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

% **Date of order: 31st May, 2024**

\+ W.P.(C) 10371/2022 & CM APPL. 29902/2022

ATLAS LOGISTIC PVT LTD ..... petitioner

Through: Mr. Lokesh Chopra, Advocate

versus

MR JITENDRA KUMAR ..... respondent

Through: Mr. Gaurav K. Pandey, Advocate alongwith respondent

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs: -

> "*a) Call for the records of the case;*
> *b) Issue a writ of Certiorari or any other like writ, order or direction in the nature thereof quashing and setting aside the Impugned Award dated 24.03.2021 passed by the Court of Shri. Jogindra Prakash Nahar, Presiding Officer, Labour Court, Rouse Avenue, New Delhi*
> *(c) Pass any such other or further order/s direction/s relief/s favouring the petitioner and against the respondent in the light of the above averments and in order to secure the ends of justice."*

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2. The respondent was working at the position of Senior Operations Executive with the petitioner w.e.f. 1st July 2015 on probation basis.

3. The petitioner Company alleged that despite several warnings subsequent to the conclusion of his probationary period, the respondent was doing acts of indiscipline, negligence towards duty and highly indecent behaviour towards his colleagues and seniors.

4. In the year 2016, during a period of organizational restructuring to optimize human resources, the petitioner company decided to retrench the services of the respondent owing to the said misconduct and callous attitude towards the petitioner company and seniors. Consequently, the petitioner company issued a retrenchment notice dated 22nd March, 2016 informing the respondent pertaining to the termination of his services with effect from 31st March, 2016.

5. Aggrieved by the aforesaid termination of services, on 1st September, 2017, the respondent filed a statement of claim under Section 2(2) of Industrial Disputes Act, 1947 (hereinafter "Act") directly before the learned Labour Court seeking compensation as well as reinstatement.

6. Subsequently, after completion of the trial of the matter, the learned Labour Court passed the impugned award holding that the respondent would be reinstated along with backwages and consequential benefits.

7. The respondent eventually filed an execution petition No. 539 of 2021 before the learned District Court, Tis Hazari, Delhi wherein warrant of attachment were issued against the petitioner company's bank account.

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8. Aggrieved by the impugned award dated 24th March, 2021, the petitioner company has filed the instant petition seeking quashing of the same.

9. Learned counsel appearing on behalf of the petitioner submitted that the impugned award is inherently illegal, arbitrary and contrary to the legal principles as it was passed without due regard to the entirety of the circumstances.

10. It is further submitted that the respondent's termination was in accordance with the parameters outlined in the terms and conditions of the offer of appointment and the petitioner company duly disbursed the retrenchment compensation to the respondent's associate who was authorized to act on behalf of the respondent.

11. It is submitted that the learned Labour Court has failed to appreciate that the claim filed by the respondent has maliciously not disclosed regarding receipt of the retrenchment compensation received *vide* cheque dated 28th March, 2016, amounting to Rs.53,918/-. However, the respondent had affirmed the same during his cross examination.

12. It is submitted that vide letter dated 27th January, 2017, the petitioner company has duly disbursed the respondent's bonus as well as his Leave Travel Allowances amounting to Rs.8796/- and the same was duly acknowledged by the respondent's associate. The aforementioned transaction is also reflected in the petitioner company's bank statement, thereby proving the fact that the respondent has been paid in entirety.

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13. It is further submitted that the petitioner company has deliberately omitted to mention regarding the respondent's unprofessional and callous behaviour in the termination letter to safeguard the respondent's future prospects.

14. It is contended that since the respondent had been duly paid his retrenchment compensation, hence he cannot seek re-instatement.

15. It is further submitted that the learned Labour Court has failed to take into consideration the fact that Section 25-H of the Act provides re-employment to the workman, who has been retrenched, in case the employer proposes to employ a new person. The right stipulated under Section 25 is a preferential right given to the retrenched workman. It is contended that the petitioner company, however, cannot be forced to re-employ the retrenched workman under Section 25 of the Act, if retrenchment compensation had already been paid.

16. It is further submitted that the learned Labour Court has erred in passing the impugned order as it has only relied upon the evidence of MW-2 while disregarding the evidence of MW-1 and MW-3 who testified that the respondent has created disturbances within the petitioner company and acknowledged the fact that the respondent has received retrenchment compensation.

17. It is further submitted that the respondent's claim that the petitioner company owed him Rs.70,000/- is baseless as no document has been produced on record by the respondent in support of his claim.

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18. It is further submitted that while passing the order, the learned Labour Court has failed to appreciate the factum that MW-3, during his cross-examination, stated that he had received instructions on telephone from the respondent to accept the retrenchment compensation for full and final settlement.

19. It is submitted that the respondent was terminated from the petitioner's office due to economic restructuring and disciplinary issues and it aimed for a streamlined human resource allocation to sustain operations.

20. It is submitted that the learned Labour Court has failed to appreciate the discrepancy between the respondent's claim that he has not received any bonus and his confirmation of the same during his cross-examination.

21. It is further submitted that the learned Labour Court has failed to appreciate the testimony of MW-2 which clearly established the fact that no dues were pending. Further, MW-2 stated that the sum amounting to Rs.53,918/- encompasses remuneration for one month, notice pay devoid of provident fund deductions and additional company benefits. Further, the contention of the petitioner is corroborated by the statement of accounts as filed in the written statement by the petitioner.

22. It is submitted that the impugned order passed by the learned Labour Court is bad in law, erroneous and lacks validity in its factual representation or legal reasoning. Further, it is submitted that the order is excessively cryptic, failing to take into account the pleadings, evidence and accurate facts in a proper manner.

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23. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed, and the reliefs be granted as prayed for.

24. *Per Contra*, the learned counsel appearing on behalf of the respondent workman vehemently opposed the instant petition submitting to the effect that the same being devoid of any merit is liable to be dismissed.

25. It is submitted that the impugned order was passed after considering all the facts and circumstances of the case.

26. It is further submitted that the respondent workman has performed his duties diligently to the complete satisfaction of the petitioner management and had an unblemished and continuous record of his service. Further, the petitioner company has not cited any acts of grave misconduct, **in**discipline, negligent and indecent behaviour towards his colleagues and senior in their retrenchment letter.

27. It is submitted that since the respondent workman in a calendar year has worked for more that 240 days for the petitioner company, in accordance with Sub-clause (ii) of Clause (a) of Sub-Section (2) of Section 25-B of the Industrial Dispute Act, 1947 (hereinafter Act), he is entitled to the statutory benefits including leave and encashments, bonus, compensation etc., as mandated under Section 25-F of the Act. However, the petitioner company has denied the respondent of these mandatory benefits to which the respondent is duly entitled to.

