

(1991) 08 MP CK 0047

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 471 of 1990

State of M.P.

APPELLANT

Vs

Barilal @ Munna Badai and Another

RESPONDENT

Date of Decision : 14-08-1991

Acts Referred:

Citation : (1993) 2 LLJ 1238 : (1992) 37 MPLJ 941 : (1992) MPLJ 941

Hon'ble Judges : S.K. Dubey, J;K.K. Verma, J

Bench : Division Bench

Judgement

S.K. Dubey, J.

By this petition under Article 226 and 227 of the Constitution of India, the petitioner/State of Madhya Pradesh, has challenged the award (Annexure P/1), dated April 23, 1988, in Case No. 35 of 1986 Industrial Disputes Act (Ref.), by Labour Court 1, Gwalior, whereby the order, dated June 16, 1982, of termination of the services of respondent-1 was declared non-est, because of non-compliance of i Section 25F of the Industrial Disputes Act, 1947 (for short, the Act), and respondent-1 was ordered to be reinstated from the date of his termination, with half back-wages.

Sri S.B. Mishra, learned Government Advocate, placing reliance on a Division Bench decision of this Court in M.P. Electricity Board and Others Vs. Basant Kumar Pandey, which relied on a decision of the Apex Court in Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, and a Single Bench decision of this Court in Guna Central Co-operative Bank Ltd. v. Somprakash Manendra and Ors. 1980 (57) FJR 1 contended that the Labour Court did not frame any issue in relation to the question whether the workman was gainfully employed during the relevant period, and in the absence of any evidence and finding thereon in the award, the award of half back-wages from the date of termination till the date of the award deserves to be quashed. Besides, the workman was not entitled to any half back-wages prior to the date of raising of the dispute u/s 2A of the Act.

To deal with this contention some material facts are necessary, which are thus : Indisputably, the workman/respondent-1 was working on daily wages as Lineman in Public Health Engineering Department, Division Datia, who was appointed from April 10, 1980 as a temporary appointee, on the conditions contained in the appointment order (Exhibit P/1-C), which, inter alia states that the appointment was on probation for two months and that on giving one month's advance notice or in lieu of notice, on payment of one month's salary, the services can be terminated. The services of the workman were terminated vide notice, dated April 23, 1982, from June 16, 1982 without compliance of Section 25F of the Act. The workman raised a dispute u/s 2A of the Act vide application, dated August 17, 1983 before the Assistant Labour Commissioner, Gwalior. On failure of arriving at a settlement in the conciliation proceedings and on report u/s 12(4) of the Act, the appropriate Government referred the dispute u/s 10(1) of the Act for adjudication of the Labour Court, vide order of reference, dated June 5, 1984.

In the statement of claim before the Labour Court, the workman challenged the order of termination as null and void because of non-compliance of Section 25F and 25G of the Act; in para 8 the workman specifically pleaded that after termination of his services, he is facing forced unemployment; despite all his efforts he did not get any employment and therefore, is entitled to be reinstated with all full back-wages and ancillary benefits. The petitioner/employer denied the allegations. The Labour Court framed three issues, and one related to relief, but no issue was framed on the pleadings as contained in Para 8 of the statement. Before Labour Court the workman stated on oath in Para 2 that after the date of termination, despite making all his efforts, he could not get any employment; to this there was no cross-examination nor any evidence was led in rebuttal to prove that the workman was gainfully employed. The Labour Court having found that the workman has been retrenched without compliance of Section 25F of the Act, declared the order of termination as non-est and, hence, ordered reinstatement with half back-wages from the date of termination till the date of award.

Ordinarily, a workman, whose services have been illegally terminated either by dismissal, discharge or retrenchment, will be entitled to full backwages, except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Except in special circumstances, the Labour Court or the Industrial Court, as the case may be, may slice off a part, if the workman is not wholly blameless or there are some special circumstances placed on record by the person who objects to modify and to depart from, the normal rule. (See *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others*, *G. T. Lad and Others Vs. Chemical and Fibres of India Ltd.*, *Uttar Pradesh Warehousing Corporation v. Vijay Narayan* (supra) and *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*,

The rule of reinstatement and back-wages, on an order of discharge, dismissal or retrenchment being demolished, was considered and set out in *Hindustan Tin*

Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others,

"It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of services 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, 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 the employer terminated 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. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect,"

In Para 11, at page 478 the Supreme Court further observed:

"In the very nature of things there cannot be a straight-jacket formula for awarding relief of back-wages. All relevant consideration 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."

