

[2014] 4 S.C.R. 875

TAPASH KUMAR PAUL

v.

BSNL & ANR.

(Civil Appeal No. 4980 of 2014)

JANUARY 28, 2014

**[GYAN SUDHA MISRA AND V. GOPALA GOWDA, JJ.]**

**LABOUR LAW:**

*Full Back wages - Termination - Tribunal held that termination was in violation of s.25-F of the ID Act and passed an order of reinstatement, however declined to grant back wages to the appellant-workman except Rs. 20,000/- as compensation - Single Judge of High Court upheld the decision of Tribunal - On appeal, the Division Bench set aside the award and in lieu of reinstatement passed an order directing that the amount of Rs. 20,000 be paid by way of compensation - On appeal, held: Court may substitute reinstatement by compensation but the same has to be based on justifiable grounds i.e. where the industry is closed or where the employee has superannuated or going to retire shortly and no period of service is left to his credit or where workman has been rendered incapacitated to discharge the duties and is not fit to be reinstated or when he has lost confidence of the management to discharge duties - In the instant case, the appellant's case did not fall in any of the categories so as to justify compensation in lieu of reinstatement - There was no justification for the Division Bench to interfere with the order of the Tribunal and single judge - The Division Bench of the High Court gravely erred in ignoring the normal rule that ordinarily 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 - Relying upon the view expressed in \*Deepali Gundu case to the effect that the order*

A of termination affects the entire family of the employee and deprives them of food, education and advancement in life, appellant is reinstated with full back wages since in the absence of full back wages, he will suffer punishment for no fault of his own - *Industrial Disputes Act, 1947 - s.25-F.*

B \*Deepali Gundu Surwase vs. Kranti Junior Adhyaypak Mahavidyalaya (D.Ed) and Ors. **2013 (10) SCC 324; 2013 (9) SCR 1**; Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar seal and Ors. **2010 (6) SCC 773**; Jagbir Singh v. Haryana State Agriculture Mktg. Board & Anr. **2009 (15) SCC 327; 2009 (10) SCR 908**; Hindustan Tin Works (P) Ltd. v. Employees of M/s Hindustan Tin Works Pvt. Ltd. & Ors. **1979 (2) SCC 80; 1979 (1) SCR 563** ; Surendra Kumar Verma & Ors. v. central Government Industrial Tribunal-cum-Labour Court, New Delhi & Anr. **1980 (4) SCC 443; 1981 (1) SCR 789 - relied on.**

**Case Law Reference:**

	<b>2010 (6) SCC 773</b>	<b>Relied on</b>	<b>Para 2</b>
E	<b>2009 (10) SCR 908</b>	<b>Relied on</b>	<b>Para 2</b>
	<b>2013 (9) SCR 1</b>	<b>Relied on</b>	<b>Para 3</b>
	<b>1979 (1) SCR 563</b>	<b>Relied on</b>	<b>Para 3</b>
F	<b>1981 (1) SCR 789</b>	<b>Relied on</b>	<b>Para 3</b>

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4980 of 2014.

G From the Judgment and Order dated 04.02.2013 of the High Court at Calcutta in F.M.A. No. 1514 of 2011.

Pijush K. Roy, Kakali Roy, Rajan K. Chourasia for the Appellant.

H R.D. Agrawala, Pavan Kumar, Prithvi Pal for the Respondents.

The following order of the Court was delivered

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**O R D E R**

**GYAN SUDHA MISRA, J. 1.** Leave granted.

2. This appeal has been preferred by the appellant who succeeded in getting an order of reinstatement in his favour by the Central Government Industrial Tribunal at Calcutta in Reference No. 27 of 1997 dated 13th May, 2002, by which the order of reinstatement was passed in his favour. However, the Tribunal declined to grant back wages to the appellant except Rs.20,000/- to be paid by the respondent as compensation towards back wages. This Award was passed by the Tribunal since the Management had failed to produce relevant documents to disclose the actual number of days for which appellant has worked and so his termination was held to be in violation of Section 25F of the Industrial Disputes Act, 1947.

