

**Court No. - 33**

**Case :-** WRIT - C No. - 26887 of 2021

**Petitioner :-** Uttar Pradesh State Road Transport Corporation

**Respondent :-** Sri Ram Prakash And Another

**Counsel for Petitioner :-** Sarveshwar Lal Srivastava,U.S. Singh Visen

**Counsel for Respondent :-** C.S.C.,Jamal Ahmad Khan,Omvir Singh  
Rajpoot,R.C. Maurya

**Hon'ble Chandra Kumar Rai,J.**

1. Heard Mr. Sarveshwar Lal Srivastava, learned counsel for the petitioner / U.P. State Road Transport Corporation and Mr. Jamal Ahmad Khan, learned counsel for respondent no.1

2. Brief facts of the case are that respondent no.1 was appointed as Conductor in 1989 in the petitioner-corporation. On 13.3.2010 respondent no.1 was carrying a bus no.U.P.81AA-9326. An inspection was conducted by the officer of the petitioner-corporation and it was found that 8 passengers out of 22 passengers were traveling without tickets from Jaipur to Ajmer, accordingly, a charge-sheet dated 30.3.2010 was issued to respondent no.1. Respondent no.1 filed his reply denying the charges leveled against him stating that his bus was intercepted by checking the staff when the bus was at toll plaza on Soron, Ajmer Road and respondent no.1 was in process of preparing the tickets but the inspector has taken possession of the ATM Machine from the hand of respondent no.1 and issued tickets to the passengers after collecting fair. Petitioner- corporation did not consider the reply submitted by respondent no.1. Departmental enquiry was conducted and show cause notice dated 14.12.2010 along with enquiry report was served upon respondent no.1 requiring him to show cause as to why he be not removed from service. Respondent no.1 submitted his reply dated 7.1.2011. Disciplinary authority vide order dated 13.12.2012 dismissed the respondent no.1 from service. Respondent no.1 filed a representation dated 11.2.2013, which was rejected vide order dated 29.4.2013. Revision filed by respondent no.1 has also been dismissed vide order dated 17.4.2014. Respondent no.1 initiated industrial dispute, which was referred for adjudication before labour Court and registered as Adjudication Case No.4 of 2015. In the aforementioned case, written statement was filed by the petitioner-corporation as well as respondent no.1. Both parties adduced evidence before the labour Court in support of their cases. Labour Court proceeded to decide the preliminary issue regarding fairness of departmental enquiry which was decided vide order dated 23.9.2020 holding that departmental enquiry was unfair as the same

was done in violation of principle of natural justice. Labour Court under the impugned award dated 25.1.2020 as published on 25.3.2021 set aside the order of dismissal of respondent no.1 and directed for reinstatement of respondent no.1 with continuity of service along with 80 % of the back wages from the date of termination i.e. 13.12.2012 and other service benefits, hence this writ petition for the following reliefs:

*"i. to issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 25.1.2020 passed by respondent no.2 published on 25.3.2021 (Annexure No.8 to the writ petition).*

*ii. to issue a writ, order or direction in the nature of mandamus directing the respondent no.2 not to enforce the impugned award dated 25.1.2020 published on 25.3.2021 in Adjudication Case No.4 of 2015 by respondent no.2 (Annexure No.8 to the writ petition)."*

3. This Court entertained the matter vide order dated 25.10.2021 directing that subject to the respondent-workman being reinstated in service forthwith the award of back wages shall remain stayed.

4. In compliance of the order dated 25.10.2021, petitioner- corporation has reinstated the respondent no.1/workman in service and respondent no.1 is still working in the petitioner- corporation. A counter affidavit has also been filed on behalf of respondent no.1 to the writ petition.

5. Learned counsel for the petitioner submitted that the impugned award is not sustainable in the eye of law as the pleading of the parties and evidence on record has not been considered in proper manner. He further submitted that the finding recorded by the labour Court in respect to the disciplinary enquiry is wholly perverse and erroneous as disciplinary proceeding has been conducted in proper manner. He further submitted that the checking report fully proved that respondent No.1 was carrying 8 passengers without ticket, as such, the award of the labour Court for reinstatement with 80% of back wages is wholly illegal. He further submitted that respondent no.1 has caused loss to the corporation, as such, he is not entitled for reinstatement in service. He further submitted that evidence on record fully demonstrate that there is no illegality or infirmity in the disciplinary proceeding conducted by the authorities. He next submitted that the labour Court has granted 80% of back wages without considering the evidence and pleading on record.

6. On the other hand, Mr. Jamal Ahmad Khan, learned counsel for respondent no.1 / workman submitted that respondent no.1 was appointed on the post of Conductor in the year 1989 and since the date of appointment, he was performing his duty in proper manner. He further submitted that departmental enquiry was initiated and conducted in arbitrary manner. He next submitted that respondent no.1 was illegally dismissed from service vide order dated 13.12.2012, which has been maintained in

revision without considering the case of respondent no.1 in proper manner. He also submitted that the industrial dispute was raised by respondent no.1 in proper manner and labour Court has rightly decided the dispute recording finding of fact that the departmental enquiry was conducted in illegal manner. He further submitted that the labour Court has held that charges leveled against respondent no.1 is not proved, accordingly, the punishment order was set aside and respondent no.1 was reinstated in service with 80 % of the back wages. He further submitted that in view of the judgement of Hon'ble Apex Court reported in **(2013) 10 SCC 324, Deepali Gundu Surwase vs. Kranti Junior Adhyapak & Others**, there is no illegality in awarding back wages along with other service benefits and reinstatement of respondent no.1 in service. He further submitted that no interference is required against the impugned award and writ petition is liable to be dismissed.

