

(2006) 06 DEL CK 0023

In the Delhi High Court

Case No : Writ Petition (Civil) No. 3667 of 2001

D.T.C.

APPELLANT

Vs

Ishwar Singh

RESPONDENT

Date of Decision : 02-06-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 43A
Industrial Disputes Act, 1947 — Section 17B, 25F

Citation : (2006) 06 DEL CK 0023

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Ataul Haque, for the Appellant; Anil Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—By this order the DTC assails an award dated 11th October, 1999 passed by the industrial adjudicator answering an industrial reference in favor of the workman. It appears that the respondent was appointed as a conducted with the DTC on 1st November, 1969. On allegations that the workman entered into some dispute with other employees of the DTC, he was charge sheeted by a charge sheet dated 31st October, 1996 and a disciplinary inquiry was conducted against him. Based on an inquiry report dated 28th April, 1987, the disciplinary authority issued a notice to show cause to the workman to show cause as to why he should not be removed from service. Finally, by an order dated 23rd July, 1987, the respondent was removed from service with effect from 14th July, 1987. The workman assailed the disciplinary proceedings taken against him as well as the order imposing the punishment in a statement of claim made before the conciliation officer. The appropriate government by an order dated 2nd March, 1989 referred the issue relating to the legality and justification of the dismissal of the respondent to the industrial adjudicator and also the relief which he would be entitled to.

2. On the issue of fairness and propriety of the disciplinary proceedings

conducted by the management, by an order dated 21st July, 1998 the industrial adjudicator held that the inquiry which was conducted was not fair or proper and granted an opportunity to the management to prove the misconduct attributed against the workman.

3. It is noteworthy that the order dated 21st July, 1998 vitiating the inquiry has not been impugned by the DTC either in the present writ petition or in any proceedings prior hitherto and has Therefore did not attain finality. It is noteworthy that the DTC has not even bothered to place this order before the court. It is the workman who has placed reliance on the order and has filed the same on record Along with his counter affidavit.

4. So far as the issue relating to misconduct is concerned, the DTC examined only one witness in support of its contentions. This witness namely Shri Satya Dev who was Regional Manager(North) with the DTC stated that he did not remember anything about the case on the ground that it was old. The industrial adjudicator has held that the witness was not a reliable witness and that he did not state anything against the workman in respect of the allegations of misconduct. It has been noted by the industrial adjudicator that the management failed to prove the allegations of misconduct despite repeated opportunities to do so.

5. Before this Court as well, the petitioner has not been able to point out any material which was placed before the industrial adjudicator which could have in any manner supported the allegations of misconduct against the workman and which has been overlooked. In this view of the matter, the award dated 11th October, 1999 returning such finding cannot be assailed on any legally tenable grounds.

6. The jurisdiction of this Court under Article 226 of the Constitution of India to examine detailed questions of fact on which a challenge is laid to an industrial award are narrow. The principles in this behalf are well settled and the parameters within which this Court would exercise discretion while entertaining a petition calling upon a judicial review of an adjudication by the industrial adjudicator are well settled. In this behalf reference can be appropriately made to AIR 2000 SC 1508 entitled Indian Overseas Bank v. I.O.B. Staff Canteen Workers" Union and Anr. in which it was held thus:

The learned single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a Judicial Officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings at any rate, as

long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly one taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned single Judge and in ordering restoration of the Award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken, the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, Therefore, open to the writ Judge was the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of re-assessing the evidence and arriving at findings of one's own, altogether giving a complete go-bye even to the facts specifically found by the Tribunal below.

7. In this context the law laid down by the Apex Court in *Sadhu Ram v. Delhi Transport Corporation* AIR 1984 SC 1967 observed:

Para 5...nor do we think that it was right for the High Court to interfere with the Award of the Industrial Tribunal under Article 226 on a mere technicality. Article 226 is a device to secure and advance justice and not otherwise. In the result, we allow the appeal, set-aside the judgment of the High Court and restore the Award of the Presiding Officer.

8. In *Harbans Lal Vs. Jagmohan Saran*, the court ruled:

Para 5 ...The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The Writ Petition before the High Court prayed for a Writ in the nature of certiorari, and it is well known that a Writ in the nature of certiorari may be issued only if the order of the inferior tribunal of subordinate court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach finding of fact contrary to those rendered by an inferior court or subordinate court. When a High Court proceeds to do so, it acts plainly in excess of its power.

