



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.8209 of 2025

Date of Decision: 16.09.2026

Chattar SinghPetitioner

Versus

The Executive Engineer, HPSEBL ... Respondent

Coram:
Hon’ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? ¹

For the Petitioner: Mr. M.L.Sharma & Ms. Meghna Kashava
Advocates.

For the Respondents: Mr. Rajan Kahol & Mr. Vishal Panwar,
Additional Advocate Generals with Mr. Ravi
Chauhan & Mr. Anish Banshtu, Deputy
Advocates General.

Sandeep Sharma, Judge(oral):

Being aggrieved and dissatisfied with award dated 27.11.2024 passed by the Presiding Judge, HP Industrial Tribunal-cum-Labour Court, Shimla, in Reference No. 141 of 2004, titled ***Chatter Singh vs. Executive Engineer, HPSEB, Division Rajgarh, District Sirmaur***, inasmuch as the petitioner-workman (***hereinafter referred to as the ‘workman’***) came to be denied back wages despite his being reinstated from the date of termination, petitioner has approached this Court in the instant proceedings filed under

¹Whether the reporters of the local papers may be allowed to see the judgment?

Article 226 of Constitution of India, praying therein for following main relief:-

“ By issuing a writ of certiorari to modify the award dated 27.11.2024 passed by the learned Labour Court, Shimla in Ref. No.141 of 2004 to the extent that the petitioner would be entitled to full back wages with interest @ 12% per annum from the due date or for any other appropriate writ, order or direction in the facts and circumstances of the case.”

2. Precisely, the facts of the case as emerge from the pleadings as well as other material adduced on record by the respective parties, are that taking note of the dispute *interse* petitioner-workman and respondent- Department, appropriate Government under Section 10 of the Industrial Disputes Act, 1947 (**for short ‘Act’**) made following reference to the HP Industrial Tribunal-cum-Labour Court, Shimla:-

“Whether the removal from daily wage of Sh. Chatter Singh, son of Sh. Gurdia Ram, w.e.f.12.03.1997 by the Executive Engineer, H.P.S.E.B. Division, Rajgarh, District Sirmour, HP vide his order dated 14.03.1997 is legal and justified? If not, what seniority, service benefit and relief the concerned workmen are entitled to.”

3. Though, afore Court on the basis of pleadings as well as evidence led on record by the respective parties, found petitioner-workman entitled for reinstatement and as such, vide impugned award directed the respondent-department to re-engage the petitioner-workman alongwith seniority and continuity in service, but without

back wages. Petitioner herein, being aggrieved on account of non-grant of back wages, has approached this Court in the instant proceedings, whereas, respondent-department has accepted the aforesaid award and pursuant to directions contained in the same, petitioner-workman has already been reinstated. Since award granting reinstatement has not been challenged by the respondent-State, it has attained finality qua respondent-Board.

4. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. M.L. Sharma, Advocate, duly assisted by Ms. Meghna Kashava, Advocate, representing the petitioner, is that impugned award inasmuch as denying back wages deserves interference for the reason that same is not in accordance with law. He states that as per law, petitioner-workman is only required to plead in the claim petition that after his being retrenched/terminated, he was not gainfully employed and thereafter onus, if any, was upon the respondent-department to prove that after being terminated petitioner-workman was gainfully employed. While making this Court peruse claim petition (**Annexure P-9**), learned counsel for the petitioner submitted that petitioner-workman made specific pleadings that after his being removed from the service, he remained unemployed, but Labour Court, while passing impugned award, returned erroneous finding to the effect that

petitioner-workman failed to discharge onus by stating that after his termination, he was not gainfully employed. He placed reliance upon the judgment dated 28.10.2022 passed by this Court in CWP No. 1445 of 2018, titled **Sandeep Kumar vs. M/s Biogenetic Drugs Private Limited**, to state that once Court holds workman entitled to reinstatement with continuity in service, workman is also entitled to be granted back wages. He also placed reliance upon further few judgments passed by Hon'ble Apex Court to state that workman is only required to plead in the claim petition that after his/her being retrenched, he/she was not gainfully employed and thereafter onus will be upon the respondent-department to prove that petitioner-workman was gainfully employed after his being retrenched. (See: 1979) 2 Supreme Court Cases 80, 2014 STPL 7794 SC & (2013) 10 Supreme Court Cases 324).

