Maharashtra State Road Transport ... vs Mahadeo Krishna Naik on 14 February, 2025

Author: Dipankar Datta

Bench: Dipankar Datta

2025 INSC 218 REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.13834 OF 2024

MAHARASHTRA STATE ROAD TRANSPORT CORPORATION … APPELLANT

Versus

MAHADEO KRISHNA NAIK … RESPONDENT

JUDGMENT

DIPANKAR DATTA J.

THE APPEAL

1. This appeal by the Maharashtra State Road Transport Corporation 1, by special leave, is directed against the judgment and order dated 30th November 20182 of Hon'ble S.C. Gupte, J.3 of the High Court of Bombay4 allowing a petition for review5 of his earlier order dated 7th February 2017 of dismissal of a writ petition6 instituted by the respondent7. The single judge not only set aside the order of dismissal of the writ petition passed by him but also set aside the award passed against Mahadeo by the 4th Labour Court at Mumbai8. Corporation impugned order single judge High Court 4 pant Date: 2025.02.14 16:55:21 IST Reason: 5 Review Petition No. 18 of 2018 Mahadeo Labour Court While so reviewing, the single judge also directed the Corporation to pay all benefits and emoluments including back wages to Mahadeo.

2. The Corporation has taken exception to the impugned order and contends that the High Court erred in interfering with the decisions of the Writ Court and the Labour Court in its review jurisdiction. FACTUAL MATRIX

3. The facts emerging from a perusal of the records would reflect that Mahadeo was appointed by the Corporation as a bus driver on 19th April, 1988. The incident which formed the genesis of the present proceedings occurred on 10th May 1996. A lorry coming from the opposite direction collided at about 22.45 hours with a bus of the Corporation, driven by Mahadeo, resulting in a fatal accident. Two passengers travelling on the bus succumbed to their injuries while several others (around ten) suffered injuries. The monetary loss to the Corporation arising from the accident was calculated at Rs. 45,000/.

4. As a consequence of this accident, disciplinary action followed against Mahadeo. Consequent upon an inquiry, the Divisional Traffic Officer9 dismissed Mahadeo from service of the Corporation on 27th May, 1997. Aggrieved by his dismissal, Mahadeo preferred a departmental appeal which proved abortive. The Union of which Mahadeo was a member, thereafter, raised an industrial dispute. A disciplinary authority reference was made by the Deputy Commissioner of Labour requiring the Labour Court The Labour Court, upon considering the evidence led and hearing the parties to the dispute, held that the inquiry conducted was fair10; the findings of the inquiry officer were not perverse11; and the punishment inflicted was in proportion to the misconduct proved; therefore Mahadeo was not entitled to reinstatement in service. Resting on these findings, the Labour Court answered the reference by holding that Mahadeo was not entitled to any relief12.

5. Crestfallen, Mahadeo invoked the writ jurisdiction of the High Court by applying under Article 226 of the Constitution of India13. The single judge dismissed the challenge observing that there was enough material before the Labour Court to support the findings of the Inquiry Officer and hence, no interference was warranted.

6. While the reference and then the writ petition was pending, proceedings for compensation had been initiated by the family members of the deceased and injured victims of the road accident under the Motor Vehicles Act, 198814 before the Motor Accidents Claims Tribunal at Mumbai15. Mahadeo, after becoming aware of the proceedings before the MACT, more particularly the contrary stand taken by the Corporation where the entire blame for the fatal vide preliminary award dated 26th May, 2004 vide preliminary award dated 9th December, 2005 vide final award dated 16th May, 2006 W.P. 154 of 2007 the 1988 Act MACT accident was laid on the feet of the lorry driver as well as the award of the MACT dated 9th July, 200416, applied for review before the High Court17. The review proceeding succeeded before the High Court, triggering this appeal.

