

(2014) 07 AHC CK 0218

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 37484 of 2013

Vinay Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 08-07-2014

Acts Referred:

Constitution of India, 1950 — Article 41, 43
Industrial Disputes Act, 1947 — Section 11A

Citation : (2014) 7 ADJ 319 : (2014) 6 AWC 5941 : (2014) 4 ESC 2092 : (2014) 3 UPLBEC 2200

Hon'ble Judges : Mahesh Chandra Tripathi, J

Bench : Single Bench

Advocate : Ram Sagar Yadav, Advocate for the Appellant

Final Decision : Allowed

Judgement

Mahesh Chandra Tripathi, J.—Heard Sri Ram Sagar Yadav, learned counsel for the petitioner and Sri Piyush Shukla, learned Standing Counsel for the State. By means of the present writ petition, the petitioner has challenged the impugned order dated 10.4.2013 passed by respondent No. 2 by which the claim of the petitioner for compassionate appointment has been rejected.

2. With the consent of the parties, the writ petition is disposed of after exchange of affidavits between the parties.

3. Brief facts giving rise to the writ petition are as follows:

The brother of the petitioner, namely, Anup Kumar Yadav was selected in PAC as Constable on 5.7.2006 and was appointed in 28th Battalion, PAC Itawah. The State Government vide Government Order dated 8.11.2007 had cancelled the various appointments of Constables throughout the State on the ground of mal practices in the recruitment process. The State Government had constituted a High Powered Inquiry Committee to inquire into the matter and finally on the recommendation of High Powered Committee, the State Government had

cancelled the recruitment and consequently appointments of more than 18700 personnel were cancelled vide orders dated 11.9.2007, 18.9.2007 and 30.9.2007. It is relevant to mention that none of the aggrieved personnel were noticed or involved in High Powered Enquiry Committee or heard at any time and in one stroke their all appointments were cancelled, large number of writ petitions were filed and this Hon"ble Court vide order dated 8.12.2008 in leading Writ Petition No. 45645 of 2007 (Pawan Kumar Singh v. State of U.P. and others) had allowed the writ petition, the operative portion of the order dated 8.12.2008 is reproduced herein under:

"121. The aforesaid chart would show that out of about 22,000 personnel selected across the Board, only 40 were detected to have inducted with less than the minimum prescribed standards of physical measurement. It comes 0.18 percent. In the chart annexed as aforesaid, the difference in height which has been noted at some places is between 0.1 to 0.5 centimeters less than the prescribed minimum height. This percentage was negligible.

122. In the aforesaid circular dated 29.6.2007 the DGP had also required the committees to scrutinize the training sheets in the following manner.

"Training sheet of a recruited constable - During the course of the training, training sheets regarding physical efficiency of these recruited constables are drawn up by the Institute at the training centre. They are also subjected to monthly/quarterly/final written tests. Kindly ensure that their training sheets are correctly filled up and answer sheets concerning their written tests are properly evaluated. These training sheets and the copies of the written tests may be summoned by the Enquiry Committee for perusal. If any constable fails in the examination or does not have minimum qualification, such a matter be immediately referred to the Enquiry committee."

123. In pursuance of the aforesaid, even in the training sheets of monthly, quarterly and final test, nothing adverse to the petitioners was found. The allocation of marks for the recruitment indicates that the main requirement of a constable is his physical proficiency and endurance. As already noted in the earlier part of the judgement, 100 marks were fixed for physical under different heads such as sit up, chinning up, cricket ball throw, distance running etc. and to qualify in the physical test, the candidates had to secure more than 50% marks. Admittedly, the petitioners secured more than 50% in the respective physical test.

124. The second requirement was mental aptitude which was tested in the written test which had a maximum of 50 marks only and bench mark to succeed was fixed at a meagre 33% only. All these petitioners also cleared the second requirement.

