

(2016) 03 KL CK 0081

In the High Court Of Kerala

Case No : W.A. No. 2479 of 2015 in WP(C) 4827/2014

T.M. George

APPELLANT

Vs

The Arpookara Service Co-Operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:

Constitution of India, 1950 — Article 136, Article 226
Industrial Disputes Act, 1947 — Section 11-A, Section 32(1)
Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 03 KL CK 0081

Hon'ble Judges : Ashok Bhushan, C.J. and A.M. Shaffique, J.

Bench : Division Bench

Advocate : George Poonthottam, Advocate, for the Appellant; T.A. Shaji, Sr. Adv., M.A. Asif and Namitha Jyothish, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Shaffique, J.—1. This appeal is filed by the 1st respondent in the writ petition challenging judgment dated 30/7/2015, by which the learned Single Judge allowed the writ petition quashing Ext. P5, an award passed by the Arbitrator in ARC No. 101/2007 and Ext. P6, the revisional order passed by the Kerala Co-operative Tribunal in RP No. 86/2012 and remitting the matter to the Arbitration Court for fresh consideration after hearing the parties.

2. The writ petition was filed by respondents 1 and 2 herein challenging Exts.P5 and P6 by which the Co-operative Arbitration Court had set aside disciplinary action taken against the appellant and directed payment of full salary and other monetary benefits to the appellant for the period from 30/10/1998 to 8/4/2003. Though a revision was filed by the writ petitioners as RP No. 86/2012 before the Kerala Co-operative Tribunal, the same came to be dismissed as per Ext. P6 order, thereby confirming the award passed by the Arbitration Court.

3. The short facts involved in the writ petition would disclose that the appellant was working as Secretary of the 1st petitioner Bank. He was dismissed from

service after initiating disciplinary action against him. He preferred an appeal before the Board of Directors which also was dismissed. He filed a petition before the Joint Registrar under Rule 176 of the Cooperative Societies Rules. In the meantime, the Managing Committee of the Society was superseded and the Administrator assumed charge on 19/3/2003. In the meantime, the Joint Registrar allowed the application filed by the appellant setting aside the order rejecting the appeal by the Board of Directors and the matter was remitted back to the Board. The Administrator, who was in charge, passed an order dated 8/4/2003 allowing the appeal and reinstating the appellant in service. He was inducted in service on 9/4/2003. The order of supersession was set aside by this Court as per judgment in O.P. No. 9723/2003.

4. One Sri. T.P. Shaji challenged the order passed by the Administrator reinstating the appellant in service which came to be rejected. An appeal was filed before the Government. However, the same also came to be rejected on 3/9/2005. Thereafter, another disciplinary proceedings was initiated against the appellant as per proceedings dated 5/1/2004. He challenged the proceedings before the High Court. However, he was directed to avail the statutory remedy. The Joint Registrar refused to interfere with the proceedings and hence the appellant approached the Government. Government as per order dated 27/9/2004 dismissed the appeal against which the appellant filed WP(C) No. 30842/2004. The said writ petition was heard along with two other writ petitions and by judgment dated 30/5/2006, the decision taken by the Government was set aside. It was held that when the supersession of the Board itself was set aside, the decision of the Administrator cannot stand, and the status quo obtained by order dated 4/4/2003 issued by the Joint Registrar rescinding the decision of the Board of Directors has to be restored and to secure the ends of justice, the Board will have to hear the appeal of the delinquent and decide on the same in accordance with law. In regard to the claim made in WP(C) No. 30842/2004, it was held that though petitioner's date of retirement is 30/11/2004, question of regularisation of the period of suspension, entitlement to pay pension etc., are matters which would arise only after the decision of the appeal by the Board. The decision of the Administrator granting regularisation of the period during which the delinquent was under suspension was set aside. It was ordered that, all decisions of the Administrator, Joint Registrar or the Government after Joint Registrar's order dated 4/4/2003 in relation to disciplinary proceedings prior to supersession of the Board stands set aside. The matter was carried in appeal by the appellant by filing three separate appeals. The Division Bench held that when the order of reinstatement was endorsed by a judgment of this Court, the same cannot be altered and therefore, there cannot be any question of consideration of the appeal again by the Managing Board. Accordingly, the direction to consider the matter by the Managing Board was set aside. In regard to the second disciplinary action, it was held that the Managing Board was competent to proceed against the appellant on any other misconduct and that the Government and Registrar were justified in not interfering with the

