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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 27.03.2026

+ **W.P.(C) 12244/2019 & CM APPLs. 3309/2020, 9714/2021**

EAGLE HUNTER SOULUTIONS LIMITED THROUGH ITS
AUTHORIZED REPRESENTATIVEPetitioner

Through: Mr. Ram Prakash Sharma, Advocate

versus

ASHOK KUMAR TIWARIRespondent

Through: Mr. Guriqbal Singh Pantalia,
Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present writ petition, filed by the Management, is directed against the award dated 11.10.2018 passed by the learned Labour Court in a claim application filed by the Workman. *Vide* the aforesaid award, the Workman was held to be entitled to the relief of reinstatement with full backwages, along with continuity of services and all other consequential benefits.
2. Briefly, the Workman had preferred a claim application, thereby claiming that he was employed by the Management as a Security Supervisor since 02.07.2001 and his last drawn salary was Rs.6,576/- per month. It was further claimed that when he demanded legal benefits including appointment letter, weekly and yearly leave, overtime, bonus and other allowances, the Management terminated his service on 16.03.2013 without issuing any



notice. It was further claimed that when a demand letter was issued on 11.09.2013, seeking reinstatement and payment of allowances was sent by registered post, but the same remained unanswered. Additionally, the Workman had also filed a complaint before the concerned Authority under the Minimum Wages Act, 1948 [hereafter referred to as 'MW Act'] with respect to non-payment of minimum wages, which was settled between the parties, and an amount of Rs.12,000/-, was paid to the Workman by the Management in two cheques.

3. The Management on its part contested the claim and submitted that it was the workman who had unauthorizedly absented himself from duty with effect from 16.03.2013. The Management had closed one of his sites where the Workman was initially deployed, and he was temporarily posted at another site at *Sadhna* Enclave, but instead of joining, the workman absented himself from duties. It was claimed by the Management that it had never terminated the services of the Workman. It was further stated that even during the Conciliation proceedings before the Deputy Labour Commissioner, the Management has offered to take the Workman back on duty by issuing him a deployment letter dated 13.01.2014 for the site of *Jamia Hamdard* University, but the same was not accepted by the Workman.

4. Before this Court, learned counsel for the Management assailed the impugned award by contending that the learned Labour Court failed to appreciate that it was the Workman who failed to join duties at the alternate place posting despite having received deployment letter, and is thus guilty of misconduct.



5. Learned counsel for the Workman, on the other hand, submitted that the alleged deployment letter dated 14.02.2013 was never issued or served upon the Workman, and the same, being antedated, was given subsequently.

6. Before proceeding further, this Court takes note of the limited scope of writ jurisdiction in exercise of powers conferred under Article 226 of the Constitution of India. It is well settled that the challenge is not in the nature of appeal, but to seek if the order is passed without jurisdiction, is perverse or did not follow principle of natural justice [Ref: Syed Yakoob v. K.S. Radhakrishnan¹]. The same principle was reiterated by the Supreme Court in International Airport Authority of India v. International Air Cargo Workers Union². This Court has also considered the scope of its writ jurisdiction in 'Ritz Theatre Private Limited v. Ramesh Chandra'³.

7. The primary ground for challenge of the impugned award is that the Workman failed to comply with the deployment order dated 14.02.2013, *vide* which he was asked to join the duties at another site, as the site where he was reporting earlier, was closed. In this regard, learned Tribunal has noted that no evidence was placed on record by the Management to substantiate the closure of the office/site where the Workman was initially reporting for duties. Further, the said deployment order was disputed by the Workman as being antedated and handed over subsequently to the workman after filing of the claim application. Though learned counsel for the Management contended that the deployment order was filed by the Workman himself, a perusal of the record would show that the same was placed on record along with rejoinder. Moreover, neither any evidence was

¹ 1963 SCC OnLine SC 24

² (2009) 13 SCC 374



led by the Management with respect to the said deployment order, nor was any suggestion put to the Workman in his cross-examination in this regard. It has also come on record that, during the Conciliation proceedings, the Management had offered the workman to join duties at an alternate place, the Workman claimed that though he reported for duty, however, he was not permitted to join. The Tribunal on appreciation of the rival claims and the evidence on record, returned the finding that the workman was never transferred to the alternate site on 16.03.2013 or at any point thereafter, and that his services had, in fact, been terminated illegally.

