

(1990) 09 GUJ CK 0010
In the Gujarat High Court

Mahendrakumar Veerabhai Makwana	APPELLANT
Vs	
State of Gujarat and Another	RESPONDENT

Date of Decision : 01-09-1990

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5
Constitution of India, 1950 — Article 226, 331

Citation : (1991) 1 GLR 179

Hon'ble Judges : C.K. Thakker, J

Bench : Single Bench

Judgement

C.K. Thakker, J.—This petition is filed by the petitioner against the order dt. February 26, 1986 passed by the Commander, State Reserve Police (SRP) Force, Group-XII, Gandhinagar, respondent No. 2 herein terminating his services.

The case of the petitioner is that after he was duly selected, he was appointed as Carpenter by an order dt. May 14, 1984 with effect from that date in the pay scale of Rs. 350-560. The said appointment was purely on temporary basis. He was posted at Nadiad. It is the case of the petitioner that even though his services were satisfactory, by the impugned order dt. February 26, 1986 his services came to be terminated with effect from 30 days from that date. It is the contention of the petitioner that the said order is not an order of termination simpliciter, but by way of penalty and punishment. Since it is punitive in nature, the said action can be taken in consonance with the principles of natural justice by issuing notice, calling for explanation and affording reasonable opportunity of being heard to the petitioner. Since it is not done, the impugned order requires to be quashed and set aside.

2. Miss Doshit appearing for the respondents contended that the petition is required to be dismissed on the ground that the petitioner has not availed of an alternative remedy which is available to him under Rule 89(2) of the Gujarat Police Manual, 1975. She has further submitted that even on merits, the impugned order is of termination simpliciter and it does not cast stigma. Finally,

she has submitted that even if the petition is allowed and the impuned order is quashed and set aside, the petitioner is not entitled to all the reliefs which he has prayed in the petition.

3. So far as the preliminary objection regarding maintainability of the concerned. Miss Doshit for the respondents, submitted that the petitioners has not availed of an alternative remedy. In this connection she has invited my attention to Rule 89 of the Gujarat Police Manual, 1975. Rule 89 reads as under:

89. Temporary Appointments:

(1)(a) Orders sanctioning every temporary appointment which is not for a definite period should make it clear that the appointment is made "until further orders". Appointments of temporary Government servants for definite period should be restricted to exceptional cases.

(b) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by that authority to the Government servant.

(c) Where the temporary Government servant has put in service for a period exceeding one year, the period of such notice shall be one month and where such Government servant has put in service for one year or any period less than one year the period of such notice shall be one week:

Provided that the services of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice, at the same rates at which he was drawing pay and allowances immediately before the termination of his service, or as the case may be, for the period by which such notice falls short of the notice period. (2)(a) Where a notice is given by the authority other than the Government terminating the services of a temporary Government servant or where the services of any such Government servant are terminated by an authority other than the Government either on the expiry of the period of such notice or forthwith by payment of pay plus allowances, the Government may, of its own motion or otherwise re-open the case and after calling for the records of the case and after calling for the records of the case and after making such inquiry as it deems fit:

(i) confirm the action taken by the authority;

(ii) withdraw the notice;

(iii) re-instate the Government servant in service; or

(iv) make such other order in the case as it may consider proper;

Provided that except in special circumstances, which shall be recorded in writings, no case shall be reopened under this sub-rule after the expiry of three

months;

(i) from the date of notice, in case where notice is given;

(ii) from the date of termination of service, in case where no notice is given;

(b) Where a Government servant is re-instated in service under Sub-rule (2) the order of re-instatement shall specify--

(i) the amount of proportion of pay and allowances if any, to be paid to the Government servant for the period of his absence between the date of commencement of his service and the date of his re-instatement, and

(ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes.

(3)(a) Temporary Government servants who have not been appointed for a definite period should, if necessary, be discharged from service in strict order of juniority and no person should be arbitrarily discharged, without regard to his seniority. (b) The order terminating the services should not contain any reason beyond stating that the services of the person concerned are not required.