5. Mr. Virender Singh Kanwar, learned counsel representing the respondent-department, supported the impugned award. He submitted that mere averment, if any, with regard to non-employment is not sufficient, rather petitioner-workman, to avail the benefit of back wages, is required to prove by leading cogent and convincing evidence that he/she after his/her termination was not gainfully employed anywhere. He submitted that since petitioner-workman led no evidence with regard to aforesaid aspect of the matter, no illegality

can be said to have been committed by Court below, while passing the impugned award. He further submitted that bare perusal of the reply filed by the respondent-board to the claim petition, clearly reveals that respondent-board had categorically denied the averments made by the petitioner with regard to non-employment after his being terminated.

6. Having heard learned counsel representing the parties and perused material available on record vis-a-vis reasoning assigned in the impugned award, which has attained finality qua the respondent-board, this Court is persuaded to agree with learned counsel for the petitioner that no specific reason has been assigned by Labour Court, while denying back wages to the petitioner-workman, save and except that he was not able to discharge the onus placed upon him to prove that during the period of termination, he was not gainfully employed.

7. Careful perusal of the award reveals that, while denying the prayer for back wages made on behalf of the petitioner, Tribunal has simply stated that once order of termination is set aside, it does not make him automatically entitled to payment of back wages, rather for that purpose, petitioner-workman is under obligation to prove by leading cogent evidence that he was not gainfully employed after dismissal from service. However, this Court finds no merit in the

aforesaid finding returned by the Labour Court, being contrary to the law laid down by the Hon'ble Apex Court as well as this Court. Hon'ble Apex Court in **Kendriya Vidyalaya Sangathan and another vs. S.C.Sharma**, (2005)2 Supreme Court Cases 363, has held that the initial burden is on the workman/employee to show that he was not gainfully employed and in case, he places material in that regard, the employer can bring on record material to rebut the claim. It is not in dispute that the petitioner while making claim before the tribunal below has categorically averred in the claim petition that during termination period he was not gainfully employed. There is no material worth the name available on record suggestive of the fact that the respondent was able to demonstrate on record any adversity or hindrance in the grant of aforesaid relief. Otherwise also, once Tribunal below while answering the reference had come to a conclusion that action of the employer in terminating the service of the petitioner is bad and de hors the rules, natural consequence was to order for re-engagement/reinstatement from the date of termination alongwith back wages. Otherwise also, Section 11-A of the Industrial Disputes Act empowers the Industrial Tribunal to award consequential benefits. Section 11-A of the Act is reproduced as under:-

“Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National

Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its awards, set aside the order of discharge of dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge of dismissal as the circumstances of the case may require.” “Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter”.

8. The Hon'ble Apex Court in case titled **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (2013) 10 SCC 324**, has categorically held that reinstatement entitles an employee to claim full back wages and denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments. 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 the employee was gainfully employed during the intervening period.

9. Hon'ble Apex Court in case bearing Civil Appeal No. 6188 of 2019, titled **Jayantibhai Raojibhai Patel v. Municipal Council, Narkhed & Ors**, decided on 21.8.2019, has also held as under:-

“9. Several judgments of this Court have laid down the principles pertaining to the grant of back wages. In Hindustan Tin Works, a three-judge Bench of this Court adjudicated on the criterion for grant of back-

wages where a termination has been held to be illegal. The appellant in that case was a private limited company with an industrial unit. The Labour Court held that the retrenchment of employees by the appellant was not bona fide and awarded full back wages to the employees, which was challenged before the Supreme Court. This Court made the following observations:

"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 work of the workman contrary to the relevant law or in breach of 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 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 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..."

(Emphasis supplied)

The Court further clarified that while the payment of full back wages would be the normal rule, there can be a departure from it where necessary circumstances have been established:

"11. In the very nature of things there cannot be a straightjacket 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 (see *Susannah Sharp v. Wakefield* [(1891) AC 173, 179])." Taking note of the financial problems of the appellant company, the Court granted compensation to the extent of 75% of back wages. The principle laid down in *Hindustan Tin Works* has been followed by other decisions of this Court.⁴

10. In *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum- Labour Court*⁵, the termination of the services of the appellants was held to be in contravention of Section 25-F of the Industrial Disputes Act by the Labour Court, but the appellants were denied the payment of back wages. In appeal, a three-judge bench of this Court observed:

"6... 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 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."

