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Court No. - 52

Case :- WRIT - C No. - 3192 of 2017

Petitioner :- State Of U.P. And 3 Others
Respondent :- The Labour Court And Anr.
Counsel for Petitioner :- Kirtika Singh,C.S.C.
Counsel for Respondent :- Gopal Narain Srivastava,S.C.,Sudhanshu Narain

Hon'ble Kshitij Shailendra,J.

1. This writ petition has been filed by State of U.P. through Principal Secretary, Irrigation, Lucknow and officials of the said Department challenging the impugned award dated 08.01.2016 passed by the Labour Court, Gorakhpur, which was notified on the notice board on 07.06.2016, in Adjudication Case No.170 of 1992 whereby the Labour Court has held termination of services of the respondent no.2 with effect from 01.01.1991 as improper and illegal with a further direction for reinstatement of the said respondent maintaining continuity in his past services along with back-wages at the rate of 50%. A further direction has been issued that the respondent no.2 shall be entitled for full salary from the date of publication of the award.

2. The facts of the case are that the respondent no.2 (hereinafter referred to as the workman) came up with a case that he was regularly working in the department of Irrigation since October, 1988 as Camp

Dhawak and was performing duties relating to distribution of post. It was further contended that all of a sudden, his services were orally terminated on 01.01.1991 and his salary with effect from March, 1990 to December, 1990 was also not paid regarding which the workman had earlier filed a case before the Controlling Authority, Deoria under the Payment of Wages Act which was pending. It was further contended that the nature of the work performed by the workman was permanent and the juniors like Indrasan, Keshav and Shrawan, etc were retained in service; that the provisions of Sections 6-N, 6-P and 6-Q of the U.P. Industrial Disputes Act, 1947 and Rule 42 of the Rules were not complied with; that the workman had worked for a period of more than 240 days; and that he was wholly unemployed after the termination of his services despite best efforts.

3. The workman pleaded that the matter was registered as an Adjudication Case No.170 of 1992 pursuant to reference made by the Deputy Labour Commissioner, Gorakhpur where the question referred was as to whether termination of service of the workman by the Department with effect from 01.01.1991 was proper and/or legal ? If not, as to what benefit/ relief/ compensation the workman was entitled to receive ?

4. The Department also made its defence stating that the services of the workman were not terminated and that there was no question for payment of salary to him with effect from March, 1990 to December, 1990 as he had not worked during the said period. The Court finds that Annexure No.2 to the writ petition is a copy of the written statement filed by the Department in which nothing special has been averred except the aforesaid, however, in the impugned

award, the Labour Court has discussed the defence taken by the Department also to the effect that the workman was working as a daily-wager as per the requirements and he used to be paid wages as per the work performed by him. Therefore, it appears that there is some additional written statement filed by the Department which has not been brought on record in support of the pleadings, however the Court will consider this defence also as the same has been dealt with by the Labour Court in the award impugned.

5. Parties led evidence in support of their respective cases. Oral testimony of the workman has been filed as Annexure No.CA-1 to the counter affidavit in which the workman stated that he used to get monthly salary and that his services were orally terminated with effect from 01.01.1991; that for getting payment of salary with effect from March, 1990 to December, 1990, he had filed P.W. Case No.46 of 1991 which was decided in his favour on 17.02.1995 against which order, the employer filed a Misc. Case No.3 of 2000, which was also dismissed. It was further stated on oath that though the services of the workman had been illegally terminated, juniors to him, namely, Indrasan, Keshav and Shrawan were retained in service; that since the date of termination the workman was thoroughly unemployed and could not get job despite search; that despite order passed by the Labour Court on his application 17-D, the documents were not produced by the Department. The workman also proved documents filed by him which included muster roll. The workman was cross examined and specifically denied the suggestion made by the Department that it was wrong to say that he was working on daily-wage basis. The workman also stuck to his stand regarding retainment

of persons junior to him in the services and also to the fact that the Department had not produced the muster roll, except the muster roll of 1990 which the workman had got and filed as paper no.6 on record.

6. The Labour Court, after considering the pleadings of the parties and having perused the record, came to the conclusion that the working of more than 240 days period stood proved in view of the order passed by the Competent Authority in P.W. Case No.46 of 1991. The Labour Court also drew adverse inference against the Department for not filing attendance register/ muster roll for the period with effect from October, 1988 till January, 1991, despite application 17-D filed by the workman in this regard which was allowed. The Labour Court also observed that the Department just completed its formality by producing muster roll of only July, 1990 stating that in July, 1990 the workman had worked only for a period of 26 days.