For departing from the normal rule, the question arises as to whose burden is this- whether of the workman or of the employer-to establish circumstances warranting departure. To remove obscurity, it was first dealt with by a Division Bench of this Court in case of Signeshwar Prasaf Hajari v. General Manager, Bhilai

Steel Plant 1970 MPLJ 773 wherein J.S. Verma J. (as he then was), speaking for the Bench, considering the cases of the Apex Court and other High Courts and also an unreported Division Bench decision of this Court in Madhya Pradesh State Road Transport Corporation v. Industrial Court, Madhya Pradesh, Indore, and Ors. (Miscellaneous Petition No. 50 of 1987), observed:

"Strictly speaking, in all such cases, including those wherein a deduction from full back-wages is permitted, the rule applied is the same. The deduction itself is an application of the same rule and it is not correct to call it a deviation from the normal rule. Such deduction is allowed to avoid any unjust enrichment of the employee. The principle requires only full restitution without any unjust enrichment to the employee, and in working out the same, the employer is entitled to deduct the benefit accrued to the employee during that period. It is for this reason that the employer is permitted to plead and prove circumstances justifying the deduction. It also follows from this, that the onus must therefore, be on the employer who claims the benefit of deduction to ensure proper restitution and to avoid unjust enrichment of the employee. For this reason where there is no evidence and the question has to be decided on the basis of onus, the employer must fail and no deduction from the full back-wages can be made. Viewed at from this angle also, the conclusion reached is the same. We have considered this question at some length because of the impression given that the position in law on this point is somewhat: obscure."

Again, in case of Ramprakash Bhikaram v. Madhya Pradesh State Road Transport Corporation, Bhopal 1980 MPU 29, J.S. Verma J. (as he then was), speaking for the Division Bench, placing reliance on the Apex Court's decision in G.T. Lad and others v. Chemicals and Fibres India, (supra) and Singeshwar Prasad Hajari (supra), observed:

"It cannot, therefore, now be doubted after the Supreme Court decision that on reinstatement of the employee, the entire back-wages must follow as matter of course as a normal rule. Where nothing has been brought on record to indicate that there are any special circumstances requiring the Court in its discretion to modify this normal rule, it is obvious that the normal rule of awarding the entire back-wages must be followed. It need hardly be added that it is the duty of the employer wanting any deduction to be made in this amount to bring on record the special circumstances, if any, which can justify any deduction in that amount and unless and such special circumstances are shown no occasion arises for the Court to exercise its discretion of departing from the normal rule and making any deduction in that amount required to be paid to the employee in accordance with the normal rule. Thus, unless the employer pleads and proves any such special circumstances to justify making any deduction from the amount, the entire back-wages have to be awarded to the employee as a matter of course,"

Later, this question came up for consideration before the Supreme Court in the case of Shambhu Nath Goyal Vs. Bank of Baroda and Others, wherein the Supreme Court considered the duty of framing an issue on the question and in

Para 13 observed (p.423):

"..... The blame for not framing an issue On the question whether or not the workman was gainfully employed in the intervening period cannot be laid on the Tribunal alone. It was equally the duty of the management to have got that issue framed by the Tribunal and adduced the necessary evidence unless the object was to rake up that question at some later stage to the disadvantage of the workman as in fact it has been done. The management appears to have come forward with the grievance for the first time only in the High Court. There is no material on record to show that the workman was gainfully employed anywhere. The management has not furnished any particulars in this regard even before this Court after such a long lapse of time. The workman could have been asked to furnish the necessary information at the earliest stage. The management has not resorted to that course. The workman was not expected to prove the negative...."

True, in case of Guna Central Co-operative Bank, Ltd. (supra), Dr. T.N. Singh, J. laid down that for gainful employment or mitigating loss, a Labour Court or Industrial Court, as the case may be, has to frame an issue and to record a finding. This decision was later relied by a Division Bench of this Court in Basant Kumar case (supra), wherein Dr. T.N. Singh, J., spoke for the Bench. Both the aforementioned cases placed reliance on Apex Court's decision in Uttar Pradesh Warehousing Corporation v. Vijay Narayan (supra) wherein a workman without raising a dispute u/s 2A for adjudication of the Labour Court, directly approached the High Court in a petition under Article 226 of the Constitution of India for quashing an order of termination. In the context without dealing with the question of framing of an issue and the burden of proving the same, the Apex Court observed:

".... Thus, in matters 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...."