9. In *Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others*, , the court further observed that:

Para 10. The object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to Tribunals for settlement is to bring about industrial peace. Whenever a reference is made by the Government to the Industrial Tribunal, it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases, an attempt should be made by Courts exercising

powers of judicial review to sustain as far as possible the Awards made by the Industrial Tribunal instead of picking holes here and there in the Awards on rival points and ultimately frustrating the entire adjudication process before the Tribunals by striking down the Awards in hyper technical grounds. Unfortunately, the orders of the Single Judge and of the Division Bench have resulted in such frustration and have made the Award fruitless on an untenable basis.

10. In *Sudhoo v. Haji Lal Mohd. Biri Works and Ors.* 1990 L.I.C. 1538 it was held that the High Court should not have interfered with the findings of the fact reached by the prescribed authority on appreciation of evidence.

11. The Supreme Court in the case of *ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others*, , held as under:

It is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution. Therefore, once the State or an instrumentality of the State is a party, it has an obligation in law to act fairly, justly and reasonably to a contract which is the requirement of Article 14 of the Constitution.

Unless the action challenged in the writ petition pertains to the discharge of a public function or public duty by an authority, the courts will not entertain a writ petition which does not involve the performance of the said public function or public duty.

12. State actions causing loss are actionable under public law and this is as a result of innovation and addition of a new tool with the courts, which are protectors of civil liberties of the citizens and would ensure protection against sometimes devastating results of State Action. The principles of public accountability and transparency in State action, which essentially must not lack bonafide was enforced by the Supreme Court even in cases of appointments in the case of *Center for Public Interest Litigation and Another Vs. Union of India (UOI) and Another*, .

13. After detailed consideration of the entire evidence laid before it, the industrial adjudicator by an award dated 11th October, 1999 was pleased to held that the respondent had not committed any misconduct and directed his reinstatement into service with full back wages.

14. Learned Counsel appearing for the petitioner has submitted that an alternative challenge to the industrial award on the ground that the industrial adjudicator was not justified in directing reinstatement into the job with continuity of service and grant of full back wages to the workman. Reliance is placed on the pronouncement of the Apex Court in 1996 (4) SLR 30 *State of Tamil Nadu Vs. Thiru K.V. Perumal and others*, *Channabasappa Basappa Happali Vs. The State of Mysore*, *Channabasappa Basappa Happali v. The State of Mysore*

to submit that even when the inquiry conducted against the workman is faulty, reinstatement into service would not be directed. I find that the judgments relied upon by the petitioner have been rendered in service jurisprudence and did not relate to industrial adjudication. So far as the industrial adjudication is concerned, it has been consistently held that in case an order of termination of service of the workman is held to be illegal, the same is rendered no nest and it is to be presumed that it never intervened in the services of the workman. In such circumstances, there would be no cessation of the service and consequently the workman would be entitled to an order directing reinstatement into service with consequential reliefs.

15. So far as the pronouncement of the Apex Court in Channabasappa Basappa Happali Vs. The State of Mysore, relied upon by the petitioner is concerned, the same relates to a continuing challenge to the legality and validity of the inquiry proceedings. The Supreme Court has held that the scope of judicial review in respect of the decision of the disciplinary authority is in a narrow compass and that the court would not exercise appellate jurisdiction while examining such petition. It is only upon the court arriving at a conclusion that the punishment was shockingly disproportionate or that the conclusion arrived at by the disciplinary authority could not have been possibly been arrived at which would thereby render it so perverse that the courts should abjure from interference.

16. In the instant case, the disciplinary proceedings were vitiated by a detailed order passed as back as on 21st July, 1998. It is an admitted position that this order was not assailed by any proceedings thereafter. This order has not been challenged even in the present proceedings. In this view of the matter, the principles laid down in these judicial pronouncements would have no application.

17. There can also be no dispute that the proposed statement was made before the inquiry officer would not be relied upon before the court and that it is only a statement which is made before the court which could be relied upon. In the instant case, this is not so. The industrial adjudicator has clearly noticed that the witness of the petitioner has not supported the allegations made against the respondent. The petitioner is unable to show anything to the contrary. The instant case Therefore is clearly a case of no evidence.

18. So far as it is in these circumstances that the industrial adjudicator has held that the termination of the service of the workman was illegal and justified in the award dated 11th October, 1999. Having so held, a challenge made by the petitioner to the grant of relief of reinstatement with continuity of service and back wages has been assailed before this Court. In this behalf, it has been repeatedly held that the order of termination having been held to be no nest, the workman would ordinarily be entitled to an order directing reinstatement into service with continuity and full back wages. Denial of back wages or a portion thereof would result only if the employer was able to establish circumstances justifying such a result. The principles in this behalf were laid down by the Apex Court in AIR 1979 SC 75 entitled Hindustan Tin Works(P) Ltd. v . The Employees

Of The Hindustan Tin Works in the following terms:

9. 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 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, 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 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 workman'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.

