*Before G.S. Singhvi and N. K. Sud, JJ.*

THE DIRECTOR, DEPARTMENT OF SOCIAL SECURITY AND WOMEN AND CHILD DEVELOPMENT, PUNJAB AND ANOTHER,—*Petitioners*

*versus*

SHEEDO DEVI AND OTHERS,—*Respondents*

*C.W.P. No. 8091 of 2003*

18th November, 2004

*Industrial Disputes Act, 1947—Sections 2(j), 2(s) and 25-F—Constitution of India, 1950—Article 226—Termination of services of a workman after 5 years continuous service without giving any notice—Non-compliance of mandatory provisions of Section 25-F—Labour Court declaring the termination illegal and ordering reinstatement with full back wages—Whether the Social Security and Women and Child Development Department does not fall within the definition of 'Industry'—New plea raised for the first time—Requires investigation into the issue of facts—No ground or justification to entertain—Reinstatement with full back wages—Department failing to contest the claim of the workman on the ground that she is not workman within the meaning of Section 2(s) or that her services were terminated after complying with the mandatory provisions of Section 25-F—No illegality in the order of Labour Court ordering reinstatement with full back wages—Petition dismissed.*

*Held,* that :—

(a) A writ of certiorari can be issued only for correcting errors of jurisdiction committed by the Industrial Tribunal/Labour Court or where in exercise of jurisdiction conferred in it, the Court or the Tribunal acts illegally or improperly i.e. it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice or where the order/award is vitiated by an error of law apparent on the face of the record.

(b) The jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one.

(c) The finding of fact reached by the inferior Court or Tribunal, on appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record.

(d) No strait—jacket formula can be evolved for deciding whether the impugned judgment, order or award suffers from an error of law and each case has to be decided on its own facts, but broadly speaking, an error of law is on which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents relied upon by the inferior Court or Tribunal. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced before the lower Court or Tribunal, cannot be regarded as an error of law for the purpose of issuing a writ or certiorari. A finding of fact can be regarded as vitiated by an error of law if the High Court finds that inferior Court/Tribunal has erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence and the same has influenced its decision. Similarly, a finding of fact based on no evidence' will be regarded as an error of law which can be corrected by a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal cannot be gone into by the High Court while considering the prayer for issuing a writ of certiorari.

(e) The mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issuance of a writ of certiorari.

(Para 18)

*Further held,* that it was neither pleaded by the petitioners before the Labour Court nor any evidence was produced to prove that all the posts of Helpers had been filled in the Anganwaris with which the Balwaris had been merged and no post was available necessitating termination of the services of the workmen. Therefore, the direction given by respondent No. 2 for her reinstatement cannot be unllified. The petitioners had not contested the claim of the workman on the

ground that she is not a workman within the meaning of Section 2(s) of the Act or that her service was terminated after complying with the mandatory provisions contained in Section 25-F of the Act. Rather, it was indirectly admitted that the workman had continuously worked as Helper in Balwari from September, 1992 to August, 1997 and her service was terminated without giving one month's notice or pay in lieu thereof as required by Section 25-F(a) and compensation in terms of Section 25-F(b) of the Act. Thus, respondent No. 2, Labour Court cannot be said to have committed any illegality when he declared the termination of the services of the workman as nullity and ordered her reinstatement with full back wages.

(Para 22)

P.S. Chhinna, Additional Advocate General, Punjab, *for the Petitioner*

R.S. Sharma, Advocate for respondent No. 1.

## JUDGMENT

**G.S. SINGHVI, J,**

(1) This is a petition for quashing award dated 1st October, 2002 (Annexure P. 8),—*vide* which Presiding Officer, Labour Court, Gurdaspur (respondent No. 2) declared the termination of the service of respondent No. 1 Smt. Sheedo Devi (hereinafter described as the workman) as illegal and ordered her reinstatement with back wages.

(2) The workman was engaged as Helper in Balwari, Village Chhota Nangal with effect from 10th September, 1992 at a monthly salary of Rs. 600. She worked up to 16th August, 1997. Her services were terminated with effect from 17th August, 1997 without giving one month's notice or pay in lieu thereof and retrenchment compensation and without holding any enquiry. She challenged the action of the employer on the ground of violation of the rules of natural justice and the provisions of the Industrial Disputes Act, 1947 (for short, the Act). The dispute raised by her was referred by the Government of Punjab under Section 10(1)(c) of the Act to Labour Court, Gurdaspur.