7. As regards the contention of the employer that the workman was working in the capacity of daily-wager, the Labour Court, after discussing various authorities, recorded a finding that even then the Department should have ensured compliance of provisions of the Act and the workman would be entitled for reinstatement in his service as it was established that he had worked for more than 240 days in a calendar year. Accordingly, the award for reinstatement of the workman by maintaining continuity in past services along with payment of 50% back-wages was passed.

8. I have heard Sri Dhananjay Singh, learned Standing Counsel for the State - petitioners and Sri Sudhanshu Narain, learned counsel for the respondents and perused the record.

9. The contention of the learned Standing Counsel is to the effect that the award of the Labour Court is not sustainable as the respondent no.2 was merely a daily-wager employee and, therefore, his reinstatement could not be ordered. It is further argued that the respondent no.2 himself voluntarily left the job and wrongly instituted the case. It is further argued that even if the case of the workman is accepted, he worked for a very short period of two years and therefore keeping in view of the said tenure of alleged service, direction for reinstatement in service by maintaining past continuity and payment of 50% back-wages is illegal. Reliance has also been placed on the judgment of the Supreme Court in the case of ***Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh: (2013) 5 SCC 136***.

10. **Per contra**, learned counsel for the respondent-workman argued that since the workman was working in the regular capacity and was getting monthly salary and had established his case not only before the Labour Court but also before the Competent Authority under Payment of Wages Act where he succeeded against the Department, oral termination of his services with effect from 01.01.1991 without following the provisions of the Act of 1947 is illegal and since the juniors to the workman were retained in service and there is sufficient evidence to demonstrate that the workman was not gainfully employed after termination of his services, the award of Labour Court is just and proper and does not call for any interference.

11. In support of his submission, learned counsel for the respondent-workman has relied upon following authorities:-

(i) Deepali Gundu Surwase Vs. Kranti Junior Adhyapak and others: 2013 (139) FLR 541 (SC);

(ii) Allahabad Bank and others Vs. Avtar Bhushan Bhartiya in Special Leave Petition (Civil) No.32554 of 2018, decided on 22.04.2022:

(iii) Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana): (2010) 3 SCC 637;

(iv) Devinder Singh Vs. Municipal Council, Sanaur: (2011) 6 SCC 584;

(v) State of U.P. Vs. Charan Singh: 2015 LawSuit (SC) 302;

(vi) Jasmer Singh Vs. State of Haryana and another: (2015) 4 SCC 458;

(vii) R.M. Yellatti Vs. Assistant Executive Engineer: (2006) 1 SCC 106;

(viii) Harjinder Singh Vs. Punjab State Warehousing Corporation: (2010) 3 SCC 192;

(ix) State of U.P. Vs. Amar Nath Yadav: 2014 Law Suit (SC) 32;

(x) Director of Horticulture and another Vs. H.A. Kumar: 2013 (138) FLR 1089 (SC);

(xi) Gauri Shanker Vs. State of Rajasthan: 2015 Law Suit (SC) 357;

(xii) Deep Chandra Vs. State of U.P.: (2001) 10 SCC 606;

(xiii) Rajya Krishi Utpadan Mandi Parishad Vs. Prescribed Authority, Industrial Tribunal (V), U.P., Meerut: 2002 (2) UPLBEC 1475; and

(xiv) State of Uttar Pradesh Vs. Labour Court, Haldwani: 1998 Law Suit (All) 788.

12. Relying upon the aforesaid authorities, the contention of the learned counsel for the respondent-workman is that the although the workman was working in a regular capacity, even if he is treated as a daily-wager, the Industrial Law does not make any distinction between the workmen/employees and the source of employment, method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/paid and the mode of payment are not at all relevant for deciding as to whether a person is a workman or not. Further submission is that since oral termination has been found to be illegal coupled with the fact that the Labour Court has recorded pure finding of fact that the workman had worked for more than 240 days and that the Department had failed to lead any documentary or oral evidence against the contention of the workman, the award is perfectly in accordance with law.

13. I have considered the arguments advanced and perused the record.

14. In **Deepali Gundu Surwase (supra)**, the Supreme Court after discussing the entire law relating to reinstatement and back-wages, in paragraph 33 of the judgment, has held as follows:-

> *33. The propositions which can be culled out from the aforementioned judgments are:*

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

ii) 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.

iii) 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 averments 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.

iv) 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.

v) 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 victimizing the employee or workman, then the concerned Court or Tribunal 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 be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give 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.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization 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 Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

vii) 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."

15. In so far as the issue regarding entitlement of a daily-wager for reinstatement or back-wages, the Supreme Court in **Krishan Singh**

(supra) passed an award in favour of a person who was said to be engaged as a daily-wager and directed his reinstatement as a daily-wager with 50% back-wages.