second disciplinary action. However, in the meantime, the appellant had retired from service on superannuation on 30/11/2004 and since no provision was available enabling the Managing Board to continue the disciplinary action against a retired employee, the second disciplinary action could not be continued. In regard to the emoluments payable to the appellant during the period he was out of service, either due to suspension or due to dismissal, the Division Bench observed that no order has been passed by any authority regularising the period of suspension or the period during which the appellant had been out of duty. The said aspect ought to be considered by the competent authority viz., the appointing authority. It was therefore observed that the appellant shall make a representation to the appointing authority within a period of two weeks and the appointing authority was directed to consider the matter after giving an opportunity for hearing to the appellant. Pursuant to the said decision, appellant preferred a representation to the Board of Directors. The Board of Directors by Ext. P3 dated 15/5/2007 limited the backwages to the amount the appellant had already received as subsistence allowance and directed regularisation of the period of suspension only for the purpose of pension.

5. Appellant preferred ARC No. 101/2007 challenging Ext. P3 order which resulted in Ext. P5 award dated 23/7/2010, against which the management preferred a revision as RP No. 86/2012 which resulted in Ext. P6.

6. The main contention urged by the writ petitioners was that the allegations raised against the appellant were very serious and Ext. P3 order had been passed after taking into consideration all relevant facts. The Arbitration Court as well as the Tribunal had considered the matter without advertting to the factual aspects involved in denying the backwages to the appellant. It was contended that when the Division Bench of this Court in judgment dated 11/12/2006 in WA No. 1121/06 and connected matters permitted the appointing authority to take a decision in the matter, and when such a decision had been taken, in the absence of any specific reason for interfering with the said order passed by the appointing authority, the Arbitration Court was not justified in interfering with the said decision. The decision has been taken in compliance with the principles of natural justice and on sufficient material which could not have been set aside. That apart, the only reason stated was with reference to the decision of the Administrator setting aside the order issued by the writ petitioners dismissing the appellant from service. In fact, in regard to claim for backwages, the matter had to be independently considered as directed by the Division Bench and when such a consideration has been made, the earlier reason stated for setting aside the dismissal was totally irrelevant and merely for the reason that the dismissal order is set aside does not mean that the entire backwages are liable to be paid. The Tribunal also did not consider the matter in its proper perspective.

7. In the writ petition, counter affidavit is filed by the 1st respondent inter alia contending that there was no reason to interfere with Exts.P5 and P6 especially on account of the fact that when the order of dismissal of the 1st respondent was

set aside by the Administrator and when the said order had been approved by this Court, the said order cannot be ignored and was rightly relied upon by the competent authorities and therefore the direction to pay backwages was fully justified.

8. The learned Single Judge after evaluating the respective contentions of the parties observed that even assuming that the dismissal order was set aside, it will not imply that the order of dismissal was wholly unjustified and there cannot be any hard and fast rule that the delinquent shall be entitled to full backwages in all cases where reinstatement is ordered. Hence, the learned Single Judge observed that mere reliance on the order passed by the Administrator reinstating the appellant in service by itself cannot be reason for grant of backwages and setting aside the order passed by the appointing authority. Therefore, the award and the revisional order were set aside and the matter was remitted to the Arbitration Court for fresh consideration, after hearing the parties.