(c) Before terminating the services of a temporary Government servant on the basis of juniority, as far as practicable the required notice of one month or a week, as the case may be, should be given. But if it is not possible to give such notice, there is no objection if the services of such temporary persons are terminated instantaneously.

(d) Even a purely temporary Government servant cannot be punished with dismissal, removal or reduction in rank without following the proper procedure, laid down for departmental enquiries.

(e) Retention of a junior person in service and terminating the services of a senior person in exercise of the powers to terminate the services of such persons is held discriminatory. It is, therefore, desirable that whenever it becomes necessary to terminate the services of a temporary Government servant for misconduct or for unsatisfactory conduct or for unsatisfactory work or for such default as would warrant termination of services, and the Government servant concerned is senior to another Government servant who is retained in service, full procedure of departmental enquiry should be followed before terminating the services of such Government servant. If it is proposed to debar him from future employment under government having regard to the seriousness of the default, misconduct, the best course would be to resort to dismissal or removal from service instead of termination of the service of such person.

But if the default or misconduct is not so serious, it would be desirable to terminate the services of such person only after following the proper procedure of departmental enquiry.

4. From the above Rule it appears that under Sub-rule (1) of Rule 89, the service

of a temporary government servant can be terminated at any time by issuing notice in writing. Sub-rule 2(a) empowers the Government either of its own motion or otherwise, to reopen the case and to decide the validity or otherwise of such order passed by the sub-ordinate officer. She, therefore, contended that even if the termination is contrary to Rule 89, the petitioner cannot directly approach this Court by filing the petition under Article 226 of the Constitution of India without resorting to an alternative remedy provided by Sub-rule (2) of Rule 89. She has also drawn my attention to the judgment in the case of *The British India Steam Navigation Co. Ltd. Vs. Jasjit Singh, Addl. Collector of Customs, Calcutta and Others*, wherein the Hon'ble Supreme Court has observed that :

The High Court should be slow in encouraging parties to special provisions made providing for appeals and revisions in respect of orders which they seek to challenge by writ petition under Article 226.

5. Similar view is also expressed by the Supreme Court in the case of *Bhopal Sugar Industries v. S.T.O. Bhopal*, reported in AIR 1967 SC 549.

I am unable to uphold this contention. Firstly, it cannot be said to be a statutory remedy inasmuch as the Rules referred to by her are not statutory. They are merely administrative instruction. However, even otherwise also, the above contention is required to be rejected because the revision which has been provided is against the order of termination which is termination simpliciter. When I am of the opinion that the impugned order of termination is not an order of termination simpliciter but penal in nature, obviously Rule 2(a) cannot be pressed into service and no revision can be filed against such order.

6. Mr. Padiwal has also contended that even under the above Rule, no Substantive right of filing an appeal is conferred on him. So far as revision is concerned, it is merely a discretionary power which cannot be said to be an effective or efficacious remedy so as to deprive him to approach this Court by filing petition under Article 226 of the Constitution of India. In this connection he relies on the judgment of the Hon'ble Supreme Court in the case of *Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava*, . The Supreme Court has observed in that case that the revision application cannot be considered to be an equally efficacious remedy. A remedy of revision is held to be discretionary remedy. Such a remedy, therefore, does not bar the jurisdiction of the High Court to entertain a petition under Article 226 of the Constitution of India. It is also observed by the Full Bench of this Court in the case of *Ahmedabad Cotton Mfg. Co. v. Union of India*, reported in [1977] 18 GLR 714, that an alternative remedy must be a direct remedy specifically provided by or under specific law under which the impugned order is made. Further, it is well settled that where the principle of natural justice have not been observed and the authority has acted in contravention of those principles, the existence of an alternative remedy is no bar to relief under Article 226 as held by the Supreme Court in the leading case of *State of Uttar Pradesh v. Mohd. Nooh*, reported in AIR 1958 SC 86 . Finally, the present petition is filed in 1986 and the Rule was issued as early as on April

16, 1986. Therefore, as per the ratio laid down by the Supreme Court in *Hirday Narain v. Income Tax Officer, Bareilly*, reported in , where a High Court entertains a petition under Article 226 of the Constitution of India, it would not be proper to dismiss it only on the ground that an alternat L. *Hirday Narain Vs. Income Tax Officer, Bareilly*, ive remedy is available to the petitioner. Therefore, on all these grounds, I reject the preliminary contention raised by Miss Doshit.