IMPUGNED ORDER

7. The single judge, in review, noticed the stand taken by the Corporation before the MACT that the accident was entirely due to the negligence of the lorry driver, who was driving carelessly without observing traffic norms. It was stated before the MACT that the driver of the lorry drove it into the Corporation's bus and that no fault could have at all been attributed to Mahadeo for the accident. Furthermore, in its defence, the Corporation led evidence before the MACT of the conductor of the bus and a passenger who emphatically stated that the lorry driver was completely at fault for the accident. The single judge noticed the fact that the proceeding before the MACT culminated into an award for compensation in favour of the claimants therein, where the MACT recognising the fact

that the lorry driver was at fault, did not affix any liability on the Corporation. Based on the pleadings and the evidence presented by the Corporation, the MACT categorically held that the accident took place because of the negligence of the lorry driver. the said award

8. It became clear to the single judge that such relevant evidence was suppressed before the Labour Court. This material, in the opinion of the single judge, had a crucial and conclusive bearing on the case before the Labour Court.

9. The single judge relied on a decision of this Court reported in Associate Builders v. Delhi Development Authority18, where it was held that disregard of a vital piece of evidence is one of the factors to be considered while examining whether an order is perverse. The single judge further held that if the material produced before the MACT had been produced before it, the Labour Court would have reached a diametrically opposite conclusion than the one it reached in the present case.

10. The Corporation contended that a conclusion reached by a claims tribunal under the 1988 Act is not binding on the Labour Court, with which the single judge agreed. However, the single judge held that the Corporation had admitted in a sworn pleading that the accident was not due to the negligence of Mahadeo. This newly produced material, which existed when the Labour Court made its award and the order dismissing the writ petition was made, could not be produced by Mahadeo, yet, it was of such a clinching nature that on the face of this material, no court could come to the conclusion that Mahadeo was rightly dismissed from service due to gross negligence on his part amounting to misconduct.

2015 (3) SCC 49

11. Mahadeo pleaded his inability to produce this material before as he only became aware of the proceedings before the MACT in June, 2017 and received the certified copies of the materials by 23 rd June 2017. This was neither challenged by the Corporation before the single judge nor was it shown that Mahadeo, despite being aware of the proceedings before the MACT, went into slumber.

12. Hence, recording satisfaction that a case for review had been set up, the single judge proceeded to observe that no useful purpose would be served by remanding the matter to the Labour Court as the materials spoke for themselves and no case of negligence could be made out against Mahadeo by the Corporation. Consequently, the Corporation suffered an order for payment of all benefits and emoluments including back wages on the basis of continuous service of Mahadeo from the date of his wrongful termination till his superannuation. Since Mahadeo had attained the age of superannuation, reinstatement was denied.

13. The writ petition, thus, stood allowed on review of the earlier order of dismissal.

CONTENTIONS OF THE PARTIES

14. On behalf of the Corporation, exception is taken to the impugned order on the following grounds:

(i) Mahadeo was a trained driver who was responsible for the safety of the passengers travelling in the bus. It is a fact that there was extensive damage to the bus and its passengers by the lorry and even though Mahadeo might have swerved to avoid the collision, there was a massive impact on account of the high speed of the bus. To bolster this submission, the Corporation relied on a decision of this Court in T.N. State Transport Corpn. (Coimbatore) Ltd. v. M. Chandrasekaran19 where it was held that the injuries caused to the passengers and the nature of impact raises an inference that the bus was being driven negligently by the bus driver.

(ii) The proceedings before the MACT and the disciplinary proceedings stand on completely different footing. The disciplinary proceedings were aimed at examining the role of Mahadeo in the collision, whereas the MACT proceedings aimed to determine the negligence of the drivers involved in the collision.

(iii) Judicial review is limited to analysis of the decision-making process and the High Court could not have ventured into the correctness of the decision itself. Once it has been established that no ground for review was made out on the aspects of fairness and propriety of the inquiry, the High Court should not have interfered with the decision of the Labour Court. (2016) 16 SCC 16

(iv) The single judge has substituted its view in the place of the competent authority and erred in not remanding the matter to the Labour Court.

