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## Right to Back Wages: Analysis Through Deepali Gundu Surwase Case

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### INTRODUCTION

In the discipline of a factory's rule of law, the Court can issue a ruling that the dismissal of a worker was unlawful and that the worker should be reinstated. The principle that individual service agreements are unable to be imposed is not relevant in this instance of the Industrial Dispute Act 1947<sup>1</sup>. The expression 'back wages' is not mentioned in the Act, and its meaning evolved through court notification.

There is no hard and fast rule for determining the value of back pay. It is a voluntary aspect involved, which has to be addressed on a case-by-case basis based on the information available. The duration of labour which a workman provides is a significant factor in granting remuneration. If an employee has been employed for a long time and his employment was unjustly dismissed, he may be entitled to full or partial back pay, taking into account that, given his age and expertise, he may be unable to find a new job. Back pay is granted at the discretion

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<sup>1</sup> Industrial Dispute Act 1947

of the Court/Tribunal based on factors such as business standing, income, organization duty, and stability at work. They have some discretion in granting significant orders concerning back wages.

## FACTS OF THE CASE

The appellant worked as a primary school teacher at Nandanvan Vidya Mandir which was administered by the Bagade family's trust, which was founded and is chaired. One of its members owns the building, thus the State Government helps cover the Bagade family's rent.

The Municipal Corporation declared the property to be a commercial property and imposed an excise bill of Rs. 79,974. The school headmaster, who was also the school trust's president, then gave the appellant and every other employee instruction to pay a monthly tax due of Rs. 1500. The appellant disobeyed the advice given by the head instructor. The management then suspended the appellant and sent her 25 memoranda in response to her rejection. Then, she denied every charge in the memoranda to which she answered. The appellant was placed on indefinite leave without pay or basic benefits, as mandated by Section 16<sup>2</sup> and her suspension was not only upheld by the management but also rejected by the education officer.

Subsequently, the appellant petitioned the High Court's division bench for a writ. The court's decision mandates that the appellant be reinstated as of March 14, 2007, and she is also qualified for the benefits specified in Rule 37(2)(f)<sup>3</sup>. On 28 December 2006, the management was looking into the appellant in compliance with Rules 36<sup>4</sup> and 37<sup>5</sup>. Smt. Sulbha was chosen by the appellant to testify before the inquiry committee, but she was refused the opportunity to take part in the actual investigation. An ex-parte process led to the termination of her services.

On 25 June 2007, the appellant filed an appeal with the School Tribunal, alleging that her supervisors had attempted to penalize her for not paying the tax bill, in breach of the principle

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<sup>2</sup> Maharashtra Employees of Private Schools (Condition of Service) Regulation Act 1977, s 16

<sup>3</sup> Maharashtra Employees of Private Schools (Condition of Service) Regulation Act 1977, r 37(2)(f)

<sup>4</sup> Maharashtra Employees of Private Schools (Condition of Service) Regulation Act 1977, r 36

<sup>5</sup> Maharashtra Employees of Private Schools (Condition of Service) Regulation Act 1977, r 37

of natural justice. Based on records, the tribunal concluded, the headmistress intended to retaliate against the appellant. As a result, the panel upheld the appellant's appeal and reinstated her, awarding her full back pay. The management filed a writ petition with the lone judge of the High Court. It was concluded that her job termination went against the principle of natural justice and that the tribunal's ruling was only partially accurate. Since the appellant did not present any evidence to support her claim that she was not employed for profit during her suspension and reappointment it also overturned the back pay order. The Supreme Court then heard the appeal.

### **ISSUE IN HAND**

1. Is the appellant eligible for back pay under the Industrial Disputes Act 1947 for the period of suspension?

### **JUDGMENT**

The Bench asserts that the employee and her family suffer suffering as a result of her unjust termination, including the loss of a major source of support. This accomplishes the dual goals of rewarding and disciplining the workers by relieving them of the need to settle arrears. The Bench concluded that in circumstances of wrongful termination, reinstatement with back pay is required, citing earlier orders. They went on to state that while determining back wages, any misconduct committed by the employee, the duration of their employment, and any other pertinent information will be taken into consideration. They further stated that Rule 33<sup>6</sup> prohibits the single judge from accepting a position elsewhere, therefore she is entitled to back pay and that it was a mistake for her to disregard the decision of the High Court.

