

IN THE HIGH COURT OF JHARKHAND AT RANCHI
A.C. (DB) Case No.02 of 2018

1. Vidya Bharti Chinmaya Vidyalaya, Telco Colony, P.O. & P.S. Telco, Town - Jamshedpur, District- East Singhbhum, Pin-831004 (Jharkhand), Through its Chairman Sri Manas Kumar Mishra, aged about 56 years, son of Sri Saroj Kumar Mishra, residing at House No. 2, River View Enclave, Telco Colony, P.O. & P.S.- Telco, Town - Jamshedpur, District- East Singhbhum, (Jharkhand).
2. Vidya Bharti Chinmaya Vidyalaya, Telco Colony, P.O. & P.S.- Telco, Town - Jamshedpur, District- East Singhbhum, Pin 831004 (Jharkhand), Through its Secretary Sri Vishnu Chandra Dixit, aged about 47 years son of Sri Prakash Dixit, residing at 554, Alok Nanda Tower, Alok Vihar, P.O. & P.S.- Govindpur, Town Jamshedpur, District- East Singhbhum (Jharkhand).

... .. **Appellants**

-Versus-

Subra Palit, wife of Mr. S.K. Palit, resident of L-4/6, Cross Road, 10-A, P.O. & P.S. - Telco, Town - Jamshedpur, District East Singhbhum, Pin-831004 (Jharkhand).

... .. **Respondent**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellants	: Mrs. Rashmi Kumar, Advocate
	: Ms. Mahi, Advocate
For the Respondent	: Mr. Saurav Arun, Advocate
	: Mr. Abhishek Sinha, Advocate

Order No.30/Dated : 18th March, 2026

Per Sujit Narayan Prasad, J :

1. The instant appeal is under Section 15 of the Jharkhand Education Tribunal Act, 2004 directed against the judgment dated 03.08.2018 passed in A.C. (SB) No.15 of 2014 whereby and whereunder the appeal has been dismissed upholding the judgment passed by the Jharkhand Education Tribunal dated 01.09.2014 by which while allowing the appeal, the order of termination passed by the Chairman, Vidya Bharti Chinmaya

Vidyalaya, Jamshedpur has been set aside with a direction upon the Management of the School to reinstate the petitioner (respondent herein) in service with 50% back wages and consequential benefits to which she would have been entitled had she not been unlawfully thrown out from service.

The said back wages have been directed to be paid within a period of three months from the date of passing of the said judgment and further the direction was passed for physical reinstatement in service within two weeks from the date of passing of the judgment.

2. The brief facts of the case require to be enumerated herein as per the pleading made before the Jharkhand Education Tribunal (hereinafter referred as the Tribunal).

3. It is the case of the respondent (applicant before the tribunal) that she was appointed as primary teacher on 01.04.2006. She was put under suspension in contemplation of the domestic enquiry. An enquiry officer was appointed after service of memorandum of charge so as to provide an opportunity to defend her case.

4. The Enquiry Officer has concluded the enquiry and found the charges to be proved. The enquiry report has been forwarded before the disciplinary authority. The disciplinary authority has issued the show cause along with the copy of the enquiry report and after following the procedure which was to

be followed at that stage, the order of termination dated 08.06.2010 was passed.

5. The respondent has challenged the said order of termination before the Jharkhand Education Tribunal, Ranchi on the ground of violation of principle of natural justice by taking the plea that the place of enquiry has been changed without any information to the concerned delinquent and the first charge pertaining to implication in the criminal case has resulted into acquittal by the competent court of criminal jurisdiction.

6. Specific plea was taken that one witness, namely, Shri S. Velu, a teacher working in the school, has been made a management witness and his statement was recorded by the Enquiry Officer but subsequently he was not placed before the Enquiry Officer for his cross-examination even then the content of the statement in support of the charge has been accepted by the Enquiry Officer.

7. The learned Tribunal has called upon the Management. The Management has filed a detailed counter affidavit denying the aspersion so made of violation of principle of natural justice, rather, the ground has been agitated therein that all efforts had been taken to provide an opportunity of hearing said to be sufficient and adequate and it is the delinquent who has not availed that opportunity, reason best known to her.

8. The ground has been taken that at the belated stage the requisition was made to defend through Advocate and the said request was rejected on the pretext that the requisition for defending through an Advocate ought to have been made at the inception but making it at the belated stage is nothing but delaying tactics of the delinquent employee.

9. The learned Tribunal has appreciated the fact in entirety and has passed an order by considering the issue of violation of principle of natural justice, non-engagement of an Advocate, not presenting Shri S. Velu for his cross-examination to be carried out by the delinquent in course of enquiry and has come to the specific finding that the domestic enquiry cannot be said to be fair and as such, the order of termination has been said to be improper and illegal and in consequence thereof, the order of termination passed by the Chairman has been quashed and set aside with a direction of making payment of 50% back wages to be carried out within a period of three months. However, separate direction has been issued for physical reinstatement in service within two weeks from the date of passing of the judgment holding the petitioner entitled to all consequential benefits of her continuous service.

The operative part of the order is being referred herein :-

“30. Accordingly, the petition is allowed and the order of termination passed by the Chairman is set aside and the petitioner is reinstated in service with 50% of back wages and consequential benefits to which she would have been entitled had she not been unlawfully

thrown out from service. The back wages payable to the petitioner shall be paid to her within 3 (three) months from today. The petitioner shall be physically reinstated in service within two weeks from today. The petitioner will be entitled to all consequential benefits of her continuous service.”

10. The Management, the appellant herein, has challenged the order passed by the learned Tribunal before this Court by filing appeal being A.C.(SB) No.15 of 2014. The matter was heard by learned Single Judge of this Court.