(3) In her statement of claim, the workman pleaded that she had continuously worked from 10th September, 1992 to 17th August, 1997 and that the service was terminated without complying with the

mandatory provisions of Section 25-F of the Act. She also pleaded that after removing her from service, Smt. Nanki was appointed in her place and this action of the employer was clearly discriminatory.

(4) Notice of the claim filed by the workman was duly served upon petitioners but no reply was filed on behalf of petitioner No. 1. In his written statement, petitioner No. 2 took the stand that the workman had not been employed at Quadian and as such, she had no claim against him. It was further pleaded that Smt. Nanki, who belongs to Scheduled Caste, was appointed as per the provisions of ICDS scheme after inviting applications from the eligible candidates.

(5) On the pleadings of the parties, respondent No. 2 framed the following issues :—

"(1) Whether the relationship of master servant exists between the parties ?

(2) If issue No. 1 is not proved, whether termination of services of the workman is justified and in order ?

(3) Relief."

(6) The workman appeared in the witness-box as W.W. 2 and supported her claim by stating that she was employed in October, 1992 and her service was terminated in June, 1997 without giving notice or pay in lieu thereof and retrenchment compensation. She also examined Kashmir Kaur-WW 1, who was employed as Teacher in Anganwari Centre at Chhota Nangal and Satwinder Kaur-WW 3, who was employed as Supervisor. They deposed that the workman had continuously worked as Helper from 1992 to 1997. They further deposed that in accordance with the decision taken by the Government, all the Balwaris had been amalgamated with Anganwaris and the entire staff of Balwaris was transferred to Anganwaris but the services of the workman were terminated in August, 1997.

(7) The petitioners did not adduce any evidence to contest the claim of the workman.

(8) On a consideration of the pleadings of the parties and evidence produced before him, respondent No. 2 held that the workman has worked for more than 240 days in a calendar year and that her

service was terminated without giving notice or pay in lieu thereof and retrenchment compensation as required by Section 25-F of the Act and, therefore, she was entitled to be reinstated. Accordingly, he declared the termination of the services of the workman to be illegal and ordered her reinstatement with full back wages from the date of demand notice till reinstatement.

(9) The petitioners have challenged the impugned award on the following grounds :—

(a) The reference made by the State Government was not maintainable because Social Security and Women and Child Development Department does not fall within the definition of 'industry' under Section 2(j) of the Act.

(b) Termination of the workman's services did not amount to retrenchment and in any case, respondent No. 2 should not have ordered her reinstatement with back wages ignoring the fact that all the Balwaris have been amalgamated with Anganwaris and the post of Helper in Balwari, Village Chhota Nangal held by the workman was filled by appointing Smt. Nanki wife of late Shri Gopal Dass.

(10) In her written statement, the workman has averred that the petitioners cannot question the findings of fact recorded by respondent No. 2 on the issues of the length of her service and non-compliance of the mandatory provisions contained in Section 25-F of the Act because they neither controverted the statement of claim filed by her nor any evidence was produced to justified the termination of her service. She has further averred that the petitioners cannot, for the first time, raise the new plea regarding maintainability of the reference and this Court cannot determine a question which is essentially a mixed question of fact and law.

(11) We have heard learned counsel for the parties and perused the record.

(12) Before considering the legality of the impugned award, we deem it proper to notice some judgments which have bearing on the scope of judicial review in such matters.

(13) In **Syed Yakoob** *versus* **K.S. Radhakrishnan and others, (1),** a Constitution Bench of the Supreme Court considered the scope of the High Court's power to issue the writ of certiorari and laid down the following propositions :—

"A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can, similarly, be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit the admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to

(1) AIR 1964 S.C. 477

sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the points cannot be agitated before a Writ Court."

(14) In **Shaikh Mahammad Umarsaheb** *versus* **Kadalaskar Hasham Karimsab and other (2),** their Lordships of the Supreme Court, while dealing with the power of the High Court under Article 226 to re-appreciate the evidence produced before the trial Judge, held as under :—

"Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

(15) In **Jatendra Singh Rathor** *versus* **Shri Baidyanath Ayurved Bhawan Limited and another (3),** a two Judges Bench of the Supreme Court dealt with the scope of certiorari jurisdiction of the High Court *qua* the award passed by the Tribunal under the Act and held as under :—

"The High Court is indisputably entitled to scrutinise the orders of the subordinate tribunals within the well accepted limitations and, therefore, it could in an appropriate case quash the award of the Tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. The High Court is not entitled to exercise the powers of the Tribunal and substitute an award in place of the one made by the Tribunal as in the case of an appeal where it lies to it."

