Novartis India Ltd vs State Of West Bengal & Ors on 2 December, 2008

Author: S.B. Sinha

Bench: S.B. Sinha, Cyriac Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7011 of 2008
(Arising out of SLP (C) No. 21254 of 2007)

Novartis India Ltd. .... Appellant

Versus

State of West Bengal and others .... Respondents

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

2 Whether back wages should have been directed to be paid in favour of respondent Nos. 2 to 4 by the Industrial Tribunal as also by the High Court of Calcutta is the question involved in this appeal which arises out of a judgment and order dated 1st August, 2007 whereby and whereunder a Letters Patent Appeal filed by the appellant from a judgment and order dated 11th July, 2003 passed by a learned Single Judge of the High Court was affirmed dismissing the writ petition filed by the appellant herein and questioning the validity of an award dated 10th October, 2002.

3. Appellant herein is a successor in interest of a company known as Sandoz (India) Limited. Respondents were appointed as Sales Representatives by the said Santoz (India) Limited. Indisputably in terms of offers of appointment they could be transferred from one place to another.

In October, 1994 respondent Nos. 2 to 4 were transferred to Siwan, Karimganj and Farrukabad respectively. They were allegedly relieved from their duties and were directed to report at the transferred places on or about 17th October, 1994. They filed their representations requesting for withdrawal/ cancellation of their respective orders of transfer.

4. Respondent No.4 sought for cancellation of the order of his transfer on medical grounds.

Respondent No.3 in his representation dated 19th October, 1994 stated:-

> "Now, the Company Advocate Shri C.U. Singh has made statement before Her Hon'ble Judge Miss Sondur of Bombay City Civil Court to the effect that "the Defendants shall not take any disciplinary action against the transferred Medical Representatives not reporting to their posts of transfer during the pendency of Notice of Motion". On this statement, the Notice of Motion are fixed for hearing on 5th October, 1994.
>
> I have not accepted transfer and not reported at the place of transfer in view of the above statement and awaiting result of Motion. I am advised by Association to defer to file suit to challenge the transfer order."

5. Indisputably Civil Suits were filed in the District Court at Mumbai which were marked as Suit Nos. 6263 and 6290 of 1994 questioning the policy of transfer of the company.

6. The company, however, asked the respondents to report for duties at their respective transferred places. Reminders were sent by the company to respondent Nos. 2 and 4 on 1st April, 1995 while to respondent No.3 on 31st March, 1995. As the respondents did not join at their transferred places, they were discharged from services by orders dated 15th April, 1995, stating:_ "Note that as you have failed to honour adhere to and comply with the contractual obligations on your part, we are left with no alternative but to determine your contract of employment which we hereby do with immediate effect, with one month pay in lieu of notice. The notice pay for a sum of Rs.7311/- (Rupees seven thousand three hundred and eleven only) by a Demand Draft No.736343 dated 14.04.95 is being sent herewith as a part of the same transaction.

Your legal dues arising out of determination of the Contract of Employment shall be remitted to you at your last known local address upon your surrendering all company property such a Detailing Bag, Promotion Aids, Medical Dictionary, Training Manual, Operations Manual, Literatures, Company Correspondence etc. at an early date."

7. It is, however, not in dispute that in the meantime respondent Nos. 2 to 4 had approached the Regional Labour Commissioner for conciliation. The Company refused to participate therein.

Questioning the said orders of termination respondent Nos. 2 to 4 raised an industrial dispute. The Government of West Bengal by an order dated 12th June, 1997 referred the said dispute for determination by the Third Industrial Tribunal, West Bengal, the terms whereof read as under :-

> "Whether the termination of services of (1) Shri Bikash Bhusan Ghosh, (2) Shri Pradip Kumar Mukherjee and (3) Shri Shyama Charan Mallick is justified ? What relief, if any, are they entitled ?"

8. The company filed its written statement before the Industrial Tribunal inter alia questioning its jurisdiction. A preliminary issue was raised as regards the maintainability of the reference on the ground that the dispute, if any, could have been raised only at the transferred locations and the appropriate State Governments where respondent Nos. 2 to 4 have been transferred only had the jurisdiction to refer the alleged dispute. By an order dated 30th March, 1999 the said preliminary objection was rejected. The Industrial Tribunal made an award on 10th October, 2002 holding that since no domestic inquiry was conducted before passing the orders of termination, the same were bad in law. It was observed that since the said respondents had superannuated in the meantime, the question of directing their reinstatement did not arise. It however, held that the said respondents were entitled to back wages from the date of termination till the date of attaining their normal superannuation. However, it was directed that the back wages should be calculated on the basis of the last pay drawn.