...On top of it they were forced to litigation up to the apex court and now they are being told that something less than full back wages should be awarded to them. 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 nor 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 there from 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.

A division Bench of the Gujarat High Court in *Dhari Gram Panchayat v. Safai Kamdar Mandal* 197 I LLI 508, and a division Bench of the Allahabad High Court

in *Postal Seals Industrial Co-operative Society Ltd. v. Labour Court II, Lucknow and Ors.* 1971 I LLJ 327, have taken this view and we are of the opinion that the view taken therein is correct.

19. In *Gammon India Limited Vs. Niranjan Dass*, the court held that the order of termination of service being in violation of the provisions of Section 25F would render the same void abinitio.

20. In the instant case, the industrial adjudicator has noted that the management would be gainful employment of the workman during any period after the termination of his service. In *Union of India Vs. K.V. Jankiraman, etc. etc.*, the Supreme Court held that the normal rule of no work, no pay is not applicable to such cases where the employee although is willing to work, is kept away from work by the authorities for no fault of his.

21. In *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, the Supreme Court held thus:

143. Dealing with the complex of considerations bearing on payment of back wages the new perspective emerging from Article 43A cannot be missed, as explained in *Hindustan Tin Works*. Labour is no more a mere factor in production but a partner in Industry, conceptually speaking and less than full back wages is a sacrifice by those who can best (least) afford and cannot be demanded by those, who least sacrifice their large "wages" though can best afford, if financial constraint is the ground urged by the latter (Management) as inability to pay full back pay to the former. The morality of law and the constitutional mutation implied in Article 43A bring about a new equation in industrial relations. Anyway, in the *Hindustan Tin Works*" case, 75 per cent of the past wages was directed to be paid. traveling over the same ground by going through every precedent is supererogatory and we hold the rule is simple that the discretion to deny reinstatement or pare down the quantum of back wages is absent save for exceptional reasons.

144. It must be added however that particular circumstances of each case may induce the court to modify the direction in regard to the quantum of back wages payable as happened in the *India General Navigation and Railway Co. Ltd. and Another Vs. Their Workmen*, We may, Therefore, have to consider when finally moulding the relief, what, in this case, we should do regarding reinstatement and back wages.

148. This perspective informs our decision. What did the High Court do regarding reinstatement and should we modify and way? If the discharge is bad, reinstatement is the rule. In *India General Navigation and Railway Co. Ltd. and Another Vs. Their Workmen*, , *The Punjab National Bank Ltd. Vs. Its Workmen*, and *The Swadeshi Industries Ltd. Vs. Its Workmen*, , et al, restoration, despite large numbers, was directed. But most rules have exceptions wrought by the pressure of life and *Oriental* was relied on to contend that reinstatement must be denied. There is force in the High Court's reasoning to distinguish *Oriental*, as

we hinted earlier and we quote:

There were only 22 workmen involved in that case. The management had made genuine and persistent efforts to persuade the concerned workmen to call off the strike and join work. Those efforts were made at three different stages, namely, (1) immediately after the workers went on the lightning strike and before charge-sheets were issued (2) after the charges were dropped and individual notices were sent to the workmen asking them to resume work by specified dates and (3) after the orders of termination were served and conciliation proceedings were commenced pursuant to the demand notice. But this is not all. Even the Labour Officer and Labour Inspector had tried to persuade the concerned workmen to join duty before the charge-sheets came to be issued. As against these repeated bona fide attempts on the part of the management and an outside agency to persuade the erring workmen, they not only did not resume work but also failed to acknowledge or send a reply to the individual notices served upon them requesting them to resume work and they appear to have made it a condition precedent to their joining duty that the suspended workmen should also be taken back. Even under such circumstances, the management did not straightway terminate their services but gave individual notices requiring the concerned workmen to show cause why their names should not be struck off and asked them to submit their reply by a certain date. Even those notices were not replied. It is only thereafter that the services of the concerned workmen came to be terminated. It is against this background that the Supreme Court held that there was a persistent and obdurate refusal by the workmen to join duty notwithstanding the fact that the management has done everything possible to persuade them and give them opportunities to come back to work. and that they had without any sufficient cause refused to do so which constituted misconduct so as to justify the termination of their services. ...If the workmen had been approached individually, not only those amongst them who were unwilling to join strike but were prevented from joining work would have taken courage to resume duty but even those amongst them who were undecided could also have been won over. That apart, those notices, as their contents disclose, were hardly persuasive efforts. They were a mixture of ultimatums, threats, complaints and indictment of the workmen and the Sabha. Was it, Therefore, a genuine effort on the part of a keenly desirous employer to offer an olive branch In Oriental, orders of termination were passed only after giving individual notices to the concerned workmen to show cause why their names should not be struck off. Besides, those notices were given after charges formally served upon each workman earlier were dropped and persuasive efforts made in the meantime had failed. None of those steps was taken herein. All that happened was that in one of the notices meant for mass consumption and circulation, such intimation was given.