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3. The respondent-Management of the BSNL, however, appealed against the Award passed by the Tribunal by way of a Writ Petition in the High Court before the Single Judge whereby the learned Single Judge affirmed the Award passed by the Tribunal and dismissed the writ petition filed by the respondent- Management. The respondent was not satisfied with the order passed by the Single Judge and refused to give effect to the Award in favour of the appellant and preferred a further appeal before the Division Bench. The Division Bench, however, was pleased to allow the appeal by setting aside the Award passed in favour of the appellant and in lieu of reinstatement, passed an order directing that the amount of Rs.20,000/- be paid by way of compensation to the appellant which in any case had been passed by the Tribunal as compensation towards back wages. Thus, in effect, the compensation which has been ordered to be paid was legally due to the appellant towards back wages and the High Court set aside the entire Award passed by the Tribunal which in effect can be construed that no amount was paid by way of

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A compensation. Although the High Court recorded that Rs.20,000/- be paid by way of compensation, as aforesaid, the same was towards back wages as per the Award passed by the Tribunal.

B .4 It is no doubt true that a Court may pass an order  
C substituting an order of reinstatement by awarding  
D compensation but the same has to be based on justifiable  
grounds viz. (i) where the industry is closed; (ii) where the  
employee has superannuated or going to retire shortly and no  
period of service is left to his credit; (iii) where the workman  
has been rendered incapacitated to discharge the duties and  
cannot be reinstated and / or (iv) when he has lost confidence  
of the Management to discharge duties. What is sought to be  
emphasised is that there may be appropriate case on facts  
which may justify substituting the order of reinstatement by  
award of compensation, but that has to be supported by some  
legal and justifiable reasons indicating why the order of  
reinstatement should be allowed to be substituted by award of  
compensation.

E 5. In the instant matter, we are not satisfied that the  
appellant's case falls in to any of the categories referred to  
hereinbefore which would justify compensation in lieu of  
reinstatement. We thus find no justification for the High Court  
so as to interfere with the Award passed by the Tribunal which  
F was affirmed even by the Single Judge, but the Division Bench  
thought it appropriate to set aside the order of reinstatement  
without specifying any reasons whatsoever, as to why it  
substituted with compensation of a meagre amount of  
Rs.20,000/- to the appellant.

G 6. In view of this we set aside the judgment and order of  
the High Court and restore the Award of the Tribunal and the  
order of the Single Judge affirming the same.

H 7. The appeal accordingly is allowed but without cost.

**V. GOPALA GOWDA, J. (Concurring)**

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1. While concurring with the finding and reasons recorded by my sister Justice Gyan Sudha Misra in allowing the Civil Appeal by setting aside the impugned judgment of the High Court of Calcutta and restoring the award of the Labour Court with consequential benefits of awarding backwages, I am giving my additional reasons after distinguishing decisions of this Court upon which reliance has been placed by the learned senior counsel appearing on behalf of the appellant.

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2. The learned counsel on behalf of the respondent has relied upon the decision of this Court in the case of *Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and Others*<sup>1</sup> to contend that in the last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if the termination of employee has been found illegal or is in contravention to the prescribed procedure. The learned counsel has further relied upon the *Santosh Kumar Seal's* judgment (supra) which hold as under:

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"10. In a recent judgment authored by one of us (R.M. Lodha, J.) in *Jagbir Singh v. Haryana State Agriculture Mktg. Board & Anr.*<sup>2</sup>, the aforesaid decisions were noticed and it was stated:

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7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even

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<sup>1</sup> (2010) 6 SCC 773.

<sup>2</sup> (2009) 15 SCC 327.

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A though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

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B 14. It would be, thus, seen that by a catena of decisions in  
 C recent time, this Court has clearly laid down that an order  
 D of retrenchment passed in violation of Section 25-F  
 although may be set aside but an award of reinstatement  
 should not, however, be automatically passed. The award  
 of reinstatement with full back wages in a case where the  
 workman has completed 240 days of work in a year  
 preceding the date of termination, particularly, daily wagers  
 has not been found to be proper by this Court and instead  
 compensation has been awarded. This Court has  
 distinguished between a daily wager who does not hold a  
 post and a permanent employee.”