16. Similar view was taken by the Supreme Court in the case of **Jasmer Singh (supra)** where it was held that non compliance with the statutory provisions in case of termination of services even a daily-wager worker would justify award of reinstatement with back-wages.

17. In **R.M. Yellatty (supra)**, regarding mischief of the Department in connection with termination of services of an alleged daily-wager, the Supreme Court directed reinstatement of a workman as a daily-wager in the nominal muster roll and it was held that daily waged earners are not regular employees. They are not given letters of appointments. They are not given letters of termination. They are not given any written document which they could produce as proof of receipt of wages. Their muster rolls are maintained in loose sheets. Even in cases, where registers are maintained by the Government departments, the officers/clerks making entries do not put their signatures. Even where signatures of clerks appear, the entries are not countersigned or certified by the appointing authorities.

18. The Supreme Court in ***Maharashtra SRTC Versus Casteribe Rajya Parivahan Karmchari Sanghatana (2009) 8 SCC 556*** held that the case of ***State of Karanataka Vs. Umadevi*** does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV

where the posts on which they have been working exist. Umadevi cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established.

19. The Supreme Court in ***Hari Nandan Prasad Versus Food Corporation of India (2014) 7 SCC 190***, upon considering the aforementioned judgments as to whether the principles enshrined in Umadevi case are applicable observed as follows:-

> *"34. A close scrutiny of the two cases, thus, would reveal that the law laid down in those cases is not contradictory to each other. In U.P. Power Corporation, this Court has recognized the powers of the Labour Court and at the same time emphasized that the Labour Court is to keep in mind that there should not be any direction of regularization if this offends the provisions of Article 14 of the Constitution, on which judgment in Umadevi is primarily founded. On the other hand, in Bhonde case, the Court has recognized the principle that having regard to statutory powers conferred upon the Labour Court/Industrial Court to grant certain reliefs to the workmen, which includes the relief of giving the status of permanency to the contract employees, such statutory power does not get denuded by the judgment in Umadevi's case. It is clear from the reading of this judgment that such a power is to be exercised when the employer has indulged in unfair labour practice by not filling up the permanent post even when available and continuing to workers on temporary/daily wage basis and taking the same work from them and making them some purpose which were performed by the regular workers but paying them much less wages. It is only when a particular practice is found to be unfair labour practice as enumerated in Schedule IV of MRTP and PULP Act and it necessitates giving direction under Section 30 of the said Act, that the Court would give such a direction."*

20. The Supreme Court in **Hari Nandan Prasad case (supra)** observed that keeping in mind that industrial disputes are settled by

industrial adjudicator on principles of fair play and justice concluded that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art. 14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art. 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision.

21. A three-Judge Bench of the Supreme Court in ***Haryana Roadways Versus Rudhan Singh (2005) 5 SCC 591***, considered the question whether back wages should be awarded to the workman in each and every case of illegal retrenchment and it was held that there is no rule of thumb that in every case where the Industrial Tribunal

gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily- wage employment though it may be for 240 days in a calendar year.

22. The Supreme Court in ***Bhuvnesh Kumar Dwivedi Versus Hindalco Industries Ltd. (2014) 11 SCC 85***, on the facts of that case, the Court held that the workman was subjected to victimization, therefore, the award passed by the Labour Court reinstating with

backwages was justified. The judgment and order of the High Court granting compensation was reversed.

23. Learned counsel for the workman Sri Sudhanshu Narain, has placed reliance upon a decision of the Supreme Court in ***Devinder Singh Vs. Municipal Council, Sanaur (2011) 6 SCC 584***, where the argument that had prevailed with the High Court to set aside the award of the Labour Court directing reinstatement of the workman, was that the employment of the workman with the respondent Municipal Council from 01.08.1994 to 19.09.1996 was engagement on contractual basis and that it was an appointment made contrary to the recruitment rules. The High Court had taken view that it would be violative of Articles 14 and 15 of the Constitution, and, that it would not be in public interest to sustain the award of reinstatement after a long lapse of time. It was also held that Section 2(s) contains an exhaustive definition of the term "workman". The definition takes within its ambit any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and it is immaterial that the terms of employment are not reduced into writing. The definition also includes a person, who has been dismissed, discharged or retrenched in connection with an industrial dispute or as a consequence of such dispute or whose dismissal, discharge or retrenchment has led to that dispute.

