charge Sheet was issued to the Appellant vide Memo dated 30.08.2011 under Rule 14 of the Central Civil Services (Classification Control and Appeal) Rules, 1965 for violating Rule 3(1)(i) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964, wherein two charges were levelled against the Appellant. The first charge was that while functioning as Executive Engineer (Civil) in the JNU during the month of July, 2011, the Appellant applied for two advances of Rs. 97,100/- each against the same sanction of the rector, JNU, and thus, attempted to fraudulently draw the amount of advance twice. The second charge against the Appellant was that he used intemperate language in his reply dated 04.11.2011 to the Memo dated 01.08.2011 issued by the Joint Registrar of JNU.



The relevant extract of the Charge Sheet dated 30.08.2011 is reproduced hereunder:

“ *Article I*

That the said Shri P.K. Jain while functioning as Executive Engineer (Civil), Jawaharlal Nehru University during the month of July 2011 applied for two advances of Rs. 97,100 each against the same sanction of the rector, JNU and thus attempted to fraudulently draw the amount of advance twice. By doing so Shri P.K.Jain, Executive Engineer (Civil), Jawaharlal Nehru University violated Rule 3(1)(i) of the Central Civil Services (Conduct) Rules, 1964.

Article II

That the said Shri P.K.Jain while functioning as Executive Engineer (Civil), Jawaharlal Nehru University during the month of August 2011 used intemperate language in his reply dated 4.8.2011 to the the Memo no. Reg/Misc/2011/335 dated 01.08.2011 from the Registrar, Jawaharlal Nehru University. By doing so, he violated Rule 3(1)(iii) of the Central Civil Services(Conduct) Rules, 1964.”

- e) An Enquiry Officer was appointed to inquire into the charges levelled against the Appellant. A detailed inquiry was conducted, whereafter the Enquiry Officer submitted its Report dated 12.12.2012 to the Disciplinary Authority. The Enquiry Officer exonerated the Appellant of the first charge, holding that it will not be possible to decide on the alleged fraudulent withdrawal of amounts, considering the facts of the case. As



regards the second charge, the Enquiry Officer held that the Appellant was guilty of using intemperate language.

- f) Consequently, the Vice Chancellor issued a Memo dated 21.03.2013 to the Appellant, communicating his tentative reasons for disagreements with the findings of the Enquiry Officer. The Appellant filed a reply on 05.04.2013 to the Memo dated 21.03.2013.
 - g) The EC of the JNU considered the matter in its meeting held on 18.11.2013 and came to the conclusion that both the charges against the Appellant have been proved.
 - h) Thus, *vide* Order dated 19.11.2013 issued by the Vice Chancellor and Chairman, Executive Council, JNU, the Appellant was removed from service with immediate effect.
 - i) Against this Order dated 19.11.2013, the Appellant filed a Writ Petition, WP(C) 8149/2013.
 - j) The Learned Single Judge *vide* the Impugned Judgment, allowed the Writ Petition in part, setting aside the removal of the Appellant from service and directing his reinstatement with continuity of service and seniority, but denied back wages on the ground of insufficient pleadings.
 - k) The Appellant has therefore preferred the present Appeal challenging the part of the Impugned Judgment denying back wages to the Appellant.
3. Learned Counsel for the Appellant submits that once the Learned Single Judge held the order of removal to be illegal and directed reinstatement of the Appellant with continuity of service and seniority, the



natural and legal consequence thereof was the grant of full back wages. The denial of back wages, it is urged, is contrary to settled service jurisprudence.

4. It is the case of the Appellant that during the eleven year period of his illegal removal from service, he faced extreme financial hardship, was not gainfully employed, and had to rely on borrowings to sustain his family. It is submitted that the income documents produced at the appellate stage substantiate these material facts.

5. Learned Counsel for the Appellant further argues that reinstatement after illegal termination ordinarily mandates back wages unless the employer proves gainful employment, which the Respondents never pleaded or established.

6. Learned Counsel for the Appellant further submits that the learned Single Judge erred in holding that pleadings regarding denial of back wages were insufficient. The writ petition clearly sought “all consequential benefits,” which in law, includes back wages.

