

**THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA**

**AND**

**THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**W.A.No.977 of 2017**

**JUDGMENT:** *(Per the Hon'ble the Chief Justice Satish Chandra Sharma)*

The present appeal is arising out of order dated 21.10.2016, passed by the learned Single Judge, in W.P.No.27856 of 2005 (**The Depot Manager, APSRTC v. Gollamandala Subba Raju and another**).

The facts of the case reveal that respondent No.1/workman was subjected to disciplinary proceedings by issuing a charge sheet on 12.12.2000 and thereafter, an enquiry was held in the matter. The enquiry officer has held the charges proved against the workman and the disciplinary authority has passed an order of punishment on 07.05.2001, against which, an appeal was preferred and the same was also rejected by the appellate authority.

The workman in question took shelter of the Industrial Disputes Act, 1947, by preferring a petition under Section 2A(2) thereof i.e., I.D.No.105 of 2004 and the Industrial Tribunal, after scanning the entire evidence, has set aside the order of punishment

and directed reinstatement of the workman into service with 50% backwages *vide* award dated 17.03.2005.

The employer, being aggrieved by the award passed by the Labour Court, came up before this Court by filing W.P.No.27856 of 2005. The learned Single Judge has upheld the award passed by the Tribunal and dismissed the writ petition.

Paragraphs 11 and 12 of the impugned order passed by the learned Single Judge in W.P.No.27856 of 2005 read as under:

“11. Coming to the reliefs granted, in *A.L.Kalra v. The Project and Equipment Corporation of India Limited* (AIR 1984 SC 1361) a three Judge Bench of the Apex Court, while dealing with the issue of payment of back wages after holding his removal from service as illegal, held that though he was employed elsewhere during the period of his removal still he is entitled to 50% of the back wages. In *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyala and others* (2 (2013) 10 SCC 324) the Apex Court after referring to all the judgments on the subject, including the judgments of the Apex Court in *J.K.Synthetics Ltd. V. K.P.Agrawal* ((2007) 2 SCC 433) and *Zilla*

*Parishad, Gachiroli v. Prakash* ((2009) 4 Mah.LJ

628), held as under:

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 averments 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 full back wages.

12) Similarly, the Apex Court in *Raghubir Singh v. General Manager, Haryana Roadways, Hissar* ((2014) 10 SCC 301) after referring to the judgments of the Apex Court in *Deepali Gundu Sarwase* (supra), *Hindustan Tin Works (P) Ltd. V. Employees* ((1979) 2 SCC 80) and *Surendra Kumar Verma v. Central Govt. Industrial Tribunal - cum- Labour Court* ((1980) 4 CC 443), held as under:

“the critical analysis of law laid down is very much relevant to the case on hand, which is neither discussed nor considered and examined by the courts below while answering the reference made by the State Government and passing the award, judgments and orders in a cavalier manner. Thus, the lives of the appellant and his family members have been hampered. Further, on facts, we have to hold that the order of termination passed is highly disproportionate to the gravity of misconduct and therefore shocks the conscience of this Court. Hence, we hold that the appellant is entitled for the reliefs as prayed and the respondent is directed to reinstate the appellant workman with back wages from the date of raising the industrial dispute till the date of his reinstatement with all

consequential benefits such as continuity of service, wage revisions and other statutory monetary benefits.””

This Court has carefully gone through the award passed by the Industrial Tribunal.

The finding of facts arrived at by the Industrial Tribunal make it very clear that the workman was not guilty of the charges levelled against him. It has also been held by the Tribunal that the enquiry officer was unjustified, in the absence of evidence, to hold the charges proved. The finding of facts have been affirmed by the learned Single Judge also. Therefore, this Court does not find any reason to interfere with the impugned order passed by the learned Single Judge.

Another important aspect of the case is that, as there was no interim order granted in the matter, the workman was reinstated into service.

The Writ Appeal is, accordingly, dismissed.

No costs.

As a sequel, miscellaneous petitions, pending if any, stand dismissed.

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**SATISH CHANDRA SHARMA, CJ**

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**ABHINAND KUMAR SHAVILI, J**

**Date: 21-04-2022**  
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