It was further held that the source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within

the meaning of Section 2(s) of the Act. It is apposite to observe that the definition of workman also does not make any distinction between full-time and part-time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on a regular basis or a person employed for doing whole-time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

24. The Apex Court in the case of ***M/s Hindustan Tin Works Pvt. Ltd. Vs. The Employees of M/s Hindustan Tin Works Pvt. Ltd and others: AIR 1979 SC 75***, has held that 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 the work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived deprived workman of his earnings. 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 litigating activity of the employer.

25. Further, the Supreme Court, in the case of ***Deepali Gundu Surwase (supra),*** elaborately discussed the very idea of restoring an employee to the position which he held before dismissal or removal or termination of his services and, in paragraph 17, the Supreme Court held that 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. The reinstatement of such an employee, which is preceded by

a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages.

26. The Supreme Court further held that 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.

27. In the same report, with regard to award of back-wages, it was held that payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety.

28. Reference of another decision of the Supreme Court in the case of ***Bhuvanesh Kumar Dwivedi Vs. M/s Hindalco Industries Ltd: 2014 (142) FLR 20*** is also worth mention in which, while referring to the judgment in the case of **Deepali Gundu Surwase (supra)** the Apex Court has held that 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 Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).….”

29. After discussing on the issue of reinstatement vis-a-vis back-wages, the Apex Court in the case of ***Mackinnon Mackenzie & Company Ltd. Vs. Mackinnon Employees’ Union: 2015 (145) FLR 184***, has reiterated the ratio laid down in Deepali Gundu (supra).

30. The aforesaid views have been reiterated by the Supreme Court very recently in its judgment dated 23.09.2022 passed in ***Civil Appeal No.6890 of 2022 (Arising out of Special Leave Petition (Civil) No.8393 of 2022) Jeetubha Khansangji Jadeja Vs. Kutchh District Panchayat***.

31. In the present case, I find that the workman successfully pleaded and fully proved his case by oral and documentary evidence that oral termination of his services with effect from 01.01.1991 was contrary to the provisions of the Act, 1947 and that the workmen junior to him were retained in service. I also find that the employer by not producing oral and documentary evidence to rebut the contention of the workman would be subjected to adverse inference which has rightly been drawn by the Labour Court, more particularly in view of Section 114, Illustration (g) of the Indian Evidence Act, 1872.

32. In the present case, the workman has not only pleaded but also stated on oath in his oral testimony and maintained the stand even in cross examination that he was not gainfully employed after termination of his services. To the contrary, the petitioner/employer completely failed either to plead or to prove in any manner that the workman was gainfully employed so as to deny him back-wages. Therefore, the ratio laid down in the aforesaid authorities on this score fully supports the case of workman for award of back-wages which the Labour Court has assessed to the extent of 50% although it could be a case where the workman was entitled for full back-wages. However, the Court is not inclined to enhance the back-wages as the writ petition has not been filed by the workman but by the employer.

33. There is no need to multiply the authorities on the aforesaid issues or to refer/quote more and more paragraphs of the said authorities as it would only make the judgment bulky and when the Court is satisfied that the Labour Court has not erred in making the award in the aforesaid terms, I find that no interference is required in the impugned award and the writ petition is devoid of merit.

34. Accordingly, the writ petition fails and is **dismissed** as such. **The impugned award is upheld**.

35. Before concluding this judgment, the Court finds that in the present case an interim order was passed on 23.01.2017 whereby the petitioner was directed to deposit a sum of Rs.2,00,000/- with the Labour Court, Gorakhpur and the operation of the impugned award was kept in abeyance. Though, it was also provided under the said interim order that out of the aforesaid amount, 25% of the same would be released in favour of the workman, I find that although the amount

was deposited, the said 25% of the same could not be released despite a subsequent order dated 03.10.2017 and the reason for not release was that the Labour Court concerned was vacant, as noticed in the order dated 30.04.2019. Thereafter, a modification application was filed and it was contended on behalf of the workman that direction may be issued to the Presiding Officer, Industrial Tribunal, Gorakhpur to act as the Presiding Officer, Labour Court, however the said contention was found to be misconceived and, accordingly, the modification application was rejected by order dated 11.07.2019. Thereafter, there is no order by which it could be inferred that the condition of release of 25% amount was fulfilled or that the workman has received the sum.

36. Therefore, while dismissing the writ petition, it is observed that the award of the Labour Court shall be executed as it is and the execution proceedings shall be completed within a period of **four months** from the date a certified copy of this judgment is produced before the court concerned. The amount of 25% as directed under the interim order dated 23.01.2017, if not released in favour of the respondent-workman, shall be adjusted in the back-wages to be awarded to him.

37. With the aforesaid observations, the writ petition is **dismissed**.

Order Date :- 8.5.2023
AKShukla/-