

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. /2026
[@ SPECIAL LEAVE PETITION (C) NOS.6903-6904/2020]

CONSTABLE UMA SHANKARAN

APPELLANT(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

O R D E R

1. Leave granted.
2. Heard learned counsel for the parties.
3. These appeals impugn judgment and order(s) of the High Court of Delhi dated 26.03.2019 and 01.05.2019 to the extent it denies back wages/ arrears of salary to the appellant. By order dated 26.03.2019, though writ petition (W.P. (C) No.4680 of 2006) of the appellant was allowed and order of removal from service was set aside with full consequential benefits including fixation of seniority and computation of pay and pension in the manner as if the appellant was never removed from service, arrears of salary/ back wages was denied. As far as order dated 01.05.2019 is concerned, it dismissed the review petition of the appellant. Interestingly, the special leave petition of the first respondent against the order dated 26.03.2019 was dismissed by this Court *vide* order dated 16.09.2019. Thus, the order of Delhi High Court to the extent it set aside removal from service with the benefit of continuity in service, etc. has attained finality. As a result, we have only to

consider whether in the facts of the case, the High Court was justified in denying arrears of salary.

4. In short, the factual matrix is as under. The appellant was charged of being in possession of assets disproportionate to his income. The said charge was based on a confession that the appellant had dispatched two Bank drafts of Rs.10,000/- each to his brother at Kerala. The High Court found the charge baseless. The relevant observations of the High Court are found in paragraphs 18, 20, 21 and 23 of its judgment which are extracted below:

"18. It is pointed out by Mr. Kapoor that at the relevant time the petitioner was posted in a field area where everything including shelter, food and clothing are free. During the entire calendar year 2002, the petitioner drew Rs.65781/- as salary. From October to December 2002, even as per the prosecution, he drew a salary of Rs.19,272. The Petitioner had received a letter from home about his mother suspected of being having cancer and kidney failure and undergoing investigation at the University Medical Centre in Bangalore. He had initially sent Rs.10,000/- by way of a DD on 3rd December 2002. Since more money was required, he borrowed Rs.5,000/- from HC Amar Singh and in lieu thereof gave Amar Singh an authority letter to withdraw Rs.5,000/- from the Petitioner's salary for December, 2002. On 5th December, 2002, another DD for Rs.10,000/- was sent by the Petitioner. All of this was mentioned in the ROE. He had also produced the medical records pertaining to the treatment of his mother. However, these were not referred to when the matter was referred for trial by the SSFC.

20. As far as the latter aspect is concerned, in the present case, no justification is shown for convening the SSFC in January 2005 when the incident took place in December 2002. No attempt has been made by the Respondents to justify the convening of the SSFC on the basis of the ROE which was recorded in December 2002 itself.

21. With the evidence recorded not supporting the case of the Respondents that the petitioner was in possession of assets disproportionate to his known sources of his income, the impugned order of the SSFC dismissing him from service suffers from serious legal infirmity. In similar circumstances, holding that there was no evidence to justify his conviction, this Court in *Ram Pal vs. Union of India* (supra) granted relief to the petitioner with reinstatement with all consequential benefits. Likewise, in *Ex. Head Constable Moti Singh vs. Union of India* (decision dated 15th March, 2017 in W.P. (C) No.3847/2006), *Nirmal Lakra vs. Union of India* (supra) and *Ex. Constable Raj Kumar vs. Union of India* (supra), this Court set aside dismissal orders passed by the SSFC after committing procedural illegalities.

23. The mere fact that in the past the petitioner faced proceedings for a similar infraction and was punished, will not relieve the burden on the respondents to prove the charges against the petitioner in accordance with law and on the basis of credible evidence. The respondents have failed to discharge that burden in the present case."

5. The submission of learned counsel for the appellant is that when the High Court had come to the conclusion

that removal from service was completely unjustified and the charge was unfounded based on no material, there was no justification to deny back wages/ arrears of salary for the period during which the petitioner for no fault on his part was kept out of service.