(v) Full back wages have been awarded to Mahadeo without any evidence that he was not gainfully employed during the period from his termination to his superannuation. The single judge erred in ignoring the fact that Mahadeo had a blemished service record, and several punishments had been meted out to him during his short service period. Reliance has been placed on the decision Rajasthan State Road Transport Corporation, Jaipur v. Phool Chand20 to contend that it is settled law that back wages are not automatic even if termination is set aside; hence, the single judge erred in not supplying reasons for award of full backwages.

15. Mahadeo, supporting the impugned order, advanced the following arguments:

(i) The Corporation has indulged in committing fraud on the Court, by not disclosing the fate of the judicial proceedings before the MACT and the pleadings filed therein, to obtain favourable orders.

(ii) Mahadeo has been fighting this legal battle since 1997 and due to dismissal from service, he has been unable to find any other permanent employment as a driver. He has been victimised by (2018) 18 SCC 229 the Corporation and has suffered irreparable financial loss due to its condemnable actions.

> (iii) The impugned order of the single judge granting relief is justified having regard to the decision of this Court in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyala21, where this Court has held that if an employee is terminated on the basis on frivolous allegations in violation of natural justice, that in itself will be ample justification to award full backwages.

Issues

16. To our mind, the present controversy tasks us to address four issues. The first is whether, the Corporation is guilty of suggestio falsi by not disclosing what it had pleaded before the MACT and suppresio veri by suppressing the said award. Depending on an affirmative answer to the first issue, the second issue would be whether, on facts and in the circumstances, the single judge was justified in exercising review jurisdiction. Again, an affirmative answer to the second issue would require serious consideration as to whether any interference with the direction for payment of full back wages is called for or not. Fourthly and finally, subject to our answers to all the three issues, what would be the appropriate relief for Mahadeo needs to be considered.

(2013) 10 SCC 324 WRITTEN STATEMENT OF THE CORPORATION BEFORE THE MACT

17. To answer the above issues, we need to appreciate what was the nature of claim before the MACT, what precisely was the defence raised by the Corporation to avoid liability for payment of compensation, and what was the outcome of such proceedings.

18. The road accident taking the lives of two young children and causing injury to several others had given rise to a First Information Report22. Mahadeo was not named as an accused therein. The driver of the lorry, involved in such accident, was the sole accused in the FIR. This fact was known to the Corporation from day one of the accident. The parents of Nitin Vardekar23, a deceased passenger aged 17 years, had approached the MACT with a claim for compensation24 under section 166 of the 1988 Act, impleading the Corporation25, the owner of the lorry26 and the insurer of the lorry27 as opposite parties.

19. To contest the claim of the claimants, the Divisional Controller of the Mumbai Division of the Corporation, Kurla, Mumbai filed the written statement, on solemn affirmation, for consideration of the MACT. Relevant passages from the said written statement read as follows:

> FIR claimants OP - 1 OP - 2 OP - 3 “4. .....It is true that when the said S.T. Bus reached at Pen Phata on Mumbai Goa Highway at Nagothane at about 22:45 hrs on 10.05.1996 at that time one M/Lorry bearing Registration no.

MRL 8226 came from the opposite direction in a very fast speed and in rash and negligent manner and gave heavy dash to the driver side of the S.T. Bus. It is also true that due to the said impact, the right side of the S.T. was cut off and the deceased who was sitting on the right side in the said S.T. Bus sustained injuries.

