HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

Case No.	**W.P. No. 4982 OF 2015**
Parties Name	Chief General Manager, S.E.C.L *vs.* Chandramani Tiwari
Date of order	**17/11/2021**
Bench Constituted	**Single Bench :** Justice Purushaindra Kumar Kaurav
Order passed by	Justice Purushaindra Kumar Kaurav
Whether approved for reporting	Yes.
Name of counsel for parties	**For Petitioner:** Shri Vikram Singh, Advocate **For Respondent** : Respondent in person.
Law laid down	1. The High Court should not exercise its power under Article 227 of the Constitution of India as an appellate Court or re-appreciate evidence and record its finding unless there are serious errors of law on the face of record. 2. The High Court could not go into reliability/adequacy of evidence, or interfere if there is some legal evidence on which findings are based, or correct error of fact however grave it may be. 3. Industrial Disputes Act is a social welfare legislation. 4. The wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. However, the said rule is subject to rider that while deciding the issue of backwages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct found proved against the workman, the financial condition of the

	management and similar other factors. 5. If the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the management had foisted a false charge, then there will be ample justification for award of full back wages. In such a case, the superior Courts should not interfere with the award so 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 management's obligation to pay the same. 6. The enquiry which was conducted against the employee was held to be illegal by the CGIT. This is a clear case of wrongful termination of service. There is no justification to give premium to the management of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages. The CGIT has found that the employee's termination was wrongful and has directed for reinstatement and therefore, it is quite reasonable that the employee, who by now, has been superannuated, should get 50% back wages and the same is the order of the CGIT, therefore, the same is also not interfered with.
Significant paragraph numbers	**11 to 13 & 17 to 20. -**

O R D E R
(17/11/2021)

This petition under Article 227 of the Constitution of India, is directed against an award dated 20.10.2014, passed by the Central Government Industrial Tribunal-cum-Labour, Jabalpur (hereinafter referred to as

"**CGIT**"). The CGIT vide impugned award has held that the action of Management of South Eastern Coalfields Ltd. (in short hereinafter referred to as "Management"), Johila Area, in terminating the services of the respondent (in short hereinafter referred to as "Workman"), is illegal and hence, the management was directed to reinstate the workman with continuity of service and 50% back wages.

2. Brief facts necessary for the decision of the petition are as under:-

(i) The management is one of the subsidiaries company of Coal India Ltd. (A Government of India undertaking) under the Ministry of Coal. The workman was appointed as General Mazdoor, Category-I on 23.8.1983 by the management. The workman was the President of Trade union and had been raising various grievances relating to Union from time to time.

(ii) On 17.2.2000, on account of one incident at mine, two workmen lost their lives. The issue was taken-up at the higher level and complaints were made against some of the responsible officers of the management. Thereupon, the cognizance was taken by the Executive Magistrate, Pali, District-Umaria.

(iii) On 28.11.2000, charge-sheet was given to the workman alleging therein that he was habitual absentee and during September, 1999 to November, 2000, he attended the work only

for 46 days and including EL/CL etc., his total presence was 109 days, which is violative under Clauses 26.24 and 26.30 of the Standing Order and, therefore, the same falls within the definition of "Misconduct".

(iv) The workman replied to the charge-sheet on 28.11.2000/ 9.12.2000 denying all the allegations and he had stated that the attendance shown in the charge-sheet was incorrect. According to him, if the attendance is compared or verified from register Form 'C', the same would make it clear that the allegations in the charge-sheet were incorrect. According to him, on account of his wife's and his own illness, he sought certain leaves without pay and was availing medical facilities. He denied that there was any violation of the Standing Order as alleged in the charge-sheet.

(v) Vide memorandum dated 16.12.2000, the management did not find the explanation of the workman as satisfactory and took a decision to proceed with the regular departmental enquiry. On 16.12.2000, Shri K.D. Jain, Mines Superintendent, Pali was appointed as Enquiry Officer and Shri Rizwan, Time Keeper, Birsinghpur Colliery was appointed as Management Representative.