28. It is further submitted that the respondent workman was terminated verbally without citing any reasons. Further, the said termination is illegal and unjustified as neither any notice was provided to the respondent nor any

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notice for payment of retrenchment compensation provided subsequent to the illegal termination of the respondent.

29. It is submitted that the respondent workman did not receive the retrenchment notice in accordance with terms and conditions of the offer of the appointment. It is further submitted that the petitioner company served retrenchment notice dated 22nd March, 2016 to the respondent with effect from 31st March, 2016 citing grounds of grave misconduct, acts of indiscipline, negligence towards colleagues and seniors. As per the conditions stipulated in Section 25 F of the Act, the respondent is entitled to an opportunity of being heard. It is pertinent to mention here that the respondent was deprived of the opportunity of being heard which constitutes a gross violation of the principles of natural justice.

30. It is contended that no inquiry was conducted by the petitioner company for the alleged misconduct and misbehavior of the respondent, thereby contravening the provisions of the Act.

31. It is further submitted that the onus of proof is on the petitioner company to establish that the amount of Rs.53,918/- which was disbursed to the respondent, constituted compensation rather than the salary.

32. It is submitted that under Section 13 A (1) of the Payment of Wages Act, the employer shall maintain the register of the wages paid and deductions made. Sub-Clause (2) states that the record has to be maintained for 3 years and the petitioner company was bound to produce the records of payments of all wages to the respondent, however, it failed to discharge the onus or provide any evidence to substantiate the fact that the amount paid

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above was paid as retrenchment compensation and not as a salary to the respondent.

33. It is submitted that the respondent workman has not authorized any associate or individual to receive the full and final settlement amount on his behalf. Further, the receipt of settlement of personal accounts has not been signed by the respondent personally. Therefore, it is evident that the petitioner has fabricated the documents with malice and the same has been done with intent to terminate the respondent illegally.

34. In view of the aforesaid submissions, the learned counsel for the respondent submitted that the instant petition is devoid of any merit and therefore, liable to be dismissed.

35. Heard the learned counsel appearing on behalf of the parties and perused the record.

36. It is the case of the petitioner company that the respondent has been terminated from his office due to his grave misconduct, acts of indiscipline, negligence towards duties and highly indecent behaviour towards his colleagues and seniors. Further, the petitioner company has complied with the conditions mentioned under Section 25 (F) of the Act and has provided the respondent workman with adequate retrenchment compensation and benefits.

37. In rival submission, the respondent has contended that his termination is illegal and unjustified as per the provisions of Section 25 (F) of the Act. Consequently, the respondent is entitled to be reinstated along with full back wages and consequential benefits as his termination was in contravention

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with the principles of natural justice and therefore, the impugned award does not suffer from any infirmity.

38. In light of the above said submissions, the question which falls for adjudication before this Court is whether the impugned award suffers from illegality or any error apparent on the face of it.

39. Adverting to perusal of the impugned award, the same has been reproduced herein below:

> "*5. On the pleading of the parties and averments made following issues were framed in the reference on 29.01.2018 which are as under:*
> *(i) Whether the workman has voluntarily abandoned his job after taking all his dues from the management? OPM*
> *(ii) Whether the services of workman have been terminated illegally or unjustifiably by the management? OPW*
> *(iii) If the answer of aforementioned issue is in affirmative, to what consequential remedies the workman is entitled to? OPW*
> *(iv) Relief.*
> *6. The workman has got examined himself as WW1 being the sole witness and vide his separate statement dated 25.10.2018 the workman's evidence was closed. The witness of management MW1 Sh. Narender Singh Rawat was examined on 11.04.2019. MW2 is Sh. Dilip Kumar Thakur who was examined on 18.01.2020. MW3 is Sh. Baljeet Singh. Vide separate statement of AR of the management the ME was closed on 18.01.2020.*
> *7. Final arguments are heard between the parties and issue-wise findings are as follows:*
>
> *ISSUE NO. (i)*
>
> *(i) Whether the workman has voluntarily abandoned his job after taking all his dues from the management? OPM*

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8. In the case the WW1 has deposed that he had worked with the management from 15.12.2014 till 30.04.2016. This fact remains unrebutted. The copy of appointment letter dated 15.12.2014 is Ex.WWl/6. I-Card issued by PF department is Ex. WW1/8. The management at para-3 of written statement has pleaded that the workman was confirmed in employment from 01.07.2015 vide confirmation letter dated 08.01.2016. Hence it is an admitted fact on record that the workman has worked for more than 240 days in a year with the management in satisfaction of Sub-Clause (ii) of Clause (a) of Sub-Section (2) of Section 25 (B) of Industrial Disputes Act, 1947.

9. Under Section 25 D of Industrial Disputes Act, 1947 it is duty of employer to maintain muster role of workmen. It is the case of the management that the workman has arrived at full and final settlement for which the cheque no. 603523 dated 28.03.2016 drawn on HSBC Bank for an amount of Rs 53,918/- was issued to the workman. It is submitted that the associate of workman Sh. Baljeet Singh had received payment on behalf of workman and he duly signed on behalf of workman in settlement Ex. WW1/MX5. This settlement mentions that "I have received full and final settlement of my personal account due to my resignation". The date of resignation is not mentioned in this settlement. Thus this settlement on the face of it is seen to have been taken by the management in the nature of indemnity bond. The claim of settlement by management is contrary to deposition of MW2 Sh. Dilip Kumar Thakur in cross examination dated 18.01.2020 where it is deposed that workman was terminated by management on March 2016. this settlement does not bear any date and in absence of which it cannot be said that this settlement if at all was arrived. The burden of proof is on the management who has relied on this settlement on the face of denial of the settlement by the workman. This settlement does not bear the signature of the workman. The management has failed to show any authorization to Sh. Baljeet Singh/MW3 to arrive at the

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settlement. Sh. Baljeet Singh/MW-3 has deposed at para-7 of Ex. MW3/A evidence by way of affidavit that he had signed the settlement with instructions from the workman. He submits in cross examination that he had telephonic instruction from the workman to take this cheque which is denied by the workman by way of suggestion in the same cross examination. It is admitted by MW3 incross examination that the management has dispensed with the service of the workman with effect from 22.3.2016. Even Sh. Baljeet Singh/MW3 had not mentioned any date by putting signature in alleged settlement Ex. WW1/MX5. The management must bring on record the resignation of the workman when this settlement is based on resignation however no resignation letter is produced on record by the management. In absence of resignation letter it cannot be said that this settlement was arrived at all with the workman. MW3 is employee of the management only and he is interested witness for the case of management. The case of the management is that workman had resigned which is contrary to deposition of MW2 that the workman was terminated. Further, in absence of any date of settlement this document Ex. WWl/MX5 is vague in nature as every act must bear date, month and year of its execution. The management has failed to prove that if there was any meeting of mind between workman and management to arrive at the alleged settlement. The settlement does not bear any amount which was to be paid to the workman on this settlement. Therefore this settlement itself is a sham document which cannot be believed for any purpose. This document can be creation of any date and the bonafide of management are doubtful that what was the hurry with the management to arrive at settlement not by way of direct communication but a telephonic conversation by Mr. Baljeet even without disclosure of the telephone numbers with particular date and time when the talk was made. Hence, the plea of management of arrival of this settlement with the workman is dismissed which cannot be believed.