125. Interview carried only 20 marks without any qualifying mark, meaning thereby, that even if a candidate secures one mark and if otherwise he had cleared both the tests, he is bound to be selected according to his merit. These

20 marks for interview were further divided under different heads. Five marks were for educational qualification and 15 marks for personality and mental proficiency. Checking of mark sheet was more of ministerial job and the remaining 15 marks with regard to personality and mental proficiency could be examined even in groups. It has to be kept in mind that constables do not require any special skill which has to be minutely adjudged. Main requirement of physical prowess and endurance have already been tested twice over. A glance was sufficient for judging the personality. It is often said in the Uniform circles that "foot soldier" as they say is best who is incapable of discerning good from bad orders" of their Commanders.

126. An identical issue arose before the Apex Court in the case of *Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others*, where large number of candidates were interviewed in groups and the Assam High Court after fixing a criteria that not more than 300 candidates could be examined in interview on a single day, quashed the selection. The Apex Court set aside the judgement finding that in an interview for constables, there was no requirement of testing their administrative or management capacity and that was only necessary to test their physical endurance, fitness and smartness in appearance.

127. No doubt, there was infraction of the circular, it would be inconsequential in these circumstances, especially for those candidates who had already secured more than the marks of the last selected candidate. Thus, in the opinion of the Court, deviation from the direction of the circular, would not be fatal to the present selection.

128. The contention that the trend of awarding higher marks in interview to those candidates who had secured less marks in physical test and vice-versa indicates that it was a predetermined exercise. In the opinion of the Court, as already noted in the earlier part of judgement, this trend was common even to other recruitment covered by different enquiry reports which were saved, including enquiry No. 34 which deals with the second recruitment of civil police at Sitapur.

129. In view of the discussions above and the findings recorded thereon, this and the connected writ petitions, succeed and are allowed. The various Government Orders cancelling the recruitment by various Recruitment Boards and the consequential orders terminating the appointment of the candidates are also quashed, however, subject to the observations made hereinabove. In the circumstances of the case, no order as to cost."

4. Aggrieved with order of State of U.P. and Others Vs. Pawan Kumar Singh and Others, and other connected matters were dismissed vide judgment and order dated 4.3.2009. The operative portion of the same is reproduced herein under:

"The Court has also taken notice of the fact that a large number of candidates have already put in few years of services and some candidates are undergoing training, who were being paid stipend during the training and as per Training

record they were found fit for retention in the Police Department and they were expecting regular appointments/postings after successful completion of their training. There are also some candidates who were merely awaiting formal orders to undergo training, thus, in such circumstances applying the ratio laid down by the Apex Court in the case of Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others, that the State Government and the High Court must make a serious endeavour to segregate untainted candidates from tainted ones. Although in the present case, the task may be certainly difficult one, but it cannot be an impossible task. Thus, while following the ratio laid down by the Apex Court in the case of Inderpreet Singh Kahlon (Supra), it would be appropriate to direct that the State Government to constitute Scrutiny Committees to examine case of each candidate separately on its merit at each centre. If the selection of a candidate after the scrutiny is found untainted and if he has been selected in accordance with the instructions after following the prescribed procedure, administrative circulars, administrative directions and fulfils all the eligibility conditions, his case shall be put in the untainted category and he shall be allowed to continue in the services or the training, as the case may be. After scrutiny, the candidates who are found to be tainted ones, they shall be weeded out by declaring their selection invalid. In such cases opportunity of hearing may be afforded to the candidate as per observations of the Hon''ble Apex Court in Inderpreet Singh Kahlon's case (Supra), reliance upon which has been placed by both of us. This Bench is of the view that the liberty may be given to the State Government to segregate Tainted ones from the untainted ones and only then appropriate action be taken.

For the discussions and observations made hereinabove, though I agree with the conclusions of my respected Senior Brother to dismiss the Special Appeals, but I respectfully differ on the above indicated findings recorded by my respected Senior Brother. Accordingly, I have recorded my own views in this judgment alongwith the directions to segregate tainted candidates from untainted ones applying the principles of the Hon''ble Apex Court laid down in Inderpreet Singh Kahlon's case (Supra).

The Special Appeals are dismissed with above observations."