9. Learned counsel for the appellant Sri. George Poonthottam contended that the aforesaid finding of the learned Single Judge is absolutely baseless and totally ignoring the earlier judgments of this Court especially the judgment in WA No. 1121/2006. It is contended that when a Division Bench of this Court while setting aside the judgment of the learned Single Judge had clearly indicated that the reinstatement order of the Administrator was endorsed by a judgment of this Court, and when the Arbitration Court as well as the Tribunal has placed reliance on the said order, there is no illegality or irregularity in the impugned orders justifying interference. It is contended that this aspect of the matter was completely ignored by the learned Single Judge by forming a different opinion. Learned counsel also placed reliance on the judgment in *Official Liquidator v. Dayanand and Others* [, (2008) 10 SCC 1] wherein the Supreme Court considered the scope for interference in a writ petition filed under Article 226 of the Constitution of India. He relied upon para 90 of the judgment to point out that there have been instances in which learned Single Judges and Benches of the High Courts refused to follow and accept the verdict and law laid down by coordinate and even Larger Benches by citing minor difference in the facts as grounds for doing so. It is argued that when a Division Bench of this Court had clearly indicated that the order passed by the Administrator had been approved by the High Court and there is no reason to continue disciplinary action, the learned Single Judge ought not have taken a different view than what has been taken by the Division Bench. He also placed reliance on the judgment in OP No. 9723/2003 by which the order passed by the Administrator was upheld by this Court. The said original petition was filed by Sri. N.P. Suresh Kurup, who was the President of the Board of Directors of the Bank which was superseded at the relevant time. He challenged the order of supersession passed by the Joint Registrar which was approved by the Government. The appellant was impleaded as an additional 7th respondent. This Court found that there was no justification to take action of supersession under Section 32(1) of the Act and the original petition has been allowed. However, in para 18, the following has been

mentioned with reference to the appellant:

"18. It had been suggested by the petitioner that the supersession was at the instance of the 7th respondent, who had been dismissed from service while functioning as the Secretary and immediately after the supersession he had been reinstated and is now functioning. But, I am sure that the restored Committee may not take steps in retaliation, and will refrain themselves from going after the reinstated Secretary. Power has to be used with caution, and not for wrecking vengeance. Nothing is commendable by harassing an employee at the fag end of his career, and the Board should develop a sense of co-operation and trust as they are the basic features of the movement."

10. On the other hand, learned senior counsel Sri. T.A. Shaji, appearing on behalf of the writ petitioners submitted that specific reasons had been stated in Ext. P3 order dated 15/5/2007 for denying the full backwages. None of the said reasons had been considered by the Arbitration Court nor the Tribunal. In fact, they only relied upon the order by which the Administrator had reinstated the appellant in service. If on a mere reinstatement, a delinquent employee is entitled for full backwages, there was nothing preventing the Division Bench of this Court in directing payment of backwages. Therefore, when direction was issued to the appointing authority to consider the question of regularisation, necessarily, it has to be considered in accordance with law. All aspects of the matter relating to grant of backwages requires to be looked into and once such a decision has been arrived at based on relevant material, in the absence of any perversity or illegality, there was no reason for the Arbitration Court or the Tribunal to have interfered with the said finding. A mere reliance on the order by which the appellant was reinstated in service was totally uncalled for. It is argued that under what circumstances he was placed under suspension, the seriousness of the allegations, under what circumstances the Administrator had passed the order, that a second disciplinary action was initiated against him while he was in service and that it could not be continued on account of his reaching the age of superannuation are all relevant facts which have to be taken into account by the appointing authority. That apart, there is a finding that the appellant was gainfully employed during the period of suspension as well as during the period of dismissal and prior to his reinstatement. There is a clear finding that he was placed under suspension, enquiry was conducted and dismissed from service based on appropriate material and very serious allegations had been raised against him including monetary irregularities.

11. Having regard to the aforesaid factual and legal arguments raised in the case, the short question to be considered is whether the order of remittance by the learned Single Judge was justified or not. There is no dispute about the fact that the claim is only with reference to regularisation and backwages for a certain period. A perusal of Exts.P5 and P6, i.e., orders passed by the Arbitration Court and Tribunal would indicate that they have only referred to the Administrator's order by which the appellant has been reinstated in service after

setting aside the order of dismissal. According to them, the reason stated in the said order by itself is sufficient to arrive at the said finding. But it is relevant to note that the order of dismissal was passed by the appointing authority, viz., the Board of Directors, after conducting necessary enquiry into the matter. The same came to be set aside by the Administrator, who was only in charge of administration. Though the order had been upheld by judgment of this Court, it only means that the order of dismissal has been set aside. The reasons for setting aside the order of dismissal might be justified also. But while considering the claim for regularisation and backwages, the appointing authority will have to consider all the factual materials available in the case to arrive at a conclusion as to whether the order of suspension was justified under the fact situation or not. As rightly observed by the learned Single Judge, payment of backwages is not automatic and merely for the reason that a person is reinstated in service does not mean that he is entitled for full backwages. It depends upon the facts and circumstances of each case. Therefore, there was justification on the part of the learned Single Judge to have made such an observation.