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10. The position now as stand between the parties is that the burden of proof is on the management to prove that the workman has voluntarily abandoned his job. The citation titled Eagle Hunter Solutions Limited. Vs. Sh. Prem Chand (Supra) 2018 LLR 1171 in W.P.(GJ 978612018 &CM Nos.38128-29/2018, dated 17.09.2018 is relied upon at para no. 8 and 10 wherein it is laid down that the onus to prove abandonment of job is on the employer. The employer must produce positive evidence of abandonment for example written communication with the workman to join her duties. The sole statement in evidence of abandonment which is controverted by the workman are not suffice to make out the case of abandonment. Animus to abandon must be shown to have exists before the date of case of abandonment is made out. The relevant para are reproduced here asunder:

8. Operating, as I am, within the limited peripheries of certiorari jurisdiction, I do not find any manifest error in the impugned award of the Labour Court, as would warrant interference by me under Article 226 of the Constitution of India. At the cost of reiteration, it may be mentioned that the position, in law, is well settled that the onus to prove abandonment is on the employer.' Mere filing of affidavit alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. That apart, the affidavit filed by MW-1, too, only referred to the respondent having been offered employment by the petitioner, during the course of the conciliation proceedings. Even on that aspect, MW-1, the only witness of the respondent, was, at best, ambivalent, confessing that it was not possible for him to state whether any written communication had been served on the respondent or not. He neither produced any record, to support his plea of abandonment, as set up by the petitioner, nor sought time to produce any such record.

9. That apart, it was necessary for the petitioner to succeed in its case, to prove that the respondent had abandoned his

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services on 8thFebruary, 2012. Even it was to be shown that thereafter, during conciliation proceedings, an offer of employment was extended to the respondent, that would not have sufficed to establish a case of abandonment, by the respondent, of his services, on 8th February,2012.

10. In view thereof, I had pointedly queried, of learned counsel for the petitioner, as to whether there was any material to indicate that the respondent had abandoned his services on 8th February, 2012. His only reliance, in this connection, is to the deposition of the respondent, during cross-examination on 16th August, 2016, in which he states that he "left the management on 01.03.2012". This sole statement, in my view, cannot suffice to make out a case of "abandonment" by the respondent, of the services of the petitioner especially as, in his cross-examination before the Labour Court, the respondent expressed his willingness to re-join the services of the petitioner even at that stage.

Animus to abandon, it is well-settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence, of any such animus on the part of the Respondent No.1, is forthcoming in the present case.

11. In view of the above when the termination of workman in the present case is not based on inquiry or charge then it is held as illegal retrenchment and therefore the workman is held entitled to reinstatement with full backwages. This was also law laid down in the case titled Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) &Ors. in Civil Appeal No. 6767 of 2013 at para no. 33 and 34 as relied upon by ARfor workman which is reproduced here asunder:

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

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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

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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. 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).

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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.

34. Reverting to the case in hand, we find that the management's decision to terminate the appellant's service was preceded by her suspension albeit without any rhyme or reason and even though the Division Bench of the High Court declared that she will be deemed to have rejoined her duty on 14.3.2007 and entitled to consequential benefits, the management neither allowed her to join the duty nor paid wages. Rather, after making a show of holding inquiry, the management terminated her service vide order dated 15.6.2007. The Tribunal found that action of the management to be wholly arbitrary and vitiated due to violation of the rules of natural justice. The Tribunal further found that the allegations levelled against the appellant were frivolous. The Tribunal also took cognizance of the statement made on behalf of the appellant that she was not gainfully employed anywhere and the fact that the management had not controverted the same and ordered her reinstatement with full back wages.

12. Now it has come on record in evidence of MW2 and MW3 that the services of the workman were terminated and it was not a matter of settlement between the parties. The settlement is two side execution of contract whereas termination is one side unilateral action on the part of a party. Hence it is held that management has failed to prove that the workman has left the job voluntarily. The workman was terminated for which management is required to satisfy requirements of Section 25 F of Industrial Disputes Act 1947 as the present case is of retrenchment and not of voluntarily abandoning of the job.

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Accordingly the present issue is decided against the management and in favour of the workman.

ISSUE NO. (ii)

(ii)Whether the services of workman have been terminated illegally or unjustifiably by the management? OPW

13. The finding of issued no. 1 above are held applicable under the present issue which be read part of this issue and not repeated herein for the sake of brevity.

14. The termination of the workman must show compliance of Section 25 F of Industrial Disputes Act, 1947. For this one month notice indicating reasons must have been given to the workman or that wage for notice period must have been paid to the workman. Among other payment notice in prescribed manner must have been given to the appropriate government. It has to be seen that whether the termination of the workman amounts to illegal retrenchment. It is the case of the management in pleadings that it has issued retrenchment notice dated 22.3.2016 to the workman with effect from 31.5.2016 on the ground that the conduct of the workman was unprofessional towards clients, workman had grave misconduct, acts of indiscipline, negligence towards duties, highly indecent behaviour towards his colleagues and seniors. The workman was negligence in performing his duties. Since the above conduct is alleged against the workman by the management therefore opportunity of being heard must have been given by the management to the workman without which no decision can be taken in this respect by the management in violation of principles of natural justice. In fact no inquiry was conducted by the management for the alleged misconduct.

15. It was held in case titled Sachiv Krishi Upaj Mandi Samiti, Sanawadv. Mahendra Kumar S/o Mangilal Tanwarao, 2004 LLR 405 = 2003 SCC OnLine MP 720: (2004) 101 FLR 176 (MP): (2004) 4 LLJ (Supp) (NOC307) 953 : 2004 LLR 405 that if the termination of an employee is based on no inquiry, no charge and not by way of punishment, then it becomes a case of

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illegal retrenchment. In such case, the workman will be entitled toreinstatement with full back wages. The relevant para is reproduced here asunder:

4. Parties led evidence. It was, however, concluded on facts and evidence that respondent has worked continuously for more than 240 days in one calendar year, that no charge-sheet or any inquiry was held prior to his termination, that no retrenchment compensation was paid prior to impugned termination, and that it was a case of dismissal without any basis or charge.