7. So far as merits are concerned, it is the contention of Mr. Padiwal that the impugned order is punitive in nature and cannot be said to be innocuous. I think that the contention is well founded and requires to be accepted. The impugned order is on record. It states that the petitioner was in temporary employment. That during the course of less than 2 years of employment, the petitioner was in the habit of remaining absent frequently. Moreover, his working was also not satisfactory and since his services were no more required they were ordered to be terminated after 30 days of the notice period. Thus, looking to the impugned order, it becomes clear that the impugned order cannot be said to be an order of termination simpliciter. Miss Doshit contended that the order does not cast stigma on the petitioner. In Concise Oxford Dictionary (1990 Edition P. 1044) "Stigma" is defined as "imputation attaching person's reputation; stain on one's good name". However, in my opinion, the impugned order casts stigma on the petitioner inasmuch as it has been specifically stated that the petitioner was in the habit of remaining absent frequently. The practical test whether an order is an innocuous one or casts stigma, would be as to whether the employee would be able to get employment elsewhere without there being any difficulty and the order would not come in his way. If the impugned order is read hearing that test in mind. I think that in all probabilities, the petitioner would not be able to get employment in view of the fact that he was "in the habit of remaining absent frequently". On both the sides, some judgments have been cited wherein the Courts have taken the view that it is open to the Court to decide the question after considering the facts and circumstances of each case. The form of the order is not material and the substance of the matter is important. However, I need not to go to those authorities, since I am of the opinion that looking to the impugned order itself, it casts stigma.

8. Miss Doshit has further contended that the fact of remaining absent has been mentioned in the impugned order only with a view to judge "the "Suitability or otherwise" of the petitioner. She submitted that it is the right of the employer to judge the suitability of the employee and since the petitioner was in the habit of remaining absent, the respondent No. 2 has passed an order that the continuance of the petitioner in the Government Service cannot be said to be satisfactory. In this connections, she has invited my attention to the decision of this Court in the case of *A.B. Gajjar v. Union of India*, reported in 1984(3) SLR 317. In that case, the appellant was appointed by the Deputy Salt Commissioner, Ahmedabad, as Inspector of Salt. His appointment was temporary and on ad hoc basis till his replacement by a regular candidate nominated by the Staff-Selection Commission. His services were liable to be terminated at any time without

assigning any reasons. He resumed duties on September 15, 1980. He remained on leave from September 21 to October 7, 1981. Thereafter he again remained on leave from October 8 to October 12, 1981. Then he applied for leave for further period of 10 days from the next day, i.e., from October 13, 1981. Then he remained on leave from October 25 to November 1, 1981. By a notice dt. January 21, 1982, his services were terminated under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 and the said order was challenged by filing a suit in the City Civil Court at Ahmedabad. The suit was dismissed by the trial Court and the appeal was filed which came up for admission before the learned single Judge of this Court which was summarily dismissed. With regard to the contention that the said order was punitive in nature and since no opportunity was given, it was required to be quashed and set aside, the learned single Judge observed as under:

(T)he appellant was appointed on ad hoc basis and only by way of a stopgap arrangement i.e., till a regular candidate became available. If during this short period he remained absent either because of his illness or for any other reasons, the work of the department naturally suffered. In his evidence the appellant has admitted that in his office at Salaya, he was the only responsible person and, there was nobody else who could supply required information in his absence. Therefore, the whole purpose of appointing the appellant was frustrated because of his frequent absence and that is the ground on which his services came to be terminated. Memos were issued not for the purpose of taking any disciplinary action against him but with a view to see that he became regular in attendance and performance of his duties. For these reasons, it cannot be said that the services of the appellant were terminated by way of punishment and that this is not a case of termination simpliciter.