(vi) After an enquiry, on 7.9.2002, the Enquiry officer

submitted his report. He concluded that between 6.9.1999 to 26.11.2000, the workman attended the office only for 49 days and has availed 22 days CL/Rest and he could not satisfactorily explain his absence from duty, therefore, the charges were found proved.

(vii) On 10.10.2002, the management supplied copy of the enquiry report to the workman and sought for his explanation. On 19.10.2002, the workman submitted his explanation. He has alleged certain malafides against S.R. Mishra, Manager and Enquiry Officer on account of some complaints lodged against the said officer. He stated that the enquiry is vitiated on account of not following the principles of natural justice and non production/supply of relevant register etc. and, therefore, the entire matter was required to be re-enquired by the independent enquiry officer.

(viii) Vide order dated 7.12.2002, the management terminated the services of the workman w.e.f. 7.12.2002.

(ix) The workman preferred an appeal before the appellate authority, which was also dismissed vide order dated 22.8.2003.

(x) Eventually on account of the labour dispute, the Government of India, Ministry of Labour vide order dated 13.5.2004 found that an industrial dispute exists between the

management and its workmen. The Government of India considered it desirable to refer the said dispute for adjudication and hence, in exercise of power conferred by Clause (d) sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as "**Act of 1947**"), the following dispute was referred for adjudication to the CGIT:-

"**The Schedule**

Whether the action of the management of SECL, Johilla Area in terminating from services of Sh. Chandramani Tiwari S/o Sh. B.P. Tiwari, General Mazdoor w.e.f. 7.12.2002 is legal and justified? If not, to what relief he is entitled to."

(xi) The parties submitted their statement of claims and adduced the evidence before the CGIT.

(xii) On 25.3.2013, the CGIT had decided the preliminary issue against the employer holding that the departmental enquiry conducted by the management against the workman was illegal and improper. However, liberty was given to the management for adducing evidence to prove misconduct of the delinquent workman. Thereafter, the final award has been passed which is under challenge in this petition.

3. Learned counsel appearing for the management has vehemently argued that the impugned award is illegal and perverse. From perusal of para 10 of the impugned award, it is seen that the evidence of Management witness Shri Mundra clearly proved the absence from duty from July, 2000 to November,

2000 and, therefore, there was no occasion for the CGIT to interfere into the order of termination. It has also been stated that entries in the Form ‘G’ register wherein month-wise attendance of each workman is available and Form ‘H’ register where the leave balance and leave availed by the workmen are mentioned, were filed before the CGIT which were wrongly ignored. It is the stand of the management that the management provides all best medical facilities at the colliery level itself and the Central hospital is also functioning at area level and in case of any emergency, the workmen are referred to specialized hospital situated at metropolitan city and the entire expenditure is borne by the management, therefore, there was no occasion for the workman to avail unauthorized leave. The petitioner has also criticized the award on the ground that grant of 50% back wages is not warranted in view of the law laid down by the Hon’ble Supreme Court in the case of **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyala (D.Ed) & Others[1].**

4. The workman while appearing in person has supported the impugned award and has submitted that the order of termination was issued with malafide intent and with an object to teach him a lesson as he was raising voice against the management on behalf of the trade union. According to him, the issue of death of two workmen was pending before the Executive Magistrate, Pali, District-Umaria, where the complaint was being examined.

1 (2013) 10 SCC 324

He has also stated that on account of his pro-activeness he was threatened by the Enquiry Officer of taking revenge to see that he would be dismissed from service. He made a request for change of the Enquiry Officer but the same was not adhered to. According to him, his signature was forged about the attendance and he was not given fair opportunity of his defence. Original attendance register has neither been produced before the Enquiry Officer nor before the Tribunal. There is violation of principles of natural justice. He has already suffered immense mental agony being out of job since 7.12.2002 and the entire action of management was arbitrary.