5. Learned Counsel for the petitioner was unable to point out to me any mistake of law or fact in the impugned award, in so far as the aforementioned findings of facts were concerned. These findings are the only findings which need to be rendered on facts and evidence. Indeed, in order to attract the protection of Labour laws, these are the only issues which need to be examined on facts on both sides. As observed supra, if the termination of an employee is based on no inquiry, no charge and not by way of punishment, then it becomes a case of illegal retrenchment. If an employee has worked for more than 240 days on the calendar year then he is entitled to have the protection of Labour Laws provided the employer is an Industry subjected to Labour Laws.

6. Learned Counsel for the petitioner contended that no order for payment of backwages could be given. I do not agree to this submission, as it has no merit. Firstly, once the termination is held to be bad in law then directions to pay back wages is a natural consequence and has to follow. It is only when the employer (as in this case petitioner) is able to show and prove that terminated employee was working for gains even after termination, the order for payment of backwages will not be passed.

7.7 The burden to prove that employee was working for gains after termination lies on the employer. In the absence of any evidence not tendered, the direction to pay backwages has to

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follow. It is, however, necessary for the employee to State on oath that he remained unemployed after the termination of his service. In this case, the petitioner failed to lead any evidence on this issue against the respondent and on the other hand, the respondent did say that he remained unemployed. In view of this, the direction to pay backwages cannot be said to be illegal of unreasonable once it was held that termination is bad in law.

16. It is further held in case titled Empire Industries Limited Vs. State of Maharashtra AIR 2010 SC 1389 that necessary mandatory requirement of Section 25 F of Industrial Disputes Act 1947 must be complied with. In the present case the management has failed to show compliance of mandatory requirement. It is claim of the management that retrenchment notice was duly accepted by MW3 Sh. Baljeet Singh on behalf of the workman which is contrary to pleadings of the management that the said acceptance by Mr. Baljeet Singh was a settlement Ex. WW1/MX5. The said Ex. WW1/MX5 is not believed by the present Court under Issue no.1 above and finding therein are equally applicable under the present issue. It is settled law and was so held in case titled Alumina Mazdoor Sangh Vs. Ratna Construction Company (2003) I ILJ Orrisa 793 that pasting of notice of retrenchment on the notice board was held not substitute for individual notice. The management must have shown that individual notice was given to the workman in respect of a valid retrenchment. The management has failed to show this on record. No inquiry or charge was given to the workman and therefore the retrenchment itself becomes illegal in absence of compliance of principles of natural justice. MW2 has denied that the workman was terminated without any notice or without conducting any inquiry however he has not proved any such notice or inquiry on record.

17. It is claim of the management that the cheque amount of Rs 53,918/was paid to the workman which is mentioned in Ex.

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MW2/WX3 which is copy of the cheque in the name of the workman. It is deposed by MW2 that the workman was paid salary for one month in this amount which also includes notice pay without PF and the company benefits. The workman has suggested in cross examination of MW2 that the said amount was paid to workman only towards his earned wages. It is claimed by the workman that this amount was paid towards the salary for the period of February, March and 15 days for the month of April. Neither MW2 has deposed that the salary was paid for above month nor it has come in evidence of MW3 or during evidence. Workman has deposed as WW1 that he has worked with the management from 15.04.2014 till 30.4.2016 which is not rebutted by the management. No retrenchment notice was issued by the management nor service of any retrenchment notice is proved on record. It is not specifically denied by the management that workman has worked till 30.4.2016. On the face of the illegal retrenchment and in absence of rebuttal of WW1 that he worked till 30.4.2016 it is proved on record that the workman has worked with the management till 30.4.2016. thereby the management must show on record to discharge its burden that the amount of Rs 53,918/- was paid other than salary to the workman for the due period. For this purpose management is required to show its bank account statement. In absence of this statement when the onus has shifted on the management to show due payment of salary to the workman then it cannot be said that the above amount of Rs 53918/- was not paid as salary to the workman but retrenchment compensation. Merely payment of an amount does not mean that it is given for the purpose for which it is claimed.

18. Under section 13 A (1) of Payment of Wages Act the employer shal lmaintain register of wages paid and deduction made. Under Sub-Clause (2) this record has to be maintained for 3 years. In the present case the dispute had arose between the parties on March 2016. The present dispute is filed

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on01.09.2017 and management had appeared on 11.10.2017. Hence the recordhad to be maintained by the management till such period till the dispute isdecided when the payment of wages itself was under consideration as industrial dispute. The workman had already disputed the payment of wages, payment of notice pay. Hence the management was bound to produce the record of payment of all wages to the workman so that it can be found that the payment for a sum of Rs 53,918/- was not for wages alone but for which the management has claimed. Since the claim is of the management that this amount was paid as retrenchment compensation then the burden of proof is on the management to prove that it is so. It has to be proved by best evidence. The management has not produced the best evidence and has failed to discharge onus and therefore it cannot be said that the above amount was paid as retrenchment compensation.

19. It is therefore held that the retrenchment of the workman was done illegally and unjustifiably and in the violation of principle of natural justice and in non-compliance of Section 25 F of Industrial Disputes Act 1947.Accordingly the present issue is decided against the management and in favour of the workman.

ISSUE NO. (iii)

(iii) If the answer of aforementioned issue is in affirmative, to what consequential remedies the workman is entitled to? OPW

AND

ISSUE NO. (iv)

(iv) Relief.

20. The finding of issue no. (i) and (ii) above are equally applicable under the present issue which are not repeated herein for the sake of brevity. The answer to the issue no. (ii) is in affirmative.

21. The workman has relied on following citations:

(a) T. Narayana v. Managing Director, APSRTC, Hyderabad & Ors. 1998 LLR 1127.