11. The respondent has been called upon, who has defended the case on merit by defending the order passed by the learned Tribunal and has also brought to the notice of the learned Single Judge regarding the irregularity said to be committed in course of enquiry, particularly, the violation of principle of natural justice and not allowing the important Management Witness, Shri S. Velu, for his cross-examination.

12. The leaned Single Judge has considered the fact in entirety and has come to the conclusive finding as would be evident from paragraph 10 thereof wherein it has been referred, charge-wise, i.e., the first charge it has been found to be proved only on the basis of F.I.R. filed before the Enquiry Officer, without examining any evidence, since the delinquent has been acquitted in the said criminal case and, as such, the said charge has been said to be not proved having not been taken into consideration by the Enquiry Officer.

13. The second charge has been taken to be proved based upon the typed examination-in-chief of the witness of the school/management who has not been allowed to be cross-examined by not allowing the said witness to participate in the proceeding.

14. Learned Single Judge, based upon the aforesaid infirmities in the enquiry, has upheld the judgment passed by the learned Tribunal.

15. The judgment passed by the learned Single Judge is the subject matter of the present appeal.

Argument advanced on behalf of the appellant

16. Mrs. Rashmi Kumar, learned counsel appearing for the appellant Management, has taken the following grounds :-

- (i) The learned Single Judge has not taken into consideration the fact that there is no violation of principle of natural justice as was agitated before the Tribunal at paragraph 13 and 14 of the counter affidavit wherein the fact has been brought to the notice of the learned Tribunal that the ample opportunity was tried to be given to the delinquent but it is the delinquent who has not availed the same, rather at the fag end of the proceeding, has made a requisition for defending her case through an Advocate. The requisition so made was rejected being agitated at the fag end.

- (ii) It has been contended that the delinquent has also been allowed to contest the case before the Enquiry Officer but for one reason or the others, the opportunity has not been availed and the ground was taken before the adjudicatory forum for violation of principle of natural justice.
- (iii) So far as the question of non-examination of one witness, namely Shri S. Velu, is concerned, the argument has been advanced that no prejudice has been caused since typed copy of the examination-in-chief was already supplied to the delinquent and, hence, she could have defended from the said document.
- (iv) The argument has been advanced that even accepting that there is violation of principle of natural justice then the proper course would have been by the adjudicatory forum to remit the matter before the Management to initiate the proceeding afresh from the stage of enquiry after providing an opportunity of hearing to meet out the ground of violation of principle of natural justice, but having not done so, serious infirmity has been committed by the learned Tribunal, which has not been taken into consideration by the learned Single Judge of this Court.

- (v) The ground has been taken on the issue of the direction of 50% back wages which cannot be said to be just and proper since no evidence is there of gainful employment.

17. Learned counsel, in order to support the argument, has relied upon the following judgments :-

- (i) *The State of Uttar Pradesh & Ors. V. Prabhat Kumar, 2022 LiveLaw (SC) 736***
- (ii) *State of Uttar Pradesh & Ors. V. Rajit Singh, (2022) 15 SCC 254***
- (iii) *Management of Regional Chief Engineer, Public Health and Engineering Department, Ranchi v. Their Workmen represented by District Secretary, (2019) 18 SCC 814***

Argument advanced on behalf of the respondent

18. Per contra, Mr. Saurav Arun, learned counsel appearing for the respondent, has taken the following grounds in defending the judgment passed by the learned Tribunal and the judgment passed by the learned Single Judge of this Court.

- (i) It has been submitted that in a case of departmental enquiry, the principle of natural justice has important bearing, since, the memorandum of charge which is to be served to the delinquent employee is for the purpose of separating the delinquent employee from service in order to end the jural relationship. Since, an adverse

decision is decided to be taken against the delinquent, hence, the same cannot be allowed to be carried out without providing an opportunity said to be adequate and sufficient to the delinquent.

- (ii) It has been submitted that the fact about making requisition for engagement of an Advocate even though at belated stage but the basis which has been taken by the disciplinary authority and even by the Enquiry Officer in course of the conclusion of domestic enquiry, that the Management witness, namely, Shri S. Velu, has been examined in support of the memorandum of charge but he has not been allowed by the Enquiry Officer to cross-examine on the pretext that some threatening was given by the delinquent and, as such, he was not in a position to participate in the enquiry proceeding.
- (iii) The submission has been made that if the Management is intending to prove the memorandum of charge on the basis of presenting a witness, then it is bounden duty of the Management to secure the appearance of such witness for cross-examination and if the cross-examination is not being allowed to be carried out, certainly the serious prejudice will be said to be caused to the delinquent due to non-cross-examination of the said witness-MW-1 which has been

made basis of the order of termination by the Management.

- (iv) On the issue of remand, the argument has been advanced that the memorandum of charge was served way back in November, 2009 and since then more than 17 years have already lapsed and, as such, after lapse of 17 years if the matter would be remitted before the Management for initiating de novo enquiry, that will not be said to be just and proper that too when the said error has been committed by the disciplinary authority.
- (v) On the issue of back wages, it has been submitted that since the order of termination has been held to be unjust and improper which itself suggests that the delinquent was willing to discharge the duty but it is the Management who has forcibly not allowed to discharge the duty and in that context the principle of 'no work no pay' will not be applicable.