5. This Court has heard the parties at length and has also carefully perused the record.

6. The CGIT vide order dated 25.3.2013 had already decided the question about the legality of the departmental enquiry conducted by the management as a preliminary issue. The enquiry was held to be illegal. It was recorded in para 5 of that order that the enquiry was conducted in absence of co-worker against the workman and he was not given fair and proper opportunity. Management witnesses have admitted that in Form 'C' in which attendance or the workmen are maintained for the relevant period was not produced in original. It is apposite to reproduce para 5 and 6 of the aforesaid order dated 25.3.2013, which is as under:-

“**5.** Workman has examined witness Shri Hiralal Sharma and to support the grievance of Ist party workman that on complaint of Ist party workman about accident, the proceeding was initiated. The Ist party workman filed affidavit of his evidence. He was cross-examined at length. He had denied suggestions of the management in the crossexamination. Management has filed affidavit of his witness Shri S.J.Mukherjee and witness was also cross-examined at length. Only zerox copies of the Enquiry proceedings are produced. The entire record of Enquiry proceedings is not produced in Court, reasons not understood. In cross-examination of management's witness by workman, it is noticed that in Form “C” in which attendance of employee is maintained, for period of November 2000 was not produced. The cross-examination of management's witness further shows that entire Form “C” about attendance during the relevant period is not produced. During recording statement of management witness in cross-examination, it was told by Enquiry Officer that the same shall be produced lateron. When the charge against the delinquent workman was about his unauthorized absence, Ist party workman was alleging that his attendance was scored out from the register and the bonus documents were prepared. Under such facts, it would have been proper to produce the register of attendance in Form “C” maintained by the management. The documents on record shows that Form “C” for November 2000 is not produced. The original attendance record is not produced. Therefore the enquiry conducted against Ist party workman cannot be said proper. Proper procedure was not followed while recording evidence of management's witness. Though the workman expressed his desire to be represented by a coworker , the co-worker was not present at the time of cross-examination of management's witness. The reason is not understood. The enquiry was conducted in absence of co-worker. For the above reasons I hold that enquiry conducted against the workman is not fair and proper.

6. The management in Para-15 of its Written Statement has requested permission to prove misconduct of delinquent workman adducing evidence. The legal position in this regard is settled that when enquiry is

> vitiated , permission cannot be refused for proving the misconduct in the Court by management. For above reasons, management is permitted to adduce evidence to prove charges against the delinquent workman."

7. The aforesaid order remained unchallenged till date, therefore, the finding to the effect that the enquiry was illegal, has attained finality.

8. Coming to the legality of the impugned award dated 20.10.2014, it is seen that in para 9 of the said award, a categorical finding is recorded that the management's witness Shri P.S. Mundra in his cross-examination has stated that register for the period September, 1999 to 2000 is not available. It has also been recorded that the evidence of management's witness discussed above only covers unauthorized leave of workman during the period July, 2000 to November, 2000 for 24 days and rest of the period of unauthorized absence of workman was not covered by any of the witnesses of management as well as documents *Ex.M/19* to *Ex.M/21*. In para 10, it has been clearly held that it was difficult to hold that the absence of the workman from duty was unauthorized. Para 9 and 10 of the impugned award are reproduced as under:-

> "**9.** After enquiry against workman was found vitiated, management of IInd party has to prove the charges against workman. Management has filed affidavit of evidence of Shri G.S.Parihar, the attendance of workman is shown 5 days during the period 16-7-00 to 22-7-00. Removal of workman is shown from 6-12-02. The charges against workman are restricted to unauthorized absence for the period Sept 99 to Nov-2000. Thus affidavit of G.S.Parihar shown 5 days

