

(2014) 11 BOM CK 0169
In the Bombay High Court
Case No : Writ Petition No. 2427 of 2007

Principal, Mungsaji Maharaj Mahavidyalaya and Others	APPELLANT
Vs	
Tulshiram Januji Raut	RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227 — Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 - Section 28 — Penal Code, 1860 (IPC) - Section 34, 380

Citation : (2015) 6 ALLMR 579 : (2015) 6 BomCR 663 : (2015) 2 MhLj 531

Hon'ble Judges : R.K. Deshpande, J.

Bench : Single Bench

Advocate : R.L. Khapre, for the Appellant; N.R. Saboo, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Deshpande, J. Complaint (ULP) No. 41 of 2000 filed by the respondent-complainant under section 28 read with Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU and PULP Act") has been allowed by the Industrial Court, Yavatmal, by its judgment and order dated 21-2-2007. The petitioner-employer is directed to reinstate the complainant in service with retrospective effect, that is from the date of his suspension on 3-8-1985, and to further pay him all the benefits due to him, viz. salary, increments, pay scale and other incidental benefits till the date of superannuation. The complainant is also held entitled to the superannuation benefits from the date of his superannuation, that is from 1-7-1999 onwards, with the costs of Rs. 500/- towards litigation. The employer is, therefore, before this Court in this petition. The parties shall hereinafter be referred to as the complainant and the employer. The complainant was working as a Watchman with the employer from the year 1992. On 9-7-1985, about 41 tin sheets were found missing from the stores of the employer. The offences of theft under section 380 read with section 34 of the Indian Penal Code were registered against the complainant along with four other

persons, viz. Gopal @ Munna Mahadeo Gulhane, Naresh Kanhuji Harkunde, Abdul Kayyum Mohammad Ibrahim, and Baburao Govinda Raut. All of them were arrested on 17-7-1985 and were in the police/judicial custody for a period of eight days up to 22-7-1985. Since the detention of the complainant in police/judicial custody on criminal charge was for a period exceeding 48 hours, an order of suspension was issued by the employer on 3-8-1985 (Exhibit 19) placing the complainant under suspension with effect from 3-8-1985. The complainant attained the age of superannuation on 1-7-1999, when the prosecution was pending and his suspension was in force. He was acquitted by the Judicial Magistrate First Class, Darwah on 22-12-1999 (Exhibit 36) in respect of the offence of theft alleged against him vide Regular Criminal Case No. 1943 of 1985. The complainant approached the employer on 31-1-2000 with representation at Exhibit 37 to release all the monetary benefits. He was asked to produce his date of birth certificate. The complainant produced it on 2-2-2000 at Exhibit 38, and since then no action was taken against him. He, therefore, filed Complaint (ULP) No. 41 of 2000 in the Industrial Court.

2. The Industrial Court has recorded the finding that after acquittal of the complainant on 22-12-1999, the employer ought to have issued a letter directing him to attend the College. There is no evidence on record to show that the employer issued any such letter to the complainant. On the contrary, the complainant has issued a letter at Exhibit 37 dated 31-1-2000 asking the employer to pay him salary for the period from 3-8-1985, as he has been acquitted of the criminal case. It is the finding recorded that the Principal of the College, who was examined, has admitted that the subsistence allowance was paid to the complainant up to 31-3-1986 and thereafter no such allowance was paid. The complainant was clearly acquitted and there was no appeal preferred against it. The denial of salary to the complainant for the period from the date of suspension till the date when he attained the age of superannuation of 60 years on 1-7-1999, was unjustified, and hence directed the payment of salary and allowances till the date of superannuation and to release the benefits to which he is entitled after the date of superannuation.