Analysis and Consideration

19. We have heard learned counsel for the parties.

20. This Court, on consideration of the argument advanced on behalf of the parties and after going through the order passed by the learned Tribunal and the learned Single Judge, requires to consider the following issues :-

- (i) Whether the view taken by the learned Tribunal on the issue of violation of principle of natural justice on the ground of not allowing the Management witness to be cross-examined by the delinquent in course of domestic enquiry if has been accepted to be violation of principle of natural justice, can such finding be said to suffer from an error?
- (ii) The learned Tribunal has come to the conclusion of unfairness of the domestic enquiry on the ground of not providing adequate and sufficient opportunity to the delinquent which has been made basis of the order of termination, but if the domestic enquiry itself has been held to be unfair, then the order of termination if has been quashed and set aside with a direction of reinstatement, can it be said to suffer from an error?
- (iii) Whether after lapse of about 17 years, if the matter will be remitted before the Management to initiate a proceeding de novo can it be said to be just and proper that too if the error lies on the part of the Management?
- (iv) Whether the finding recorded by the Tribunal of holding the delinquent entitled for 50% back wages on the pretext of the fact that the order of termination has been found to be per se improper can it be said to unjustified?

21. All the issues, on facts herein, since are interlinked, as such, are being taken up together for its consideration.

22. This Court, before considering the aforesaid issues, once again, at the risk of brevity, is referring the admitted facts herein which have been admitted by the parties in course of argument on the basis of the documents available on record :-

(i) The delinquent employee (respondent herein) was appointed as a teacher on 01.04.2006 in the concerned school, the appellant herein. She was put under suspension in contemplation of domestic enquiry while the memo issued in this regard on 09.11.2009.

(ii) The Management thereafter has decided to initiate the disciplinary proceeding and decided to serve the memorandum of charge dated 12.11.2009 imputing the following allegations against the delinquent :-

58(1) Participating in or inciting others to participate in activities detrimental to the school's interest 08(3)"Any act or disorderly or indecent behaviour or any act subversive to discipline"

68(1) Wilful violation of any of the rules of the service conditions set forth therein" read with Clause 21. An employee shall at all times conduct himself soberly and decently."

Brief description of the incidents corresponding to the acts of misconduct as stated above:-

It has also come to the notice of the School Management that Telco PS Case No.371/2009 dated 07.11.2009 u/s

341,342,344 ,323,2 324, 307,368,370,504,506,34 I.P.C. and under Section 23 JHWaNES

Juvenile Justice (Care and Protection of Children) Act, 2000 has been registered against you and your husband Mr. Saumen Kumar Palit Prima facie, alleged offences besides being offence under Indian Penal Code also constitute offence against human rights It is a matter of record that the said criminal case has been registered against you and your husband on the basis of faryad bayan of the victim Vijay Dehari aged about 13 years S/O Mantu Dehari of Village Kumar Dubi, P.S. Bersol District West Singhbhum Jharkhand.

It is further alleged against you that on 12.09.09 you along with your husband had entered the school premises and was behaving in an indecent and disorderly manner in front of the staff of the school on an issue pertaining to School which was unwarranted.

By exhibiting your behaviour inconsistent with the dignity of the pious profession to which you belong you have not only brought the School to disrepute but have also made yourself liable to be proceeded against for the misconduct(s) as specified herein above. You are also aware that any inconsistency in preaching and practice of a teacher is unacceptable to the society and detrimental to the interest of the institution.”

- (iii) The Enquiry Officer was appointed. It was communicated to the delinquent for her participation in the enquiry proceeding. The adjournment, however, has been sought for on behalf of the delinquent before the Enquiry Officer but subsequently she has participated and made a request to allow her to be defended through an Advocate.

- (iv) The requisition/request to defend through an Advocate was rejected by the Enquiry Officer.
- (v) The enquiry proceeded. The Management has come out with one witness namely, Shri S Velu. His statement was recorded by the Enquiry Officer in the capacity of the Management Witness No.1. He, however, has supported the memorandum of charge pertaining to the charge as has been alleged against the delinquent employee.
- (vi) The said M.W.-1 S.Velu has not been produced for his cross examination by the delinquent.
- (vii) The Enquiry Officer has given the finding of charge having been proved. The finding on the issue of proved charge is that the institution of F.I.R. against the delinquent along with her husband and the second charge regarding the alleged irregularity committed in course of discharge of duty which was supported by Shri S. Velu, M.W.-1.
- (viii) The enquiry report, after being forwarded by the Enquiry Officer, has been accepted and thereafter, the order of termination was passed.
- (ix) It is in this background of the factual aspect, the delinquent has approached the Jharkhand Education Tribunal, Ranchi challenging the order of termination.

- (x) The Tribunal after appreciating the evidences had passed an order by considering the issue of violation of principle of natural justice, non-engagement of an Advocate, not presenting Shri S. Velu for his cross-examination to be carried out by the delinquent in course of enquiry and has held that the domestic enquiry cannot be said to be fair and as such, the order of termination has been said to be improper and illegal and in consequence thereof, the order of termination passed by the Chairman has been quashed and set aside with a direction of making payment of 50% back wages to be carried out within a period of three months.
- (xi) The Management, the appellant herein, has challenged the order passed by the learned Tribunal before the learned single Judge of this Court by filing appeal being A.C.(SB) No.15 of 2014. The matter was heard by learned Single Judge of this Court.
- (xii) The leaned Single Judge has observed that the first charge has been found to be proved only on the basis of F.I.R. before the Enquiry Officer, without examining any evidence and since the delinquent has been acquitted in the said criminal case and, as such, the said charge has been said to be not proved having not been taken into consideration by the Enquiry Officer.

(xiii) It has further been observed by the learned single Judge that the second charge has been taken to be proved based upon the typed examination-in-chief of the witness of the school/management but the said witness has not been allowed to be cross-examined.