7. It is further contended that the case of the Appellant is fully comparable to that of the co-accused, Mr. S.D. Dahiya, who was reinstated in 2014 with minor penalty and full monetary benefits. Once parity was recognized for reinstatement and continuity, parity regarding back wages must follow as a natural course for the purpose of Articles 14 and 16 of the Constitution of India.

8. Learned Counsel for the Appellant further submits that the charge of alleged “intemperate language” cannot justify denial of eleven years of back wages, particularly when the major charge itself was disproved and the punishment was held to be illegal.

9. *Per contra*, the learned Counsel for the Respondents submits that reinstatement does not automatically entitle an employee to back wages. As



per the learned Counsel, grant of back wages is not a natural corollary of reinstatement and depends on multiple equitable considerations. Thus, even if termination is found to be illegal, back wages remain discretionary and not mandatory.

10. It is argued by the Learned Counsel for the Respondents that the Appellant did not plead unemployment, provide particulars of financial distress, or file any supporting documents before the learned Single Judge. Courts cannot grant relief that is neither pleaded nor substantiated. Therefore, the learned Single Judge exercised sound discretion in refusing the monetary relief to the Appellant.

11. It is the submission of the Learned Counsel for the Respondents that the income documents filed for the first time in appeal cannot retrospectively validate the Appellant's omissions in writ court. Appellate courts discourage filling lacunae in pleadings at a later stage. The Respondents, therefore, argue that the Appellant cannot be permitted to improve his case at the appellate stage to secure a benefit he never laid factual groundwork for.

12. The learned Counsel for the Respondents also submits that back wages are not automatic upon reinstatement. The settled legal position is that an employee seeking back wages must specifically plead and state before the original adjudicating authority that he was not gainfully employed or was employed on lesser wages during the period of termination. The Appellant never made such a plea before the Learned Single Judge and has raised it for the first time only in the present Appeal. Having failed to discharge this foundational burden of fact, the Appellant cannot now claim back wages. In light of the aforesaid, the learned Single Judge rightly noted this omission and declined monetary relief.



13. Heard the Learned Counsels for both the sides and perused the material on record.

14. The learned Single Judge in the Impugned Judgment has placed reliance upon a judgment passed by the Apex Court in Kendriya Vidyalaya Sangathan And Another Vs. S.C. Sharma, (2005) 2 SCC 363 which states that when the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed, the initial burden is on him and only after the employee places materials in that regard, the employer can bring on record materials to rebut the claim. The learned Single Judge held that in the present case, there is no material to show that the employee has been gainfully employed.

15. This Court has also gone through the entire record of the writ petition and grounds raised therein. Not a single ground has been raised by the Appellant therein for payment of back wages. There is not even a single averment that the Appellant was not gainfully employed.

16. Therefore, this Court is of the opinion that the foundational requirement for claiming back wages is that the employee must plead and, at the very least *prima facie* assert non-gainful employment before the Court of first instance. The Appellant did not make any such averment in the Writ Petition, nor did he file any supporting documents. This omission is fatal. New assertions made for the first time in appeal cannot retrospectively cure the absence of basic pleadings before the Single Judge, nor can they form the basis for fresh relief at the appellate stage.

17. In the appeal, the Appellant has only filed his income tax returns. The Appellant seeks to rely on income-related documents filed for the first time. These documents were not before the learned Single Judge and cannot be used to challenge the correctness of a discretionary order that was made



based on the record then available. Appellate review cannot convert an appeal into a fresh fact-finding exercise merely because the Appellant seeks to improve his case.