9. I am clearly of the opinion that the ratio laid down in A.B. Gajjar's case (supra) does not apply in the instant case. Looking to the facts of that case, it is clear that certain factors have been taken into account by his Court while disposing the case; such as the appellate of that case was appointed on ad hoc basis till his replacement by a regular candidate; his services were liable to be terminated at any time without assigning any reason, during a short period he had remained absent for a number of days, because of his absence the work of the Department suffered, the appellant himself had admitted that he was the only responsible officer in the office at Salaya and there was nobody else who could supply the required information in his absence, the whole purpose of appointment of the appellant was frustrated because of his frequent absence etc. etc. In the instant case, the facts are entirely different. It is no doubt true that so far as the appointment of the petitioner is concerned, it is temporary in nature. However, it is not the case of the respondents that the petitioner was required to be replaced by a regular candidate nominated or appointed vice him. It is also not the case of the respondents either in the impugned order or in the affidavit-in-reply that because of the absence of the petitioner, the work of the department has suffered. It is also not their case that the petitioner was the only

Carpenter available and that in his absence necessary work could not be undertaken. Therefore, the ratio laid down in A.B. Gajjar's case (*supra*) does not apply in the instant case. As a matter of fact, looking to the impugned order, it becomes abundantly clear that it is not that the suitability that is "sought to be considered, but it is a ground on which the action has been taken and since no opportunity is afforded to the petitioner before passing the impugned order, it is required to be quashed and set aside.

10. In *Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another*, also, the services of a permanent employee of the Road Transport Corporation were terminated on the ground of remaining absent without reasonable cause. However, the said order was passed without giving any opportunity to show cause. The said order was held illegal and against the principles of natural justice. Accordingly, it was quashed and set aside.

11. Similarly in the case of *Jai Shanker Vs. State of Rajasthan*, there was a statutory provision in the form of Regulations providing "automatic termination" of service on overstay. In spite of that, the Constitutional Bench of the Supreme Court held that an order of termination of service of such an employee would be violative of Article 311 of the Constitution of India, and such action must be taken only in accordance with the principles of natural justice and after giving opportunity to show cause. If it is not done, the action is liable to be quashed.

12. An interesting question arose before the Division Bench of this Court in the case of *Anopsinh Jatubha v. D.S.P., Jamnagar and Ors.*, reported in 1986 27 GLR 753. In that case, the services of the appellant were terminated since his services were not required by the Department. It was contended by the appellant that he was appointed as a temporary Constable and was on probation. It was alleged that he was indulging in unfair practice at the Departmental Training Examination and, therefore, he was not allowed to appear further in the examination and his service came to be terminated. He, therefore, contended that the order though innocuous in form was not really innocuous but punitive in nature. The petition which was filed by the appellant-petitioner came to be dismissed by the learned single Judge of this Court and a Letters Patent Appeal was filed. According to the learned single Judge, the appellant was attempting to create a dilemma, i.e., if the respondents allege any charges against him, it would be hit by Article 311(2), and if no charges are levelled against the appellant, the termination will be hit by discrimination offending Article 14 of the Constitution. When the Letters Patent Appeal was filed by the appellant against the said decision, the Division Bench held that if the services of the appellant were sought to be terminated because of the alleged malpractice, inquiry was required to be held and an opportunity ought to have been afforded. With regard to the dilemma the Division Bench observed (at page No. 758 of GLR):

We are not concerned with regard to the difficult situation the respondents have been put in terminating the services of the appellants. We are more concerned as to whether the foundation for the termination is the malpractice indulged in by

the appellants in copying at the examination hall. As we have seen from the facts of the case and the allegation in the affidavit-in-reply, the respondents terminated the services of the appellant only for the malpractice and they did not mention the same in order to give an opportunity to the appellants to seek some other Government employment without any stigma attached to them.