150. Another facet of the relief turns on the demand for full back wages. Certainly, the normal rule, on reinstatement, is full back wages sine the order of termination is non est. *G. T. Lad and Others Vs. Chemical and Fibres of India Ltd.*, and *The Management of Panitole Tea Estate Vs. The Workmen*, . Even so,

the industrial court may well slice off a part if the workmen are not wholly nameless or the strike is illegal and unjustified. To what extent wages for the long interregnum should be paid is, Therefore, a variable dependant on a complex of circumstances. (See for e.g. (1967) 15 Fac. L.R. 395 .

22. In Mohan Lal Vs. Management of Bharat Electronics Ltd., the Supreme Court held thus:

16. Appellant has thus satisfied both the eligibility qualifications prescribed in Section 25F for claiming retrenchment compensation. He has satisfactorily established that his case is not covered by any of the excepted or excluded categories and he has rendered continuous service for one year. Therefore, termination of his service would constitute retrenchment. As precondition for a valid retrenchment has not been satisfied the termination of service is ab initio void, invalid and inoperative. He must, Therefore, be deemed to be in continuous service.

17. The last submission was that looking to the record of the appellant this Court should not grant reinstatement but award compensation. 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 the 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 1 Ib. LJ 63 and Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, 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. No case is made out for departure from this normally accepted approach of the Courts in the field of social justice and we do not propose to depart in this case.

23. In a recent case before the Apex Court it was urged that existence of several industries in the area where the management was located showed the possibility for the workman to obtain gainful employment. A prayer for grant of back wages was opposed on this ground. In its judgment reported at 2004(VIII) AD SC 444 Nicks(India)Tools v. Ram Surat and Anr. the Apex Court held thus:

18. This leaves us to consider the next limb of the argument of Shri U.U.Lalit, learned senior counsel who contended that the Labour Court having come to the conclusion that in Ludhiana where the appellant's factory is situated, there are large number of other industries hence it was always possible for the respondent workman to have obtained a gainful employment on that basis, was justified in confining the back wages to only 25% of the full back wages, and the High Court in this regard erred in reversing that finding by not taking into consideration the

additional material produced by the management in regard to this aspect of the case, i.e. of the respondent being gainfully employed during the relevant period. He also relied on two judgments of this Court in the case of P.G.I. of M.E. and Research, Chandigarh Vs. Raj Kumar, and M.P. State Electricity Board Vs. Smt. Jarina Bee, .

20. Reliance placed by the learned Counsel for the appellant in the case of PGIU of Medical Education and Research, Chandigarh(supra), in our opinion, does not take the case of the appellant any further. In that case, this Court held that the Labour Court being the final court of facts the superior courts do not normally interfere with such finding of facts unless the said finding of fact is perverse or erroneous or not in accordance with law. In the instant case, we have already noticed the basis ground on which the Labour Court reduced the back wages was based on a judgment of the High Court of Punjab and Haryana which, as further noticed by us, was overruled by a subsequent judgment of a Division Bench. Therefore, the very foundation of the conclusion of the Labour Court having been destroyed, the appellant could not derive any support from the above cited judgments of that Court. Similarly, in the case of M.P.State Electricity Board(supra), this Court only said that it is not an inevitable conclusion that every time a reinstatement is ordered, full back wages was the only consequence. This Court, in our opinion, did not preclude that even in cases where full back wages are legally due, the superior courts are precluded from doing so merely because the Labour Court has on an erroneous ground has reduced such back wages. In the instant case, we have noticed that the trial court apart from generally observing that in Ludhiana, there must have been job opportunities available, on facts it did not rely upon any particular material to hold either such job was in fact available to the respondent and he refused to accept the same or he was otherwise gainfully employed during the period he was kept out of work. On the contrary, it is for the first time before the writ court the appellant tried to produce additional evidence which was rightly not considered by the High Court because the same was not brought on record in a manner known to law. Be that as it may, in the instant case we are satisfied that the High Court was justified in coming to the conclusion that the appellant is entitled to full back wages.