9. Questioning the validity of said award a writ petition was filed before the High Court of Calcutta. A learned Single Judge of the High Court dismissed the writ petition. However, in a Letters Patent Appeal filed by the appellant, by a judgment and order dated 1st March, 2006, a Division Bench of the said court held that the State of West Bengal was not the appropriate Government for making the reference.

A Special Leave Petition was filed by the workmen before this Court. By a judgment and order dated 27th April, 2007, reported as Bikash Bhushan Ghosh and others v. Novartis India Ltd and another, [(2007) 5 SCC 591] this Court differed with the findings of the Calcutta High Court and while setting aside the judgment of the High Court remitted back the matter to it for consideration of the matter on its own merits.

10. Pursuant to and in furtherance of the said directions, the matter was considered afresh by a Division Bench of the Calcutta High Court and by reason of the impugned judgment dated 1st August, 2007 the said Letters Patent Appeal was dismissed, stating:-

" From a perusal of the award passed by the learned Tribunal, we find that the learned Judge, 3rd Industrial Tribunal, Calcutta decided the matter after taking into consideration the entire evidence on record and we do not find any reason to send back the mater again to the Tribunal to decide the matter on merits after taking into consideration the same evidence on record. So far as the payment of back wages we also do not find any reason to interfere with the same."

11. This Court issued notice on 23rd November, 2007 confined to the question of back wages only.

12. Mr. J.P. Cama, learned senior counsel appearing on behalf of the appellant would submit :-

1) That the Tribunal and consequently the High Court committed a serious error in awarding back wages in favour of respondent Nos. 2 to 4 herein without taking into consideration the factors relevant therefor.

2) Respondents 2 to 4 had not discharged the onus placed on them to show that they were not employed elsewhere during the period of 3rd October, 1994 and the date of the award and even assuming that they were not employed in any undertaking, they should have at least shown as to how they survived for such a long time.

3) The Tribunal applied the wrong test in so far as it proceeded on the basis that the order of termination being bad in law, back wages were to be paid automatically.

4) Learned Single Judge has failed to arrive at a finding as to why the back wages should be granted.

5) The Division Bench has also not assigned any reason in support of the findings as to why the back wages should be paid.

6) The Tribunal having directed that the back wages should be calculated on the basis of last pay and no consequential benefits having been given which has attained finality, the contention of the workmen that back wages should be calculated keeping in view the revised scale of pay must be held to be wholly unsustainable.

13. Mr. Pradip Kumar Ghosh, learned senior counsel appearing on behalf of respondents 2 to 4, on the other hand, would support the judgment, contending:

1) The back wages are granted in two different situations; i.e. firstly by way of consequential relief; and secondly by way of a compensation in a case where direction to reinstatement is not possible to be given.

2) Respondent Nos. 2 to 4 having served the company for more than 25 years with all sincerity, their transfer to far away places only a few years prior to their dates of superannuation being mala fide, the same was liable to be set aside.

3) It was impossible for the respondents to get alternative employment at that age, back wages have rightly been granted in their favour.

4) The guidelines laid down by this Court for non-payment or part payment of back wages, in a situation of this nature should not be applied and in any event the said guidelines which relate to the nature and mode of employment, the length of service, etc. cannot be said to have any application in the instant case.

5) The Tribunal having directed calculation of back wages on the basis of the last drawn wages, the same would mean that the wages to which the workmen were

entitled to and not the actual wages drawn by them.

14. Respondents were posted at Kolkata by the appellant. For a long time they were posted there. They were transferred to far away places. They, however, immediately did not initiate proceedings questioning the validity of the orders of their transfer. The question as regards validity of order of transfer in similar matters was pending decision in a court of law. They were advised to wait till the decision in the notice of motion in the suit filed before the City Civil Court, Mumbai is rendered.

Admittedly, however, even after the direction went against the employees, respondents did not join their services at their transferred places.