(xiv) Learned Single Judge, based upon the aforesaid infirmities in the enquiry, has upheld the judgment passed by the learned Tribunal, against which the instant appeal has been filed.

23. This Court is now proceeding to consider the issue in the backdrop of the aforesaid admitted facts.

24. The first issue of violation of principle of natural justice has been taken into consideration by the learned Tribunal and upheld by the learned Single Judge under its appellate jurisdiction.

25. The principle of natural justice is not a straightjacket formula, rather, it is to be seen for its observance based upon the factual aspect.

26. The question of prejudice is the paramount consideration in the matter of observance of principle of natural justice which is inbuilt and the same is to be adhered to before taking any adverse decision leading to civil consequence. However, depending upon the facts, if no prejudice is being caused, then the principle of natural justice is not required to be followed. Such situation can be there if the imputation made against the

concerned is being admitted or the irregularity or any allegation if the delinquent is not in a position to dispute on the basis of admitted fact, then in such circumstances, since there is no chance of change in the circumstances, the principle of natural justice is not required to be followed otherwise the same will be an empty formality and futile exercise, reference in this regard is to be made to the judgments rendered by Hon'ble Apex Court in the case of ***Escorts Farms Ltd. vs. Commissioner, Kumaon Division, Nainital, U.P. & others***, reported in ***(2004) 4 SCC 281***, wherein at paragraph no.64 it has been held which reads as under:-

“64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India.”

27. Similarly in *Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati and Ors., (2015) 8 SCC 519* wherein their Lordships have held at paragraph-39 which is being reproduced as under:-

“39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason- perhaps because the evidence against the individual is thought to be utterly compelling- it is felt that a fair hearing “would make no difference”- meaning that a hearing would not change the ultimate conclusion reached by the decisionmaker.”

28. But, vice versa to such situation, particularly, in a case of disciplinary proceeding, the bearing of the observance of natural justice is must and without providing an opportunity, the service of an employee cannot be taken away. The principle has been dealt with way back after the enactment of The Public Servants (Enquiries) Act, wherein it has been laid down that before taking away service of an employee, adequate and sufficient opportunity is to be provided to the delinquent, for ready reference, the Public Servants (Enquiries) Act, is being referred herein :-

THE PUBLIC SERVANTS (INQUIRIES) ACT, 1850**(37 of 1850)****1st November, 1850.****For regulating inquiries into the behavior of Public Servants**

WHEREAS it is expedient to amend the law for regulating inquiries into the behavior of public servants not removable [from their appointments] without the sanction of Government and to make the same uniform throughout [India]. It is enacted as follows:-

Short title, "The Public Servants (Inquiries) Act, 1850" given by the Public Servants (Inquiries) Act (1850) Amendment Act, 1897 (1 of 1897).

Articles of charge to be drawn out for public inquiry into conduct of certain public servants

2. Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehavior by any person in the service of [the Government, not removable from his appointment without the sanction of the Government,] it [may] cause the substance of the imputations to be drawn into distinct articles of charge, and [may] order a formal and public inquiry to be made into the truth thereof.

Authorities to whom inquiry may be committed – Notice to accused

3. The inquiry may be committed either to the Court, Board or other authority to which the person accused is subordinate or to any other person or persons, to be specially appointed by the Government, commissioners for the purpose: notice of which commission shall be given to the person accused ten days at least before the beginning of the inquiry.

Conduct of Government prosecution

4. When the Government shall think fit to conduct the prosecution, it shall nominate some person to conduct the same on its behalf.

Charge by accuser to be written and verified-penalty for false accusation Institution of inquiry by Government.

5. When the charge shall be brought by an accuser, the Government shall require the accusation to be reduced to

writing, and verified by the oath or solemn affirmation of the accuser; and every person who shall wilfully and maliciously make any false accusation under the Act, upon such oath or affirmation, shall be liable to the penalties of perjury; but this enactment shall not be construed to prevent the Government from instituting any inquiry which it shall think fit, without such accusation on oath or solemn affirmation as aforesaid.

Security from accuser left by Government to prosecute

6. Where the imputations shall have been made by an accuser and the Government shall think fit to leave to him the conduct of the prosecution, the Government before appointing the commission shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually, and also, will be forthcoming to answer any counter-charge or action which may be afterwards brought against him for malicious prosecution or perjury or subordination of perjury, as the case may be.

Power of Government to abandon prosecution and to allow accuser to continue it

7. At any subsequent stage of the proceedings, the Government may, if it think fit abandon the prosecution, and in such case may, if it think fit, on the application of the accuser, allow him to continue the prosecution, if he is desirous of so doing, on his furnishing such security as is hereinbefore mentioned.

Powers of commissioners -Their protection- Service of their process Powers of Court, etc. acting under commission

8. The commissioners shall have the same power of punishing contempts and obstructions to their proceedings, as is given to Civil and Criminal Court by [the Code of Criminal Procedure, 1898,] and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty under the commission, and shall be entitled to the same protection as the Zila and City Judges, except that all process to cause the attendance of witnesses or other compulsory process, shall be served through and executed by the Zila or City Judge in whose jurisdiction the witness or other person resides, on

whom the process is to be served, and if he resides within Calcutta, Madras or Bombay, then through the Supreme Court of Judicature thereto. When the commission has been issued to a Court, or other person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission.

Penalty for disobedience to process

9. All persons disobeying any lawful process issued as aforesaid for the purposes of the commission shall be liable to the same penalties as if the same had issued originally from the Court or other authority through whom it is executed.