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(b) Allahabad Jal Sansthan v. Dya Shankar Rai & Anr. Civil Appeal No. 8924 of 2003 decided on 03.05.2005 Hon'ble Supreme Court of India.
(c) The Management of Regional Chief Engineer P.H.E.D. Ranchi v. Their Workmen Rep. By District Secretary Civil Appeal No. 9832 of2018 (arising out of SLP (C) No. 25965 of 2018 decided on 20.09.2018Hon'ble Supreme Court of India.
(d) HUDA v. Ompal Civil Appeal No. 1869 of 2007 decided on 10.04.2007 Hon'ble Supreme Court of India.
(e) Bharat Heavy Electricals Ltd. v. Anil &Ors. Civil Appeal No. 6348of 2005 decided on 07.11.2006 Hon'ble Supreme Court of India.
(f) ONGC Ltd. v. Engineering Mazdoor Sangh Civil Appeal No. 6607of 2005 decided on 20.11.2006 Hon'ble Supreme Court of India.
(g) D.K. Yadav v. J.M.A. Industries Ltd. decided on 07.05.1993Hon'ble Supreme Court of India.
(h) Baldev Singh v. Labour Court &Anr. decided on 20 July, 1989Hon'ble Punjab-Haryana High Court.
(i) Mithlesh Kumar Singh v. State of Bihar decided on 08.04.1994.
(j) Management of Tata Iron and Steel Company Ltd. v. Presiding Officer, Industrial Tribunal (High Court of Judicature at Patna)Interlocutory Application No. 10739 of 1999, Civil Writ Jurisdiction Case No. 134 of 1999 (R) decided on 27.09.1999.
(k) Oil and Natural Gas Corporation v. Krishan Gopal &Ors. Civil Appeal No. 1878 of 2016 decided on February 07, 2020 Hon'ble Supreme Court of India.
(l) Ms. Rajwati Vs. Updater Services (P) Ltd. &Anr. W.P.(C)789/2015 decided on 28.01.2015 Hon'ble High Court of Delhi.
22. In these circumstances the claim of the workman of full back wages with reinstatement in service is considered with consequential benefits. Since it is held that the retrenchment of

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the workman is illegal and unjustified with no basis in fact and law and therefore the workman is held entitled to full back wages in view of citation titled Sachiv Krishi Upaj Mandi Samiti, Sanawad v. Mahendra Kumar S/o Mangilal Tanwarao, 2004 LLR 405 = 2003 SCC OnLine MP 720 : (2004) 101 FLR 176 (MP) : (2004) 4 LLJ (Supp) (NOC 307) 953 : 2004 LLR 405 (Supra) and Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) &Ors. in Civil Appeal No. 6767 of 2013 at para no. 33 and 34 (Supra).

23. Further the workman is also held entitled to reinstatement within 15days from the date of publication of this Award along with all consequential benefits which are allowed to the workman under this Award.

24. The present claim is pending since the year 2017 therefore, cost of the litigation are also allowed to the workman. All the due amount be paid within one month of the date of publication of present Award with interest at the rate of 9% per annum from the date of publication till its realization. The claim of the workman is disposed off accordingly.

25. A copy of Award be sent to the competent authority/appropriate Government i.e., Deputy Labour Commissioner, Government of NCT of Delhi of Distt./ Area concerned for publication which thereafter become enforceable u/Sec. 17A of Industrial Dispute Act, 1947. Award is passed accordingly. File be consigned to record room.

5. On the pleading of the parties and averments made following issues were framed in the reference on 29.01.2018 which are as under:

(i) Whether the workman has voluntarily abandoned his job after taking all his dues from the management? OPM

(ii) Whether the services of workman have been terminated illegally or unjustifiably by the management? OPW

(iii) If the answer of aforementioned issue is in affirmative, to what consequential remedies the workman is entitled to? OPW

(iv) Relief.

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6. The workman has got examined himself as WW1 being the sole witness and vide his separate statement dated 25.10.2018 the workman's evidence was closed. The witness of management MW1 Sh. Narender Singh Rawat was examined on 11.04.2019. MW2 is Sh. Dilip Kumar Thakur who was examined on 18.01.2020. MW3 is Sh. Baljeet Singh. Vide separate statement of AR of the management the ME was closed on 18.01.2020.

7. Final arguments are heard between the parties and issue-wise findingsare as follows:

ISSUE NO. (i)

(i) Whether the workman has voluntarily abandoned his job after taking all his dues from the management? OPM

8. In the case the WW1 has deposed that he had worked with the management from 15.12.2014 till 30.04.2016. This fact remains unrebutted. The copy of appointment letter dated 15.12.2014 is Ex.WW1/6. I-Card issued by PF department is Ex. WW1/8. The management at para-3 of written statement has pleaded that the workman was confirmed in employment from 01.07.2015 vide confirmation letter dated 08.01.2016. Hence it is an admitted fact on record that the workman has worked for more than 240 days in a year with the management in satisfaction of Sub-Clause (ii) of Clause (a) of Sub-Section (2) of Section 25 (B) of Industrial Disputes Act, 1947.

9. Under Section 25 D of Industrial Disputes Act, 1947 it is duty of employer to maintain muster role of workmen. It is the case of the management that the workman has arrived at full and final settlement for which the cheque no. 603523 dated 28.03.2016 drawn on HSBC Bank for an amount of Rs 53,918/- was issued to the workman. It is submitted that the associate of workman Sh. Baljeet Singh had received payment on behalf of workman and he duly signed on behalf of workman in settlement Ex. WW1/MX5. This settlement mentions that "I have received full and final settlement of my personal account due to my resignation". The date of resignation is not mentioned in

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this settlement. Thus this settlement on the face of it is seen to have been taken by the management in the nature of indemnity bond. The claim of settlement by management is contrary to deposition of MW2 Sh. Dilip Kumar Thakur in cross examination dated 18.01.2020 where it is deposed that workman was terminated by management on March 2016. this settlement does not bear any date and in absence of which it cannot be said that this settlement if at all was arrived. The burden of proof is on the management who has relied on this settlement on the face of denial of the settlement by the workman. This settlement does not bear the signature of the workman. The management has failed to show any authorization to Sh. Baljeet Singh/MW3 to arrive at the settlement. Sh. Baljeet Singh/MW-3 has deposed at para-7 of Ex. MW3/A evidence by way of affidavit that he had signed the settlement with instructions from the workman. He submits in cross examination that he had telephonic instruction from the workman to take this cheque which is denied by the workman by way of suggestion in the same cross examination. It is admitted by MW3 in cross examination that the management has dispensed with the service of the workman with effect from 22.3.2016. Even Sh. Baljeet Singh/MW3 had not mentioned any date by putting signature in alleged settlement Ex. WW1/MX5. The management must bring on record the resignation of the workman when this settlement is based on resignation however no resignation letter is produced on record by the management. In absence of resignation letter it cannot be said that this settlement was arrived at all with the workman. MW3 is employee of the management only and he is interested witness for the case of management. The case of the management is that workman had resigned which is contrary to deposition of MW2 that the workman was terminated. Further, in absence of any date of settlement this document Ex. WW1/MX5 is vague in nature as every act must bear date, month and year of its execution. The management has failed to prove that if there was

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any meeting of mind between workman and management to arrive at the alleged settlement. The settlement does not bear any amount which was to be paid to the workman on this settlement. Therefore this settlement itself is a sham document which cannot be believed for any purpose. This document can be creation of any date and the bonafide of management are doubtful that what was the hurry with the management to arrive at settlement not by way of direct communication but a telephonic conversation by Mr. Baljeet even without disclosure of the telephone numbers with particular date and time when the talk was made. Hence, the plea of management of arrival of this settlement with the workman is dismissed which cannot be believed.