3. Shri Khapre, the learned counsel appearing for the employer, submits that the payment of subsistence allowance is governed by Rule 24 of the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code [Terms and Conditions of Service of Non-Teaching Employees] Rules, 1984 ("the Standard Code"). He has urged the complainant was paid subsistence allowance as per this Rule till 31-3-1986 and thereafter it was stopped, because he failed to attend the duties and to sign the muster roll till the date of his superannuation on 1-7-1999. The complainant was, therefore, not entitled to subsistence allowance. He further submits that in terms of sub-rule (2) of Rule 24 read with sub-rules (4) and (5) of Rule 45 of the Standard Code, the employee was required to produce a certificate that he did not accept any private employment or engage himself in trade or business during the period of suspension or was not in gainful employment and that he did not leave the headquarters during the

period of suspension and, therefore, he was not entitled to subsistence allowance. Thus, Shri Khapre tried to justify non-payment of subsistence allowance from 31-3-1986 to 1-7-1999.

4. Shri Khapre has invited my attention to Fourth Proviso below sub-rule (3) of Rule 24 and has urged that if the Management refused to pay or fails to start and continue the payment of subsistence to an employee under suspension, the Director of Higher Education, Maharashtra State, Pune, is authorized to deduct an equal amount from the grant that may be due and payable or may become due and payable to the College. He submits that the complainant was not paid subsistence allowance from 31-3-1986 and, therefore, this remedy under the Proviso was available to him at the appropriate time. He further submits that from 1986 till the date of his acquittal on 22-12-1999, the complainant never made any such grievance and hence the Industrial Court was not competent to go into such question and issue directions.

5. Shri Khapre for the employer has invited my attention to sub-rules (4), (5), (6) and (7) of Rule 24 of the Standard Code, including the two Provisos below therein. All these provisions are reproduced below :

"24. Subsistence Allowance. -

(4) When an employee under suspension attains the age of superannuation while under suspension, he shall be deemed to have been retired on attaining the age of superannuation and any departmental or judicial proceedings pending against him shall be continued even after his retirement. He shall not be entitled to subsistence allowance after he attains the age of superannuation. If he has opted for the Contributory Provident Fund Scheme, he shall be entitled to his share of contribution on his attaining the age of superannuation but he shall not be entitled to the University's of management's share to the Contributory Provident Fund. If he has opted for the pension-cum-gratuity Scheme, he shall be entitled to provisional pension not exceeding the maximum pension which would have been admissible to him on the basis of qualifying service upto the date immediately preceding the date on which he was placed under suspension. No amount of Death-cum-Retirement Gratuity shall be paid to him till his case is finally decided.

(5) When an employee who has been suspended is reinstated, the Competent Authority to order the reinstatement shall consider and makes a specific order -

(a) regarding the said period being treated as duty or "leave", and

(b) regarding the pay and allowance to be paid to the employee for the period of his absence from duty.

(6) If the Authority mentioned in sub-rule (5) is of the opinion that the employee has been fully exonerated or in the case of suspension, that it was wholly unjustified, the employee shall be given full pay and allowances, to which he could have been entitled to, had he not been dismissed, removed or suspended,

as the case may be. In that case the subsistence allowance already paid to him shall be fully recovered from the arrears of the pay and allowances. The University or Management shall bear expenditure on pay and allowances of the substitute, if any, appointed in place of the employee under suspension, and the same shall not be held admissible for Government Grants.

(7) In case the employee is not fully exonerated, the authority mentioned in sub-rule (5) shall specify in the order the pay and allowances to be given to such an employee which may either be equal to (i) subsistence allowance already sanctioned to him, or (ii) any other percentage of pay depending upon the merits of the case :

Provided that the period of absence from the date of suspension to the date of reinstatement or otherwise can be converted into leave due and admissible only if the employee concerned requests the Authority mentioned in sub-rule (5) in writing :

Provided further that the subsistence allowance already paid to an employee shall be fully recovered either from the pay and allowances as the case may be or from the leave salary payable to him."