13. Similarly, in the case of Jagdish Parsad Vs. Sachiv, Zila Ganna Committee, Muzaffarnagar and Another, , even though the order terminating the services of the Clerk of the Co-operative Cane Development Society Ltd., Muzaffarnagar was innocuous in form being "unsuitable for employment in the society", the Supreme Court held that as a matter of fact the order of termination was passed since there was concealment of the fact of termination of former services for involvement in corruption case and, thus, in substance, the order was penal in nature and since no inquiry was initiated before taking action, the order was illegal and contrary to law.

14 In view of the above judgments and considering the impugned order at Annexure "B" as well as affidavit-in-reply filed by the respondent No. 2 wherein it is stated that the petitioner was in habit of remaining absent, it is required to be held that the impugned order casts stigma on the petitioner. It is not disputed that no notice had been issued, no explanation of the petitioner was sought nor was he afforded an opportunity of hearing. In these circumstances, the impugned order requires to be declared as illegal and contrary to law.

In view of my above findings, the impugned order is quashed and set aside. Now the question is regarding the reliefs which are to be granted in favour, of the petitioner.

The petitioner has prayed in the petition that the impugned order of termination passed against the petitioner requires to be quashed and set aside and that this Court may direct the respondents to reinstate the petitioner to his original post with full back wages and consequential benefits with continuity in service as if the impugned order of termination has not been passed and also to direct the respondents to regularise the services of the petitioner.

15. It is the contention of the respondents that so far as regularisation is concerned, even if this Court holds that the impugned order is illegal, at the most the said order requires to be interfered with but the relief of regularisation of services of the petitioner cannot be granted. I am of the opinion that the said contention is well founded and requires to be accepted. However, when the action of the respondent is held to be bad in law and unlawful, the necessary direction with regard to the reinstatement of the petitioner in service requires to be granted.

The next question is with regard to payment of back wages. It is contended by Miss Doshit that in the exercise of the powers under Article 226 of the Constitution of India, the High Court can grant the reinstatement but not back wages. She heavily relied on the judgment of the Supreme Court in the case of

Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, . In that case, also the respondent employee was appointed as a Warehouse man with the Corporation and in pursuance of the inquiry, he was dismissed from service. He filed a writ petition in the High Court of Allahabad under Article 226 of the Constitution of India praying for a Writ of Certiorari to quash the order of dismissal on the ground that it was violative of the principles of natural justice, inasmuch as he was not allowed to cross-examine witnesses and to establish his innocence. The High Court allowed the petition and granted re-instatement with full back wages, and the Corporation approached the Supreme Court. It was contended on behalf of the Corporation that even if the dismissal of the respondent was wrongful, the High Court could only quash the same but could not in the exercise of its certiorari jurisdiction under Article 226 of the Constitution give further direction that the employee should be reinstated in service with full back wages. Upholding the said contention Sarkaria J., observed:

Thus, in matter of employment, while exercising its supervisory jurisdiction under Article 226 of the Constitution, over the orders and quasi judicial proceeding of an administrative authority not being a proceeding under the industrial/labour law before an industrial/labour tribunal culminating in dismissal of the employee, the High Court should ordinarily, in the event of the dismissal being found illegal, simply quash the same and should not further give a positive direction for payment to the employee full back wages (although as a consequence of the annulment of the dismissal, the position as it obtained immediately before the dismissal is restored), such peculiar powers can properly be exercised in a case where the impugned adjudication or award has been given by an Industrial Tribunal or Labour Court. The instant case is not one under Industrial/Labour Law. The respondent-employee never raised any industrial dispute, nor invoked the jurisdiction of the Labour Court or the Industrial Tribunal. He directly moved the High Court for the exercise of its special jurisdiction under Article 226 of the Constitution for challenging the order of dismissal primarily on the ground that it was violative of the principles of natural justice which required that his public employment should not be terminated without giving him a due opportunity to defend himself and to rebut the charges against him. Furthermore, whether a workman or employee of a statutory authority should be reinstated in public employment with or without full back wages, is a question of fact depending on evidence to be produced before the Tribunal. If after the termination of his employment the workman/employee was gainfully employed elsewhere, that is one of the important factors to be considered in determining whether or not the reinstatement should be with full back wages and with continuity of employment. For these two-fold reasons, we are of opinion that the High Court was in error in directing payment to the employee full/ back wages.

