

(2006) 06 DEL CK 0021

In the Delhi High Court

Case No : Writ Petition (Civil) No. 16255 of 2004

J.U. Akhtar

APPELLANT

Vs

The Mgmt. of Markfed Agro

RESPONDENT

Date of Decision : 02-06-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2006) 06 DEL CK 0021

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : H.K. Chaturvedi, for the Appellant; Vineet Bhagat, for the Respondent

Judgement

Gita Mittal, J.—The petitioner/workman claimed that he was appointed with M/s Punjab State Cooperative Supply and Marketing Federation Limited as a senior technician to maintain helicopters with effect from 13th July, 1981. The Markfed Agro Aviation Unit is stated to be one of the units owned by the Punjab State Cooperative Supply and Marketing Federation Limited. On the 2nd April, 1987 the petitioner apparently received one month's notice for termination of his services which he assailed by raising a statement of claim before the conciliation authorities under the Industrial Disputes Act, 1947. As conciliation was not fruitful, the appropriate government by an order passed on 7th January, 1988 referred the following dispute for adjudication to the industrial adjudicator.

Whether the termination of services of Shri J.U. Akhtar is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

2. The industrial adjudication culminated in an award dated 20th April, 2002 wherein the industrial adjudicator held that the petitioner was a workman as defined in Section 2(s) of the Industrial Disputes Act, 1947 and further that the action of the management in termination of the services of the petitioner was illegal, unjustified and in violation of the statutory provisions of Section 25F of

the Industrial Disputes Act, 1947. The industrial adjudicator also rejected the plea raised by a witness of the respondent in his cross examination that the services of the petitioner had been validly terminated and the plea taken by the authorised representative of the respondent to the effect that due to financial losses, the unit had been closed down. It was noticed that no such plea was taken in the written statement nor any issue thereon was sought or framed or any evidence in this behalf was placed before the industrial adjudicator. After so holding, the industrial adjudicator further recorded thus:

19. During the course of arguments, learned A/R of the workman fairly considered that in the facts and circumstances of the case a lump sum compensation can be ordered to be granted to the workman.

20. in the light of the evidence on record, facts and circumstances of the case I am of the opinion that interest of justice would be meted out if compensation at the rate of Rs.5,000/- per annum is awarded in favor of the workman since the date of his illegal termination i.e. 2.5.87 onwards. The award is passed and reference is answered accordingly.

3. It appears that after the publication of the award, the respondent has quantified the compensation awarded by the industrial adjudicator which according to it became payable and has paid the same to the petitioner. It is submitted on behalf of the petitioner that such acceptance was without prejudice to the rights and contentions of the petitioner in the present writ petition and the respondent can derive no benefit there from.

4. The respondent has thus accepted the legality and validity of the findings returned by the industrial adjudicator and the award made against it. The same has not been assailed by the respondent in any proceedings.

5. The respondent has contended that in view of the award directing payment of compensation to the petitioner, the respondent did not assail the other findings arrived at by the industrial adjudicator and has in fact implemented the award by effecting computation and making payment of the amount to the petitioner. It is stated that for this reason alone, the award deserves to be sustained.

6. On the other hand, the petitioner has filed the present writ petition impugning the Award dated 20th April, 2002 laying a two fold challenge. Firstly, it has been contended that the industrial adjudicator having held that the action of the respondent was in violation of the provisions of Section 25F of the Industrial Disputes Act, 1947. Consequently, the petitioner was entitled to the relief of reinstatement with back wages and all other consequential reliefs. The second submission on behalf of workman is that the authorised representative of the workman had not made any concession as has been noticed in para 19 of the award and had never stated that the workman may be granted compensation in lieu of reinstatement.

7. It appears that the workman had made a challenge to the relief granted to the

workman in the award dated 20th April, 2002 on this ground prior hitherto by way of W.P.(C) 1/2003. In view of the plea taken on behalf of the petitioner that no concession had been made by his authorised representative, by an order dated 3rd January, 2003, this Court granted permission to the petitioner to withdraw the writ petition to enable him to file an appropriate application in this behalf before the industrial adjudicator.

8. The workman consequently moved an application in this behalf before on 3rd February, 2003. However, by an order passed on 8th July, 2004, the industrial adjudicator was of the view that the court had no power to review the award dated 20th April, 2002. the court had also observed that it was doubtful that the statement had not been made on behalf of the workman. The petitioner has Therefore filed the present writ petition assailing the award dated 20th April, 2002 by way of the present writ petition.

9. Having heard learned Counsel for the parties, so far as the challenge to the award dated 20th April, 2002 on the ground that the authorised representative had never made the statement noticed in the award is concerned, I am unable to accept the same. The circumstances noticed in the award would appear to show that the respondent was contending that it did not have any helicopters and hence there was no work for the petitioner in the instant case. The petitioner was admittedly an expert technician in respect of helicopters. Furthermore, it had been argued on behalf of the respondent to the effect that the business stood closed. All these circumstances render it more plausible that the statement on behalf of the petitioner to the effect that it may be awarded compensation in lieu of reinstatement was actually made. The respondent has also contended that it did not assail the findings in the award and the limited relief given only in view of the statement made on behalf of the petitioner. There is no Explanation as to why such statement would be attributed to the petitioner, if it had not been actually made. I Therefore reject the challenge to the award dated 20th April, 2002 made by the petitioner on this ground.

