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

% **Date of order: 30th May, 2024**

\+ W.P.(C) 8193/2024 and CM APPL. 33593/2024

OMAXE BUILDHOME PVT LTD ..... Petitioner

Through: Mr.Mukti Bodh, Advocate

versus

NADEEM AHMED KHAN ..... Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 33594/2024 (Exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

W.P.(C) 8193/2024

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

> *"I) Issue a writ of certiorari or any other appropriate writ(s)/ order(s) thereby quashing/ setting aside the impugned Award dated 22.12.2023 passed by Ms. Bhavna Kalia, Ld. Presiding Officer Labour Court-V, Rouse Avenue District Courts, Delhi, in the Industrial Dispute Bearing LIR No.8519/2016 titled Nadeem Ahmed Khan vs. Omaxe Buildhome Pvt. Ltd.;*
> *II) Any other or further writ(s), order(s) or direction(s) that may be deemed just and proper in the facts and circumstances of the case may also be issued/passed in favour of the Petitioner*

in the interest of justice."

2. The relevant facts leading to the filing of the instant petition are as follows:

a. The respondent workman was employed as a Computer Operator with the petitioner company on 8th February, 2011 at the alleged last drawn salary of Rs. 19,205/- per month.

b. On one occasion, the petitioner company directed the respondent workman that he was deputed at Vrindavan, Mathura (Uttar Pradesh) effective immediately. After hearing about said deputation, the respondent allegedly denied to go to Mathura and objected to the same claiming that it was not under his scope of employment to be employed at different locations and if he was transferred, he threatened to file false litigations against the petitioner as well as its other employees.

c. It is further stated that the respondent did not reach the project location at Mathura on 23rd September, 2015 and vide an email dated 27th September, 2015, the respondent informed the petitioner company that he could not join the services as he was sick and that he will join the services on 5th October, 2015, i.e., after almost 13 days of scheduled deputation.

d. However, the respondent again failed to join the deputation

pursuant to which the petitioner sent an email dated 8th October, 2015 to the respondent workman rebuking him for his misconduct and directed him to report to his duties failing which disciplinary action would be initiated against him.

e. It is stated that since the respondent workman again failed to join his duties out of his own volition, it was deemed that the respondent workman has abandoned his duties with the petitioner company.

f. Pursuant to the above, the respondent workman raised an industrial dispute for illegal termination which was referred by the appropriate government to the learned Labour Court for adjudication in case bearing LIR no. 8519/2016.

g. In the above said dispute, the learned Labour Court passed the impugned award dated 22nd December, 2013 deciding the claim in favour of the respondent workman by awarding him the relief of reinstatement along with 50% back wages.

h. Being aggrieved by the impugned award dated 22nd December, 2013, the petitioner has approached this Court seeking quashing of the same.

3. Learned counsel appearing on behalf of the petitioner company submitted that the impugned award is bad in law as the same has been passed without appreciating the entire facts and circumstances available on the record.

4. It is submitted that the findings given in the impugned award *qua* the relief of reinstatement is unreasonable as the learned Labour Court failed to substantiate the same with any evidence that would show why the workman should be reinstated when he should have been given a lump sum monetary compensation.

5. It is submitted that the impugned award is illegal insofar as it relates to the grant of 50% back wages since the same has been awarded without there being any pleadings or evidence in support of the contention.

6. It is further submitted that the respondent workman has himself stated in his deposition that he could not get any alternative employment since the prospective employers considered him to be overage, therefore, relief of reinstatement is against the settled position of law.

7. It is submitted that the learned Labour Court has failed to appreciate that the respondent workman was discharging the administrative and supervisory functions. The onus to prove otherwise and to the contrary was on the workman which he utterly failed to discharge.

8. It is submitted that learned Labour Court failed to appreciate that it was established from the e-mails exchanged between the petitioner and the respondent that the respondent was making excuses to join his duty at the place of his transfer i.e. at Vrindavan, by citing the reason of his ill-health.

9. It is submitted that there is neither any pleading nor evidence that was by the respondent regarding him being unemployed after termination of his services. It is further submitted that the onus was upon the respondent to plead and prove this fact which he failed to do.