5. With reference to para 22(ii) of the application, this and by the correct side of the road (sic). The said S.T. Bus was fully under the control of the Bus Driver of this Opp. Party. When the said S.T. Bus came near Pen Phata, at Nagothane, at that time one M/Lorry bearing registration no. MRL8226 which was being driven by the driver of the Opp. Party No. 2, at a fast speed, rashly, negligently and without any care, caution and proper lookout from the opposite direction of the S.T. Bus, could not control his vehicle, came on the wrong side of the road and dashed against the bus very heavily. The impact was so heavy that the right portion of the S.T. Bus from the driver's side was tore and the passenger i.e. the deceased sustained injuries. The S.T. Bus driver, on seeing the M/Lorry coming towards the bus, tried to save his vehicle to his left side to avoid the accident. However, as the driver of the Opp. Party No.2 came abruptly in front of the bus in a rash and negligent manner, it came in contact of the right side of the S.T. sustained injuries and was removed to the hospital. It will this be observed that there was no negligence whatsoever on the part of the S.T. Bus driver, but it was sheer negligence on the part of the driver of the Opp. Party No. 2 who drove his M/lorry rashly, carelessly and Opp. Party denies that the accident is of such a nature that it would not have taken place but for the gross negligence and rashness of the driver of this Opp. Party and puts the applicants to the strict proof thereof. This Opp. Party further denies that the driver of the S.T. Bus was rash and negligent while driving the same in as much as he drove the said vehicle at a high, excessive and improper speed or that he drove the said S.T. Bus without taking precautions and/or keeping proper lookout or watch for the traffic and puts the applicant to the strict proof thereof. This opp. Party further denies that the driver of the S.T. Bus failed and neglected to apply the breaks and/or failed to apply the breaks efficiently and/or in sufficient time to avoid the accident or neglected to manoeuvre the vehicle so as to avoid the accident and puts the applicant to the strict proof thereof." (emphasis supplied) AWARD OF THE MACT

20. MACT, Mumbai, considering the claim raised by the claimants and the defence of the Corporation recorded the evidence of, inter alia, a passenger named Anant Chindarkar28 and the conductor of the Corporation's bus named Chandrakant Lokhe29, respectively. On the basis of appreciation of the materials on record, the MACT proceeded to deliver the said award. We consider it appropriate to extract relevant passages from the said award hereinbelow:

> "2. ...Applicant Nos.1 and 2 are father and mother respectively of the deceased Nitin. On 10.5.1996 the deceased was travelling by S.T. Bus No.MH-12-Q-8712. It was going along Mumbai Goa Highway. At about 10.45 p.m., it reached at Nagothane. At that time, one Motor Lorry No.MRL-8226 came from the front side in very fast speed and gave dash to the said S.T. Bus at its's driver's side. Therefore, right side of S.T. Bus was cut off. The deceased was seriously injured and died on the spot.
>
> ****
>
> 3. Opposite party No.1 M.S.R.T.C. filed written statement Exhibit-8.

It's case is that: The said Motor lorry came on wrong side of the road and dashed the S.T. Bus heavily. The accident occurred due to sole negligence of the driver of the said lorry. **** ISSUES FINDINGS

1) Whether the Applicants prove that the accident took place due to rash and negligent driving of Yes vehicle No.MRL-8226?

2) Whether the Applicants prove that the deceased Yes died in the said accident?

3) Whether the Applicants prove that they are entitled to compensation as alleged? Yes, Rs.1,40,000/-

****

P.W. 2

D.W. 1

8. Applicants examined one Anant Chindarkar as P.W.2 as an eye witness. P.W.2 stated that: On 10.5.1996 he was accompanying the deceased in the said S.T. Bus. Deceased was sitting on seat No.25. Near Pen fatta, one lorry came from front side and gave dash to the S.T. Bus. That lorry was in great speed. It hit S.T. Bus as it's middle portion of the right side. Therefore right side of the S.T. Bus was torn. The deceased got injuries on his head and chest. He became unconscious. Police came on the spot after about 15 to 20 minutes and removed the deceased to Nagothane Rural Hospital by one private car. P.W.2 and his friends also went to that hospital. Doctor examined the deceased and declared him dead. Number of that S.T. Bus is MH-12-Q-8712. Number of that lorry is MRL-8226. ****