10. The position now as stand between the parties is that the burden of proof is on the management to prove that the workman has voluntarily abandoned his job. The citation titled Eagle Hunter Solutions Limited. Vs. Sh. Prem Chand (Supra) 2018 LLR 1171 in W.P.(GJ 978612018 &CM Nos.38128-29/2018, dated 17.09.2018 is relied upon at para no. 8 and 10 wherein it is laid down that the onus to prove abandonment of job is on the employer. The employer must produce positive evidence of abandonment for example written communication with the workman to join her duties. The sole statement in evidence of abandonment which is controverted by the workman are not suffice to make out the case of abandonment. Animus to abandon must be shown to have exists before the date of case of abandonment is made out. The relevant para are reproduced here asunder:

8. Operating, as I am, within the limited peripheries of certiorari jurisdiction, I do not find any manifest error in the impugned award of the Labour Court, as would warrant interference by me under Article 226 of the Constitution of India. At the cost of reiteration, it may be mentioned that the position, in law, is well settled that the onus to prove abandonment is on the employer.' Mere filing of affidavit

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alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. That apart, the affidavit filed by MW-1, too, only referred to the respondent having been offered employment by the petitioner, during the course of the conciliation proceedings. Even on that aspect, MW-1, the only witness of the respondent, was, at best, ambivalent, confessing that it was not possible for him to state whether any written communication had been served on the respondent or not. He neither produced any record, to support his plea of abandonment, as set up by the petitioner, nor sought time to produce any such record.

9. That apart, it was necessary for the petitioner to succeed in its case, to prove that the respondent had abandoned his services on 8th February, 2012. Even it was to be shown that thereafter, during conciliation proceedings, an offer of employment was extended to the respondent, that would not have sufficed to establish a case of abandonment, by the respondent, of his services, on 8th February,2012.

10. In view thereof, I had pointedly queried, of learned counsel for the petitioner, as to whether there was any material to indicate that the respondent had abandoned his services on 8th February, 2012. His only reliance, in this connection, is to the deposition of the respondent, during cross-examination on 16th August, 2016, in which he states that he "left the management on 01.03.2012". This sole statement, in my view, cannot suffice to make out a case of "abandonment" by the respondent, of the services of the petitioner especially as, in his cross-examination before the Labour Court, the respondent expressed his willingness to re-join the services of the petitioner even at that stage.

Animus to abandon, it is well-settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence, of any such animus on the part of the Respondent No.1, is forthcoming in the present case.

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11. In view of the above when the termination of workman in the present case is not based on inquiry or charge then it is held as illegal retrenchment and therefore the workman is held entitled to reinstatement with full backwages. This was also law laid down in the case titled Deepali GunduSurwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) &Ors. in Civil Appeal No. 6767 of 2013 at para no. 33 and 34 as relied upon by AR for workman which is reproduced here asunder:

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 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.

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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. 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

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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.

34. Reverting to the case in hand, we find that the management's decision to terminate the appellant's service was preceded by her suspension albeit without any rhyme or reason and even though the Division Bench of the High Court declared that she will be deemed to have rejoined her duty on 14.3.2007 and entitled to consequential benefits, the management neither allowed her to join the duty nor paid wages. Rather, after making a show of holding inquiry, the management terminated her service vide order dated 15.6.2007. The Tribunal found that action of the management to be wholly arbitrary and vitiated due to violation of the rules of natural justice. The Tribunal further found that the allegations levelled against the appellant were frivolous. The Tribunal also took cognizance of the statement made on behalf of the appellant that she was not gainfully employed anywhere and the fact that the management

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had not controverted the same and ordered her reinstatement with full back wages.

12. Now it has come on record in evidence of MW2 and MW3 that the services of the workman were terminated and it was not a matter of settlement between the parties. The settlement is two side execution of contract whereas termination is one side unilateral action on the part of a party. Hence it is held that management has failed to prove that the workman has left the job voluntarily. The workman was terminated for which management is required to satisfy requirements of Section 25 F of Industrial Disputes Act 1947 as the present case is of retrenchment and not of voluntarily abandoning of the job. Accordingly the present issue is decided against the management and in favour of the workman.

ISSUE NO. (ii)

(ii)Whether the services of workman have been terminated illegally or unjustifiably by the management? OPW

13. The finding of issued no. 1 above are held applicable under the present issue which be read part of this issue and not repeated herein for the sake of brevity.

14. The termination of the workman must show compliance of Section 25 F of Industrial Disputes Act, 1947. For this one month notice indicating reasons must have been given to the workman or that wage for notice period must have been paid to the workman. Among other payment notice in prescribed manner must have been given to the appropriate government. It has to be seen that whether the termination of the workman amounts to illegal retrenchment. It is the case of the management in pleadings that it has issued retrenchment notice dated 22.3.2016 to the workman with effect from 31.5.2016 on the ground that the conduct of the workman was unprofessional towards clients, workman had grave misconduct, acts of indiscipline, negligence towards duties, highly indecent behaviour towards his colleagues and seniors. The workman

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was negligence in performing his duties. Since the above conduct is alleged against the workman by the management therefore opportunity of being heard must have been given by the management to the workman without which no decision can be taken in this respect by the management in violation of principles of natural justice. In fact no inquiry was conducted by the management for the alleged misconduct.

15. It was held in case titled Sachiv Krishi Upaj Mandi Samiti, Sanawadv. Mahendra Kumar S/o MangilalTanwarao, 2004 LLR 405 = 2003 SCCOnLine MP 720: (2004) 101 FLR 176 (MP): (2004) 4 LLJ (Supp) (NOC307) 953 : 2004 LLR 405 that if the termination of an employee is based on inquiry, no charge and not by way of punishment, then it becomes a case of illegal retrenchment. In such case, the workman will be entitled to reinstatement with full back wages. The relevant para is reproduced hereasunder:

4. Parties led evidence. It was, however, concluded on facts and evidence that respondent has worked continuously for more than 240 days in one calendar year, that no charge-sheet or any inquiry was held prior to his termination, that no retrenchment compensation was paid prior to impugned termination, and that it was a case of dismissal without any basis or charge.

5. Learned Counsel for the petitioner was unable to point out to me any mistake of law or fact in the impugned award, in so far as the aforementioned findings of facts were concerned. These findings are the only findings which need to be rendered on facts and evidence. Indeed, in order to attract the protection of Labour laws, these are the only issues which need to be examined on facts on both sides. As observed supra, if the termination of an employee is based on no inquiry, no charge and not by way of punishment, then it becomes a case of illegal retrenchment. If an employee has worked for more than 240 days on the calendar year then he is entitled to have the

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protection of Labour Laws provided the employer is an Industry subjected to Labour Laws.