They might have committed a misconduct. Their services, however, were terminated without holding any domestic inquiry. Only a month's wages were paid. It is not in dispute that after passing of the orders of transfer till the orders of termination, no amount by way of salary or otherwise has been paid to them. No disciplinary proceeding was initiated. No subsistence allowance was also paid.

15. Indisputably when an industrial dispute was raised, the company refused to participate in the conciliation proceedings before the conciliation officer on 12th April, 1995, the date fixed therefor Allegedly only upon receipt of notice of the conciliation proceeding, the services of respondents 2 to 4 were terminated.

16. When an employee does not join at his transferred place, he commits a misconduct. A disciplinary proceeding was, therefore, required to be initiated. The order of discharge is not a substitute for an order of punishment. If an employee is to be dismissed from services on the ground that he had committed a misconduct, he was entitled to an opportunity of hearing. Had such an opportunity of hearing been given to them, they could have shown that there were compelling reasons for their not joining at the transferred places. Even a minor punishment could have been granted. Appellant precipitated the situation by passing a post haste order of termination of their services.

17. This Court in Bikash Bhushan Ghosh and others (supra) in regard to a contention raised by the appellant in earlier round of litigation that the order of transfer having not been challenged, the award of the Industrial Court was not sustainable, held :-

> "15. With respect to the Division Bench, we do not think that it has posed unto itself a correct question of law. It is not in dispute that the appellants did not join their duties at the transferred places. According to them, as the orders of transfer were illegal, their services were terminated for not complying therewith. The assertion of the respondent that the appellants were relieved from job was unilateral. If the orders of transfer were to be set aside, they would be deemed to be continuing to be posted in Calcutta. The legality of the orders of transfer, thus, had a direct nexus with the orders of termination.

It was furthermore observed :-

"18. Yet again the appellants being workmen, their services were protected in terms of the Industrial Disputes Act, 1947. If their services were protected, an order of termination was required to be communicated. Communication of an order of termination itself may give rise to a cause of action. An order of termination takes effect from the date of communication of the said order."

18. The issue before us, namely - as to whether the respondents 2 to 4 were entitled to full back wages must be determined keeping in view the aforementioned background facts in mind.

19. There can, however, be no doubt whatsoever that there has been a shift in the approach of this Court in regard to payment of back wages. Back wages cannot be granted almost automatically upon setting aside an order of termination inter alia on the premises that the burden to show that the workman was gainfully employed during interregnum period was on the employer. This Court, in a number of decisions opined that grant of back wages is not automotic. The burden of proof that he remained unemployed would be on the workmen keeping in view the provisions contained in Section 106 of the Evidence Act, 1972. This Court in the matter of grant of back wages has laid down certain guidelines stating that therefor several factors are required to be considered including the nature of appointment; the mode of recruitment; the length of service; and whether the appointment was in consonance with Articles 4 and 16 of the Constitution of India in cases of public employment; etc.

20. It is also trite that for the purpose of grant of back wages, conduct of the concerned workman also plays a vital role. Each decision, as regards grant of back wages or the quantum thereof, would, therefore, depend on the fact of each case.

Back wages are ordinarily to be granted, keeping in view the principles of grant of damages in mind. It cannot be claimed as a matter of right.

21. Large number of decisions have been referred before us by the learned counsel for the parties. It is not possible to deal with each one of them. We may, however, notice a few of them.

22. In M.P. Sate Electricity Board v. Jarina Bee, [(2003) 6 SCC 579] this Court observed that the award of full back wages was not the natural consequence of an order of reinstatement.

23. In Allahabad Jal Sansthan v. Daya Shankar Rai and another, [(2005) 5 SCC 124] it was held :-

> "6. A law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration. It is not in dispute that Respondent 1 herein was appointed on an ad hoc basis; his services were terminated on the ground of a policy decision, as far back as on 24-1-1987.

> Respondent 1 had filed a written statement wherein he had not raised any plea that he had been sitting idle or had not obtained any other employment in the interregnum. The learned counsel for the appellant, in our opinion, is correct in submitting that a pleading to that effect in the written statement by the workman was necessary. Not only no such pleading was raised, even in his evidence, the workman did not say that he continued to remain unemployed. In the instant case, the respondent herein had been reinstated from 27-2-2001."