18. It is trite law that additional evidence in the appellate stage can be permitted only in exceptional circumstances—such as when evidence was wrongly excluded by the trial court, or when the evidence was not within the party’s knowledge despite due diligence, or where the appellate court cannot pronounce judgment without it. None of these conditions are satisfied in the present case. The income documents were always within the Appellant’s knowledge and possession and there is no reason forthcoming as to why they were not produced before the learned Single Judge. Allowing these documents now would impermissibly permit the Appellant to fill a lacuna in his case. The Apex Court in State of Karnataka v. K.C. Subramanya, (2014) 13 SCC 468, has held as under:

“4. However, we do not feel impressed with this argument and deem it fit to reject it in view of Order 41 Rule 27(1)(aa) which clearly states as follows:

*“27. (1)(a)****

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

*(b) ***”*

On perusal of this provision, it is unambiguously clear that the party can seek liberty to produce additional evidence at the appellate stage, but the same can be permitted only if the evidence sought to be produced could not be produced at the stage of trial in spite of exercise of due diligence and that the evidence could not be produced as it was



not within his knowledge and hence was fit to be produced by the appellant before the appellate forum.

5. It is thus clear that there are conditions precedent before allowing a party to adduce additional evidence at the stage of appeal, which specifically incorporates conditions to the effect that the party in spite of due diligence could not produce the evidence and the same cannot be allowed to be done at his leisure or sweet will.

6. In the instant matter, the appellants are a public authority and have sought to produce a road map which, it is unbelievable, was not within the knowledge of the appellants indicating a road to the disputed land. Therefore, the rejection of the application of the appellants to rely on the said map has rightly not been entertained at the stage of first appeal. The impugned order [State of Karnataka v. K.C. Subramanya, Regular First Appeal No. 1765 of 2005, decided on 26-7-2011 (KAR)] thus does not suffer from legal infirmity so as to interfere with the same.”

19. The Apex Court has consistently held that additional evidence cannot be admitted merely to patch up weaknesses or repair omissions in the party's original case. The Appellant's attempt to introduce income records at this stage is precisely the kind of post-hoc enhancement against which the Courts have frowned upon. The Learned Single Judge decided the issue of back wages on the record as it stood, and the Appellant cannot now be permitted to transform the appeal into a fresh factual inquiry. The Apex Court in Karnataka Board of Wakf v. Govt. of India, (2004) 10 SCC 779, has held as under:

“6. In the circumstances, the learned counsel for the appellant reiterated the claim made before the High Court that they should be permitted to adduce further



evidence before the Court to substantiate their claim but when the matters were pending before the trial court and the High Court they had ample opportunity to do so. If they had to produce appropriate documents, they could have done so and also it is not clear as to the nature of the documents which they seek to produce which will tilt the matter one way or the other. The scope of Order 41 Rule 27 CPC is very clear to the effect that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, unless they have shown that in spite of due diligence, they could not produce such documents and such documents are required to enable the court to pronounce proper judgment. In this view of the matter, we do not think there is any justification for us to interfere with the orders of the High Court. However, in view of the arguments addressed by the learned counsel for the appellant, we have also gone into various aspects of the matter and have given another look at the matter and our findings are that the view taken by the High Court is justified. However, one aspect needs to be noticed. The High Court need not have stated that the first respondent is entitled to the relief even on the basis of adverse possession. We propose to examine this aspect.”

20. Though the provisions of Code of Civil Procedure, 1908 are not applicable in writ proceedings but at the same time, the provisions of CPC are based on Principles of Justice, Equity and Good Conscience and writ proceedings are directed by those principles.

21. In the opinion of this Court, the question before this Court is whether denial of back wages was justified which can be answered entirely on the basis of the pleadings before the Learned Single Judge. The later-produced documents are not indispensable for adjudicating the present appeal. Their admission is therefore unwarranted.



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22. The Learned Single Judge considered the pleadings carefully, noted the absence of any averment regarding non-gainful employment, and denied back wages on that basis.

23. In the absence of even the basic averment before the learned Single Judge that the Petitioner was not gainfully employed elsewhere or was not employed and without filing income tax returns there, it is not open for the Appellant to fill the lacuna at this stage in the present Appeal.

24. The Impugned Judgment was a sound, reasoned, and legally sustainable exercise of discretion of the learned Single Judge. An Appellate Court ought not to interfere merely because another view is possible. There is no perversity, illegality, or misapplication of law that would justify appellate interference by this Court.

25. Hence, the present Appeal is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J.

VIMAL KUMAR YADAV, J.

JANUARY 07, 2026
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