(2) AIR 1970 S.C. 61
(3) AIR 1984 S.C. 976

(16) In **R.S. Saini** *versus* **State of Punjab and others, (4),** the Supreme Court, upheld the order passed by this Court dismissing the writ petition filed against the order of the petitioner's removal from the office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing are as under :—

> "The Court while exercising writ jurisdiction will not reverse a finding of the enquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the enquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The enquiring authority is the sole Judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

(17) The view taken in **Sayed Yakoob's case *(supra)*** has been reiterated in a recent judgment in **Mohd. Shahnawaz Akhtar and another** *versus* **1st ADJ Varanasi and others (5).**

(18) The principles which can be deduced from the aforementioned decisions are :—

(a) A writ of certiorari can be issued only for correcting errors of jurisdiction committed by the Industrial Tribunal/Labour Court or where in exercise of jurisdiction conferred on it, the Court or the Tribunal acts illegally or improperly i.e. it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice or where the order/award is vitiated by an error of law apparent on the face of the record.

(b) The jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one.

(4) J.T. 1999 (6) S.C. 507
(5) J.T. 2002 (8) S.C. 69

(c) The finding of fact reached by the inferior Court or Tribunal, on appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record.

(d) No strait jacket formula can be evolved for deciding whether the impugned judgment, order or award suffers from an error of law and each case has to be decided in its own facts, but broadly speaking, an error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents relied upon by the inferior Court or Tribunal. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced before the lower Court or Tribunal, cannot be regarded as an error of law for the purpose of issuing a writ of certiorari. A finding of fact can be regarded as vitiated by an error of law if the High Court finds that inferior Court/Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence and the same has influenced its decision. Similarly, a finding of fact based on 'no evidence' will be regarded as an error of law which can be corrected by a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal cannot be gone into by the High Court while considering the prayer for issuing a writ of certiorari.

(e) The mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issuance of a writ of certiorari.

(19) In the light of the above principles, we shall now determine whether the impugned award is vitiated by any jurisdictional infirmity or an error of law apparent on the face of the record.

(20) Although, the petitioners have challenged the award on the ground that Social Security and Women and Child Development Department does not fall within the definition of 'industry', during the course of hearing, the learned Additional Advocate General did not put forward any argument on this issue. Therefore, we do not consider

it necessary to decide this question. That apart, we do not find any valid ground or justification to entertain the new plea raised by the petitioners regarding the maintainability of the reference for the first time in this petition because determination of the question whether Social Security and Women and Child Development Department is an 'industry' will necessarily require investigation into the issues of facts. In **State of Haryana** *versus* **Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad (6),** this Court refused to examine the new plea sought to be raised by the petitioner that reference order was not maintainable because Food and Supplies Department does not fall within the ambit of the definition of the term 'industry'. Paragraph 6 of that judgment, which contains discussion on this issue, reads as under :—

> "One of the grounds on which the impugned award has been assailed by the petitioners is that the Labour Court did not have the jurisdiction to decide the dispute because Food and Supplies Department does not fall within the ambit of the definition of term 'industry' under Section 2(j) of the Act. Learned Deputy Advocate General made valiant efforts to convince us that even though the petitioners did not challenge the maintainability of reference on the ground that the dispute raised by the respondent—workman was not an industrial dispute because he was not employed in an industry, the petitioners should be allowed to raise this plea for the first time before this Court but we are not inclined to agree with him. The question whether or not an establishment, government department institution or organisation falls within the definition of industry is primarily a question of fact which can be decided only after a thorough evaluation of evidence which the parties may adduce before an appropriate adjudicatory forum and certainly the High Court is not one such forum. If the employer seeks ouster of the jurisdiction of the Labour Court or Tribunal on the ground that the dispute referred by the appropriate government is not an industrial dispute or that the employee was not working in an industry, then the onus to plead and prove the relevant facts is always

(6) 1999 (2) R.S.J. 42

on the employer and where such plea has not been raised before the Labour Court etc., the employer cannot be permitted to raise the same before the High Court for the first time. In this case, the petitioners did not raise the question of maintainability of the reference before the Labour Court by stating that Food and Supplies Department does not fall within the definition of 'industry'. This, in our view, is sufficient to disentitle the petitioners from raising the same before the High Court because it is one of the settled principles of law that even the issue of jurisdiction, the adjudication of which depends on the investigation into disputed facts cannot be allowed to be raised before the High Court in exercise of the jurisdiction under Article 226 of the Constitution of India. We also of the opinion that by not raising this issue before the Labour Court, the petitioners will be deemed to have waived their right to raise the same."