5. Thereafter, the State Government had filed the SLP before the Hon''ble Apex Court. On the direction of the Hon''ble Apex Court dated 25.5.2009, the State Government had issued the Government Order dated 26.5.2009 by which all the Constables were allowed to re-join on the provisional basis and finally the special leave appeal was withdrawn by the State Government, therefore, the direction issued by this Court in Pawan Kumar Singh (supra) had attained finality and various Government Orders cancelling the recruitment by various recruitment boards and consequent orders terminating the appointment of the Constables were quashed, meaning thereby the order passed by this Court in Pawan Kumar Singh's case (supra) had attained finality, means all the police personnel those who were recruited in the year 2006 were deemed to be in service and their

termination orders were no more in existence.

6. It is relevant to mention at this stage, that Anup Kumar Yadav, Constable unfortunately met with an accident on 26.2.2008 and died. It is further relevant to mention that Constable Anup Kumar Yadav was unmarried and his brother (petitioner) had applied for compassionate employment under Dying in Harness Rules, 1974. When the answering respondent had not taken any decision, he had filed Writ Petition No. 68565 of 2012 (Vinay Yadav v. State of U.P.) and this Court vide order dated 3.1.2013 had finally disposed of the writ petition with direction to the answering respondent to decide the claim of the petitioner. The answering respondent vide order dated 10.4.2013 (Annexure 8 to the writ petition) had rejected the claim of the petitioner on the ground that the brother of the petitioner who had joined the services on 2.9.2006 and subsequently State Government vide order dated 8.11.2007 had cancelled all the recruitments and the appointments throughout the State. Finally the Commandant 28th Battalion, PAC Itawah vide order dated 12.9.2007 had also terminated the services of his brother, then the claim was unsustainable, even though the State Government's cancellation order had been quashed by this Court in Pawan Kumar Singh's case (supra) and the same has been upheld up to the Hon'ble Apex Court but meanwhile on account of order dated 26.5.2009 passed by the State Government, the brother of the petitioner could not join the services and meanwhile he met with an accident and died on 26.2.2008, then he was deemed to be out of service and claim is unsustainable, further even though notice had been sent to Anup Kumar Yadav, Constable on 30.5.2009 in compliance of the order passed by the Hon'ble Apex Court dated 25.5.2009 and subsequent Government Order dated 26.5.2009 but he had not reported.

7. As per the averments made in the impugned order and in the counter affidavit, it has been averred that though notice was sent to Sri Anup Kumar Yadav on 30.5.2009, in compliance of the Hon'ble Apex Court direction but he had not reported to the concerned police Battalion. The claim of the petitioner had been turned down basically on the ground that if the brother of the petitioner could not be reinstated in service as he died on 26.2.2008 then initial termination order sustained and petitioner is not liable to seek appointment under compassionate appointment, in place of his brother, as his brother was not in service and formally he had not joined and his status remained were he was placed at the time of termination.

8. Learned counsel for the petitioner states that the brother of the petitioner had joined the post of Constable on 2.9.2006 in 28th Battalion, PAC, Itawah and on account of Government Order dated 8.11.2007 and subsequent order dated 12.9.2007 passed by the Commandant 28th Battalion, PAC, Itawah, the appointment of various Constables were cancelled including the appointment of late Anup Kumar Yadav.

9. Aggrieved with the Government Orders, this Court had decided the controversy in Pawan Kumar Singh and Others Vs. State of U.P. and Others, The

impugned order passed by the State Government and consequent order passed by the concerned competent authority had been quashed by this Court then late Constable Anup Kumar Yadav was deemed to be in service and his heirs are entitled for all consequential benefits.

10. Learned counsel for the petitioner further submits that the case of the petitioner is liable to be considered in pursuance to the Dying in Harness Rules, 1974 and in this regard petitioner had moved a detailed representation through his mother (Annexure 4 to the writ petition) on 1.11.2011, by the said representation, mother of the petitioner had informed to the Commandant Itawah that due to all of sudden demise of my elder son, who was sole bread earner, the family is at the verge of starvation and my elder son was unmarried, therefore, in place of him, my younger son who is 19 years of age may be given an appointment so that the whole family may survive and came out from starvation. Learned counsel for the petitioner further relied that his case is entirely covered with the recent Amendment known as "Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness (Ninth Amendment), Rule, 2011" by which he had submitted that there was an amendment of Rule 2 which was published in U.P. Gazette. For ready reference the amendment of Rule 2 is reproduced herein under:

2. Amendment of Rule 2.--In the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974, in Rule 2, for existing clause (c), the following clause shall be substituted, namely-

"(c) family shall include the following relations of the deceased Government Servant-

(i) wife or husband;

(ii) sons/adopted sons;

(iii) unmarried daughters, unmarried adopted daughters, widowed daughters and widowed daughter-in-law;

(iv) unmarried brothers, unmarried sisters and widowed mother dependent on the deceased Government servant, if the deceased Government servant was unmarried;

(v) aforementioned relations of such missing Government servant who has been declared as "dead" by the competent Court;

Provided that if a person belonging to any of the above mentioned relations of the deceased Government servant is not available or is found to be physically and mentally unfit and thus ineligible for employment in Government service, then only in such situation the word "family" shall also include the grandsons and the unmarried granddaughters of the deceased Government servant dependent on him.

11. Learned counsel for the petitioner further submits that the petitioner is the

brother of late Anup Kumar Singh, Constable, therefore, in the definition of family his case is fully covered as per compassionate rules.

12. Learned Standing Counsel has vehemently submitted that once the State Government had issued the Government Order dated 8.11.2007 by which all the recruitment had been cancelled and the Commandant 28th Battalion, PAC, Itawah had also passed order dated 12.9.2007 against Constable Anup Kumar Yadav then his services had come to an end and quashing of the Government Orders by this Court in Pawan Kumar Singh's case (supra) would not help the petitioner on the ground that in compliance of the order passed by this Court late Sri Anup Kumar Yadav had never joined the services on account of his death on 26.2.2008 and in compliance of the direction issued by the Hon'ble Apex Court dated 25.5.2009 and State Government dated 26.5.2009 late Anup Kumar Yadav could not join services. Therefore, it is deemed that he was out of service. As such, the impugned order dated 10.4.2013 is sustainable and strictly in consonance with the facts and circumstances of the case.

13. However, learned Standing has vehemently relied on Paragraph No. 10 of the counter affidavit which clearly states that in compliance of the order passed by the Hon'ble Apex Court dated 25.5.2009, the State Government has issued the Government Order dated 26.5.2009 by which the Constables were provisionally permitted to join their services and in pursuance of the said Government Order an information has already been sent to late Constable Anup Kumar Yadav on 30.5.2009, on account of his death on 26.2.2008, he could not join, therefore, in pursuance to the said Government Order late Constable Anup Kumar Yadav had never join his services. For ready reference, Paragraph No. 10 of the counter affidavit is reproduced herein under:

14. Heard learned counsel for the petitioner and perused the record.

15. The facts of the case are undisputed that late Constable Anup Kumar Yadav had joined as Constable on 2.9.2006 on substantive post which was duly advertised by the State Government but subsequently on account of some mal practices in the recruitment process, the entire selection had been cancelled by the State Government. The bunch of petitions had been filed before this Court, and finally in Pawan Kumar Singh and Others Vs. State of U.P. and Others, this Court had allowed the writ petition with following observations:

"129. In view of the discussions above and the findings recorded thereon, this and the connected writ petitions, succeed and are allowed. The various Government Orders cancelling the recruitment by various Recruitment Boards and the consequential orders terminating the appointment of the candidates are also quashed, however, subject to the observations made hereinabove. In the circumstances of the case, no order as to cost."

16. The order dated 8.12.2008 passed in Pawan Kumar Singh's case (supra) clearly indicate to the extent that the various Government Orders cancelling the recruitment by various recruitment boards and consequential orders terminating

the appointments of candidates were all quashed. It means the impugned order dated 8.11.2007 passed by the State Government in case of late Constable Anup Kumar Yadav and the subsequent order passed by the Commandant 28th Battalion, Itawah dated 12.9.2007 were also been quashed, means the status of late Constable Anup Kumar Yadav reverted back to the position where he was placed prior to 8.11.2007, i.e. he was deemed to be in service.