The learned senior counsel has further relied upon the decision  
 of this Court in Civil Appeal No.107 of 2014 titled *BSNL & Ors.*  
 E *Vs. Kailash Narayan Sharma* to hold that reinstatement may  
 not be a natural consequence of termination of service of a work  
 in contravention to Section 25 F of the ID Act. The relevant para  
 reads as under:

F “The decisions of this Court referred to above, in no  
 uncertain terms hold that in case of termination in violation  
 of Section 25-F of the I.D. Act, relief of reinstatement may  
 not be the natural consequence. It will depend upon the  
 facts and circumstances of each case. It is not automatic.  
 G In the facts of a given case, instead of reinstatement,  
 monetary compensation can be granted. The cases in  
 hand clearly fall within the ratio of the decisions of this  
 Court, referred to above.”

H 3. However, it is pertinent to mention that the recent  
 decision of this Court in the case of *Deepali Gundu Surwase*

*v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and Ors.*<sup>3</sup>  
took a contrary view. The Court in this case, opined as under:

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter’s source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

3. (2013) 10 SCC 324.

A 23. A somewhat similar issue was considered by a three-  
Judge Bench in *Hindustan Tin Works (P) Ltd. v. Employees of M/s Hindustan Tin Works Pvt. Ltd. & Ors.*<sup>4</sup>  
B in the context of termination of services of 56 employees  
by way of retrenchment due to alleged non-availability of  
the raw material necessary for utilisation of full installed  
capacity by the petitioner. The dispute raised by the  
employees resulted in award of reinstatement with full back  
wages. This Court examined the issue at length and held:

C "It is no more open to debate that in the field of industrial  
jurisprudence a declaration can be given that the  
D 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  
E 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 work of the  
workman contrary to the relevant law or in breach of  
F contract and simultaneously deprived the 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  
G 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  
H 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

H 4. (1979) 2 SCC 80.

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 litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen'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 endeavoured 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 up to the Apex Court 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 workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.

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B In the very nature of things there cannot be a straitjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular.

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(emphasis supplied)

E After enunciating the abovenoted principles, this Court took cognizance of the appellant's plea that the company is suffering loss and, therefore, the workmen should make some sacrifice and modified the award of full back wages by directing that the workmen shall be entitled to 75% of the back wages.

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24. Another three-Judge Bench considered the same issue in *Surendra Kumar Verma & Ors. v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi & Anr.*<sup>5</sup> and observed:

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"... Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional

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5. (1980) 4 SCC 443.

circumstances which make it impossible or wholly  
inequitable vis-à-vis the employer and workmen to direct  
reinstatement with full back wages. For instance, the  
industry might have closed down or might be in severe  
financial doldrums; the workmen concerned might have  
secured better or other employment elsewhere and so on.  
In such situations, there is a vestige of discretion left in the  
court to make appropriate consequential orders. The court  
may deny the relief of reinstatement where reinstatement  
is impossible because the industry has closed down. The  
court may deny the relief of award of full back wages where  
that would place an impossible burden on the employer.  
In such and other exceptional cases the court may mould  
the relief, but, ordinarily the relief to be awarded must be  
reinstatement with full back wages. That relief must be  
awarded where no special impediment in the way of  
awarding the relief is clearly shown. True, occasional  
hardship may be caused to an employer but we must  
remember that, more often than not, comparatively far  
greater hardship is certain to be caused to the workmen  
if the relief is denied than to the employer if the relief is  
granted.

(emphasis supplied)

Therefore, in the light of the decision of this Court in *Deepali Gundu's* case (supra) which has correctly relied upon higher bench decisions of this Court in *Surendra Kumar Verma's* case (supra) and *Hindustan Tin Works Pvt. Ltd.* (supra), I am of the opinion that the appellant herein is entitled to reinstatement with full back wages since in the absence of full back wages, the employee will be distressed and will suffer punishment for no fault of his own.

4. The Division Bench of the High Court has gravely erred in law that the Tribunal and learned single Judge found that the order of the termination is bad in law for non-compliance with the above statutory provisions of the ID Act and therefore,

A following the normal Rule of Award of reinstatement is awarded but erroneously denied full back wages in the absence of proof of gainful employment of appellant-workman.

B 5. For the foregoing additional reasons, the impugned judgment and order of the Division Bench is set aside and the Award of the Tribunal and the order of the learned single Judge are restored. The appeal is accordingly allowed, but without costs.

ORDER

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1. Leave granted.

2. In view of the two orders giving separate reasons, though concurring, the appeal is allowed.

D Devika Gujral

Appeal allowed.