Copy of charge and list to be furnished to accused

10. A copy of the articles of charge, and list of the documents and witnesses by which each charge is to be sustained shall be delivered to the person accused, at least three days before the beginning of the inquiry, exclusive of the day of delivery and the first day of the inquiry.

Procedure at beginning of inquiry- Non-appearance of accused and admission of charge

11. At the beginning of the inquiry the prosecutor shall exhibit the articles of charge to the commissioners, which shall be openly read, and the person accused shall thereupon be required to plead "guilty" or "not guilty" to each of them, which pleas shall be forthwith recorded with the articles of charge. If the person accused refuses, or without reasonable cause neglects, to appear to answer the charge either personally or by his counsel or agent, he shall be taken to admit the truth of the articles of charge.

Prosecutor's right of address

12. The prosecutor shall then be entitled to address the commissioners in explanation of the articles of charge, and of the evidence by which they are to be proved: his address shall not be recorded.

**Evidence for prosecution and examination of witnesses-
Re-examination by prosecution**

13. The oral and documentary evidence for the prosecution shall then be exhibited; the witnesses shall be examined by or on behalf of the prosecutor and may be cross-examined by or

on behalf of the person accused. The prosecutor shall be entitled to re-examine the witnesses on any points on which, they have been cross-examined, but not on any new matter, without leave of the commissioners who also may put such questions as they think fit.

Power to admit or call for new evidence or prosecution-Accused's right to adjournment

14. If it shall appear necessary before the close of the case for the prosecution, the commissioners may in their discretion allow the prosecutor to exhibit evidence not included in the list given to the person accused, or may themselves call for new evidence; and in such case the person accused shall be entitled to have, if he demands it, an adjournment of the proceedings for three clear days, before the exhibition and of the adjournment and of the day to which he proceedings are adjourned.

Defence of accused-To be recorded only when written.

15. When the case for the prosecution is closed, the person accused shall be required to make his defence, orally or in writing as he shall prefer. If made orally, it shall not be recorded, if made in writing, it shall be recorded, after being openly read, and in that case a copy shall be given at the same time to the prosecutor.

Evidence for defence and examination of witnesses

16. The evidence for the defence shall then be exhibited, and the witnesses examined, who shall be liable to cross-examination and re-examination and to examination by the commissioners according to the like rules as the witnesses for the prosecution.

17. [Examination of witnesses and evidence by prosecutor.]
Repealed by the Repealing Act, 1876 (12 of 1876). Section 2 and Schedule, Part I.

Notes of oral evidence

18. The commissioners or some person appointed by them shall take notes in English of all oral evidence which shall be read aloud to each witness by whom the same was given, and, if necessary, explained to him in the language in which it was given, and shall be recorded with the proceedings.

Inquiry when closed with defence-Prosecutor when entitled to reply and given evidence-Accused not entitled to adjournment

19. If the person accused makes only an oral defence, and exhibits no evidence, the inquiry shall end with his defence; if he records a written defence, or exhibits evidence, the prosecutor shall be entitled to a general oral reply on the whole case; and may also exhibit evidence to contradict any evidence exhibited for the defence, in which case the person accused shall not be entitled to any adjournment of the proceedings, although such new evidence were not included in the list furnished to him.

Power to require amendment of charge and to adjourn-Reason for refusing adjournment to be recorded

20. When the commissioners shall be of opinion that the articles of charge, or any of them are not drawn with sufficient clearness and precision, the commissioners may, in their discretion, require the same to be amended, and may thereupon, on the application of the person accused, adjourn the inquiry for a reasonable time. The commissioners may also, if they think fit, adjourn the inquiry from time to time, on the application of either the prosecutor or the person accused, on the ground of sickness or unavoidable absence of any witness or other reasonable cause. When such application is made and refused, the commissioners shall record the application, and their reason for refusing to comply with it.

Report of commissioners' proceedings

21. After the close of inquiry the commissioners shall forthwith report to Government their proceedings under the commission, and shall send with the record thereof their opinion upon each of the articles of charge separately, with such observations as they think fit on the whole case.

Power to call for further evidence or explanation-Inquiry into additional articles of charge- Reference of report of special commissioners' final orders.

22. The Government, on consideration of the report of the commissioners, may order to take further evidence, or give further explanation of their opinions. It may also order additional articles of charge to be framed, in which case the

inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges. When special commissioners have been appointed, the Government may also, if it thinks fit refer the report of the commissioners to the Court or other authority to which the person accused is subordinate, for their opinion on the case; and will finally pass such orders thereon as appear just and consistent with its powers in such cases.

Definition of "Government"

'[23. In this Act, "the Government" means the Central Government in the case of persons employed under that Government and the [State] Government in the case of persons employed under that Government].

Saving of enactments as to dismissal of certain officers – Commission under Act for their trial

24. Nothing in this Act shall be construed to repeal any Act or Regulation in force for the suspension or dismissal of Principal and other Sadr Amins or of Deputy Magistrates or Deputy Collectors, but a commission may be issued for the trial of any charge against any of the said officers, under this Act, in any case in which the Government shall think it expedient.

Saving of power of removal without inquiry under Act

25. Nothing in this Act shall be construed to affect the authority of Government, for suspending or removing any public servant for any cause without an inquiry under this Act.

29. The reference of the Public Servants (Enquiries) Act, 1850 is necessary herein, since one of the arguments of the learned counsel for the appellant is that in the bylaws there is no provision to provide an opportunity of hearing.