8. This Court, in light of the facts as well as limited scope of Writ jurisdiction finds no ground to interfere with finding the impugned award that the services of the Workman were terminated illegally. As a sequitur, the impugned award directed relief of reinstatement with full backwages. In 'Allahabad Bank v. Krishan Pal Singh'⁴, the Supreme Court has held that reinstatement with full back wages is not automatic in every case where termination or dismissal is found to be not in accordance with the procedure prescribed under law and that the relief can be moulded depending upon the facts and circumstances of the case.

9. Though learned counsel for the Management has placed reliance on the judgment of the Supreme Court in 'Chief Engineer (Construction) vs. Keshava Rao (D) by Lrs.'⁵, however, this decision is distinguishable on facts, as in the cited case, the Tribunal returned a finding that the workman had abandoned his services and after a lapse of one and a half years, had sent a notice seeking reinstatement. Further, the Tribunal also returned a

³ 2024 SCC OnLine Del 3633

⁴ (2021) 19 SCC 227



finding that the Workman's allegation that he was prevented from joining duties, was untrue. The fact situation in the present case is, however, different.

10. In 'Jagbir Singh v. Haryana State Agriculture Mktg. Board'⁶, the Supreme Court clarified that reinstatement with back wages is not automatic, and in appropriate cases, compensation may be granted instead depending on the facts and circumstance, relevant paragraph has been reproduced hereinunder:-

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

11. The aforesaid position was reiterated in 'Telegraph Deott v. Santosh Kumar Seal'⁷ wherein the Supreme Court held as under: -

"In view of the aforesaid legal position and the fact that the workmen were engaged as daily-wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice."

12. Recently, the principles relating to reinstatement and back wages in cases of wrongful termination have been clearly laid down by the Supreme Court in 'Deepali Gundu Surwase v. Kranti Junior Adhyapak'

⁵ 2005 LLR 446

⁶ (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545

⁷ (2009) 15 SCC 327



Mahavidyalaya⁸, wherein reinstatement with back wages has been recognised as the normal rule, subject to certain exceptions. The relevant extract is hereinunder:

“38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. 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.

38.3 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.

38.4. 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.

⁸ (2013) 10 SCC 324



38.5. *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.*

38.6. *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."*

13. In the present case, the Workman is stated to be presently aged about 57 years. He claims to have been employed since 02.07.2001 and his last drawn wages were Rs.6,576/- per month. It also appears that as per the settlement arrived before the Authority under MW Act, the wages upto 31.12.2015 stood settled. *Vide* order dated 10.03.2021 passed by this Court, it was recorded that the Management was ready and willing to take the Workman back into service, and the Workman was to report for duty by



11.03.2021. However, as noted in the subsequent order dated 15.04.2021, the said directions were not complied with, and only an assurance to comply was given on behalf of the Management. Till date, the workman has not rejoined the Management.

14. Considering the facts and circumstances of the present case as well as the last drawn salary and the settlement under the MW Act, this Court is of the considered opinion that a compensation of Rs.8 lakhs in lieu of reinstatement with full backwages, along with continuity of services and all other consequential benefits, would be just and proper.

15. The Management is directed to pay a lump-sum compensation of Rs.8 lakhs to the Workman within a period of 6 weeks, failing which, he shall be entitled for interest @12% per annum, till payment.

16. Accordingly, in view of the aforesaid judgments, while upholding the findings of the learned Labour Court, the impugned award is modified to the aforesaid extent.

17. The petition is disposed of in the above terms, along with pending applications.

**MANOJ KUMAR OHRI
(JUDGE)**

MARCH 27, 2026/pmc