Shri Khapre submits that in terms of sub-rule (4) above, if an employee under suspension attains the age of superannuation, he is entitled to the contributory provident fund or the provisional pension-cum-gratuity and this is required to be decided by the employer. Under sub-rule (5), when an employee under suspension is reinstated, the competent authority ordering reinstatement has to decide regarding the period of suspension to be treated as duty or leave and regarding the pay and allowances to be paid to the employee for the period of his absence from duty. Under sub-rule (6), if the competent authority is of the opinion that the employee has been fully exonerated or in the case of suspension, that it was wholly unjustified, then the employee shall be given full pay and allowances, to which he could have been entitled to, had he not been dismissed, removed or suspended, as the case may be. In terms of sub-rule (7), where an employee is not fully exonerated, the competent authority shall specify in the order the pay and allowances to be given to such employee, which may either be equal to (i) subsistence allowance already sanctioned to him, or (ii) any other percentage of pay depending upon the merits of the case. Shri Khapre submits that in view of the aforesaid provisions of sub-rules (4), (5), (6) and (7) of Rule 24 of the Standard Code, it is the exclusive jurisdiction of the competent authority, i.e. the employer, to take decisions in respect of all such matters. In the absence of any such order by the competent authority, the Industrial Court was not competent to usurp the jurisdiction of the competent authority and issue such directions.

6. For all the aforesaid propositions, Shri Khapre for the employer has relied upon the decisions of the Apex Court in the cases of (i) The Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal, ; (ii) Depot Manager,

Andhra Pradesh State Road Transport Corporation, Hanumakonda Vs. V. Venkateswarulu and Another, etc. etc., ; (iii) Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others, ; (iv) Shri Vasant Krushnaji Kamble Vs. The State of Maharashtra and Zilla Parishad, ; (v) The Greater Hyderabad Municipal Corporation Vs. M. Prabhakar Rao, ; and (vi) Gurpal Singh Vs. High Court of Judicature for Rajasthan, .

7. Rule 45 of the Standard Code deals with the suspension, and sub-rule (2) of Rule 45 states that the employee shall be deemed to have been placed under suspension with effect from the date of his detention, if he is detained in police or judicial custody, on a criminal charge, for a period exceeding 48 hours. Undisputedly, in the present case, the suspension of the complainant on 3-8-1985 (Exhibit 19) was under sub-rule (2) of Rule 45 on the ground that the complainant was detained in police or judicial custody on a criminal charge for eight days from 17-7-1985 to 22-7-1985, that is the period exceeding 48 hours. Shri Khapre for the employer concedes to this position. The suspension of the complainant was automatic and it was not the choice with the employer whether to suspend the complainant or not and it lasts till acquittal.

8. Neither the order of suspension at Exhibit 19 nor any of the statutory rules referred to by Shri Khapre for the employer prescribe the condition that the complainant or employee was required to attend his duties in the College or to remain present in the College premises and to sign the muster roll during working hours on working days. It was not the defence of the employer that the complainant was under any private or gainful employment during the period of suspension or that the complainant left the head quarters during the period of suspension without prior approval of the competent authority. The only ground to deny the subsistence allowance was that the complainant stopped attending the duties to sign the muster roll with effect from 31-3-1986. In the absence of any such condition either in the order at Exhibit 19 or in the statutory rules and in the absence of any such defence, the employer could not have denied the complainant the subsistence allowance on any such ground to the complainant.

9. Rule 24 of the Standard Code deals with the rates with which the subsistence allowance is to be paid. In terms of clause (a) under sub-rule (1) therein, the employer is duty bound to pay a subsistence allowance at an amount equal to the leave salary which the employee would have drawn, if he had been on leave on half pay and in addition, dearness allowance based on such leave salary to the employee under suspension. Gradually after a period of six months, it has to be increased in terms of clause (b) under the said Rule. It is not in dispute that the complainant was not paid the subsistence allowance as per the provision of sub-rule (1) of Rule 24 with effect from 31-3-1986. The total denial of such subsistence allowance, without any valid reason amounts to an unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act. The cause of action to claim revocation of suspension and arrears of salary arose only after acquittal on 22-12-1999, when the employer neglected to pay the same in the

year 2000 when the complaint was filed. There was as such no delay in filing complaint.