(21) The question which remains to be considered is whether respondent No. 2 erred in ordering reinstatement of the workman with full back wages. The argument of Shri P. S. Chhinna is that the direction given by respondent No. 2 is liable to be set aside because all the Balwaris including the one at Chhota Nangal were merged with the Anganwaris and another person, namely, Smt. Nanki had been employed as Helper.

(22) In our opinion there is no merit in the argument of learned Additional Advocate General. It was neither pleaded by the petitioners before respondent No. 2 nor any evidence was produced to prove that all the posts of Helpers had been filled in the Anganwaris with which the Balwaris had been merged and no post was available necessitating termination of the services of the workmen. Therefore, the direction given by respondent No. 2 for her reinstatement cannot be nullified. In this context, it is also appropriate to mention that the petitioners had not contested the claim of the workman on the ground that she is not a workman within the meaning of Section 2(s) of the Act or that her service was terminated after complying with the mandatory provisions contained in Section 25-F of the Act. Rather, it was indirectly admitted that the workman had continuously worked as Helper in Balwari from September, 1992 to August, 1997 and her service was terminated without giving one month's notice or pay in lieu thereof as required by Section 25-F(a) and compensation in terms

of Section 25-F(b) of the Act. In view of this admitted factual matrix, respondent No. 2 cannot be said to have committed any illegality when he declared the termination of the services of the workman as nullity and ordered her reinstatement with full back wages.

(23) The effect of non-compliance of the mandatory provisions contained in Section 25-F(b) of the Act was considered by the Supreme Court in **The State of Bombay and other** *versus* **The Hospital Mazdoor Sabha and others, (7)** and it was held :

> "On a plain reading of Section 25-F(b), it is clear that the requirement prescribed by it is a condition precedent for the retrechment of the workman. The section provides that no workman shall be retrenched until the condition in question has been satisfied. It is difficult to accede to the argument that when the section imposes in mandatory terms a condition precedent, non-compliance with the said condition would not render the impugned retrenchment invalid. The argument which appealed to Tendolkar, J., however, was that the consequence of non-compliance with the requirement of Section 25-F(b) was not to tender the impugned retrenchment invalid, because he thought that by Section 25-I a spacific provision has been made for the recovery of the amount prescribed by Section 25-F(b). Section 25-I provides for the recovery of monies due from employers under Ch. V., and according to Tendolkar J., this provision covers the amount due to the workman by way of compensation under Section 25-F(b). In our opinion, this view is untenable. However, regard to the fact that the words used in Section 25-F(b) are mandatory and their effect is plain and unambiguous is seems to us that the Court of Appeal was right in holding that Section 25-I covered cases of recovery of monies other than those specified in Section 25-F(b), and it is obvious that there are serveral other cases in which monies become due from the employers to the employees under Ch. V : it is for the recovery of these monies that Section 25-I had been enacted. Therefore, we see no substance in the argument that the Court of Appeal has misconstrued Section 25-F(b), that being so, failure to comply with the said provision renders the impugned orders invalid and inoperative."
>
> (Emphasis added).

(7) AIR 1960 S.C. 610

(24) The above noted proposition has been reiterated in almost all subsequent judgements of the Supreme Court in the context of violation of Clauses (a) and (b) of Section 25-F of the 1947 Act. Some of these judgements are—**National Iron and Steel Co. Ltd.** *versus* **State of West Bengal, (8) State Bank of India** *versus* **N. Sundramoni, (9) Hindustan Steel Ltd.** *versus* **Presiding Officer, Labour Court, (10) Avon Services/Production and Agencies** *versus* **Industrial Tribunal, Haryana, (11) Santosh Gupta** *versus* **State Bank of Patiala, (12) S. K. Verma** *versus* **Industrial Tribunal-cum-Labour Court, New Delhi, (13) Mohan Lal** *versus* **Management of Bharat Electrionics Ltd., (14) L. Robert Desouza** *versus* **Executive Engineer, Southern Railway, (15) and Gammon India Ltd.** *versus* **Niranjan, (16)** .