24. The issue as to grant of an appropriate relief after holding that the termination of service was held to be illegal, fell for consideration before the Division Bench of this Court in its pronouncement reported at 1982(1) SLJ 255 Management of Delhi Transport Corporation v. Shri Ram Kumar and Anr. The court held as follows:

13. Mr. Malhotra then sought to urge that even though reinstatement may be ordered the workman is not entitled to full back wages. We cannot agree. "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 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" Hindustan Tin case(supra). Mr. Malhotra then contends that full back wages cannot be paid because it cannot be expected that the workman must have been out of employment for all this period. Now the evidence of workman is clear wherein he has stated that ever since dismissal he had been unemployed. Mr. Malhotra seeks to catch on to the further part of his evidence where he stated that he did not make any efforts to get a job and says that this shows an attitude of slackness on the part of the employee which should deprive him of entitlement to full back wages. We feel that Mr. Malhotra mis appreciates the principles on which full back wages are paid. The principle is that when an employee after protracted litigation with the employer succeeds in showing that the termination of his services was unjustified he would normally be entitled to reinstatement with full back wages excepting of course if it could be shown that he had been gainfully employed in the meanwhile. Thus full back wages would be normal rate and the party objecting to it must establish the circumstances necessitating departure. See Gujarat Steel Tubes Ltd. v. Its Mazdoor Sabha. Thus if the employer wishes to show that workman was gainfully employed he must establish and prove that fact no presumption of being gainfully employed can be raised. It is not disputed that no evidence has been led or even shown on the record by the appellant which shows that the workman was at any time in between employed elsewhere. In that view there would be no justification for denying him full back wages. The mere fact of long time having elapsed is certainly not a reason to deny him his normal relief of reinstatement, because as said in Panitole Tea Estate case(P.240) if his dismissal was wrongful then merely because proceedings for adjudication of the industrial disputes have taken a long time is by itself no reason for not directing his reinstatement if it is otherwise justified being in accordance with normal rule.

25. In a Single Bench decision of this Court reported at Management of Asiatic Air Conditioning and Refrigeration Pvt. Ltd. Vs. Presiding Officer, Labour Court-X, Karkardooma Court and Jagdish Tripathi, this Court has considered the judicial pronouncements on the subject. After a detailed consideration of the law on the subject, several factors which are required to be taken into consideration in awarding back wages have been noticed. Inter alia, relevant factors which would weigh with the court in awarding back wages would include the time involved in the litigation and causes of the delay; the status of the management as a public body meant for public benefit; possibility of the worker being gainfully employed; nature of the alleged misconduct; ensuing financial burden; delay in raising an industrial dispute; duration of the employment and the nature of the employment.

26. In the instant case, the workman has been prevented from working on

account of the order of termination of service of the workman which has been held to be illegal by the industrial adjudicator.

27. In this view of the matter, in view of the authoritative principles laid down by the apex court which are binding on this Court, there being no evidence of gainful employment of the workman or any other circumstances justifying denial of the back wages, the award of the industrial adjudicator holding that the workman was entitled to reinstatement with continuity of service and full back wages cannot be faulted in any manner. I find no merit in this writ petition which is dismissed with costs which are quantified at Rs.10,000/-

28. The petitioner shall pass appropriate orders in terms of the award dated 11th October, 1999 within a period of four weeks and communicate the same to the workman. The DTC shall effect payment in terms of the award and the orders passed today within a further period of four weeks thereafter. The DTC will be entitled to adjust all amounts which have been paid to the workman on any account for any reason including towards subsistence allowance or in compliance of orders u/s 17B made by this Court as well as any amount which may have been recovered by the workman in implementation proceedings which were filed on the basis of the award dated 11th October, 1999.

29. It is pointed out that by an order dated 7th September, 2001, this Court had directed the petitioner to deposit 50% amount of the same award towards the back wages. By a subsequent order dated 15th May, 2002, this amount was directed to be kept in a fixed deposit receipt. It is directed that the full amount of the fixed deposit receipt shall be released in favor of the respondent/workman. The DTC shall be entitled to also adjust an amount equivalent to only the principal amount of the fixed deposit receipt which it had deposited in this Court towards the arrears which shall be paid to the workman in terms of the present judgment. The petitioner has been deprived of the wages and Therefore, in the facts and circumstances, the interest on the fixed deposit shall be paid to the respondent.