10. Opposite party No.1 M.S.R.T.C. examined one Chandrakant Lokhe as D.W.1. He stated that on 10.5.1996 he was conductor of the said S.T. Bus. Accident happened near Nagothane Fatta at about 10.45 p.m. Speed of S.T. Bus was about 30 K.M.P.H. There was vehicular traffic on the road. The S.T. Bus was on the left side of the road. The said lorry came from front side in great speed and gave dash to middle portion of right side of S.T. Bus. The accident happened because lorry came to wrong side of the road. Body of S.T. Bus was torn. The lorry went further ahead and then overturned. The S.T. Bus was stopped immediately after the accident. Lorry driver was responsible for the accident. ****

13. ...Spot panchnama Exhibit-23 further shows that: The said truck No. MRL 8226 after giving dash to the S.T. Bus went towards western side of the road. Then it hit and uprooted six stones on the kacha road. Thereafter, it went below the road and dashed one tree. It was standing there facing towards the road. Trucks body is of iron. Upper side of truck's cabin was broken and was lying near it. It stopped about 115 feet away from the place of accident. Driver's side body of the truck was seen damaged. ****

16. P.W.2 Anant Chindarkar was one of the passengers in the said S.T. Bus. That fact is not disputed

by the other side. D.W.1 Chandrakant Lokhe was the conductor of the said S.T. Bus. It is also not disputed. P.W.2 and D.W.1 were, therefore, supposed to have personal knowledge and experience of the circumstances in which the accident occurred. Both of them blamed driver of the said lorry for the occurrence.

****

20. For the aforesaid reasons I find that the accident took place because of rash and negligent driving of the said truck No.MRL- 8226. Issue No.1 is, therefore, answered affirmatively. ****

25. Consequently, the applicants are entitled to get total compensation of Rs.1,40,000/- (Rs.1,30,000 + Rs.10,000). Admittedly: Deceased died in the accident in question. The said motor lorry was involved in it. It was insured with the New India Assurance Co. Ltd., on the date of the accident. The Opposite party No.2, Ramesh Suryawanshi is owner of the said lorry. Therefore, I find that Opposite Party No.2 and Insurer are liable to pay aforesaid compensation of Rs.1,40,000/- to the applicants. Issue No.3 is answered accordingly.

****

27. Hence, the following order:

> ORDER Application is partly allowed with proportionate costs. Opposite party No.2 Ramesh Suryawanshi and the Insurer the New India Assurance Co. Ltd. Both are ordered to pay jointly and severally Rs.1,40,000 (Rupees One Lakh Forty Thousand Only) to the applicants alongwith interest at the rate of 6% p.a. From the date of the filing of the application i.e. 27.8.1996 till payment. It is inclusive of payment under sec.140 of Motor Vehicles Act by way of No-Fault Liability.
>
> The case against Opposite party No.1, M.S.R.T.C. is dismissed." (emphasis supplied)
> ANALYSIS AND REASONS
>
> 21. We now proceed to address each of the first three issues, in seriatim, with the answer to the fourth and final issue being made part of the answer to the third issue.
>
> 22. The Latin phrases suggestio falsi and suppresio veri embody concepts of unethical conduct of a party having serious consequences in various fields including law.
>
> 23. According to Black's Law Dictionary30, suggestio falsi is a false representation or a misleading suggestion while suppresio veri 11th Edition connotes suppression of the truth; an indirect lie, whether by words, conduct, or artifice. It is a type of fraud.
>
> 24. That the Corporation indulged in the misadventure of suggestio falsi and suppresio veri is incontrovertible.

25. Before the Labour Court, the Corporation did not leave any stone unturned to establish that not only was the inquiry conducted against Mahadeo fair, but the conclusion arrived at in course of such inquiry that Mahadeo was guilty of misconduct in rashly and negligently driving the bus of the Corporation leading to loss suffered by it was established upon due consideration of the materials on record. Having regard to the clear and specific stand taken before the MACT in its written statement, which has been quoted above, the Corporation did make a false representation before the Labour Court amounting to suggestio falsi. Also, having not disclosed before the Labour Court the outcome of the proceedings before the MACT, a fortiori, that it had not been found liable to pay any compensation to the passengers who either died and were injured based on what the version in the written statement was and the argument advanced on its behalf to absolve itself of any liability, the Corporation is also guilty of suppresio veri.