10. The second ground of challenge made by the petitioner however has substantial force. It has been contended by Mr. H.K. Chaturvedi, learned Counsel representing the petitioner that even if the statement noticed in para 19 of the award to the effect that the workman may be awarded compensation is to be accepted, the workman has only conceded the appropriate relief which may be granted to the petitioner. It is contended that the industrial adjudicator having held that the action of the respondent was in violation of the specific statutory provision of Section 25F of the Industrial Disputes Act, 1947, the petitioner ipso facto became entitled to the relief of reinstatement and full back wages. The workman had agreed to accept compensation. In view of the findings returned by the industrial adjudicator, it was required to Therefore, assess a reasonable and fair compensation which would counter balance the relief to which the workman was entitled. In this behalf, it is contended that such compensation, under no circumstance, could be less than the full back wages which the workman would

have drawn. Reliance in support of this submission is placed on Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, Mohan Lal Vs. Management of Bharat Electronics Ltd., Mohan Lal v. The Management of Bharat Electronics Ltd.; 1982 L. I.C. 1378 Hari Mohan Rastogi Vs. Labour Court and Another, Hari Mohan Rastogi v. Labour Court and Anr. 1190 (4) SLR 154 The Punjab Land Development and Recclamation Corporation Ltd., Chandigarh v. The P.O., Labour Court, Chandigarh and Ors. 1999 LLR 130 Nicks (India) Tools Vs. Ram Surat and Another, Nicks (India) Tools v. Ram Surat and Anr. 2005 IX AD(S.C.) 261 Bank of Baroda Vs. Ghemarbhai Harjibhai Rabari, Delhi Cantonment Board Vs. Central Govt. Industrial Tribunal and Others,

11. As against this contention, it has been stated on behalf of the respondent that the compensation awarded by the industrial adjudicator is fair, reasonable and sufficient inasmuch as the respondent had stated before the industrial adjudicator that the unit of the respondent was suffering financial losses and had been closed. In these circumstances, the compensation awarded was fair and that the respondent after affecting computation thereof, has already paid the same to the petitioner.

12. Having heard learned Counsel for the parties, the principles which would apply to the relief to be granted to a workman whose service, it has been held, have been illegally terminated are well settled. It would be useful to notice the various binding judicial pronouncements on this aspect wherein the principles have been laid down.

13. The petitioner has placed strong reliance on several pronouncements of the Apex Court where it was held that violation of Section 25F was required to be strictly construed and that this provision is imperative in character. Therefore contravention of this provision rendered termination of the service of the workman illegal. Upon so, the Apex Court has directed not only reinstatement and continuity of service but has directed payment of full back wages. In this behalf, reliance has also been placed on Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another, Hindustan Steel Ltd. Vs. The Presiding Officer, Labour Court, Orissa and Others, Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others, Ruby General Insurance Co. Ltd. Vs. Shri P.P. Chopra, Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, The State Bank of India Vs. Shri N. Sundara Money, Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, O.P. Bhandari Vs. Indian Tourism Development Corp'n. Ltd. and Others, O.P. Bhandari v. Indian Tourism Development Corporation in this behalf.

14. It would be useful to consider the principle laid in judicial pronouncements on this question. In Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, which holds the field even today, the Apex Court was required to consider the issue and upon a detailed consideration,

authoritatively ruled thus:

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* 1971 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.

10. ...This Court held that the workmen concerned did not have any opportunity of explaining why their services should not be terminated and, Therefore, reinstatement was held to be the appropriate relief, and set aside the order of the Tribunal. It was observed that there was no justification for not awarding full back wages from the day they offered to resume work till their reinstatement.

11. In the very nature of things there cannot be a straight jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear in the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, accordingly to law and not humour. It is not to be arbitrary vague and fanciful but legal and regular.

13. Now, if a sacrifice is necessary in the overall interest of the industry or a particular undertaking, it would be both unfair and iniquitous to expect only one partner of the industry to make the sacrifice. Pragmatism compels common sacrifice on the part of both. The sacrifice must come from both the partners and we need not state the obvious that the labour is a weaker partner who is more often called upon to make the sacrifice. Sacrifice for the survival of an industrial undertaking cannot be an unilateral action. It must be a two way traffic. The management need not have merry time to itself making the workmen the sacrificial goat. If sacrifice is necessary, those who can afford and have the cushion and the capacity must bear the greater burst making the shock of sacrifice as less poignant as possible for those who keep body and soul together with utmost difficulty.

14. The appellant wants us to give some thing less than full back wages in this case which the Labour Court has awarded. There is nothing to show whether the Managing Director has made any sacrifice; whether his salary and perks have been adversely affected; whether the managerial coterie has reduced some expenses on itself. If there is no such material on record, how do we expect the workmen, the least affording of the weaker segment of the society, to make the sacrifice, because sacrifice on their part is denial of the very means of livelihood, Therefore no presumption of being gainfully employed can be raised in the light of the principles laid down.