17. The instant matter traveled up to the Hon''ble Apex Court and finally the State Government had withdrawn the SLP which clearly indicate that the Constables those were selected through proper recruitment process for the post of Constables in Civil Police and PAC (Provincial Armed Constabulary), their selections and appointments were approved and the termination order had no implication regarding the status.

18. Therefore, in view of above, it is apparent that the impugned Government Orders and an individual termination order were all quashed by this Court in bunch of the matters. This Court has upheld the various recruitment made by various recruitment boards and selection of more than 18700 Constables were found to be correct and there were no infirmities in the selections and recruitment process. All appointments were found to be in accordance to law. It is further highly important to mention that the respondents have not taken any other plea while rejecting the claim of the petitioner except the plea which has been narrated in detail in Paragraph No. 10 of the counter affidavit.

19. It is not disputed, as per the family definition, unmarried brothers dependent upon the deceased Government servant is entitled for compassionate employment, if the deceased Government servant is unmarried. These facts are admitted in the present matter. It is further relevant to mention that while rejecting the claim of the petitioner the answering respondent had not taken any plea that the case of the petitioner is not covered as per definition of family provided in Rule 2 of Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness (Ninth Amendment), Rule, 2011. Therefore, in the said circumstance, there is no need to adjudicate this issue.

20. Therefore, in view of above, late Constable Anup Kumar Yadav who had joined the services on 2.9.2006 treated to be in service on account of an order passed by this Court in Pawan Kumar Singh's case (supra). Therefore, when late Constable Anup Kumar Yadav met with an accident on 26.2.2008, he was deemed to be in service, hence, family members of deceased employee are liable to get all the consequential benefits as permissible under law.

21. The Hon''ble Apex Court has recently considered the reinstatement in Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others, The relevant Paragraph Nos. 21, 22 and 23 are reproduced herein:

21. The word "reinstatement" has not been defined in the Act and the Rules. As per Shorter Oxford English Dictionary, Vol.II, 3rd Edition, the word "reinstate" means to reinstall or reestablish (a person or thing in a place, station, condition,

etc.); to restore to its proper or original state; to reinstate afresh and the word "reinstatement" means the action of reinstating; re-establishment. As per Law Lexicon, 2nd Edition, the word "reinstate" means to reinstall; to re-establish; to place again in a former state, condition or office; to restore to a state or position from which the object or person had been removed and the word "reinstatement" means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Merriam Webster Dictionary, the word "reinstate" means to place again (as in possession or in a former position), to restore to a previous effective state. As per Black's Law Dictionary, 6th Edition, "reinstatement" means to reinstall, to re-establish, to place again in a former state, condition, or office? To restore to a state or position from which the object or person had been removed."

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 severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, 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. There 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 back wages.

If the employer wants to deny back wages 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. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.

23. A somewhat similar issue was considered by a three Judge Bench in Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd. (supra) in the context of termination of services of 56 employees by way of retrenchment due to alleged non-availability of the raw material necessary for utilization of full installed capacity by the petitioner. The dispute raised by the employees resulted in award of reinstatement with full back wages. This Court examined the issue at length and held: "It is no more open to debate that in the

field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service.

The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer.

Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, 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 terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen'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. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen.

In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away there from. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them.

If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they

would legitimately be entitled to the wages for the same.

If the workmen were always ready to work but they were kept away there from on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them. In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure.

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." (emphasis supplied) After enunciating the above-noted principles, this Court took cognizance of the appellant's plea that the company is suffering loss and, therefore, the workmen should make some sacrifice and modified the award of full back wages by directing that the workmen shall be entitled to 75 % of the back wages.

22. The Hon"ble Apex Court has culled out the controversy in paragraph No. 38 of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (supra), the same is reproduced herein:

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

38.4 The cases in which the Labour Court/Industrial Tribunal exercises power u/s 11A 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 fullback 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.

38.7 The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) 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.

23. Therefore, in the facts and circumstances of the above case, the impugned

order dated 10.4.2014 is unsustainable and is accordingly quashed. The matter is remanded back to the respondent No. 2 to look into the matter and decide the case of the petitioner in the light of the observation made as above within a period of six weeks from the date of production of a certified copy of this order. With the aforesaid observations and directions, the writ petition is allowed. No order as to cost.