16. Miss Doshit also relied on the recent judgment of the Supreme Court in the case of Virender Kumar, General Manager, Northern Railways, New Delhi Vs.

Avinash Chandra Chadha and others, . In that case, the petition was filed by the petitioners for the purpose of getting promotion to the higher post and for consequential benefits including arrears of salary with retrospective effect. Though the Supreme Court upheld the contention with regard to the promotion of the petitioners, it did not grant prayer of back wages with retrospective effect.

17. In any opinion, in the instant case the petitioner is required to be granted Teinstatement with full back wages. So far as Virender Kumar's case (supra) is concerned, the facts were entirely different. It has been observed by the Supreme Court that initially when the petitioners approached the Court, their grievance was with regard to their seniority and promotion to the grades in Class III service. The High Court had also its direction said nothing about the promotions to Class II service. The respondents, therefore, have gained substantially since, the promotions to Class II and above were not the subject-matter of the writ petition before the High Court. As regards the emoluments of higher posts with retrospective effect, the said relief was refused by the High Court. It was further observed that even the entitlement of the respondents to the higher grades in Class II posts as per the directions of the High Court was on the basis of the quota and rota rule which in itself was both inequitable and irrational. The Court proceeded to observe:

Time and again, the rule has been criticised on account of the absurd result to which it leads, viz., the deemed appointments have to be given to the concerned employees even from the date when they were not in service and probably when they were still in their Schools and Colleges. We are informed across the bar that this is the situation even with respect to some of the respondents herein. There is, therefore, neither equity nor justice in favour of the respondents to award them emoluments of the higher posts with retrospective effect.

(Emphasis supplied)

Thus, looking to the facts of Virender Kumar's case (supra), the Supreme Court refused to grant relief on legal as well as equitable grounds. The respondents were not legally entitled to get promotion from the date on which they had prayed the benefits of emoluments with retrospective effect and also on the principle of "no work no pay". In the instant case, the facts are entirely different. The petitioner was appointed as a Carpenter and he was performing his function and discharging his duties. It was not the voluntary act on his part to discontinue the work, but his services came to be terminated by me impugned order. Thus, it is the action of the respondent-authorities by which he was deprived of the said work. If in the these circumstances, the respondents are not ordered to pay back wages, it would be allowing the respondents to take undue advantage of their own wrong inasmuch as on the one hand, they terminated the services of the petitioner by an order which is held to be illegal and on the other hand, they can successfully contend that on the basis of "no work no pay" the petitioner should not be paid back wages.

18. In a number of cases, the Supreme Court as well as this Court was called upon to consider and decide as to whether the employee would be entitled to get such benefit of back wages. In *Maharaja Sayajirao University of Baroda and Others Vs. R.S. Thakar*, the services of an employee were terminated by the University and the said order was held illegal. Regarding back wages, the Court observed that when the termination was illegal, the employee was entitled to reinstatement and back wages. However, in the facts and circumstances, of the case and particularly in view of the fact that after termination of the services, the employee was retired during the pendency of the litigation before the High Court and started practice in law that certain amount was deducted.

19. Similarly in the case of *G. T. Lad and Others Vs. Chemical and Fibres of India Ltd.*, it was observed by the Division Bench of three Judges of the Supreme Court that rule in such cases is that where reinstatement has been directed by the Court, the entire back wages must follow as a matter of course. The Court proceeded to observe that:

There is a discretion in the Court having regard to the special circumstances is any, to modify the said normal rule.