(25) In Santosh Gupta's case *(supra)*, the Supreme Court held that the expression "termination of service for any reason whatsoever in section 2(oo) covers any kind of termination of services except those not expressly included in Section 25-F or not expressly provided for by either provisions of the Act such as Section 25-FF and 25-FFF". In that case, the discharge of the workman on the ground that she did not pass the test which would have enabled her to be confirmed was treated as retrenchment and direction for her reinstatement with full back wages was passed because the employer had not complied with Section 25-F of the Act.

(26) In **Mohan Lal** *versus* **Management of Bharat Electronics Ltd.** *(supra)*, their Lordships of the Supreme Court reiterated the proposition that termination of the service of the workman for any reason whatsoever constitutes retrenchment except when his case falls in one of the exceptions enumerated in clauses (a), (b), (bb) or (c) of Section 2(oo) of the Act and observed :

"Niceties and semantics apart, termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment except in cases excepted in the

(8) (1967) II LLJ 23
(9) AIR 1976 S.C. 1111
(10) AIR 1977 S.C. 31
(11) (1979) Lab. I.C. 1
(12) AIR 1980 S.C. 1219
(13) AIR 1981 S.C. 422
(14) AIR 1981 S.C. 1253
(15) AIR 1982 S.C. 854
(16) AIR 1984 S.C. 500

section itself. The excepted or excluded cases are where termination is by way of punishment inflicted by way of disciplinary action, voluntary retirement of the workman, retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf and termination of the service of a workman on the ground of continued ill-health. It is not the case of the respondent that termination in the instant case was a punishment inflicted by way of disciplinary action. If such a position were adopted, the termination would be *ab initio* void for violation of principle of natural justice or for not following the procedure prescribed for imposing punishment. It is not even suggested that this was a case of voluntary retirement or retirement on reaching the age of supernnuation or absence on account of continued ill-health. The case does not fall under any of the excepted categories. There is thus termination of service for a reason other than the excepted category. It would indisputably be retrenchment within the meaning of the word as defined in the Act. It is not necessary to dilate on the point nor to refer to the earlier decisions of this Court in view of the later two pronouncements of this Court to both of which one of us was a party."

(27) Their Lordships of the Supreme Court then considered the question whether the workman whose service is terminated in violation of the mandatory provisions contained in Section 25-F of the Act is entitled to reinstatement and held :

"If the termination of service is *ab initio* void and inoperative, there is no question of granting reinstatement because there is no cessation of service and a mere declaration follows that he continues to be in service with all consequential benefits. Undoubtedly, in some decisions of this Court such as Ruby General Insurance Co. Ltd. V.P.P. Chopra, (1970) I Lab. LJ 63 and Hindustan Steel Ltd., Rourkela *versus* A. K. Roy, (1970) 3 SCR 343 : (AIR 1970 SC 1401) it was held that the Court before granting reinstatement must weigh all the facts and exercise discretion properly whether to grant reinstatement or to award compensation. But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there

is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits."

(28) In Gammon India Limited *versus* Niranjan Dass *(supra),* the Supreme Court considered with the question whether termination of service on account of recession and deduction in volume of work of the Company amounts to retrenchment and held as under :

> "Where the service of the employee of Company was terminated on account of recession and reduction in the volume of work of the company and the termination of service of the employee did not fall in any of the excluded categories, the termination of his service would amount to retrenchment. That being so, when the pre-requisite for a valid retrenchment as laid down in Section 25-F was not complied with, the retrenchment bringing about termination of service of employee would be *ab initio* void."
> (Underlining is ours)

(29) In S. K. Verma *versus* Industrial Tribunal-cum-Labour Court, New Delhi *(supra),* their Lordships of the Supreme Court, after considering some of the judicial precedents on the subject, held as under :

> "Where legislation is designed to give relief against certain kinds of mischief, the etymological excursions. 'Void *ab initio*', invalid and inoperative' or call it what you will, the workmen and the employer are primarily concerned with the consequence of striking down the order of termination of services of the workmen. Plain common sense dictates that the removal of an order terminating the services of workman must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums : the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of reinstatement where reinstatement is impossible

because the industry has closed down. The Court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the Court may mould the relief but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted."