15. 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 Art. 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 tot he 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 since 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. (1967) 15 Fac. L.R. 395 .

16. 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. Vs. Shri P.P. Chopra, 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.

17. Applying such principles, in 1982 Lab. Industrial Cases 1378 DTC v. Ram Kumar, the court held that the dismissal of the workman having been found unjustified and his reinstatement having been directed, he would be entitled to full back wages except to the extent he was gainfully employed during his enforce idleness.

18. 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 PGI of Medical Education and Research, Chandigarh v. Raj Kumar 2001(2)SCC 54 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.

19. 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.

20. 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.

21. It has been held by the Apex Court in Hindustan Tin Works Limited (supra) that so far as the circumstances which would necessitate departure from the normal circumstances of grant of full back wages are concerned, the party which is objecting to such an order must establish the circumstances which would enable the court to draw the exception.

22. In the instant case there is neither any pleading nor any evidence to enable this Court to draw any conclusion which would disentitle the workman to grant of the full back wages in terms of the law laid down by the Apex Court or by this Court.

23. In view of the afore noticed principles, once the industrial adjudicator had arrived at a finding that the termination of the services of the petitioner was

contrary to law, he would have normally become entitled to reinstatement into service. However, based on the statement made on his behalf, the industrial adjudicator considered award of compensation. If the workman had been reinstated into service, the corollary would have been a direction to pay full back wages to the workman. This is so because no material or evidence was placed before the industrial adjudicator to the effect that the workman was gainfully employed. In his affidavit by way of evidence, the workman categorically stated that he has been trying to find out some job ever since he was removed from service, but he remains unemployed. The workman specifically submitted that he is entitled to full wages for the period for which he has remain unemployed and also to reinstatement. He affirmed this statement when he was cross examined on 16th November, 1998. In fact his categorical statement was that despite efforts for an alternative job, he was unable to get the same on account of his being overage for fresh recruitment.

24. Before this Court, it has been pointed out that the workman would have superannuated at the age of 60 years as his date of birth was 13th May, 1939, the workman would have superannuated on 12th May, 1999.

25. The industrial adjudicator has not accepted the plea set up by the respondent of closure of the industry noticing that no pleadings in respect thereof had been laid before the court. In this view of the matter, none of the circumstances which may have been weighed with the industrial adjudicator or the court in denying the workman the relief of full back wages was either pleaded or established before the industrial adjudicator.

26. As noticed hereinabove in Mohan Lal v. The Management of Bharat Electronics Ltd."s case(supra) the court had occasion to consider a similar submission that termination of services having been held to be invalid, instead of reinstatement, compensation should be granted. The Apex Court has held that where the termination is held to be illegal, the order removing the workman from service is an ineffective order and as a consequence there is no cessation of service. As a consequence, the workman is deemed to be continued in service with all consequential benefits. The court held that the order of termination being declared illegal, an order of reinstatement was the rule which would be departed from only as an exception. Therefore, while computing compensation, the relief to which such workman as the respondent in the instant case is concerned, would be entitled would require to be commensurate with the benefits which would have flown in his favor which he would have continued in service. Undoubtedly, this could not have been less than the wages which the workman would have drawn had the order of termination of service not intervened.

27. In the impugned award, the industrial adjudicator has held that the workman would be entitled to compensation at the rate of Rs.5,000/- per annum since the date of his illegal termination on 2nd May, 1987. I find force in the submission on behalf of the petitioner that there is no justification or basis laid out in the award for such compensation. The same is based on no material whatsoever. A

statement having been made giving up the relief of reinstatement, the workman had claimed compensation which would have to be reasonable and justified in the facts and circumstances of the case. There is no basis discussed or disclosed which the quantification of the amount of compensation which has been awarded.

28. In the light of the principles of law laid down by the Apex Court repeatedly in the afore noticed judgments, in all fairness, the workman was entitled to at least such compensation which would commensurate with the denial of his reinstatement into service. To my mind, in the given facts, the only relief which could have been granted to the workman would have been compensation equivalent to the full back wages with effect from the date of termination of service till the date he would have superannuated.

29. In view of the foregoing discussion, the award to the extent that it has directed payment of compensation only at the rate of Rs.5,000/- per annum with effect from the date of termination of his service on 2nd May, 1987 till the passing of the award is hereby set aside and quashed. It is held that the workman would be entitled to compensation equivalent to back wages at the rate which would be computed on the basis of last drawn wages with effect from 2nd May, 1987 till 13th May, 1989 on which date the workman would have superannuated.

30. The computation in terms of the judgment shall be effected and shall be communicated to the petitioner within a period of four weeks. The payment shall be made to the petitioner within a period of four weeks thereafter. The respondent shall be entitled to effect adjustments of the amount which it has paid to the workman in purported compliance of the award.

31. The petitioner shall be entitled to costs of the present litigation which are quantified at Rs.10,000/- to be paid within the period of four weeks.