(Emphasis supplied)

Again, in the case of *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, a Division Bench of three Judges ruled that when dismissal is found to be improper, ordinarily the employee is required to be reinstated in service with full back wages. In the words of D.A. Desai, J.:

Ordinarily, it is well settled that if termination of service is held to be bad, no other punishment in the guise of denial of back wages can be imposed and, therefore, it must as a necessary corollary follow that he will be entitled to all the back wages on the footing that he has continued to be in service uninterruptedly.

In that case, however, considering the facts and circumstances the Court granted 50% back wages instead of full back wages. It is important to note that in that case also, the services of the appellant were terminated by the respondent-Corporation and the appellant directly approached the High Court under Article 226 of the Constitution of India.

20. Even in case of promotion also, such a relief can be granted and in fact it was granted in case of *P.S. Mahal and Others Vs. Union of India (UOI) and Others*, which was distinguished in *Virender Kumar's* case (*supra*) referred to earlier. This Court also in the case of *Mohanbhai Dunderbhai Parmar v. Y.B. Zala and Anr.*, reported in [1979] 20 GLR 497 and *Dhangauri Valji Bhatt Vs. District Panchayat*, took similar view. In *Dhangauri's* case (*supra*), this Court observed:

It is now well settled that once the order of reinstatement is granted back wages should follow as a matter of course.

21. My attention was invited by Mr. Padiwal to the decision of Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, . In that case, the Departmental inquiry was held against an employee for misappropriation of certain amount, which finding was held to be bad based on "no evidence". In view of the said finding, the order of dismissal was set aside and the reinstatement was granted. With regard to the back wages the Supreme Court observed as under:

It was next contended on behalf of the appellant that reinstatement with full back wages be awarded to him. Mr. P.K. Jain, learned Counsel for the employer countered urging that there is evidence to show that the appellant was gainfully employed since the termination of service and therefore he was not entitled to back wages. In support of this submission Mr. Jain pointed out that the appellant in his cross-examination has admitted that during his forced absence from employment since the date of termination of his service, he was maintaining his family by helping his father-in-law Tarachand who owns a coal-depot, and that he and the members of his family lived with his father-in-law and that he had no alternative source of maintenance. If this is gainful employment, the employer can contend that the dismissed employee in order to keep his body and soul together had taken to begging and that would as well be a gainful employment. The gross perversity with which the employer had approached this case had left us stunned. If the employer after an utterly unsustainable termination order of service wants to deny back wages on the ground that the appellant and the members of his family were staying with the father-in-law of the appellant as there was no alternative source of maintenance and during this period appellant was helping his father-in-law Tarachand who had a coal-depot, it cannot be said that the appellant was gainfully employed. This was the only evidence in support of the submission that during his forced absence from service he was gainfully employed. This cannot be said to be gainful employment so as to reject the claim for back wages. There is no evidence on the record to show that the appellant was gainfully employed during the period of his absence from service. Therefore, the appellant would be entitled to full back wages and all consequential benefits.

(Emphasis supplied)

22. From the above cases, it becomes clear that the normal rule is reinstatement in service with full back wages. In fact, in Rajinder Kumar's case (supra) there was some evidence to show that the employee was gainfully employed since the termination of service as he had admitted in his cross-examination that after the termination of service he was maintaining his family by helping his father-in-law who owned a coal-depot and that he and the members of his family lived with his father-in-law.

23. According to the Supreme Court, such an argument would be perverse and the Supreme Court was "stunned". In the opinion of the Court, after an utterly unsustainable termination order of service the employer cannot deny back wages on the ground that the workman had to maintain himself and his family members

by doing something. In the instant case, it is not even contended by the respondent-authorities in the affidavit-in-reply that after the impugned order of termination, the petitioner was serving elsewhere or was gainfully employed or earning anything. In view of the above facts and circumstances and the judgments cited before me, I am clearly of the opinion that the petitioner is entitled to full back wages.

In the result, all the contentions raised on behalf of the respondents are rejected. The impugned order at Annexure "B" is quashed and set aside by directing the respondent-authorities to reinstate the petitioner in service as if the impugned order had never been passed. Rule is made absolute accordingly with costs.