working during 16-7-00 to 22-7-00, 1 day working during 13-7-00 to 5-8-00. Rest of the period of unauthorized absence is not covered by chargesheet issued to workman. The affidavit of management's witness Shri P.S.Mundra is filed covering same period. It is surprise to say that evidence of Shri P.S.Mundra covers attendance of workman during Sept 99 to November 2000 for 46 days. From evidence of witness of management, document Exhibit M-19 to M-33 are proved. Management's witness Shri P.S. Mundra in his cross-examination says that register for the period Sept 99 to Nov-2000 is not available. Only register for the period 5 year was available, register for remaining period are destroyed. That Form C register for 9-7-00, November 07 was brought, its copies are produced. Entries dated 29-10-00, 4-11-00 shows workman was on EL. The form C register for onwards period was not available. The termination order of Ist party workman was issued by Shri Sarkar Sub Area Manager. The termination order was not issued by Lallan Giri. He was not posted in the mine during said period. Rest of cross examination of witness of management is devoted on the point whether order bears signature of General Manager or not, whether witness was given intimation. Workman had passed Data Entry Exam and workman was released for said examination. Said part of evidence in cross-examination has no direct bearing to the unauthorized absence of workman. The evidence of management's witness discussed above only covers unauthorized absence of workman during the period July 2000 to November 2000 for 24 days, rest of the period of unauthorized absence of workman is not covered in evidence of above witness of management as well documents Exhibit M-19 to M-21. Document Exhibit M-30 relates to transfer of workman from Pinoura Project to Birsinghpur Project. M-31 relates to request of workman for light duty was not accepted. Exhibit M-32 relates to treatment of workman in hospital. He should approach Doctor in hospital.

10. Documents also do not relate to alleged unauthorized absence of workman form duty. Thus it is clear that from evidence of management's witness Shri

> Mundra only his absence from duty from July 2000 to November 2000 is covered. The unauthorised absence of Workman from September 99 to June 00 cannot be proved from evidence of witness as Form C register of above period was not available. The management's witness Shri G.S. Parihar was not produced for cross-examination. His evidence cannot be considered. To conclude, evidence adduced by management about unauthorized absence from July 2000 could not be proved for want of record i.e. Form C register. Thus charges alleged against workman cannot be proved. Rather as per documents corroborating evidence of management's witness Shri P.S.Mundra, workman was on duty only for 24 days during July to October 2000, he was absent from duty. From his evidence, it is difficult to hold that the absence of workman from duty was unauthorized as said witness in his cross-examination says workman was on EL during 29-10-00 to 4-11-2000 and medical bill register was not brought by him therefore evidence adduced by management is not sufficient to prove charges against workman. Therefore I record Point No.1 in Negative."

9. Even at the time of hearing of this petition also, no material is shown, no specific perversity is pointed out so as to contradict the findings of facts recorded by the CGIT.

10. Learned counsel for the petitioner, however, relied upon the judgments of the Supreme Court in the cases of **State of Andhra Pradesh Vs. S. Sree Rama Rao**[2]; **The State of Karnataka Vs. N. Gangaraj**[3]; **High Court of Judicature at Bombay Through its Registrar Vs. Shashikant S. Patil and another**[4]; **State Bank of Bikaner & Jaipur Vs. Nemi Chand Nalwaya**[5] as

2 1963 AIR 1723
3 (2020) 3 SCC 423
4 1999 Supp (4) SCR 205
5 (2011) 4 SCC 584

also on the judgment passed by the High Court of Allahabad, Lucknow Bench in the case of **Rakesh Kumar Pandey Vs. State of U.P. through Principal Secretary, Department of Revenue LKO and others**[6] and urged that the writ petition be allowed and the order passed by the CGIT be set aside.