It was furthermore observed :-

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

24. Yet again in U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey, [(2006) 1 SCC 479], this emphasized that grant or denial of back wages would be subject matter of each case stating :-

> "61. It is not in dispute that the respondent did not raise any plea in his written statement that he was not gainfully employed during the said period. It is now well settled by various decisions of this Court that although earlier this Court insisted that it was for the employer to raise the aforementioned plea but having regard to the provisions of Section 106 of the Evidence Act or the provisions analogous thereto, such a plea should be raised by the workman."

25. In G.M. Haryana Roadways v. Rudhan Singh, [(2005) 5 SCC 591], which was mentioned in paragraph 54 of U.P. State Brassware Corporation Ltd. (supra) it was held :-

> "8. 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."

26. Again in U.P.S.R.T.C. Ltd. v. Sarada Prasad Misra and another, [(2006) 4 SCC 733], it was held that the grant of back wages is discretionary. It was reiterated that initially it was for the employee to prove that he had not been gainfully employed. It was observed :-

> "16. From the above cases, it is clear that no precise formula can be adopted nor "cast-iron rule" can be laid down as to when payment of full back wages should be allowed by the court or tribunal. It depends upon the facts and circumstances of each case. The approach of the court/tribunal should not be rigid or mechanical but flexible and realistic. The court or tribunal dealing with cases of industrial disputes may find force in the contention of the employee as to illegal termination of his services and may come to the conclusion that the action has been taken otherwise than in accordance with law. In such cases obviously, the workman would be entitled to reinstatement but the question regarding payment of back wages would be independent of the first question as to entitlement of reinstatement in service. While considering and determining the second question, the court or tribunal would consider all relevant circumstances referred to above and keeping in view the principles of justice, equity and good conscience, should pass an appropriate order."

27. In A.P.S.R.T.C. and another v. B.S. David Paul, [(2006) 2 SCC 282], it was observed :-

> "8. The principle of law on point is no more res integra. This Court in A.P. SRTC v. S. Narsagoud1 succinctly crystallised the principle of law in para 9 of the judgment on SCC p. 215:
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> `9. We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in

service.' "

(See also A.P. Sate Road Transport Corporation and others v. Abdul Kareem, [(2005) 6 SCC 36]. and Rajasthan State Road Transport Corporation and others v. Shyam BiharI Lal Gupta, [(2005) 7 SCC 406]).

28. In Muir Mills Unit of NITC (U.p.) Ltd. v. Swayam Prakash Srivastava and another, [(2007) 1 SCC 491], it was held :-

> "46. We are also of the view that the award of the Labour Court is perverse as it had directed grant of back wages without giving any finding on the gainful employment of Respondent 1 and held that the discontinuance of the services of a probationer was illegal without giving any finding to the effect that the disengagement of Respondent 1 was in any manner stigmatic. In the decision in M.P. SEB v. Jarina Bee2 this Court held that payment of full back wages was not the natural consequence of setting aside an order of removal. In the instant case, though the termination was as far back as in 1983, the industrial adjudicator has not given any finding on unemployment. This Court in a recent case of State of Punjab v. Bhagwan Singh18 has held that even if the termination order of the probationer refers to the performance being "not satisfactory", such an order cannot be said to be stigmatic and the termination would be valid."

29. In J.K. Synthetics Ltd. v. K.P. Agrawal and another, [(2007) 2 SCC 433], Raveendran, J. speaking for the Division Bench held :-

> "17. There is also a misconception that whenever reinstatement is directed, "continuity of service"

and "consequential benefits" should follow, as a matter of course. The disastrous effect of granting several promotions as a "consequential benefit" to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualised while granting consequential benefits automatically. Whenever courts or tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether "continuity of service" and/or "consequential benefits" should also be directed. We may in this behalf refer to the decisions of this Court in A.P. SRTC v. S. Narsagoud, A.P. SRTC v.

Abdul Kareem14 and Rajasthan SRTC v. Shyam Bihari Lal Gupta."

