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**(2009) 03 SC CK 0191**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 1795 of 2009 (Arising out of SLP (C) No. 9587 of 2008)

Executive Engineer, Water Services Div. Haryana

APPELLANT

Vs

Kartar Singh

RESPONDENT

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**Date of Decision :** 23-03-2009

**Acts Referred:**

**Citation :** (2009) 121 FLR 598 : (2009) 4 JT 211 : (2009) 3 LLJ 38 : (2009) 4 SCALE 537 : (2009) 5 SCC 44

**Hon'ble Judges :** Tarun Chatterjee, J;H. L. Dattu, J

**Bench :** Division Bench

**Advocate :** Manjit Singh and T.V. George, Avds, for the Appellant; Harikesh Singh and Kamal Mohan Gupta, for the Respondent

**Final Decision :** Dismissed

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## Judgement

1. Delay condoned.

2. Leave granted.

3. This appeal is filed against the Judgment and Order of the High Court of Punjab and Haryana in CWP No. 8127 of 2007, by which the writ petition was dismissed which was filed against an award passed by the Labour Court, Rohtak directing the reinstatement of the respondent in service and payment of back wages to the extent of 50 per cent.

4. The respondent was appointed as a Chaukidar on daily wages but his services were terminated, for which reference was made before the Labour Court as to whether the termination was legal or not. In that factual background, the aforesaid award was passed by the Labour Court directing the reinstatement of the respondent into service and also payment of the wages to the extent of 50%.

5. While entertaining the Special Leave Petition, this Court, on 28th of March, 2006, passed the following order:

Issue notice limited to the question of back wages.

Issue notice on the application for condonation of delay also.

6. So far as the application for condonation of delay as noted herein earlier, we have already condoned the delay of 166 days in filing this SLP as we find that the statements made in the application for condonation of delay do constitute sufficient cause in condoning the delay. Therefore, the only question remains to be decided is what should be the appropriate back wages to be paid to the respondent.

7. We have heard the learned Counsel for the parties and considered the submissions made on behalf of the learned Counsel for the parties on the question of payment of back wages.

8. In our view, since the respondent has already been reinstated in service and considering the fact that there was no plea nor any evidence or proof to show that from the alleged discontinuation of his engagement till the date of the award, the respondent was not in gainful employment, we are of the view that instead of payment of 50% of the back wages, the award may be modified to the extent that the respondent shall be entitled to 25% of the back wages.

9. Accordingly, the order of the High Court and the award in question is modified to the above extent.

10. The appellant is directed to pay 25% of the back wages from the date of award i.e. 5th of March, 2004 within four months from this date. The appeal is allowed to the extent indicated above. There will be no order as to costs.