10. It is submitted that the learned Labour Court erred in law in not appreciating the fact that the respondent has no vested right to seek reinstatement. Moreover, in such cases where there has been dispute between the parties, it is appropriate not to grant the relief of reinstatement.

11. 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.

12. Heard the learned counsel appearing on behalf of the petitioner and perused the material on record. There is no appearance on behalf of the respondent.

13. It is the case of the petitioner that the learned Labour Court failed to appreciate that the relief of reinstatement could not be granted as a thumb rule in each and every case and the respondent could have been granted one-time compensation in lieu of reinstatement and back wages. It has been submitted that the present dispute is a fit case for one time compensation in lieu of reinstatement and back wages since, the respondent has nowhere pleaded that he was not able to get a job in the *interregnum* or that he was running his own business/enterprise.

14. At this stage, this Court finds it imperative to peruse the impugned award, relevant extracts of which are as under:

> "*..15. From the pleading of the parties, the following issues were framed, vide order, dated 16.08.2017:*
>
> ***1. Whether the workman has abandoned his duties as alleged by the management in its written statement? OPM***

2. Whether the services of the workman have been terminated illegally and/or justifiably by the management?OPW

3. Relief

Decision on Issue no. 1 and 2

34. Thus, to determine whether the workman had abandoned his job or was terminated illegally from services, evidence led by the parties has to be perused. The workman has stated that he was transferred by the management on and off and one fine day he was asked not to report for work anymore. Management has denied the suggestion stating that workman abandoned his services. The abandonment has not been proved by the management. They issued no notice or charge sheet to the workman. They sent no letter to him to ask him to join back work. They have taken the stand that as the workman had failed to join and abandoned his employment with the management, therefore, he was deemed to be dismissed from 10.10.2015. It is suffice to say that for just this attitude or the management, the labour Laws have been enacted, to protect the interest of the workman. Deeming dismissal was never a choice with the management. The management should have conducted proper proceedings to check as to why workman was not reporting for duty in case they had presumed that workman had abandoned duty. Further, in case they had deemed workman to be dismissed, they should have followed the law and ensured that the workman was retrenched as per law. Also, it is to be noted that the management did not put any suggestions to the workman during his cross examination denying the case of the workman and hence, it appears that the case of the workman stood admitted by the management.

35. Thus, in view of the above stated legal position and facts discussed, it is held that the services or Sh. Nadeem Ahmed Khan have been terminated illegally and/or unjustifiably by the management. This issue is decided in favor of the workman and against the management."

Issue No. 3. Relief

"37. Since it has been held above that the present case is a case of illegal termination or services of the claimant workman by the management as per the Act, the workman is entitled to relief under the Act.

38. As far as the relief part is concerned, the workman has made a prayer in his statement of claim for his reinstatement with full back wages and consequential relief."

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"41. Therefore, keeping in view the facts-

a) That the workman worked for almost 10 years with the management;

b) that management had deemed him dismissed from service without following principle of natural justice;

c) that matter is more than 8 years old;

d) that it was not proved by the management that workman had found alternate employment; and also keeping in view the aforesaid law point, this court deems it appropriate to grant relief of reinstatement and 50% of back wages to the claimant. The amount of backwages shall be paid to the workman by management within one month from the date when this award becomes enforceable, on publication, failing which the amount shall carry an interest@ 8% p.a. from the date it becomes due till the time it is realized.

42. With these observations the statement of claim of the workman filed under the provisions or the Act is disposed off. Reference is answered and disposed off accordingly..."

15. The above quoted portion of the impugned award states that the respondent had raised an industrial dispute for his illegal retrenchment against his employer, i.e., the petitioner herein. The issues framed for consideration was first, whether the respondent abandoned his duties as alleged by the petitioner management and second, whether his termination

was illegal or justified.

16. It is revealed that the workman claimed that he was transferred intermittently by the management and was ultimately asked not to report for work without any formal notice of termination. The petitioner management on the other hand contended that the workman abandoned his services.