11. It is settled law that the High Court normally should not exercise its power under Article 227 of the Constitution of India as an appellate Court or re-appreciate evidence and record its findings on the contentious points. It is only if there is a serious error of law or the findings recorded suffer from error apparent on record, the High Court can certainly quash such an order. The power of interference under Article 227 is to be kept to the minimum to ensure public confidence in the functioning of the Tribunals and Courts subordinate to the High Court. (See : **Ishwar Lal Mohanlal Thakkar Vs. Paschim Gujarat Vij Company Limited and another**[7]**.**

12. Under Articles 226 and 227 of Constitution of India, the High Court should not venture into reappreciation of evidence or interfere with conclusions in enquiry proceedings if the same are conducted in accordance with law, or go into reliability/adequacy of evidence, or interfere if there is some legal evidence on which findings are based, or correct error of fact however grave it may be, or go into proportionality of punishment unless it

6 Service Single No.18642/2018 dated 20.2.2019
7 (2014) 6 SCC 434

shocks conscience of Court. (See : **Union of India and others Vs. P. Gunasekaran**[8])

13. The High Court can interfere in its writ jurisdiction only if jurisdictional error is committed by the Labour Court/CGIT. Besides, it must proceed on the basis that Industrial Disputes Act is a social welfare legislation. (See : **Naresh Kumar Thakur and others Vs. Principal/ Executive Director, Civil Aviation Training College, Allahabad**[9])

14. So far as the judgments relied upon by the learned counsel for the petitioner are concerned, they are also in the same line. None of the judgments takes any different view as has been stated above.

15. In the instant case, the CGIT has considered the entire evidence and material available on record and has passed a well reasoned award giving full opportunity of hearing to the Management to prove the misconduct. The findings as reproduced in preceding paragraphs clearly show that there is no perversity or jurisdictional lapse which can be said to be so grave so as to call for interference under Article 227 of Constitution of India and hence, any interference is declined.

16. So far as the grant of back wages is concerned, a perusal of the record shows that employee in his affidavits dated 12.8.2004 and 20.10.2014 before

8 (2015) 2 SCC 610
9 (2016) 15 SCC 701

CGIT has stated that he was not employed elsewhere. The Management has not taken any stand in its statement of claim that the workman was gainfully employed elsewhere and in this regard, neither any document has been produced nor any evidence is laid.

17. The law on the question of award of back wages has taken some shift. It is now ruled in cases that when the dismissal/removal order is set aside/withdrawn by the Courts or otherwise, as the case may be, directing employee's reinstatement in service, the employee does not become entitled to claim back wages as of right unless the order of reinstatement itself in express terms directs payment of back wages and other benefits. (See **M.P. State Electricity Board Vs. Jarina Bee (Smt.)[10]).**

18. The Supreme Court in the case of **Deepali Gundu Surwase** (supra), has laid down certain propositions from its earlier judgments while deciding the issue of back wages. It has been held that wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule, however, the said 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 found proved against the workman, the financial condition of the management and similar other factors. Para 22 of the aforesaid judgment is

10 (2003) 6 SCC 141

reproduced hereunder:-

> "**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."

19. In the case of **Deepali Gundu Surwase** (supra), the Supreme Court has further held that an employee 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 management 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. Once the employee shows that he was not employed, the onus lies on the management to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments. *If the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the management had foisted a false charge, then there will be ample justification for award of full back wages. In such a case, the superior Courts should not interfere with the award so 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 management's obligation to pay the same.*

20. In the instant case, the CGIT has awarded 50% back wages on the basis of the facts and circumstances of the case. The enquiry which was conducted against the employee was held to be illegal by the CGIT vide its order dated 25.3.2013 and even after giving opportunity to the management to prove the misconduct, the management has failed to establish during the proceedings before the CGIT and therefore, this is a clear case of wrongful

termination of service. In the case of wrongful/illegal termination of service, the wrongdoer is the management and sufferer is the employee/workman and there is no justification to give premium to the management of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages. Since the reinstatement itself is ordered with 50% back wages, therefore, the same cannot be considered to be unreasonable. The CGIT has found that the employee's termination was wrongful and has directed for reinstatement and therefore, it is quite reasonable that the employee, who by now, has been superannuated, should get 50% back wages and the same is the order of the CGIT, therefore, the same is also not interfered with.

21. In view of the aforesaid analysis, I do not find any merit in the instant petition and the same is accordingly dismissed. No orders as to cost.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

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