12. The main argument raised by the learned counsel for the appellant is that the learned Single Judge had completely ignored and did not even place reliance on the Division Bench judgment in WA No. 1121/2006 and connected cases. It is argued that when a Division Bench of this Court had found that the order of reinstatement need not be interfered with, especially when it was approved by a judgment of this Court, the learned Single Judge was not justified in ignoring the said judgment and taking a different view.

13. A perusal of the judgment in WA No. 1121/2006 and connected cases does not give us an impression that the learned Single Judge had committed any impropriety in not placing reliance on the said judgment. In fact, in the said judgment, at para 9, the Division Bench observed as under:

"9. The next aspect is emoluments payable to the appellant during the period he was out of service either due to suspension or due to dismissal. It is revealed from Ext. P24 that no order has been passed by any authority regularizing the period of suspension or the period during which the appellant had been out of duty. This aspect has to be considered by one or the other authority. The primary authority to consider regularisation of the period of suspension or the period between the date of dismissal and reinstatement is the appointing authority which placed him under suspension or passed the dismissal order. Necessarily the appointing authority is liable to consider these aspects. In this regard the appellant shall make a representation to the appointing authority within a period of two weeks and the appointing authority shall consider the matter after rendering an opportunity of being heard to the appellant at any rate within six weeks from the date of submitting of the representation."

The argument of the learned counsel is that the Division Bench judgment clearly indicated that the period of suspension has to be regularised. We do not think so. The Division Bench only observed that on a perusal of Ext. P24 it was evident

that no order has been passed by any authority regularising the period of suspension or the period during which the appellant was out of duty. It was for the primary authority to consider regularisation of period of suspension. Therefore, whether the period of suspension or the period during which the appellant was out of duty ought to be regularised or not was definitely a matter which required consideration by the appointing authority. While arriving at such a finding as to whether the period should be regularised or not, definitely the appointing authority can rely upon various factual circumstances involved in the matter.

14. It will be useful to refer to Allahabad Jal Sansthan v. Daya Shankar Rai [, (2005) 5 SCC 124] in which Supreme Court had occasion to consider the various cases relating to payment of backwages. Paragraphs 6 to 16 of the judgment reads as under:

"6. A law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration. It is not in dispute that Respondent 1 herein was appointed on an ad hoc basis; his services were terminated on the ground of a policy decision, as far back as on 24-1-1987. Respondent 1 had filed a written statement wherein he had not raised any plea that he had been sitting idle or had not obtained any other employment in the interregnum. The learned counsel for the appellant, in our opinion, is correct in submitting that a pleading to that effect in the written statement by the workman was necessary. Not only no such pleading was raised, even in his evidence, the workman did not say that he continued to remain unemployed. In the instant case, the respondent herein had been reinstated from 27-2-2001.

7. In Tapan Kumar Bhattacharya this Court noticed that there was no pleading or evidence as to whether the respondent therein was employed elsewhere during the long interregnum, and in the fact situation obtaining therein, the appellant was directed to pay 50% of the back wages till the date of reinstatement.

8. Yet again in Jarina Bee this Court observed that the award of full back wages was not the natural consequence of an order of reinstatement.

9. In Rahmat Ullah, a Bench of this Court held that as the respondent therein was out of service since 1990 as an ordinary worker, he must have been working elsewhere to earn his livelihood; and there was no material to show that he was not gainfully employed whereupon, a direction to pay 50% of the back wages was made.

10. In Ram Ashrey Singh v. Ram Bux Singh, questioning the order of termination after six years was considered to be one of the factors for denying an order of reinstatement with back wages to the workman. In the fact situation obtaining

therein, it was held that ends of justice would be subserved if the appellants therein were directed to pay a sum of Rs. 35,000 by way of compensation in addition to what has already been paid. (See also *Sonepat Coop. Sugar Mills Ltd. v. Ajit Singh.*)

11. In *Haryana State Coop. Land Development Bank v. Neelam* it was held: (SCC pp. 98-99, para 18)

"18. It is trite that the courts and tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct a workman would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of acceptance sub silentio."