Learned Government Advocate on this basis and on the basis of the decision of Madhya Pradesh Electricity Board and Ors. v. Basant Kumar and Ors. (supra) and in Guna Central Co-operative Bank Ltd. (supra), submitted that if this Court is in disagreement with these decisions, the question be referred for decision of larger Bench for settling the law. True, we are bound to follow the judicial discipline which have been reiterated in a number of decisions, that if a Bench of coordinated jurisdiction disagrees with the decision of another Bench, it is proper to refer the matter to a larger Bench for an authoritative decision, which, in our opinion, is not the case here. As the law is clear and settled by the Supreme Court in Hindustan Tin Works v. Its employees (supra) and G. T. Lad and Ors. v. Chemicals and Fibres India, Ltd. (supra) and by this Court in two Division Bench decisions in Madhya Pradesh State Road Transport Corporation v. Industrial Court, Madhya Pradesh, Indore (supra) and Ramprasad Bhikaram v. Madhya Pradesh State Road Transport Corporation, Bhopal (supra), we do not consider it proper to refer the case to larger Bench. We simply have explained and made it clear what has been said and laid down by the Supreme Court.

Besides the law which is clear, on facts, we find that the workman has led evidence in respect of his non-employment and for that there was no cross-examination nor any evidence was led in rebuttal. The parties were alive of the question in issue. Hence, merely non-framing of an issue would not entitle the petitioner/employer to invoke the jurisdiction of this Court for the first time, when no grievance was raised before the Labour Court, and the parties who were alive of the question, led evidence, as it is settled that when parties were conscious of issue, absence of pleading or non-framing of an issue will not be a ground for setting aside the judgment or an award, unless it is shown that prejudice has resulted. Even if it is assumed that onus was on the workman, which is not the correct position of law, the onus lost its importance, as the evidence was led by the workman. (See Hindustan Steel Ltd. v. Labour Court, Orissa 1976 11 LLN 479 Cox and Kings (Agents) Ltd. Vs. Their Workmen and Others,

Coming to the next contention of Sri Mishra, in our opinion, on the facts of the case, it deserves consideration, though Sri A.K. Upadhyaya, learned counsel for the workman, contended that the award of half back-wages from the date of termination is legal and proper and does not call for any interference in writ jurisdiction. But, we find from the record that after termination, the dispute for

the first time was raised by an application u/s 2A of the Act on August 17, 1983; therefore, the workman who is to blame for himself, was not entitled to wages for the period prior to date of raising of the dispute. (See Para 32 of the Judgment in Cox and Kings (Agents) case (supra).

In the result, the petition is partly allowed. The award of half back-wages from the date of termination of the services is substituted from the date of making of the application under Section 2-A, i.e., August 17, 1983. The workman shall be entitled to halfback-wages from August 17, 1983 till the date of the award; and from the date of the award the workman would be entitled to full wages and all ancillary benefits. Though the petitioner/employer has succeeded partly, we direct the petitioner to bear the cost of the workman/respondent-1. Counsel's fee Rs.500 if already certified.

VERMA J. I agree with operative part of the order of my learned brother S.K.Dubey, J.

I was a Member of the Division Bench in Madhya Pradesh Electricity Board and Ors. v. Basant Kumar Pandey (supra), in which Dr. T. N. Singh, J., has spoken for the Court. I, therefore, feel obligated to give my views in respect of the submissions of the learned Government Advocate that the aforementioned ruling is a binding precedent here in support of his contention that the award to the respondent of half back-wages is liable to be quashed because the Labour Court and the Industrial Court did not record a finding that the respondent was not gainfully employed after the termination of his services; or else, the matter be referred to a larger Bench.

In my view, the following points have to be touched upon before taking up the submission that Madhya Pradesh Electricity Board v. Basant Kumar Pandey (supra), is a precedent which is applicable to the case before us:

- (1) What is the doctrine-of precedent and its effect?
- (2) What is that in a judgment-cited as a precedent-which has binding force?
- (3) How to extract the ratio decidendi from a judgment and determine whether or not the discovered ratio decidendi, is applicable as a binding precedent in a given subsequent case?

Point (1): The doctrine of precedent (as accepted and practiced in Britain at present) was settled in the later half of nineteenth century. (Sir C.K.Allen in Law in the Making, Sixth Edn. - Footnote 4, page 215 and page 345).