30. Even if some income was derived by the employee, the same should be taken into for consideration for the purpose of consideration in regard to grant of entire back wages. Our attention has been drawn to a decision of the Bombay High Court in Navin J. Surti v. Modi Rubber Ltd. and another, [2004 II CLR 46] wherein it was observed :-

> "Eventually, there would be a burden cast upon the employee to disclose the efforts made by him to secure another job during the time he was out of employment on account of termination of the service, in order to justify the claim for the back wages in its entirety. Indeed, the Division Bench in Sadanand Patankar's case (supra) has clearly ruled that "Since the facts about the employment or non-employment and/or the efforts made or not made to secure an alternative employment during the period of enforced idleness are within the special knowledge of the employee, it is only fair and proper that he should first state whether, he was employed or not and during what period, the amount of income earned by him if any, the nature of efforts made by him for securing alternate employment or the circumstances which prevented him from making such efforts." It has also been clearly held that once such burden is discharged by the employee, it would be for the employer to prove facts to the contrary. Similarly is the decision of the learned Single Judge, as he then was (Sri Justice B.N. Srikrishna), in Indiana Engineering Works (Bombay) Pvt. Ltd. v. The Presiding Officer 5th Labour Court and Ors. 1995 (II) C.L.R. 890 where it has been clearly held that "I am of the considered view that the dismissed workman also owes a duty to the industrial adjudicator to honestly disclose full particulars of the facts which are purely within his knowledge and that any attempt to mislead the Tribunal must surely be looked at askance,"

It was furthermore observed :-

> "Apart from the obligation on the part of the employer to establish gainful employment of the employee during such period, it would also be necessary for the employee to disclose the efforts made by him to get. some other job or employment during such period as well as about the source of income during the said period and if so, to what extent. Mere silence on the part of the employee in that regard cannot, in any manner, enure to the benefit of the employee to justify the claim for back wages in entirety. It cannot be forgotten that the order for payment of back wages has to be from the point of view of compensating the employee for the loss suffered during the time he was out of the employment and not a reward for having succeeded in establishing the action of termination of the service by the employer to be illegal."

31. In regard to the construction of the words "last pay dawn", learned counsel has drawn our attention to the decision of this Court in Dena Bank v. Kirti Kumar T. Patel, [(1999) 2 SCC 106] wherein it was held :-

> "19. As per the decisions of the High Courts referred to above, the expression "full wages last drawn" in Section 17-B can mean as under:
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> (i) Wages only at the rate last drawn and not at the same rate at which the wages are being paid to the workmen who are actually working. (Daladdi Coop. Agriculture Service Society Ltd. v. Gurcharan Singh)

(ii) Wages drawn on the date of termination of the services plus the yearly increment and the dearness allowance to be worked out till the date of the award. (Visveswaraya Iron and Steel Ltd. v.

M. Chandrappa and Kirtiben B. Amin v. Mafatlal Apparels7)

(iii) Full wages which the workman was entitled to draw in pursuance of the award and the implementation of which is suspended during the pendency of the proceedings. (Carona Sahu Co.

Ltd. v. A.K. Munafkhan6, Macneil and Magor Ltd. v. First Addl. Labour Court8 and P. Chennaiah v. Dy. Executive Engineer10)

20. The first construction gives to the words "full wages last drawn" their plain and material meaning. The second as well as the third constructions read something more than their plain and material meaning in those words. In substance these constructions read the words "full wages last drawn" as "full wages which would have been drawn". Such an extended meaning to the words "full wages last drawn" does not find support in the language of Section 17-B. Nor can this extended meaning be based on the object underlying the enactment of Section 17-B."

32. There cannot be any doubt whatsoever that ordinarily an employee who has been transferred should, subject to just exceptions, join at his transferred place. Ordinarily in an industrial undertaking indiscipline should not be encouraged.

33. This Court in State Bank of India v. Anjan Sanyal and others, [JT 2001 (5) SC 203], observed that the conduct of an employee in a transfer case is material as he cannot get a premium for his disobedience.

34. There are, however, certain exceptional situations in this case. Admittedly the respondents were challenging the right of the employer to order transfer of the employee particularly when they hold some posts in the association. The dispute was subjudice. They were in their late fiftees. They had served the company for a period of more than 25 years. It is true that they did not join at their transferred posts within a reasonable time. It may also in an ordinary situation be held that seven months is too long a period to join at the transferred place. There cannot furthermore be any doubt that the transfer is an incidence of service. Unless an order of transfer is passed contrary to the provisions of the statutory rule or settlement, the same should not be interfered.

35. However, the question which arose for consideration before the Industrial Tribunal was as to whether the order of termination passed by the company was valid. The answer to the said issue was answered in the negative. It had attained finality. We have also noticed hereinbefore that there did not exist any justifiable reason as to why such a post haste decision was taken.