When a court uses its authority under Article 226<sup>7</sup> or Section 11-A<sup>8</sup> of the Industrial Disputes Act to intervene in the punishment because it is extreme for the employee, who deserves a minor penalty, also issue subsequent orders for rehiring, does not imply that the management was

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<sup>6</sup> Maharashtra Employees of Private Schools (Condition of Service) Regulation Act 1977, r 33

<sup>7</sup> Constitution of India 1950, art 226

<sup>8</sup> Industrial Disputes Act 1947, s 11A

accountable or that the dismissal was unlawful or illegitimate. In awarding a less severe penalty, the court is just using its discretion. It is legitimate and enforceable as long as the termination is used. If the court considers the punishment excessively harsh, it may grant restitution or a small lump sum payment.

Even if the investigation was conducted with flagrant disregard for the natural justice principle and the appellant's claims were unfounded, the High Court judge erred greatly in interfering with the Tribunal's decision to reimburse salaries. If the appellant's allegations prove to be unfounded and the investigation was conducted with a flagrant indifference to natural justice principles, the High Court Judge committed a grave error in her decision to overturn the Tribunal's salary reimbursement ruling.

As a result, the contested order is overturned, the appeal is accepted, and the Tribunal's ruling is maintained. If, within four months of receiving a copy of this order, the management does not reimburse the appellant for all of his lost income, it will compensate with interest at the rate of nine percent annually from the date of the suspension until the actual reinstatement. The court further stated that should the management disregard this directive; it would be subject to the Contempt of Courts Act 1971.

## ANALYSIS

In the early years, full-back wages were usually granted. In *Hindustan Tin Works v Employees*, the Supreme Court held that ordinarily, a worker whose service was wrongfully terminated would be entitled to full back wages and that a contrary view would be a premium on the employer's unwarranted litigious activity. The goal of granting full back wages was to put the worker in the same position as before the illegal termination. If the service had not been terminated, the worker would have stayed to work and earned his or her wages.

The Apex Court held in *Deepali Gundu Surwase Case*<sup>9</sup>, that 'reinstatement' meant returning the dismissed employee to his prior role. A three-year cumulative penalty for not receiving three

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<sup>9</sup> *Deepali Gundu Surwase v Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors* Civ App No 6778/2012

annual increments takes the place of the removal penalty upon reinstatement. The appeals court ruled that 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 concerned employee'.

The court did emphasize that there was no one-size-fits-all formula and that each case's facts and circumstances should be taken into consideration when determining how much back wages should be paid with a discretionary component. The High Court made an error, according to the Honourable Supreme Court, when she interfered with the Tribunal's decision to recoup wages. As a result, the Honourable Supreme Court granted the Appeal, reversed the Honourable High Court's ruling, and upheld the Honourable Tribunal's ruling.

## CONCLUSION

In agreement with the Tribunal, the learned Judge of the High Court detained that the appellant's service was terminated and suspended by management in contravention of natural justice statutes and principles. The learned Single Judge overturned the School Tribunal's decision to give back wages by referencing relevant rulings. However, the court determined that the investigation was conducted with a flagrant disregard for the principles of natural justice and the lack of merit in the appellant's accusations. As a result, the appeal was granted, the impugned ruling was reversed, and the Tribunal's order was reinstated.

If the employer wishes to avoid paying back wages in full, he must plead and demonstrate that the worker was advantageously employed and earning compensation comparable to those earned before his termination. This is due to the widely accepted principle that the person who makes an affirmative averment concerning the existence of a fact carries the burden of proof. Positive facts are usually easier to establish than negative facts. As a result, when an employee claims he is not working, it is the employer's responsibility to plead and demonstrate that the employee was gainfully engaged.

By upholding equality and equity in the relationship between a company and its workers, the verdict puts an end to the Appellant's pursuit of justice. It sustains salaries for illegally limited

job tasks, guaranteeing the employees and their family's subsistence. It also stipulates that higher-level courts can not reverse lower tribunal rulings and that employees must repay wages.