10. After the complainant attained the age of superannuation on 1-7-1999, the employer has not taken any decision in respect of the contributory provident fund or the provisional pension-cum-gratuity payable to the complainant, although the prosecution was pending till 22-12-1999. In view of this, the reliance on sub-rule (4) of Rule 24 of the Standard Code is not at all attracted and it does not help the employer in any manner. Sub-rule (5) of Rule 24 will be attracted only if the competent authority passes an order of reinstatement of the complainant in service. In spite of acquittal on 22-12-1999, till this date the employer has not passed any order of reinstatement, despite the fact that it was made known of the acquittal of the complainant on 22-12-1999 by the communication at Exhibit 37, dated 31-1-2000. The said Rule, therefore, would not operate in the absence of condition precedent of passing an order of reinstatement. Similarly, no specific orders are passed expressing an opinion that the complainant was fully exonerated or that the suspension was wholly unjustified, so as to proceed further to pass appropriate consequential orders in terms of sub-rules (6) and (7) of Rule 24 of the Standard Code by the competent authority in spite of the fact that the petitioner made a representation for payment of salary on 31-1-2000 at Exhibit 37.

11. In a recent decision of the Apex Court in the case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others, , the Apex Court has reviewed the case law on the question of payment of backwages. In paras 22 and 38.5 therein, being relevant, are reproduced below :

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of serving the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full backwages. If the employer wants to deny backwages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the

employee was gainfully employed and was getting the same emoluments. The denial of backwages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay backwages including the emoluments."

"38.5. The cases in which the competent Court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the Court or tribunal concerned will be fully justified in directing payment of full backwages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full backwages or the employer's obligation to pay the same. The Courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full backwages."

It is held in the aforesaid decision that the reinstatement of an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or the Court that the action taken by the employer is ultra vires, the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full backwages. If the employer wants to deny backwages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period, the employee was gainfully employed and was getting the same emoluments. The denial of backwages to an employee, who has suffered due to an illegal act of the employer, would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay backwages, including the emoluments.

12. The Apex Court has further held that the discretion exercised by the competent Court or the tribunal in awarding full backwages should be interfered with by the High Court under Article 226 of the Constitution of India, merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full backwages or the employer's obligation to pay the same. The Courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman, and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee his dues in the form of full backwages.

13. In the decision of the Apex Court in the case of *Banshi Dhar Vs. State of Rajasthan and Another*, , it has been held that no hard and fast rule can be laid down in regard to the grant of backwages and each case has to be determined

on its own facts. It has been held that the question of backwages shall be considered only if the employer has taken an action by way of disciplinary proceedings and action was found unsustainable in law, preventing the employee unlawfully from performing his duties.

14. The position of the complainant in attaining the age of superannuation during the period of his suspension pending the criminal prosecution resulting in his honourable acquittal without there being any further order of suspension, termination, dismissal, removal from service or any other punishment cannot be worst than an employee, who is reinstated in service upon setting aside the order of dismissal on the basis of the honourable acquittal in criminal prosecution, in terms of sub-rule (6) of Rule 24 of the Standard Code where the employee is given full pay and allowances. In the facts and circumstances of this case, the employee not being at fault on any count would be entitled to full pay and allowances to which he could have been entitled to, had he not been dismissed, removed or suspended in terms of sub-rule (6) of Rule 24 of the Standard Code, after deducting the amount of subsistence allowance already paid to an employee, upon the findings by the Industrial Court that the complainant was fully exonerated and suspension was totally unjustified.