30. This Court is of the view that whether it has been provided in the bylaws or not is immaterial, rather, the observance of principle of natural justice since has been held to be inbuilt and hence, it is mandatorily to be followed. At this

juncture, reference of the judgment rendered by the Constitution Bench of Hon'ble Apex Court in the case of ***Maneka Gandhi vs. Union of India and Anr., (1978) 1 SCC 248*** is required to be made. The relevant paragraph is being reproduced hereinbelow :-

“221. It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. This principle was laid down by this Court in the State of Orissa v. Dr (Miss) Binapani Dei [AIR 1967 SC 1269, 1271] in the following words:

“The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore arise from the very nature of the function intended to be performed: it need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.”

31. The fact of the case of *Maneka Gandhi vs. Union of India and Anr.* (Supra) was that Section 10 of the Passport Act, 1967 was under challenge which pertains to impounding of the passport having not provided with a provision to provide for an opportunity before impounding the passport and on that ground the validity of Section 10 of the Passport Act, 1967 was challenged.

32. The Hon'ble Apex Court has refused to hold that provision to be invalid, however, has laid down that even though there is no reference to provide an opportunity to the party concerned who is going to be adversely affected leading to civil consequence even then the cardinal principle of natural justice will be said to be inbuilt in that provision.

33. Herein also, what has been argued that there is no provision in the bylaws to provide for an opportunity of natural justice. Even though that is not available in the bylaws even then it is mandatorily required to provide an opportunity said to be sufficient and adequate.

34. The said argument of the mangment/appellant is also misconceived for the reason that if bylaws does not contain a provision to provide principle of natural justice, then for what purpose the domestic enquiry was initiated. The purpose is to provide an opportunity to the delinquent and once it has been provided then it should be sufficient and adequate.

35. Adverting to the facts of the case, we are not much concerned on the issue of not allowing the delinquent to engage the Advocate, rather, we are much concerned with the entire case was based upon the evidence of one witness of the Management, namely, Shri S. Velu, M.W.-1. The M.W.-1, Shri S. Velu who has supported the alleged charge against the delinquent but he was not allowed to be cross-examined by the delinquent, being not brought before the Enquiry Officer in course of the domestic enquiry.

36. It needs to refer herein that the meaning of adequate and sufficient opportunity impliedly means that at the time of serving the charge-sheet the documents in support thereof is mandatorily to be supplied.

37. It requires to refer herein that in the case of ***State of Uttar Pradesh and others vs. Saroj Kumar Sinha, (2010) 2 SCC 772***, wherein it has been laid down at paras-29 and 30 that it is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity to defend himself in any proceedings which may culminate in punishment being imposed on the employee. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal /removal

from service. For ready reference the relevant paragraphs of the aforesaid judgment are being quoted as under:

"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

31. In *Shaughnessy v. United States* [97 L Ed 956 : 345 US 206 (1952)] (Jackson, J.), a Judge of the United States Supreme Court has said: (L Ed p. 969) "... Procedural

fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied."

38. It needs to refer herein that in the case of ***State of U.P. v. Shatrughan Lal*, (1998) 6 SCC 651** the Hon'ble Apex Court has observed that in departmental proceedings where charge-sheet is issued and the documents which are proposed to be utilised against that person are indicated in the charge-sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him, for ready reference the relevant paragraph of the aforesaid judgment are being quoted as under:

"4.Now, one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence. In departmental proceedings where charge-sheet is issued and the documents which are proposed to be utilised against that person are indicated in the charge-sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him. (See: *Chandrama Tewari v. Union of India* [1987 Supp SCC 518 : 1988 SCC (L&S) 226 : (1987) 5 ATC 369 : AIR 1988 SC 117] ; *Kashinath Dikshita v. Union of India* [(1986) 3 SCC 229 : 1986 SCC (L&S) 502 : (1986) 1 ATC 176 : AIR 1986 SC 2118] ; *State of U.P. v. Mohd.*

Sharif [(1982) 2 SCC 376 : 1982 SCC (L&S) 253 : AIR 1982 SC 937] .)

5. In *High Court of Punjab & Haryana v. Amrik Singh* [1995 Supp (1) SCC 321 : 1995 SCC (L&S) 471 : (1995) 29 ATC 311] it was indicated that the delinquent officer must be supplied copies of documents relied upon in support of the charges. It was further indicated that if the documents are voluminous and copies cannot be supplied, then such officer must be given an opportunity to inspect the same, or else, the principle of natural justice would be violated.”

39. It is further evident that the copy of the enquiry report has also not been supplied to the delinquent.

40. We are conscious that after the law laid down by the Hon'ble Apex Court in the case of **Managing Director ECIL, Hyderabad and Ors. Vrs. B. Karunakar and Ors.**, reported in **(1993) 4 SCC 727** that non-supply of the copy of the enquiry report will not ipso facto vitiate the departmental proceeding as also the order of punishment. Rather, the delinquent employee will have to show the prejudice caused.

41. The factual aspect of the **Managing Director ECIL, Hyderabad Vs. B. Karunakar (supra)** which was the consideration made by the Constitution Bench of Hon'ble Apex Court after having been referred for consideration of the judgment rendered in the case of **Union of India and Ors. Vrs. Mohd. Ramzan Khan**, reported in **(1991) 1 SCC 588** has laid down the proposition, in which circumstances, due to non-supply of enquiry report and non-issuance of second show cause notice the departmental proceeding will be vitiated. The

relevant consideration has been made at paragraph 31 of the said judgment, which reads as under:

"31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non- supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided

by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

42. Herein also, in the backdrop of the fact that the principle of natural justice has not been followed properly, the M.W.-1 the sole witness who has been examined on behalf of the Management leaving aside the other three witness, has also not been allowed to be cross-examined by the delinquent, as such, in this pretext, non-supply of enquiry report has certainly cause serious prejudice.