6. On the other hand, learned counsel for the respondent submitted that the previous conduct of the appellant did not justify grant of full back wages and, therefore, it is not a fit case where this Court should exercise its discretionary jurisdiction and award full back wages to the appellant.
7. We have considered the submissions made before us and have perused the materials available on record. What is clear from the judgment of the High Court is that there was no worthwhile evidence on record to substantiate the charge against the appellant. Moreover, the charge was not based on any misconduct but on suspicion arising from preparation and sending of Bank Drafts by the appellant to his family. In that context, we will have to consider whether denial of arrears was justified or not.
8. We are conscious of the law that ordering back wages to be paid to a dismissed employee - upon his dismissal being set aside by a court of law - is not an automatic relief and, ordinarily, is dependent on the employee being not employed in the interregnum. However, the general rule is that if the employer by reason of its illegal act deprives any of its employees from discharging his work and the termination is ultimately held to be bad in law, such employee has a legitimate and valid claim to be

restored with all that he would have received but for being illegally kept away from work. This is based on the principle that although the employee was willing to perform work, it was the employer who did not accept work from him and, therefore, if the employer's action is held to be illegal and bad, such employer cannot escape from suffering the consequences¹.

9. In the light of the afore-stated legal position, the High Court ought to have undertaken an exercise to ascertain whether the writ petitioner was gainfully employed in the interregnum before denying arrears of salary/ back wages. However, this exercise was not done. In our view, as already sufficient time has elapsed since the date of High Court's order and the order of reinstatement with benefit of continuity in service has attained finality, we do not consider it appropriate to remand the matter for such an exercise. Consequently, we have examined the counter affidavit of the respondent to ascertain whether any plea has been taken that the appellant was gainfully employed elsewhere in the interregnum. On perusal of the counter affidavit, we find that the counter affidavit emphasizes more on the plea that there should not have been a direction for reinstatement than on providing any material to show that the appellant was gainfully employed elsewhere. As the plea to deny reinstatement has already been rejected by the High Court, and its direction for reinstatement has attained finality, in absence of any plea that the appellant was gainfully employed elsewhere in the interregnum, in our view,

1 1 Maharashtra SRTC v. Mahadeo Krishna Naik, (2025) 4 SCC 321

there appears no good reason to deny back wages/ arrears of pay.

10. Besides that, the charge of dispatch of Bank Drafts of an amount which, *prima facie*, is within the known sources of income ought not to have been a basis for removal from service, particularly, when the source of money was duly proved. In consequence, the action of the respondent(s) is nothing short of being arbitrary. Thus, when the High Court held charge(s) were not proved, there had to be a cogent reason for denial of arrears / back wages. We do not find any such cogent reason to deny those benefits.
11. As far as the previous conduct of the appellant is concerned, the appellant has already been punished and therefore, denial of back wages on that ground would amount to double punishment.
12. We, therefore, allow these appeals. The order of the High Court to the extent it denies the appellant of the arrears of pay/back wages is set aside. In consequence, the appellant shall be entitled to arrears of pay / back wages in addition to what he is entitled to under the order of the High Court.
13. Pending application(s), if any, shall stand disposed of.

.....J.
(MANOJ MISRA)

.....J.
(MANMOHAN)

NEW DELHI;
JANUARY 19, 2026

ITEM NO.63

COURT NO.13

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO.6903-6904/2020

[Arising out of impugned final judgment and order dated 26-03-2019 in WPC No. 4680/2006 01-05-2019 in REVP No. 186/2019 passed by the High Court of Delhi at New Delhi]

CONSTABLE UMA SHANKARAN

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 19-01-2026 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE MANMOHAN

For Petitioner(s) :Mr. M.G.Kapoor, Adv.
Mr. Ghan Shyam Vasisht, AOR

For Respondent(s) :Ms. Aishwarya Bhati, A.S.G.
Ms. Ruchi Kohli, Adv.
Ms. Shraddha Deshmukh, Adv.
Ms. Sweksha, Adv.
Mr. Arvind Kumar Sharma, AOR
Ms. Sonali Jain, Adv.
Ms. Shivika Mehra, Adv.
Mr. A.K. Sharma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The appeals are allowed.
3. Pending application(s), if any, shall stand disposed of.

(KAVITA PAHUJA)
ASTT. REGISTRAR-cum-PS

(SAPNA BANSAL)
COURT MASTER (NSH)