15. The Industrial Court has recorded the finding that on going through the order passed by the Judicial Magistrate First Class in criminal prosecution, it is clear that the charges against the complainant have not been proved. The seizure of the tin sheets from the complainant was not established. I have also gone through the judgment dated 22-12-1999 in the case of acquittal in Regular Criminal Case No. 1943 of 1985. There is not even a remote connection of the complainant with the charges framed against him. None of the witnesses examined by the prosecution have deposed against the complainant and all the persons prosecuted have been acquitted. It was thus a clear case of honourable acquittal and not even a case of benefit of doubt. In view of this, the suspension of the complainant on 3-8-1985 was totally unjustified.

16. The complainant remained under suspension for a period of 14 years from 3-8-1985 till he attained the age of superannuation of 60 years on 1-7-1999 solely on the ground that the criminal prosecution was pending against him. After attaining the age of superannuation, the complainant was acquitted on 22-12-1999. The suspension of the complainant being automatic under sub-rule (2) of Rule 45, it would last till the date of his acquittal, but the complainant attained the age of superannuation before his acquittal and as such, the relationship of "employer and employee" came to an end on 1-7-1999. There was neither any order of revocation of suspension nor of reinstatement. Hence, the suspension automatically came to an end on 1-7-1999 and in terms of sub-rule (4) of Rule 24 of the Standard Code, the complainant was not entitled to get subsistence allowance after the date of superannuation.

17. It is not in dispute that after the acquittal on 22-12-1999, the employer did not take any decision to conduct any enquiry against the complainant in respect

of the charge of theft or missing of 41 tin sheets from the stores. The employer never expressed its intention or desire to hold any such enquiry either during the pendency of the complaint before the Industrial Court or writ petition before this Court. There is nothing placed on record to show that the employer wanted to conduct any enquiry against the complainant. The complainant was never terminated, dismissed, discharged or removed from service. The total deliberate inaction on the part of the employer to pass appropriate orders under sub-rules (4), (5), (6) and (7) of Rule 24 of the Standard Code for a further period of 8 years from 1-7-1999 till the date of decision of the Industrial Court on 21-2-2007 would not take away the jurisdiction of the Industrial Court to adjudicate over the controversy and pass appropriate orders upon a finding that there was an unfair labour practice committed by the employer under Item 9 of Schedule IV of the MRTU and PULP Act.

18. Shri Khapre for the employer could not point out any express or implied bar to the jurisdiction of the Industrial Court to entertain, try and decide such controversy and to pass appropriate orders in such a situation. The power of the Director of Higher Education under Fourth Proviso below sub-rule (3) of Rule 24 of the Standard Code to deduct an equal amount of suspension allowance payable to an employee from the grant that may be due and payable or may become due and payable to the College, cannot be construed as a bar to the jurisdiction of the Industrial Court to implement the provisions of the Standard Code.

19. Shri Khapre has invited my attention to Rule 109 of the Standard Code, which is reproduced below :

"109. Counting of period of Suspension. - Period passed by a non-teaching employee under suspension pending inquiry into conduct shall count as qualifying service where, on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be wholly unjustified; in other cases, the period of suspension shall not count unless the Director of Higher Education, Maharashtra State, Pune, pass orders and expressly that it shall count to such extent as he may declare."

He submits that in terms of the aforesaid Rule, the period passed by a non-teaching employee under suspension pending enquiry into conduct shall count as qualifying service where, on conclusion of such enquiry, he has been fully exonerated or the suspension is held to be wholly unjustified. He further submits that in other cases, the period of suspension shall not count unless the Director of Higher Education, Maharashtra State, Pune, passes orders and expressly that it shall count to such extent as he may declare.

20. In terms of the aforesaid Rule 109 of the Standard Code, the period passed by the complainant under suspension pending prosecution, has to be counted as qualifying service upon acquittal of the complainant on 22-12-1999 and the finding recorded by the Industrial Court and by this Court that the suspension

was totally unjustified. In view of this, the question of the Director of Higher Education, Maharashtra State, Pune, passing any orders in terms of Rule 109 of the Standard Code does not at all arise. The said provision does not in any manner help the petitioner-employer.