26. The conduct of the Corporation when Mahadeo was struggling to find a foothold before the single judge in view of the contours of judicial scrutiny of awards of industrial adjudicators cannot also escape notice. Perhaps, the Corporation thought that the proceedings before the MACT not having been brought to the notice of the Labour Court by Mahadeo previously, he was blissfully ignorant of the same and, therefore, the Corporation would steal a march over him by not making the appropriate disclosure. The Corporation was caught off-guard when Mahadeo produced the written statement and the award of the MACT before the single judge in his review petition.

27. The relevance of the MACT judgment and its probative value to the case at hand cannot be gainsaid. To be relevant, a piece of evidence relied on by a party must be shown to have some logical connection to the case and its admission would be necessary to prove or disprove a fact. Once the evidence is found to be relevant and is admitted arises the question of its probative value. Probative value, as is well-known, refers to the weight or persuasive power of the evidence. It is not always necessary that a piece of evidence found relevant to a case would still demand significant probative value. An assessment has to be made by the court as to how convincing or persuasive the evidence is and how effective it would be to prove or disprove a fact.

28. We are conscious that the law of evidence per se does not apply to industrial adjudication. Nevertheless, the general principles do apply. In any event, in industrial adjudication, principles of natural justice have to be complied with. Fairness in procedure has developed as the third limb of natural justice. The manner in which the Corporation conducted itself before the Labour Court does not behove a creature of a statute. It has been far from fair in its dealings with Mahadeo.

29. The Corporation did not deliberately refer to the award of the MACT at two different tiers, and thereby actively suppressed relevant material from a court of law. We do not propose to enter the arena of controversy as to whether the award of the

MACT is binding on the Labour Court. However, the Corporation could not have at any rate resiled from what it pleaded in its own written statement before the MACT on a sworn affidavit and deliberately withhold the same. This Court has always taken a serious view against suppression of evidence in a judicial proceeding. In State of M.P. v. Narmada Bachao Andolan31, a three-Judge bench of this Court observed:

"164. It is a settled proposition of law that a false statement made in the court or in the pleadings, intentionally to mislead the court and obtain a favourable order, amounts to criminal contempt, as it tends to impede the administration of justice. It adversely affects the interest of the public in the administration of justice. Every party is under a legal obligation to make truthful statements before the court, for the reason that causing an obstruction in the due course of justice 'undermines and obstructs the very flow of the unsoiled stream of justice, which has to be kept clear and pure, and no one can be permitted to take liberties with it by soiling its purity'."

30. Even if we keep the award of the MACT aside, it is clear from the pleadings of the Corporation before the MACT and the Labour Court that the Corporation has attempted to get the best of both worlds.

(2011) 7 SCC 639 The contradictory nature of the stances taken by the Corporation before the Labour Court and the MACT reeks of the Corporation trying to approbate and reprobate on the same issue. It is bound to cause immense prejudice to Mahadeo if the Corporation is allowed to reverse its stance to suit its own interests. This Court in Union of India v. N. Murugesan32 while holding that it will be inequitable and unfair if a party is allowed to challenge a position while enjoying its fruits, ruled:

"26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle." (emphasis supplied)

31. The Corporation, without an iota of doubt, being in the dominant position has attempted and achieved success in stealing a march over Mahadeo by indulging in suggestio falsi and suppressio veri.

The actions of the Corporation have resulted in Mahadeo being robbed of a stable livelihood and has caused irreparable harm to him. It would not behove any court, much less this Court, to allow such free reign to a party. Omission, neglect and/or failure – (2022) 2 SCC 25 whatever be the cause - the Corporation's non-disclosure of what its stand was before the MACT and what was ultimately held by the MACT to the Labour Court as well as the single judge is suppression of such high magnitude that it can safely be held to be akin to a clear fraud on court.