17. While deciding as to whether the workman abandoned his services or he was terminated illegally, the learned Labour Court emphasized upon the statement of the workman as per which he was regularly transferred by the management and on one day, he was asked not to report to his duty. The learned Labour Court noted that the petitioner management's failure to follow due process, including issuing a notice or conducting proper enquiry, violates various provisions of Industrial Disputes Act, 1947 (hereinafter "the Act") enacted to protect the interests of workers. It was further observed by the learned Labour Court that in case the management deemed the workman to be dismissed, it should have followed the due process of retrenchment. Therefore, it ruled in favor of the workman stating that his termination was illegal and unjustified and that the intention to abandon his services is absent on the part of the workman.

18. In conclusion, the learned Labour Court considered various factors such as respondent workman's tenure with the petitioner company which spanned over 10 years, the petitioner management's disregard to the principles of natural justice by not conducting enquiry, the age of the workman, and the lack of evidence adduced on the part of the management regarding the workman's alternate employment. Based on these

considerations and legal principles as well as the fact that the petitioner company failed to provide any evidence or follow proper procedures such as issuing notices or conducting disciplinary proceedings, the learned Labour Court granted the relief of reinstatement with 50% of back wages.

19. Therefore, the short question afforded to this Court for its consideration is whether the impugned award suffers from any illegality which is apparent on the face of the record, thereby, warranting the interference of this Court under Article 226 of the Constitution of India.

20. Now adverting to the facts of the matter at hand.

21. The petitioner company has contended that the respondent workman is not a workman within the definition of Section 2 (s) of the Act. With respect to the said submission, it is apposite to mention that the burden to establish the same was on the petitioner management and the respondent was not required to prove otherwise. In the case of ***Seth Jeejeebhoy Dadabhoy Charity Funds v. Farokh Noshir Dadachanji,* 2005 SCC OnLine Bom 723**, the employer, therein, had claimed that the employee was not a "workman" and the Division Bench of the Bombay High Court observed that the burden to establish that the workman had managerial, administrative and supervisory duties falls upon the management, i.e., the employer. The relevant extracts are reproduced herewith:

> "*…14. Applying the aforesaid legal position on the present facts, it may be immediately noticed that the complainant placed on record the list of duties which was not disputed bythe present appellants. The appellants raised the plea that the complainant had the managerial, administrative and*

supervisory duties. The burden has to be on the employer to establish the same. The judgment of the Supreme Court in the case of Workmen of Nilgiri [2004 (2) L.L.N. 68] (vide supra), also does not help the case of the appellants.

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16. In Northcote Nursing Home (Private), Ltd., Bombay [2001 (3) L.L.N. 550] (vide supra), the learned Single Judge of this Court held that where there was a complaint by the employee of an unfair labour practice and the respondent denied complainant was a workman, the initial burden was on the employee to prove that he was workman under S. 2(s) of the Industrial Disputes Act. In the case before us and on the facts and the available material where the employer asserts that the complainant has been given managerial, administrative and supervisory duties, obviously to prove these facts the burden has to be on the employer and not on the complainant. The burden cannot be placed on the complainant to prove that he was not given managerial, administrative or supervisory duties. In our considered view, the burden of proof must depend on the facts and pleadings of each case. It is the appellants who raised the objection that the Industrial Court has no jurisdiction. Initial burden to prove the ouster of the jurisdiction of the Industrial Court therefore, has to be on the employer. We do not find any legal infirmity in the impugned order…"

22. In view of the aforesaid judgment, it is not open to the petitioner in the instant petition to attempt to exclude the learned Labour Court's jurisdiction by merely pleading that the respondent is not a 'workman' especially when no material fact had been placed by it on record to justify the same.

23. Now adverting to the issue of illegal termination of the respondent workman.

24. The petitioner management has contended that the respondent himself abandoned his services and it is not the case that the petitioner terminated his services.

25. The Hon'ble Supreme Court in the judgment of ***Vijay S. Sathaye* v. *Indian Airlines Ltd.*, (2013) 10 SCC 253,** has held that where an employee does not join back his duty after leave and remains absent for a long period of time, then such absence should be treated as misconduct. However, the said absenteeism from services must be accompanied with the intention to voluntary abandon the service. The relevant extract of the judgment has been reproduced herein below:

> "*..12. It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntary abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.*
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> *13. In Jeewanlal (1929) Ltd. v. Workmen [AIR 1961 SC 1567] this Court held as under : (AIR p. 1570, para 6)*
> *"6. ... there would be the class of cases where long unauthorised absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee."*
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> *(See also Shahoodul Haque v. Registrar, Coop. Societies [(1975) 3 SCC 108 : 1974 SCC (L&S) 498 : AIR 1974 SC 1896] .)*

14. For the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as "retrenchment" from service. (See State of Haryana v. Om Parkash [(1998) 8 SCC 733 : 1999 SCC (L&S) 262] .)