7. I have considered the argument advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that the labour Court vide impugned award dated 25.01.2020 as published on 25.03.2021 has reinstated respondent no.1 in service with 80% of back wages and other service benefits. There is also no dispute about the fact that respondent no.1 has been reinstated and still working in the petitioner-corporation.

9. Perusal of finding of fact recorded by labour Court by which respondent no.1 was reinstated in service do not require any interference in exercise of jurisdiction under Article 226 of the Constitution of India as labour court has recorded finding of fact that dismissal order passed against the respondent no.1/workman was illegal.

10. So far as the grant of back wages is concerned, the perusal of the case law on the point of back wages will be relevant for consideration, which are as under:

*"1.AIR 1979 SC 75 (M/s. Hindustan Tin Works Pvt. Ltd., v/s The Employees of M/s. Hindustan Tin Works Pvt. Ltd. And others )*

*2. [2010 (124) FLR 700] Harjinder Singh v/s Punjab State Warehousing Corporation*

*3. [2013 (139) FLR 541] Deepali Gundu Surwase v/s Kranti Junior Adhyapak and others*

*4. [2014 (142) FLR 20] Bhuvanesh Kumar Dwivedi v/s M/s. Hindalco Industries Ltd.*

*5. [2015 (145) FLR 184] Mackinnon Mackenzie & Company Ltd. v/s Mackinnon Employees Union*

*6. [2019 LawSuit(SC) 1506] Jayantibhai Raojibhai Patel v/s Municipal Council, Narkhed & Ors.*

*7. [2022 (175) FLR 544] Armed Forces Ex Officers Multi Services Co-Operative Society*

11. Hon'ble Apex Court in **Deepali Gundu Surwase (supra)** has laid down the principle for grant of back wages. Paragraph nos.33 to 38 will be relevant for perusal, which are as under:

*"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.*

*i) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*

*iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.*

*iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.*

*v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. 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-a-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 managements decision to terminate the appellants 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.*

*35. The learned Single Judge agreed with the Tribunal that the action taken by the management to terminate the appellants service was per se illegal but set aside the award of back wages by making a cryptic observation that she had not proved the factum of non-employment during the intervening period. While doing so, the learned Single Judge not only overlooked the order passed by the Division Bench in Writ Petition No.8404/2006, but also Rule 33 which prohibits an employee from taking employment elsewhere. Indeed, it was not even the pleaded case of the management that during the period of suspension, the appellant had left the Headquarter without prior approval of the Chief Executive Officer and thereby disentitling her from getting subsistence allowance or that during the intervening period she was gainfully employed elsewhere.*

*36. In view of the above discussion, we hold that the learned Single Judge of the High Court committed grave error by interfering with the order passed by the Tribunal for payment of back wages, ignoring that the charges levelled against the appellant were frivolous and the inquiry was held in gross violation of the rules of natural justice.*

*37. In the result, the appeal is allowed, the impugned order is set aside and the order passed by the Tribunal is restored. The management shall pay full back wages to the appellant within four months from the date of receipt of copy of this order failing which it shall have to pay interest at the rate of 9% per annum from the date of the appellant's suspension till the date of actual reinstatement.3.*

*8. It is also made clear that in the event of non-compliance of this order, the management shall make itself liable to be punished under the Contempt of Courts Act, 1971"*

**12. Hon'ble Apex Court in another case of *Allahabad Bank and Others Vs. Avtar Bhusan Bhartiya in Special Leave Petition (Civil) No. 9096 of***

**2019 vide judgement dated 22.4.2022** has ordered for payment of 50% of the back wages considering the earlier case law including **Deepali Gundu Surwase (Supra)**. Paragraph Nos. 36, 37 and 38 of the judgement rendered in **Allahabad Bank (Supra)** will be relevant which are as under:-

*"36. Therefore, even applying the ratio laid down in various decisions, we do not think that the employee could be granted anything more than what the High Court has awarded.*

*37. As we have pointed out at the beginning, the total period of service rendered by the Officer-employee before his dismissal from service, was about 15 years, from 1974 to 1989 and he attained the age of superannuation in February, 2013, meaning thereby that he was out of employment for 24 years. The High Court has taken this factor into consideration for limiting the back wages only to 50% and we find that the High Court has actually struck a balance. We do not wish to upset this balance. Therefore, the Special Leave Petition of the Officer-employee is also liable to be dismissed.*

*38. Accordingly, both the Special Leave Petitions are dismissed, no costs."*

13. In the instant matter, the labour Court has found that dismissal of respondent no.1 from service is illegal but considering the entire fact and circumstances of the case as well as ratio of law laid down by Hon'ble Apex Court from time to time the grant of 60% of the back wages to the respondent no.1/workman from the date of dismissal to date of reinstatement alongwith other service benefits appears to be just and proper in the place of 80% of the back wages.

14. This Court under the interim order has ordered for reinstatement of the respondent No.1 which has already been done and respondent no.1 is still working in petitioner-corporation.

15. Considering the entire facts and circumstances as well as the ratio of law laid down by Hon'ble Apex Court in **Deepali Gundu Surwase (Supra)** and **Allahabad Bank and Others (Supra)**, the instant petition is allowed in part. The impugned award dated 25.01.2020 as published on 25.03.2021 passed by respondent no.2/ Labour Court U.P. Agra in Adjudication Case No.4 of 2015 is modified to the extent that respondent no.1 / workman shall be entitled to 60% of his back wages from the date of termination / dismissal up to date of reinstatement in service as well as other service benefits under the impugned award. Petitioners/ corporation is directed to release the arrears of back wages, to respondent no.1 within period of two months from today. In case of non-payment of the amount of back wages as directed above, the interest at the rate of 6% per anum will be charged on the due amount against the petitioner.

16. No order as to cost.

**Order Date :- 3.10.2024**  
Rameez