36. The workmen had pleaded that they remained unemployed. They stated so in their respective depositions. The fact that they survived and did not die of starvation itself could not be a ground for denying back wages to them. Even an unemployed person has a right to survive. He may survive on

his past savings. He may beg or borrow but so long as he has not been employed, back wages, subject to just exceptions, should not be denied.

An award of reinstatement in service was denied to them only because in the meanwhile, they attained their age of superannuation.

37. Back wages in a situation of this nature had to be granted to respondents by way of compensation. If the principle of grant of compensation in a case of this nature is to be applied, indisputably having regard to the fact situation obtaining herein, namely, that they were doing a specialized job and were to reach their age of superannuation within a few years, grant of back wages was the only relief which could have been granted. It was furthermore not expected that they would get an alternative employment as they were superannuated. Burden of proof was undoubtedly upon the workmen. The said burden, however, was a negative one. Once they discharged their burden by deposing before the Tribunal, it shifted to the employer to show that their contention that they had not been employed, was incorrect. No witness was examined on behalf of the employer. Even there was no pleading in that behalf.

38. Respondents were in private employment and not in public employment. Their services were permanent in nature. The termination of their services was held to be illegal as prior to issuance of the orders, no enquiry had been conducted. The order of discharge was, thus, void ab initio. Back wages, therefore, could have been granted from the date of termination of service.

39. In Nicks (India) Tools v. Ram Surat [(2004) 8 SCC 222], this Court held :

> "19. Reliance placed by the learned counsel for the appellant on the case of P.G.I. of Medical Education & Research in our opinion, does not take the case of the appellant any further. In that case, this Court held that the Labour Court being the final court of facts the superior courts do not normally interfere with such findings of fact unless the said finding of fact is perverse or erroneous or not in accordance with law. In the instant case, we have already noticed that the basic ground on which the Labour Court reduced the back wages was based on a judgment of the High Court of Punjab and Haryana which, as further noticed by us, was overruled by a subsequent judgment of a Division Bench. Therefore, the very foundation of the conclusion of the Labour Court having been destroyed, the appellant could not derive any support from the abovecited judgments of that Court. Similarly, in the case of M.P. SEB this Court only said that it is not an inevitable conclusion that every time a reinstatement is ordered, full back wages was the only consequence. This Court, in our opinion, did not conclude that even in cases where full back wages are legally due, the superior courts are precluded from doing so merely because the Labour Court has on an erroneous ground reduced such back wages. In the instant case, we have noticed that the trial court apart from generally observing that in Ludhiana, there must have been job opportunities available, on facts it did not rely upon any particular material to hold that either such job was in fact available to the respondent and he refused to accept the same or he was otherwise gainfully employed during the period he was

> kept out of work. On the contrary, it is for the first time before the writ court the appellant tried to produce additional evidence which was rightly not considered by the High Court because the same was not brought on record in a manner known to law. Be that as it may, in the instant case we are satisfied that the High Court was justified in coming to the conclusion that the appellant is entitled to full back wages."

{See also Jasbir Singh v. Punjab & Sind Bank & Ors. [(2007) 1 SCC 566]}.

40. In Madhya Pradesh Administration v. Tribhuvan [(2007) 9 SCC 748], while reiterating the principle relating to grant of back wages in some of the decisions to which we had adverted to, this Court opined that the court should consider each case on its own merits. So far as the issue that the orders of transfer were not in question, in the case of the parties themselves in Bikash Bhushan Ghosh (supra), it was observed that the orders of transfer were not in issue before the Tribunal.

41. There is another aspect of the matter which cannot be lost sight of. The Industrial Court had directed calculation of back wages on the last pay drawn. Its attention, however, was not drawn to the fact that in the mean time revision in wages had taken place. On the date of their superannuation, they were entitled to a much higher pay as the revision in wages had taken place to which the workman were entitled to. In view of the fact that the same attained finality, this Court is not inclined to exercise its jurisdiction under Article 142 of the Constitution of India for the purpose directing payment of back wages on the basis of revised scale of pay and, thus, it will not be fit and proper to interfere with the impugned judgment while noticing the law in this behalf.

42. For the reasons aforementioned, the impugned judgment warrants no interference. The appeal is dismissed with costs. Counsel's fee assessed at Rs.50,000/-.

.....J. [S.B. Sinha] .....J. [Cyriac Joseph] New Delhi;

December 02, 2008