Dias, in his Jurisprudence (Fifth Edn.) says (at page 126):

"... the doctrine of precedent in Britain has assumed a special form, known as stare decisis the effect of which is that judicial decisions have binding force and enjoy law-quality *per se*."

The doctrine of precedent in the aforementioned form also forms an integral part

of our jurisprudence. In *Krishna Kumar v. Union of India* 1991-I-LLJ-191 a five Judges judgment, it was said (in Paras 19, 20 at page 203 that the doctrine of precedent consists in being bound by a previous decision.

Point (2): Sir George Jessal Osborne to Rowlett 13 Ch.O.774 at page 785 (cited at footnote 2, page 288) in Sir C.Allen s *Law in the Making* Sixth Edn.).

"I have often said, and repeat it, that the only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided."

Dias, at page 126 of his *Jurisprudence* (Fifth Edn.) locates the law-quality in a decision as follows:

"law-quality relates to the principle behind a decision, its ratio decidendi".

In *Krishna Kumar v. Union of India* (supra), the declaration of the rule of ratio decidendi, was given at Para 19 and the first part of Para 20 thus: (p. 203):

"19. The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it.

"20. In other words, the enunciation of the reason or principle upon which a question before a Court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision ..."

Point (3): The process of extracting the ratio decidendi forms part of the judicial process of deciding disputes by giving just decision therein. In Chapter 7 "Justice in deciding disputes precedent" of his *Jurisprudence* Dias says (at page 126):

"Deciding disputes involves three kinds of knowledge: Knowing the facts, knowing the law applicable to those facts, and knowing the just way of applying the law to them. Knowing the law involves knowing how to find it in judicial precedents, statutes and immemorial customs..."

The learned author, Dias, makes eminently illuminating observations at page 138 (Ibid) under the heading Application of Precedents. He says:

"A precedent influences future decisions. Every decision is decided on a specific set of past facts and from a decision on those facts a rule has to be extracted and projected into the future. No one can foresee the precise situations that will arise, to the rule has to be capable of applying to a range of broadly similar situations against a background of changing conditions..."

Applying a precedent to the instant case is a process of matching the fact pattern of the precedent and the ruling thereon with the fact-pattern of the instant case, if they match, the rule is applied, if not, it is distinguished."

Knowing the facts of the instant case as well as in the precedent case means to

have the knowledge of the facts which have been admitted or found to have been proved finally.

Dias goes on to say under the heading Knowing the Law (at pages 139 and 140) as follows:

"What is 'law' in a precedent is its ruling or ratio decidendi, which concerns future litigants as well as those involved in the instant dispute. Knowing the law in this context means knowing how to extract the ratio decidendi horn cases. Statements not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative.

.. ratio is best regarded as a pointer towards the direction which subsequent decisions should take within a broad spectrum of variations. It is not something identifiable once and for all, but a continuing process, and as such it has to be viewed in a continuity of time."

In *Krishna Kumar v. Union of India* (supra), the subject of the process of ascertaining the ratio decidendi of a given decision has been treated as follows in Para 20, at page 203:

"... The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the Court to spell it out with difficulty in order to be bound by it."

Now, I come to the facts of the instant case touching the relief of grant of back-wages to respondent-1. In statement of claim filed before the Labour Court 2, Gwalior, on July 26, 1984, the respondent stated at Para 8, as follows:

^^;g fd lsok ls i`Fkd fd, tkus ds dkj.k izkFkhZ dks osru dh gkfu gks jgh gSA izkFkhZ us lsok ls i`Fkd fd, tkus ds ckn vU; ukSdjh ds fy, dkQh dksf"k"dh fdUrq izkFkhZ dks dksbZ ukSdjh ugha feyh**A

In the written statement the present petitioner, that is, the employer stated as follows:

^^izkFkhZ thfodksiktZu dj jgk gSA bl dkj.k mldk ;g dFku fd og dgha dke ugha dj jgk gS o mls dksbZ ikfjJfed ugha fey jgk gS] vLR; gksus ls Lohdkj ugha**A

^^lsok ls i`Fkd fd, tkus ds ckn eq>s dgha ukSdjh ugha feyh**A

This statement was verified by the Executive Engineer, the officer in charge of the case on the basis of the Government records and information received.

In my view such a statement could not be taken to be a denial, much less a specific denial of the employee's pleading that he had not been able to get any employment after termination of his service till the date of the filing of his statement of claim in the Labour Court.

The aforementioned averments were verified to be true from the personal knowledge of the employee.