6. Learned Counsel for the petitioner contended that no order for payment of backwages could be given. I do not agree to this submission, as it has no merit. Firstly, once the termination is held to be bad in law then directions to pay back wages is a natural consequence and has to follow. It is only when the employer (as in this case petitioner) is able to show and prove that terminated employee was working for gains even after termination, the order for payment of backwages will not be passed.

7.7 The burden to prove that employee was working for gains after termination lies on the employer. In the absence of any evidence not tendered, the direction to pay back wages has to follow. It is, however, necessary for the employee to State on oath that he remained unemployed after the termination of his service. In this case, the petitioner failed to lead any evidence on this issue against the respondent and on the other hand, the respondent did say that he remained unemployed. In view of this, the direction to pay backwages cannot be said to be illegal of unreasonable once it was held that termination is bad in law.

16. It is further held in case titled Empire Industries Limited Vs. State of Maharashtra AIR 2010 SC 1389 that necessary mandatory requirement of Section 25 F of Industrial Disputes Act 1947 must be complied with. In the present case the management has failed to show compliance of mandatory requirement. It is claim of the management that retrenchment notice was duly accepted by MW3 Sh. Baljeet Singh on behalf of the workman which is contrary to pleadings of the management that the said acceptance by Mr. Baljeet Singh was a settlement Ex. WW1/MX5. The said Ex. WW1/MX5 is not believed by the present Court under Issue no.1 above and finding therein are equally applicable under the present issue. It is settled law and was so held in case titled Alumina Mazdoor

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Sangh Vs. Ratna Construction Company (2003) I ILJ Orrisa 793 that pasting of notice of retrenchment on the notice board was held not substitute for individual notice. The management must have shown that individual notice was given to the workman in respect of a valid retrenchment. The management has failed to show this on record. No inquiry or charge was given to the workman and therefore the retrenchment itself becomes illegal in absence of compliance of principles of natural justice. MW2 has denied that the workman was terminated without any notice or without conducting any inquiry however he has not proved any such notice or inquiry on record.

17. It is claim of the management that the cheque amount of Rs 53,918/was paid to the workman which is mentioned in Ex. MW2/WX3 which is copy of the cheque in the name of the workman. It is deposed by MW2 that the workman was paid salary for one month in this amount which also includes notice pay without PF and the company benefits. The workman has suggested in cross examination of MW2 that the said amount was paid to workman only towards his earned wages. It is claimed by the workman that this amount was paid towards the salary for the period of February, March and 15 days for the month of April. Neither MW2 has deposed that the salary was paid for above month nor it has come in evidence of MW3 or during evidence. Workman has deposed as WW1 that he has worked with the management from 15.04.2014 till 30.4.2016 which is not rebutted by the management. No retrenchment notice was issued by the management nor service of any retrenchment notice is proved on record. It is not specifically denied by the management that workman has worked till 30.4.2016. On the face of the illegal retrenchment and in absence of rebuttal of WW1 that he worked till 30.4.2016 it is proved on record that the workman has worked with the management till 30.4.2016. thereby the management must show on record to discharge its burden that the amount of Rs

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53,918/- was paid other than salary to the workman for the due period. For this purpose management is required to show its bank account statement. In absence of this statement when the onus has shifted on the management to showdue payment of salary to the workman then it cannot be said that the above amount of Rs 53918/- was not paid as salary to the workman but retrenchment compensation. Merely payment of an amount does not mean that it is given for the purpose for which it is claimed.

18. Under section 13 A (1) of Payment of Wages Act the employer shall maintain register of wages paid and deduction made. Under Sub-Clause (2) this record has to be maintained for 3 years. In the present case the dispute had arose between the parties on March 2016. The present dispute is filed on01.09.2017 and management had appeared on 11.10.2017. Hence the record had to be maintained by the management till such period till the dispute is decided when the payment of wages itself was under consideration as industrial dispute. The workman had already disputed the payment of wages, payment of notice pay. Hence the management was bound to produce the record of payment of all wages to the workman so that it can be found that the payment for a sum of Rs 53,918/- was not for wages alone but for which the management has claimed. Since the claim is of the management that this amount was paid as retrenchment compensation then the burden of proof is on the management to prove that it is so. It has to be proved by best evidence. The management has not produced the best evidence and has failed to discharge onus and therefore it cannot be said that the above amount was paid as retrenchment compensation.

19. It is therefore held that the retrenchment of the workman was done illegally and unjustifiably and in the violation of principle of natural justice and in non-compliance of Section 25 F of Industrial Disputes Act 1947.Accordingly the present issue is decided against the management and in favour of the workman.

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ISSUE NO. (iii)
(iii) If the answer of aforementioned issue is in affirmative, to what consequential remedies the workman is entitled to? OPW"

40. The learned Tribunal framed the following issues:

i. *Whether the workman has voluntarily abandoned his job after taking all his dues from the management?*
ii. *Whether the services of workman have been terminated illegally or unjustifiably by the management?*
iii. *If the answer of the aforementioned issue is in affirmative, to what consequential remedies the workman is entitled to?*
iv. *Relief.*

Issue no. (i)

41. The learned Labour Court evaluated the evidence and held that it is an unrebutted fact of record that WW1 has worked for more than 240 days in a year with the management which satisfies the provision of Sub clause (ii) of Clause (a) of Sub-Section (2) of Section 25 (B) of the Industrial Disputes Act, 1947.

42. It further opined that it is the duty of the employer to maintain the muster roll of the workman as per the provisions of 25- D of the Industrial Disputes Act, 1947. The petitioner company has contended that the respondent workman has arrived at full and final settlement, with payments received and settlement duly signed by the associate of the respondent. It is pertinent to mention that the date of resignation is not mentioned in the settlement. The learned Labour Court has further observed that *prima facie,* the settlement is seen to have been obtained by the management in a manner resembling an indemnity bond and the claim of the settlement by the

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petitioner management is contrary to the deposition made by MW-2 in cross examination that the workman was terminated by the petitioner management wherein MW-2 testified that the workman was terminated by the petitioner management in March 2016.

43. Moreover, there are discrepancies regarding communication of the MW-3 with the respondent, raising doubts about the authenticity of the settlement. The absence of a resignation letter further weakens the petitioner company's contention pertaining to the settlement.

44. Consequently, the learned Labour Court held that in the absence of resignation letter, it cannot be said that any settlement was arrived at between the petitioner company and the respondent. It was further observed that the employee of the company is an interested witness and hence, his testimony cannot be relied upon. Further, there is a lack of evidence demonstrating mutual agreement between the petitioner company and the respondent workman in relation to the settlement.