15. In Buckingham and Carnatic Co. Ltd. v. Venkatiah [AIR 1964 SC 1272] , while dealing with a similar case, this Court observed : (AIR p. 1275, para 5)

"5. ... Abandonment or relinquishment of service is always a question of intention, and, normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf."

A similar view has been reiterated in G.T. Lad v. Chemical and Fibres of India Ltd. [(1979) 1 SCC 590 : 1979 SCC (L&S) 76 : AIR 1979 SC 582]

16. In Syndicate Bank v. Staff Assn. [(2000) 5 SCC 65 : 2000 SCC (L&S) 601] and Aligarh Muslim University v. Mansoor Ali Khan [(2000) 7 SCC 529 : 2002 SCC (L&S) 965 : AIR 2000 SC 2783] this Court ruled that if a person is absent beyond the prescribed period for which leave of any kind can be granted, he should be treated to have resigned and ceases to be in service. In such a case, there is no need to hold an enquiry or to give any notice as it would amount to useless formalities. A similar view has been reiterated in Banaras Hindu University v. Shrikant [(2006) 11 SCC 42 : (2007) 1 SCC (L&S) 327] , Chief Engineer (Construction) v. Keshava Rao [(2005) 11 SCC 229 : 2005 SCC (L&S) 872] and Bank of Baroda v. Anita Nandrajog [(2009) 9 SCC 462 : (2009) 2 SCC (L&S) 689]..."

26. With respect to the petitioner management's assertion that the actions of the respondent constituted abandonment of services, it is observed that no enquiry proceedings were conducted by the petitioner management to determine the reason for the respondent's absence. Neither did the petitioner management issue any notice or letter pertaining to respondent's absence, nor did it pay any compensation to the respondent workman, thereby, the procedure contemplated under Section 25F of the Act was not complied with.

27. Upon perusal of the record including the testimonies of the witnesses before the learned Labour Court, it is apparent that the workman had no intention to abandon his services and the 'intention' being a pre-requisite *qua* the principle of abandonment, it is essential that this Court takes the same into consideration. Therefore, it is suffice to state that the learned Labour Court rightly decided the issue of abandonment of services against the petitioner management and the decision that the workman was terminated illegally is in accordance with the law.

28. Now adverting to the issue of grant of relief of reinstatement.

29. It has been contended on behalf of the petitioner management that the relief of reinstatement is unreasonable and the learned Labour Court ought to have awarded only lump sum compensation to the workman.

30. With regard to the above said contention of the petitioner management, this Court has referred to the judgment of the Hon'ble Supreme Court in ***Vikramaditya Pandey v. Industrial Tribunal, Lucknow,*** **(2001) 2 SCC 423,** wherein, it was observed that ordinarily, once the

termination of service of an employee is held to be wrongful or illegal, usually the relief of reinstatement with full back wages shall be available to an employee.

31. The Hon'ble Supreme Court in ***Hindustan Tin Works v. Employees***, **(1979) 2 SCC 80**, held that as a general norm, the workman whose service has been illegally terminated would be entitled to full back wages except to the extent that he was gainfully employed during the enforced idleness. Further, with regard to the relief of reinstatement, it was held that where the termination of service is found to be invalid, reinstatement, as a matter of course, should be awarded. The relevant paragraphs of the said judgment are as under:

> "....***4.*** *The question whether the workmen who were retrenched were entitled to the relief of reinstatement is no more open to challenge. In other words, it would mean that the retrenchment of workmen was invalid for the reasons found by the Labour Court and the workmen were entitled to the relief of reinstatement effective from the day on which they were sought to be retrenched. The workmen were sought to be retrenched from August 1, 1974 and the Labour Court has directed their reinstatement effective from that date. The Labour Court has also awarded full back wages to the workmen on its finding that the retrenchment was not bona fide and that the non-availability of the raw material or recurrent power shedding and lack of profitability was a mere pretence or a ruse to torment the workmen by depriving them of their livelihood, the real reason being the annoyance of the appellant consequent upon the refusal of the workmen to be a party to a proposed settlement by which workload was sought to be raised.*
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> ***
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> ***8.*** *Let us steer clear of one controversy whether where*

termination of service is found to be invalid, reinstatement as a matter of course should be awarded or compensation would be an adequate relief. That question does not arise in this appeal. Here the relief of reinstatement has been granted and the award has been implemented and the retrenched workmen have been reinstated in service. The only limited question is whether the Labour Court in the facts and circumstances of this case was justified in awarding full back wages.

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. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. Safai Kamdar Mandal [(1971) 1 LLJ 508 (Guj)] and a Division Bench of the Allahabad High Court in Postal Seals Industrial Cooperative Society Ltd. v. Labour Court II,

Lucknow [(1971) 1 LLJ 327 (All)] have taken this view and we are of the opinion that the view taken therein is correct.

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11. *In the very nature of things there cannot be a strait-jacket 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])..*"

32. Furthermore, in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya,* (2013) 10 SCC 324**, the Hon'ble Supreme Court highlighted the need to adopt a restitutionary approach, when a Court has to consider whether to reinstate an employee, and if so, the extent to which backwages is to be ordered. The above said approach implies that the position and status of the workman who was illegally terminated should be restored to what he was before termination. The relevant portion of the judgment is as under:

"*...**22.*** *The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same*

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

23. *A somewhat similar issue was considered by a three-Judge Bench in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] in the context of termination of services of 56 employees by way of retrenchment due to alleged non-availability of the raw material necessary*

for utilisation of full installed capacity by the petitioner. The dispute raised by the employees resulted in award of reinstatement with full back wages. This Court examined the issue at length and held : (SCC pp. 85-86, paras 9 and 11)….

24. *Another three-Judge Bench considered the same issue in Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] and observed : (SCC p. 447, para 6)*

> *"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."

(emphasis supplied).."

33. Upon perusal of the above cited judgments, it is a settled principle of law that in the event the Court comes to the conclusion that the services of the workman were terminated illegally, the same must be followed by reinstatement of the services of the workman keeping in view the peculiar facts of the case, and there may be exceptional circumstances which make it impossible or wholly inequitable *vis-à-vis* the employer and workman to direct reinstatement. In such exceptional circumstances, instead of granting the relief of reinstatement, the Courts may consider granting the relief of monetary condensation.

34. With regard to the facts of the instant petition, this Court is of the considered view that it is open to the employer to specifically plead and establish that there were special circumstances which warranted either non-reinstatement or non-payment of back wages. Since the petitioner management has not justified as to why compensation is to be favoured over the usual relief of re-instatement, this Court does not find force in the submissions advanced by the petitioner.

35. Applying the above discussed principles of law, this Court is of the considered view that after holding that the respondent workman was terminated illegally, the learned Labour Court rightly awarded the relief of reinstatement and back wages, and the same is justified in terms of the particular facts of the case.

36. Under Article 226 of the Constitution of India, while exercising the extraordinary writ jurisdiction, it is not proper for this Court to re-examine the evidence on record or to adjudicate upon the dispute involving quantum of punishment, in a bid to find faults in the findings of the learned Labour Court.

37. Considering the above, this Court does not find any merit in the proposition put forth by the petitioner as the impugned award has been passed after taking into consideration the entire facts and circumstances as well as the settled principles of law.

38. In light of the above facts and circumstances, this Court is of the view that the learned Labour Court had exercised its powers in accordance with the jurisdiction conferred upon it and there is no illegality of any kind thereto. Therefore, the instant writ petition, being bereft of any merit, is liable to be dismissed.

39. In view of the foregoing discussions, the impugned award dated 22nd December, 2023 passed by the learned Labour Court, Dwarka Courts, South-West District, New Delhi in LIR No. 8519/2016, is upheld.

40. Accordingly, the instant petition stands dismissed alongwith pending application if any.

41. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 30, 2024
dy/ryp/db

Click here to check corrigendum, if any