32. It also appears to us that the actions of the Corporation were motivated. The track record of Mahadeo would show that he had been involved in 8 collisions before the collision with the lorry. Why the Corporation did not get rid of Mahadeo before is best known to it. However, wanting to get rid of Mahadeo, the Corporation on this occasion found a convenient excuse in the collision and went ahead to dismiss him in the most unfair manner.

33. The first issue is, thus, answered in the affirmative.

34. Moving on to the second issue, the same need not detain us for long in view of our answer to the first issue.

35. Section 114 read with Order XLVII, CPC does permit the court to look into any document, having a bearing on the lis decided earlier, which was not on record because despite exercise of due diligence the same could not be produced by a party. It would invariably reduce to an examination as to whether the document has such intrinsic worth that if the same had been produced, the outcome could have been different.

36. The written statement of the Corporation filed before the MACT and its award are documents of immense significance which were sufficient to tilt the balance in favour of Mahadeo. The objection of the Corporation to the single judge receiving such document as evidence in course of exercise of review jurisdiction is wholly without any substance and merits outright rejection.

37. Accordingly, the second issue too is answered in favour of Mahadeo.

38. It is now time to consider the important point of award of back wages.

39. There is no dearth of judicial precedents on such point. While not referring to all the precedents, we may notice only a couple of them here.

40. Hindustan Tin Works (P) Ltd. v. Employees33 is a decision rendered by a bench of three Judges of this Court. The following passage from the judgment authored by Hon'ble D.A. Desai, J. (as His Lordship then was) is instructive:

> "9. 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 (1979) 2 SCC 80 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. ... " (emphasis supplied)

41. Close on the heels of Hindustan Tin Works (P) Ltd. (supra) came another seminal decision on entitlement to back wages by another three-Judge Bench in Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court34. Hon'ble O. Chinappa Reddy, J. (as His Lordship then was) in His Lordship's inimitable style remarked:

> "6. ... Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions. 'Void ab initio', 'invalid and inoperative' or call it what you will, the workmen and the employer are primarily concerned with the consequence of striking down the order of termination of the services of the workmen. Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be (1980) 4 SCC 443 exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have

> closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted." (emphasis supplied)

42. There have been decisions of this Court rendered thereafter where a shift in approach on awarding full back wages is clearly discernible. However, a coordinate bench of this Court in Deepali Gundu Surwase (supra) considered a dozen precedents on award of back wages upon reinstatement (referred to in paragraphs 13 and 14). Speaking through Hon'ble G. S. Singhvi, J. (as His Lordship then was), the legal position was neatly summed up in the following words:

> "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 employee concerned, 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. 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. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments." x x x

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 [(1979) 2 SCC 80].

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal [(2007) 2 SCC 433] 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 [Hindustan Tin Works (P) Ltd. (supra) and Surendra Kumar Verma (supra)] and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman." (emphasis supplied)

43. We cannot but endorse our wholehearted concurrence with the views expressed in the aforesaid decisions. Taking a cue therefrom, it can safely be concluded 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; grant of full or partial back wages has to be preceded by a minor fact-finding exercise by the industrial adjudicator/court seized of the proceedings. Such exercise would require the relevant industrial court or the jurisdictional high court or even this Court to ascertain whether in the interregnum, that is, between the dates of termination and proposed reinstatement, the employee has been gainfully employed. If the employee admits of any gainful employment and gives particulars of the employment together with details of the emoluments received, or, if the employee asserts by pleading that he was not gainfully employed but the employer pleads and proves otherwise to the satisfaction of the court, the quantum of back wages that ought to be awarded on reinstatement is really in the realm of discretion of the court. Such discretion would generally necessitate bearing in mind two circumstances : the first is, the employee, because of the order terminating his service, could not work for a certain period under the employer and secondly, for his bare survival, he might not have had any option but to take up alternative employment. It is discernible from certain precedents, duly noticed in Deepali Gundu Surwase (supra), that the courts are loath to award back wages for the period when no work has been performed by such an employee. Such a view is no doubt debatable, having regard to the ratio decidendi in Hindustan Tin Works (P) Ltd. (supra), Surendra Kumar Verma (supra) and Deepali Gundu Surwase (supra). Though the latter decision was cited before the coordinate bench when it decided Phool Chand (supra), any thoughtful discussion appears to be absent.