21. Sub-rule (1)(c) of Rule 113 of the Standard Code dealing with the interruption in service, is relevant and, therefore, is reproduced below :

"113. Effect of interruption in service. - (1) An interruption in the service of a non-teaching employee entails forfeiture of his past service except in the following cases :--

...

(c) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the non-teaching employee dies or is permitted to retire or is retired on attaining the age of superannuation while under suspension.

..."

In terms of the aforesaid Rule, any interruption in service of a non-teaching employee on account of his suspension, which is followed by reinstatement or retirement on attaining the age of superannuation while under suspension would not entail forfeiture of his past service.

22. In the present case, the complainant remained under suspension till he attained the age of superannuation on 1-7-1999. The complainant was, therefore, in uninterrupted service from 1992 till 1-7-1999. The service rendered by the complainant from 3-5-1985 till 1-7-1999 can neither be forfeited nor be considered as interruption in service in terms of Rule 113 of the Standard Code. There was no severance of the status of "employer and employee" between the petitioners and the complainant till the date of superannuation; so as to deprive any post-retiral benefits to the complainant. The denial of post-retiral benefits to the complainant, as are available in law, on the ground that the complainant was under suspension from 3-5-1985, he was not reinstated in service till the age of superannuation in the facts and circumstances of this case attracted an unfair labour practice under Item 9 of Schedule IV of the MRTU and PULP Act.

23. I have gone through all the decisions cited by Shri Khapre for the petitioner-employer and it is not necessary to deal separately with all such decisions. In all these cases, the Apex Court was concerned with the specific orders passed by the competent authorities, in exercise of their jurisdiction conferred by the statutory provisions, regarding period of suspension, pay and allowances to which the employee was entitled to during the period of suspension, entitlement of an employee to pay and allowances upon acquittal from criminal prosecution or exonerating from the charges levelled, and consequently entitlement to receive post-retiral benefits. The Apex Court has held that the Courts or tribunals should not interfere with such orders passed by the competent authorities. In

none of these cases, the question of jurisdiction of the Industrial Court, more particularly, under Item 9 of Schedule IV read with section 28 of the MRTU and PULP Act, to adjudicate upon all such issues covered by statutory rules; such as sub-rules (4) to (7) of Rule 24 of the Standard Code in the present case, is involved. Those are not the cases where the employer competent and duty bound to take decision has shown total inaction keeping the fate of the employee hanging.

24. To sum up the position, the non-payment of subsistence allowance from 31-3-1986 was wholly unjustified. The employer has neglected to exercise its jurisdiction vested in it to pass appropriate orders at appropriate time. The complainant was wrongfully deprived of the source of sustenance not only for a period of 14 years up to 1-7-1999, but also thereafter till this date, that is for a total period of 29 years. It was, therefore, for the employer, in the facts and circumstances of the case, to plead and prove before the Industrial Court that the complainant was in the alternate gainful employment and/or that the complainant was not entitled to any post-retiral benefits either on the basis of any statutory provisions or otherwise. To deny the complainant the salary for the entire period of 14 years along with all other retiral benefits without any fault on his part, would amount to punishing the complainant and rewarding the employer for his wrongdoings. The view taken by the Industrial Court cannot, therefore, be disturbed in exercise of the jurisdiction under Article 226 or 227 of the Constitution of India, merely because there is a possibility of forming a different opinion.

25. In the result, the petition is dismissed with the clarification that in terms of the decision given by the Industrial Court impugned in this petition, the complainant would be entitled to arrears of salary from 3-8-1985 till the date of his superannuation on 1-7-1999, along with the increments/emoluments in the pay-scale applicable to him, and thereafter to all post-retiral benefits, as are available to him under the rules. Rule accordingly. No order as to costs.