(Emphasis added)

(30) The question whether the workman is entitled to full back wages has been considered in serveral judicial precedents. In **M/s Hindustan Tin Works Pvt. Ltd.** *versus* **The Employees of M/s Hindustan Tin Works Pvt. Ltd. and others, (17),** their Lordships of the Supreme Court laid down the following general propositions :

"It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself

(17) AIR 1979 S.C. 75

throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances, reinstatement being the normal rule, it should be followed with full back wages.

If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper or justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them."

(31) The afore-mentioned judgement of the Supreme Court was considered by the Full Bench in **Hari Palace, Ambala City** *versus* **The Presiding Officer, Labour Court, Rohtak and another, (18).** The Full Bench noted the apparent divergence of opinion reflected in the judgements of various High Courts and observed as under :—

"There is no gain saying the fact that there has been some divergence of opinion in the various High Court on the point earlier, varying views had been expressed as to

(18) (1979-2) P.L.R. 720

whether precisely the onus lay with regard to the claim to back wages and also with regard to the striking of the issues or the necessary point for determination thereof by the Labour Court itself. Within this Court a Division Bench in **Daljeet and Co. Private Ltd. Ropar** *versus* **The State of Punjab and others** has held that if the dismissed employee is reinstated with continuity of service, the normal relief would be the payment of full wages from the date of dismissal, and it is for the employer to raise this matter and prove that the employee has been earning wages for the whole or any part of the period in question. The aforesaid view has been consistently followed in this Court and reaffirmed in **Harbans Singh and others** *versus* **The Assistant Labour Commissioner and others.** The Allahabad High Court was inclined to take a similar view in **Postal Steals Industrial Cooperative Society Limited** *versus* **Labour Court, Lucknow** and the same tenor is the judgment of the Gujarat High Court in **Dhari Gram Panchayat** *versus* **Safal Kumdar Mandal.**

However, all controversy now seems to have been set at rest by their Lordships of the Supreme Court in **M/s Hindustan Tin Works Private Limited** *versus* **The Employees of M/s Hindustan Tin Works Private Limited and others** wherein the appeal by Special Leave was expressly limited to the question of grant of back wages. It has been held therein in no uncertain terms :—

"Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is not normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer's.

And again :

"Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure."

(32) In **Ajit Singh** *versus* **Presiding Officer, (19),** a Division Bench of this Court, of which one of us (G.S. Singhvi, J.) was a member, held that relief of reinstatement with continuity of service and back wages must follow as a necessary corollary to the declaration of invalidity of the action taken by the employer in violation of the provisions of Section 25-F, though such relief can be denied where reinstatement becomes impossible on account of closure of industry of grave financial stringency or in a case where the workman concerned may have secured better or other employment elsewhere or where reinstatement would amount to placing of an impossible burden on the employer.

(33) In **Ram Lakhan** *versus* **State of Punjab,(20) State of Haryana** *versus* **Harish Kumar and another(21), Angrez Singh** *versus* **State of Punjab(22) and Surjit Singh** *versus* **P.R.T.C.(23)** different Benches of this Court have applied the ratio of the judgment of the Supreme Court in **Hindustan Tin Works Pvt. Ltd.** *versus* **Employees of M/s Hindustan Tin Works Pvt. Ltd.** *(supra)* and of the Full Bench in **Hari Palace, Ambala City** *versus* **The Presiding Officer, Labour Court, Rohtak** *(supra)* and held that relief of reinstatement and back wages cannot be denied to the workman except when the employer is able to show the existence of exceptional circumstances. It has been further held that if the employer wants to contest the workman's claim for reinstatement and back wages, then it must plead and prove the existence of exceptional circumstances.

(34) In the present case, the petitioners had neither pleaded nor any evidence was produced before respondent No. 2 to show that the case of the workman falls in any of the exceptional categories or that relief of reinstatement with back wages would place unbearable burden on the employer. Therefore, we do not find any justification, legal or otherwise to interfere with the award passed by respondent No. 2.

(35) In the result, the writ petition is dismissed. However, the parties are left to bear their own costs.

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***R.N.R.***

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(19) 2002 (1) R.S.J. 19
(20) 2002 (3) R.S.J. 72
(21) 2003 (1) R.S.J. 786
(22) 2003 (3) R.S.J. 402
(23) 2003 (3) R.S.J. 583