It is in this context the absence of an issue on the aforementioned fact (at Para 8 of the statement of claim and the written statement) has to be viewed in the instant case.

The employee deposed on oath on September 24, 1986 (sic).

^^Isok Is i` Fkd fd, tkus ds ckn eq>s dgha ukSdjh ugha feyh**A

During his cross-examination the aforementioned statement was not touched at all. At the same time, the State did not give any evidence whatever in rebuttal of the aforementioned evidence.

Hence, the fact-pattern of the instant case is to be found in the previous three paragraphs.

In *Madhya Pradesh Electricity Board v. Basant Kumar Pandey* (supra), the fact-pattern relevant to the question of the grant of back-wages to the employee has to be gleaned from the following observations in Para.6 of that judgment. The first observation is that the statement was made by the M.P. Electricity Board and Others Vs. Basant Kumar Pandey, at 325):

"... that there is no whisper of any finding to be read in any of the awards as to whether the delinquent employee was in any gainful employment after termination of his service."

Then the Court refers to the submission made by the employees' learned counsel (p-325):

"... that in their written statement the employees/workmen made a claim for payment of back-wages on the basis of their being out of employment."

Then the Court went on to say (p.325):

"However, we do not think that the Labour Court or even the Industrial Court could have even given finding on that because there was no issue framed and no evidence led on the question as to whether the claimants in each case had not been gainfully employed during the relevant period. Accordingly, that part of the award is quashed and the matter is remitted to the Labour Court for deciding the question in accordance with law after framing proper issues and recording necessary evidence, if so adduced by the parties."

So, in *Madhya Pradesh Electricity Board* case (supra), the Court proceeded on the premises that the employer had specifically denied the employees' averments that they had been out of employment. The Court took the non-framing of an issue on the aforementioned point into consideration. The Court also proceeded on the fact that there was no finding of the Labour Court and the Industrial Court on this point and also the fact that there was no evidence on this point.

The Court, therefore, found a fact-situation of the non-adduction of evidence on the point whether or not the employees had been gainfully employed and considered this lacuna the justification for holding that the relief of back-wages had been granted without evidence and was unsustainable in law. This consideration led to the order for the remand of the case to the Labour Court, the appropriate forum for receiving evidence and for adjudicating upon the factum of gainful employment and deciding the point of the relief for grant of back-wages. Thus, the ratio decidendi of the judgment is that the grant of a relief which could be granted by considering evidence could not be sustained in law owing to absence of evidence.

Now, in the instant case before us, the employer did not specifically deny the employee's averments in the pleading that he had failed in getting any employment. Besides, the employee's testimony on the aforementioned point was not only subjected to any cross-examination but also the employer had adduced no evidence despite the grant of adjournments on November 13, 1986, January 15, 1987, March 25, 1987, July 7, 1987, August 11, 1987, October 30, 1987 and January 12, 1988. On April 11, 1988 the employer had no evidence. In these circumstances the Labour Court heard arguments on the merits of the case. Thus the employer had no evidence for rebutting the employee's evidence. Thus, it is not the fact-pattern of the case that there is no evidence in support of the employee's claim for backwages. This fact-pattern is fully distinguishable from the fact-pattern in the precedent case, Madhya Pradesh Electricity Board case (supra), i.e., fact-pattern stated at Para 36 and as posted in the first three lines Para.38 (supra). Hence, the ratio decidendi in that case, as extracted in the last sentence at Para.36 (vide supra), is not applicable to the instant case and, is, therefore, clearly distinguishable.

It is the appropriate stage to point out that in Uttar Pradesh Warehousing Corporation v. Vijay Narayan (supra), it was declared, as follows:

"... 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...".

This declaration that the question of gainful employment is a question of fact lends assurance to the ascertainment of the ratio decidendi in Madhya Pradesh Electricity Board v. Basant Kumar (supra), and also to the view that the ratio decidendi is not applicable to the case now before us.

On the essential fact-pattern of the instant case [(vide) Para.26 (vide supra)] and the statement at the beginning of Para. 6 supra, applying the law laid down at Para.9 of Hindustan Tin Works v. Its employees (vide supra), extracted at Para.6 of my learned brother S.K.Dubey, J., and to decision in Cox and Kings (Agents) Ltd. v. Their Workmen (vide supra), at para 13 to the effect that the workmen were not entitled to back-wages for the period next-before the date of demand notice of reinstatement, I conclude that the writ petition be disposed of

as proposed by my learned brother S.K.Dubey, J., at Para.14 of his judgment.