43. We, after going through the order of termination and the reference thereof made in the judgment passed by the learned Tribunal, has found that the learned Tribunal has elaborately dealt with the bearing of the evidence of M.W.-1 and since he has not been allowed to be cross-examined, that has been taken to be a serious lapse in the domestic enquiry.

44. The matter would have been different if no reliance would have been placed by the Enquiry Officer on the evidence of M.W.-1 but that was not possible, since, the entire memo of

charge was found to be substantiated on the basis of statement so recorded of M.W.-1.

45. Since we have already dealt with herein that as per the mandate as referred hereinabove, the adequate and sufficient opportunity is to be provided and not allowing the delinquent to cross-examine M.W.-1, the sole witness, in support of the Management, a serious prejudice has been caused to the delinquent and, therefore, this Court is not hesitant in holding that the principle of natural justice has seriously been flouted.

46. The learned Tribunal has taken into consideration the aforesaid aspect of the matter and has held that serious prejudice has been caused due to non-allowing the delinquent to cross-examine M.W.-1 Shri S.Velu, as would be evident from paragraph 24 of the judgment passed by the learned Tribunal. This Court, therefore, is of the view that if the Tribunal has taken into consideration that serious prejudice has been caused due to non-examination of M.W.-1 which has been made one of the basis to interfere with the order of termination, the same cannot be said to suffer from an error.

47. The domestic enquiry since has been found to be unjust and improper which is the basis of order of termination and once the domestic enquiry itself has been held to be unjust and improper then any consequence based upon the said enquiry report will also be unjustified. Keeping the aforesaid fact into consideration, the learned Tribunal since has

interfered with the order of termination which has been upheld by the learned Single Judge on deliberating upon the issues, the same requires no interference.

48. The question of remand is another argument on the pretext of the fact that even accepting that there is violation of principle of natural justice then it should have been remitted from the stage of enquiry.

49. So far as this ground is concerned, we are conscious that if on technicalities any final outcome by a decision taken by the competent authority is being quashed and set aside, then generally it is to be remanded before the authority from the stage to meet out the aforesaid technicality on the principle that on technicality no one can be allowed to take advantage, therefore, we are not adverse to the proposition laid down by Hon'ble Apex Court upon which reliance has been placed i.e., the judgment rendered in the case of ***State of Uttar Pradesh & Ors. V. Rajit Singh, (supra)***. But the order of remand is to be passed depending upon the facts and circumstances of the case.

50. This Court, therefore, is proceeding to examine the applicability of the judgment passed by the Hon'ble Apex Court having been relied in support of his argument by the appellant.

51. The factual aspect of the said case i.e. ***State of Uttar Pradesh & Ors. V. Rajit Singh, (supra)*** needs to be referred herein which has been discussed at paragraph-2 wherein the

employee was serving as a Junior Engineer. An enquiry was conducted and it was found that he had committed financial irregularities causing loss to the Government. The disciplinary proceedings were initiated against the respondent and others. The enquiry officer held the charges alleged against the respondent employee as proved. The disciplinary authority concurred with the findings recorded by the enquiry officer and passed an order of recovery of government loss of Rs 22,48,964.42 as per the rules from the salary. The matter went to the Tribunal wherein the order of recovery has been quashed and set aside which was affirmed by the High Court and thereby the matter travelled to the Hon'ble Apex Court.

52. The respondent-State of Uttar Pradesh has taken the ground therein that if there is violation of principles of natural justice based upon the aforesaid ground if the Tribunal has quashed and set aside the order then the enquiry ought to have been remanded to initiate from the stage of the enquiry.

53. The Hon'ble Apex Court while discussing the factual aspect as under paragraph-10 has made an observation that the order of punishment could not have been set aside by the Tribunal and the High Court reason being that the doctrine of equality ought not to have been applied when the enquiry officer and the disciplinary authority held the charges proved against the delinquent officer. The Tribunal and the High Court have interfered with the order of punishment by taking

into consideration the fact that other officer involved in the incident were exonerated, the Hon'ble Apex Court in that pretext has observed in the said paragraph that merely because some other officers involved in the incident are exonerated and/or no action is taken against other officers cannot be a ground to set aside the order of punishment when the charges against the individual concerned - delinquent officer are held to be proved in a departmental enquiry. There cannot be any claim of negative equality in such cases. The Hon'ble Apex Court in that pretext, has quashed and set aside the order passed by the Tribunal and the High Court as also the punishment imposed by the disciplinary authority, however, as the enquiry is found to be vitiated and is found to be in violation of the principles of natural justice in as much as it is alleged that the relevant documents mentioned in the charge-sheet were not supplied to the delinquent officer, the Hon'ble Apex Court remanded the matter to the disciplinary authority to conduct a fresh enquiry from the stage it stood vitiated i.e. after the issuance of the charge-sheet and to proceed further with the enquiry after furnishing all the necessary documents mentioned in the charge-sheet and after following due principles of natural justice.

54. From the aforesaid paragraph it is evident that the said judgment cannot be made applicable herein in the fact and circumstances of the present case because herein there is

apparent that opportunity was denied to the respondent/delinquent and sole Management witness (MW.1) has not been cross examined by the delinquent and further from date of the serving of charge about 16 years has already been lapsed, therefore if matter is remanded back it will not be subservient in the ends of justice.

55. The fact of the present case is that the memo of charge was issued on 12.11.2009 which culminated into final order of termination vide order dated 08.06.2010 and thus, after lapse of almost 16 years, the question of remand is being raised that too by the appellant who has committed the error in conducting the domestic enquiry.