45. Additionally, the settlement does not mention or specify any amount which is to be paid by the petitioner company to the respondent. Consequently, the learned Labour Court came to the conclusion that the settlement is an invalid document which cannot be relied upon for any purpose. Therefore, the plea that the workman has voluntarily resigned from his job after taking all his dues cannot be relied upon and is hence dismissed.

46. The question before the learned Court was that whether the burden of proof rests on the management to prove that the workman has voluntarily abandoned the job or not. On the said question, the learned Labour Court has

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placed reliance on the case titled **Eagle Hunter Solutions Limited. Vs. Sh. Prem Chand (Supra) 2018 LLR 1171** ***in W.P. (GJ 978612018 & CM Nos. 38128-29/2018***, dated 17th September, 2018 which held that the onus to prove the abandonment of job is on the employer. The employer must produce evidence regarding abandonment for example written communication with the workman to join her duties. The sole statement in evidence of abandonment which is controverted by the workman does not suffice to make out the case of abandonment. Intention to abandon must be shown to have existed before the date of case of abandonment is made out. Furthermore, the learned Labour Court has relied upon the case titled ***Deepali Gundu Surwase v. Kranti*** **Junior Adhyapak Mahavidyalaya (D.Ed.) & ors. in Civil Appeal No. 6767 of 2013** dated 12th August, 2013 which held that if the termination of the workman is not based on inquiry or charge, the same is held to be illegal retrenchment and therefore the workman is entitled to reinstatement with full back wages.

47. The learned Labour Court is of the view that the management has failed to provide sufficient evidence to substantiate the claim of the petitioner that the respondent has voluntarily left the job and based on the evidence of MW-2 and MW-3, the learned Labour Court has come to the conclusion that the services of the respondent workman were terminated. In view of the above, the learned Labour Court held that the respondent workman was terminated illegally and hence the management was required to satisfy the requirements of Section 25 F of the Act.

Issue no. (ii)

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48. The learned Labour Court has affirmed that the findings arrived at issue no (i) are applicable under the present issue as well and further emphasized that if a worker is terminated, compliance with Section 25F of the Act, 1947, is imperative as per which the worker with one months' notice indicating the reason must have been given to the workman or that wage for notice period must have been paid to the workman.

49. In the instant case, the learned Labour Court held that the petitioner respondent has issued retrenchment notice to the respondent on the grounds of grave misconduct, acts of indiscipline, negligence towards duties and highly indecent behaviour towards his colleagues and senior but was deprived of an opportunity of being heard, a fundamental principle of natural justice.

50. The learned Labour Court relied upon catena of judgments to enunciate the settled position of law that in case the termination of an employee is based on no inquiry, no charges framed and is a form of punishment, then it becomes a case of illegal retrenchment and the employee is entitled for relief under the Act.

51. In view of the above, the learned Labour Court held that the petitioner company has failed to demonstrate any record of serving individual notice to the respondent. Further, there is no evidence to substantiate the fact that any inquiry or charge was conducted which provided the respondent with an opportunity of being heard. Based on the aforementioned facts and circumstances, the learned court held that retrenchment of the respondent

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workman was illegal as the same did not comply with the principles of natural justice.

52. The petitioner has asserted that it had paid an amount of Rs.53,918/- to the respondent workman as retrenchment compensation, however, it failed to produced on record its bank statement. Therefore, the learned Labour Court held that in the absence of such bank statement, the onus had shifted on the petitioner management to show due payment of salary to the respondent workman and it cannot be said that the aforesaid amount was not paid as salary to the workman but as a retrenchment compensation.

53. The learned Labour Court held that the petitioner has failed to demonstrate that the cheque amount of Rs.53,918/- paid to the respondent was for the purpose other than the salary accrued to him. The onus was upon the petitioner company to prove, in absence of a bank statement, that the retrenchment compensation was given to the respondent workman.

54. Accordingly, the issue no. ii was decided in favour of the respondent workman.

Issue no. (iii) & issue no. (iv)

55. The learned Labour Court held that the findings arrived at issue no (i) and (ii) are applicable under the present issues as well and after considering the cited judgements, held that the claim of the workman with respect to full wages with reinstatement in service considered with consequential benefits. It further held that the retrenchment was deemed illegal and unjustified, the

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respondent workman is held entitled to full back wages. It further held that the respondent workman is entitled to reinstatement, along with all consequential benefits within 15 days from the date of the impugned award. Furthermore, since the case is pending since 2017, the cost of litigation is also allowed to the respondent workman.

56. This Court is of the view that whilst adjudicating upon issue no. (i) whether the workman has voluntarily abandoned his job after taking all his dues from the management; the learned Tribunal has correctly observed that the petitioner's contention that the respondent workman has arrived at full and final settlement, with payments received and settlement duly signed by the associate of the respondent, is not acceptable. Since, the learned Labour Court rightly observed that there are several discrepancies in the aforesaid contention, as there is no date of resignation mentioned, no resignation letter of the respondent produced on record, the amount paid by the petitioner to the respondent in lieu of the settlement is not mentioned in the Settlement Agreement and as per testimony of MW-2 the respondent workman was terminated in March 2016. Hence, there is no substantive evidence produced on record by the petitioner to prove the fact that the retrenchment of the respondent workman was legal and unjustified.

57. In view of the aforesaid discussions, this court is of the view that the learned Labour Court decided issue no. I in favour of the respondent.

58. Now adverting to issue no. ii whether the services of workman have been terminated illegally or unjustifiably by the management, the learned Labour Court correctly held that if a worker is terminated, compliance with

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Section 25F of the Act, 1947, is imperative that the worker is served with one months' notice indicating the reason to the workman however, in the instant case, a retrenchment notice was issued but respondent workman was denied with an opportunity of being heard, adhering to the principles of natural justice.

59. It is further opined that the learned Labour Court correctly held that no inquiry against the respondent workman was conducted which amounts to a violation of the principles of natural justice.

60. This Court observes that the petitioner asserted that the respondent was paid an amount of Rs.53,918/- as retrenchment compensation vide cheque, the learned Labour Court in this regard correctly held that the petitioner failed to produce on record its bank statement to prove the same. Hence, the aforesaid contention of the petitioner was accepted by the learned Labour Court.

61. Accordingly, it is held that the learned Labour Court rightly adjudicated upon issue no. ii in holding that the services of the workman were terminated illegally by the respondent management.

62. In view of the aforesaid discussions, this Court is of the view that the respondent is entitled to reinstatement, along with all consequential benefits and allowed the cost of litigation to the respondent workman since the matter is pending since 2017.

63. In light of the aforesaid discussions, it is held that the impugned award passed by the learned Labour Court dated 24th March, 2021 passed by

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the Presiding Officer, Labour Court, Rouse Avenue, New Delhi is upheld and the instant petition is dismissed.

64. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 31, 2024
rk/db/av

Click here to check corrigendum, if any

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