11. In Deepali Surwase, the appellant had been employed as a teacher in a primary school run by a trust. The services of the appellant had been terminated by the management of the school pursuant to an ex-parte inquiry proceeding. The School Tribunal quashed the termination of the appellant's services and issued a direction for the grant of full back wages. In appeal, the High Court affirmed the view of the Tribunal that the termination was illegal, but set aside the direction for grant of back wages. In appeal, a two-judge Bench of this Court laid down the following principles:

"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...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 emolument."

(Emphasis supplied)

The Court laid down the following principles to govern the payment of back wages:

"38.1. in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. 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.

38.3. 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.

38.4. 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.

38.5. 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 victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back 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 keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a 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.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation 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 (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L & S) 53]."

12. In the present case the first inquiry resulted in a report which came to the conclusion that the charge of misconduct was not substantiated. Upon finding that the convening of a fresh inquiry without recording reasons was contrary to law, the High Court would have ordinarily granted liberty to the Municipal Council to take a fresh decision after due notice to the appellant. Such a course of action was, however, rendered impracticable by supervening events. The writ petition instituted by the appellant before the High Court in 1996 remained pending for nearly eighteen years. The appellant had been removed from service on 29 June 1996. Considering the lapse of time, reopening the proceedings would not be expedient in the interest of justice particularly when the appellant had, in the meantime, attained the age of superannuation in 2005. Relegating the appellant to a protracted course of action by restoring the proceedings before the disciplinary authority would also not be fair and proper after a lapse of nearly fourteen years since his retirement.

13. Having due regard to the principles which have been enunciated in Deepali Surwase by this Court, the High Court was not, in our view, justified in denying the back-wages to the appellant altogether. Bearing in mind the circumstances which have been noted above, lump sum compensation should be directed to be paid."

10. It is quite apparent from the aforesaid exposition of law laid down by the Hon'ble Apex Court that in the cases of wrongful

termination of service, reinstatement with continuity of service and back wages is the normal rule, but such rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court must 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. To the contrary, an employee or workman whose services are terminated and who is desirous of getting back wages is only required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he 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. In the case at hand, though this is not in dispute that petitioner has categorically stated that during the period of termination, he was not gainfully employed, but there is no material on record suggestive of the fact that respondent-employer was able to prove that the employee was gainfully employed and was getting same and similar emoluments during the period of termination and as such, Tribunal below has erred in not awarding back wages while

holding the petitioner entitled for reinstatement alongwith continuity and seniority in service.

11. At this stage, learned counsel for the respondent invited attention of this Court to the judgment passed by Hon'ble Apex Court in ***Rajasthan State Road Transport Corporation, Jaipur vs. Phool Chand (dead) through legal representatives***, (2018)¹⁸ Supreme Court Cases 299 and in ***State of Madhya Pradesh and others Vs. Anees Khan*** (2014)⁸ Supreme Court Cases 900, to state that it is necessary for the petitioner-workman to plead and prove with aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or his family. There cannot be any quarrel with the aforesaid proposition of law laid down by the Hon'ble Apex Court in the aforesaid case, however, as has been taken note hereinabove, Hon'ble Apex Court in ***Deepali Gundu case (supra)***, has categorically held that if an employee or workman, whose services are terminated, is desirous of getting back wages, he is only required to plead or at least made 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, but once workman make such a plea, onus shifts upon the employer to specifically plead and prove that the employee was gainfully employed and was getting same and substantially similar

emoluments. In the aforesaid judgment, Hon'ble Apex Court has categorically held that 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 and hence once the employee shows that he was not employed, the onus is upon the employer to specifically plead and prove that the employee was gainfully employed. Though, in the case at hand, employee by pleading in the claim petition that he was not gainfully employed during the period of termination has discharged onus placed upon him but definitely no concrete evidence ever came to be led on record on behalf of the respondent to prove the onus which had actually shifted upon it with making of the averment by the claimant in the claim petition with regard to his being not gainfully employed during the period of termination.

12. Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, the present petition is allowed and impugned award dated 27.11.2024 is set-aside to the extent it refuses to grant back wages to the petitioner. The respondent-department is directed to pay 50% back wages to the petitioner alongwith up-to-date interest from the date of his termination, with seniority and continuity in service, within a period of six weeks from today, failing which, petitioner would be entitled to

interest at the rate of **6%** per annum from the date such amount is fell due. Pending applications, if any, also stand disposed of.

**(Sandeep Sharma),
Judge**

September 16,2026
(shankar)

High Court of HP