56. The law is well settled that a wrong doer cannot be allowed to take advantage of its own wrong but even accepting that on technicalities no advantage is to be given to the delinquent but whether after lapse of 16 years will it be proper for this Court to remit the matter before the Management for de novo enquiry, that is the question.

57. This Court is of the view that at this juncture the judgment rendered by Hon'ble Apex Court in the case of ***Punjab National Bank & Others Vs. Kunj Behari Misra*** reported in ***(1998) 7 SCC 84*** wherein while dealing with the issue of remand as under paragraph 21 in a backdrop of the case that enquiry was not conducted as per the statutory rule and in such circumstances, the Hon'ble Apex Court has been

pleased to hold that after lapse of substantial period it will not be proper to remit the matter for fresh enquiry or for taking fresh decision, for ready reference, paragraph 21 of the aforesaid judgment is being referred herein :-

“21. Both the respondents superannuated on 31-12-1983. During the pendency of these appeals, Misra died on 6-1-1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings. We, therefore, do not issue any such directions and while dismissing these appeals, we affirm the decisions of the High Court which had set aside the orders imposing penalty and had directed the appellants to release the retirement benefits to the respondents. There will, however, be no order as to costs.”

58. Adverting to the facts of the present case also that after lapse of 16 years it will not be proper for this Court to remit the matter for passing fresh order after initiating de novo enquiry to too in a case where consciously the irregularity has been committed in the domestic enquiry by not allowing the sole witness M.W.-1 for his cross-examination in the domestic enquiry, rather, it has been found from the record that his statement was also recorded secretly. That shows the conduct of the Management in holding the enquiry that is nothing but with the biased and pre-decided mind to terminate the services of the delinquent.

59. This Court, therefore, is of the view that it is not a case for remand for de novo enquiry.

60. The next issue as was raised of the issue of 50% back wages.

61. The back wages are to be given in the background of the fact that if the delinquent employee has forcibly been deprived from discharging his or her duty since there is no normal rule of 'no work no pay' rather, it depends upon the case on fact to fact basis. The reference of paragraph 25 of the judgment rendered in the case of ***Union of India and Others Vs. K.V. Jankiraman & Ors., (1991) 4 SCC 109***, wherein it has been held that although no work no pay is the normal rule, but it has got an exception and it will not be applicable in a case where the employee was willing to work but had not been allowed to discharge the duty and if such a condition would be there, the principle of no work no pay will not be applicable. Suppose, in a case where the delinquent employee was ready to discharge the duty then in such circumstances the principle of 'no work no pay' will not be applicable but if the employee has willingly not discharged the duty, then in such circumstances, the principle of 'no work no pay' will be applicable, for ready reference, paragraph 25 of the aforesaid judgment is being referred herein :-

“25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of “no work no pay” is not applicable to cases such as

the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.”

62. Similarly, in the case of **Commissioner, Karnataka Housing Board Vs. C. Muddaiah** reported in **(2007) 7 SCC 689** it has been held at paragraph 34 thereof which reads hereunder as:-

“**34.** We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a Court of law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected.”

63. Subsequent thereto, the Hon'ble Apex Court in the case of **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others [(2013) 10 SCC 324]** has been pleased to hold at paragraph 38 laying down the guidelines on the issue of back wages.

“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 averment 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.

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 victimising the employee or workman, then the court or tribunal concerned 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 keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a 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 finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should

bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works (P) Ltd. v. Employees* [*Hindustan Tin Works (P) Ltd. v. Employees*, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] .

38.7. The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* [(2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] 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 [*Hindustan Tin Works (P) Ltd. v. Employees*, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] , [*Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] 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.”

64. From the aforesaid it is evident that one of the conditions was the certificate of no gainful employment. This ground has been taken although the same was not agitated before the original forum and for the first time it has been taken before the first appellate stage which is not permissible. The appellate court is to assess the legality and propriety of the order passed by the original forum based upon the record placed before it. If any foreign documents is placed at the first appellate stage, that cannot be a ground for consideration to give a finding of illegality of the judgment passed by the original forum,

otherwise, it will lead to allowing the party to improve the case at the first appellate stage.

65. This Court, being the Court of appeal, is of the view that if the fact has been raised then it is the bounden duty of this Court to consider the aforesaid fact and, therefore, it is being considered.

66. It needs to refer herein that the Hon'ble Apex Court in the case of ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others*** (Supra) has observed in para 38.4 that 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.

67. Further in paragraph 38.5 it has been observed by the Hon'ble Apex Court that 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 victimising the employee or workman, then the court or tribunal concerned will be fully

justified in directing payment of full back wages. It has categorically observed that 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 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.

68. It has further been observed that the courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a 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.

69. In the instant case the fact about shifting of onus has also been taken but there is no averment or ground at any time before the Tribunal or before the learned Single Judge that the delinquent was gainfully employed, rather, it has been argued that as of now the delinquent employee is working.

70. This Court is of the view that there cannot be any denial in view of the fact that back wages is being paid to meet out the situation created due to termination/dismissal or removal from service causing trauma and destabilizing the entire family and on that count, the back wages is being paid as the

consideration being given by the Hon'ble Apex Court in the case of ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others*** (Supra).

71. In the entirety of the facts and circumstances as discussed hereinabove as also taking into consideration the fact that the learned Tribunal has considered the entire aspect of the matter, both in the facts and the law, and the law having been upheld by the learned Single Judge, therefore, this Court is of the view that no interference is to be given to the order passed by the learned Single Judge.

72. Accordingly, the appeal fails and is dismissed.

73. Pending interlocutory application, if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

(Sanjay Prasad, J.)

Date : 18.03.2026

Birendra./**A.F.R.**

Uploaded on 02.04.2026