44. There is one other aspect that would fall for consideration of the court. In certain decisions, noticed in Deepali Gundu Surwase (supra), it has been opined that whether or not an employee has been gainfully employed is within his special knowledge and having regard to Section 106 of the Evidence Act, 1872, the burden of proof is on him. What is required of an employee in such a case? He has to plead in his statement of claim or any subsequent pleading before the industrial tribunal/labour court that he has not been gainfully employed and that the award of reinstatement may also grant him back wages. If the employee pleads that he was not gainfully employed, he cannot possibly prove such negative fact by adducing positive evidence. In the absence of any contra-material on record, his version has to be accepted. Reference in this connection may be made to Section 17-B of the Industrial Disputes Act, 1947, which confers a right on an employee to seek "full wages last drawn" from the employer while the challenge of the employer to an award directing reinstatement in a higher court remains pending. There too, what is required is a statement on affidavit regarding non-employment and with such statement on record, the ball is in the court of the employer to satisfy the court why relief under such section ought not to be granted by invoking the proviso to the section. We see no reason why a similar approach may not be adopted. After the employee pleads his non-employment and if the employer asserts that the employee was gainfully employed between the dates of termination and proposed reinstatement, the onus of proof would shift to the employer to prove such assertion having regard to the cardinal principle that 'he who asserts must prove'. Law, though, seems to be well settled 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 consequences. However, it is elementary but requires to be restated that while grant of full back wages is the normal rule, an exceptional case with sufficient proof has to be set up by the employer to escape the burden of bearing back wages.

45. We hasten to add that the courts may be confronted with cases where grant of lumpsum compensation, instead of reinstatement with back wages, could be the more appropriate remedy. The courts may, in such cases, providing justification for its approach direct such lumpsum compensation to be paid keeping in mind the interest of the employee as well as the employer.

46. Mahadeo has admitted in his counter affidavit filed before this Court of being engaged in badli work on a daily wage basis. At the same time, it is his specific case that because his service was terminated by the Corporation, he could not find a permanent employment elsewhere. There is no material on record to disbelieve Mahadeo. Since the exact quantum of wages earned by Mahadeo is not available and at the same time it is clear as crystal that the Corporation succeeded in its attempt to get rid of Mahadeo by indulging in the misadventure of suppressio veri and suggestio falsi, we are of the considered opinion that interest of justice would be sufficiently served if, in modification of the order of the single judge awarding 100% back wages, Mahadeo is awarded 75% of the back wages from the date of his termination till the date of his superannuation.

47. The third issue having thus been answered, we are left with the fourth and final issue.

48. It is ordered that Mahadeo is entitled to 75% of the back wages from the date of his termination till the date of his superannuation. This would be apart from Mahadeo being entitled to full terminal benefits, along with interest @ 6% per annum, had he never been dismissed from service. It is ordered accordingly.

49. The amounts Mahadeo is entitled to in terms of this order shall be released in his favour by the Corporation within three months from date of its communication; in default, the said amount shall carry further interest @ 2% from such default till full payment. CONCLUSION

50. With the aforesaid modification of the impugned order, this civil appeal stands disposed of.

51. Parties shall bear their own costs.

.....J. (DIPANKAR DATTA) .....J. (SANDEEP MEHTA) New Delhi;

14th February, 2025.