(See also *Manager, R.B.I. v. S. Mani.*)

12. Let us now consider the decisions cited by the learned counsel for Respondent 1:

In *Workmen of Subong Tea Estate*, whereupon strong reliance has been placed by the learned counsel for the respondents, no principle of law has been laid down. The Court merely directed in the fact situation obtaining therein to reinstate the workmen with full wages.

13. In *Hindustan Steel Ltd.* this Court again did not lay down any law. A finding of fact was arrived at by the Labour Court that the respondents had no alternative employment which was not challenged. The only ground which was urged before the High Court was that the respondents had not proved that they had tried to mitigate their losses during the period of unemployment. The questions which have been raised herein had not been raised therein. The argument was confined only to mitigation of the losses. This Court did not interfere with the discretionary jurisdiction of the High Court in interfering with the award.

14. In *Indian Rly. Construction Co. Ltd.* this Court merely stated: (SCC pp. 593-94, para 30)

"30. Question then would be how the conflicting interests can be best balanced. By an interim order dated 5-5-2000 the appellant was directed to reinstate the respondent subject to an interim payment of Rs. 3 lakhs towards the back wages. Direction for reinstatement does not automatically entitle an employee to full back wages. In *Hindustan Tin Works (P) Ltd. v. Employees* a three-Judge Bench of this Court laid down: (SCC p. 86, para 11)

"11. In the very nature of things there cannot be a straitjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict.

More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular (see *Susannah Sharp v. Wakefield*, AC at p. 179)." "

15. In *Nicks (India) Tools* this Court again in the fact situation obtaining therein refused to interfere with the discretionary jurisdiction exercised by the High Court particularly having regard to the fact that it was for the first time before the writ court, such plea was raised by way of additional evidence, which had been rejected.

16. We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realised that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at."

15. In *Banshi Dhar v. State of Rajasthan* [, (2007) 1 SCC 324], the Supreme Court held at paragraphs 9, 11 and 13, as under:

"9. No hard-and-fast rule can be laid down in regard to grant of back wages. Each case has to be determined on its own facts. A grave charge of criminal misconduct was alleged against him. He was also found guilty of the charges levelled against him by the Special Judge. The High Court while delivering its judgment dated 16-1-2001 in SB Criminal Appeal No. 68 of 1985 inter alia held that the prosecution has not been able to prove that any demand had been made by him."

"11. Departmental proceedings, however, could not be held as on the date of passing of the judgment of acquittal, he had already reached his age of superannuation. The learned counsel may be right that the decisions of this Court referred to hereinbefore involved the respective appellants therein on charge of murder under Section 302 of the Indian Penal Code, but, as noticed, it has also been laid down that each case has to be considered on its own facts. The High Court refused to exercise its discretionary jurisdiction having regard to the aforementioned decision of this Court in *Ranchhodji Chaturji Thakore*. We do not see any reason to take a different view. Grant of back wages, it is well

settled, is not automatic. Even in cases where principles of natural justice have been held to have not been complied with, while issuing a direction of reinstatement, this Court had directed placing of the delinquent employee under suspension."

"13. Even in relation to the industrial disputes, this Court, in many judgments, has held that back wages need not be granted automatically although the order of termination passed against the workman concerned was found to be invalid. (U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, and Municipal Council, Sujampur v. Surinder Kumar.)"

16. In *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya* [, (2013) 10 SCC 324], the Apex Court after having referred to various judgments relating to the grant of backwages laid down the following propositions:

"38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/

Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

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 back wages. 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 back wages 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 back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works (P) Ltd. v. Employees*.

38.7. The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches, referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

17. The entitlement of backwages therefore will depend upon the facts and circumstances of each case. In the case on hand, the only material relied upon by the Arbitration Court as well as the Tribunal was the order passed by the Administrator. As already indicated, it was open for the appointing authority to take into consideration all relevant factors, to regularise the appointment or not, and to decide on the entitlement for fullback wages. When such a discretion is left to be decided by the appointing authority, the adjudicating authorities under the Co- operative Societies Act ought to have considered the reasons stated by

the management to have denied full backwages and considered the same on merits. Having not done so, the learned Single Judge was justified in directing the matter to be considered afresh.

We do not find any ground to interfere with the judgment of the learned Single Judge and accordingly, the appeal is dismissed.