

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
A H M E D A B A D B E N C H
 XXXXXXXXX

(3)

O.A. No.
XXXNo.

536

1989.

DATE OF DECISION 26.6.1990

Shri Sajubha Khimaji Petitioner

Mr. B.B. Gogia Advocate for the Petitioner(s)

Versus

Union of India & Anr. Respondent

Mr. B.R. Kyada Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.K. Jain Judicial Member

The Hon'ble Mr. M.M. Singh Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *N*
3. Whether their Lordships wish to see the fair copy of the Judgement? *N*
4. Whether it needs to be circulated to other Benches of the Tribunal? *N*

3 (9)

Shri Sajubha Khimaji,
Qr. No. E-14,
Gandhinagar,
Jamnagar.

.. Applicant

(Advocate-Mr. B.B. Gogia)

Versus

1. Union of India,
Through: General Manager,
W.Rly., Churchgate,
Bombay - 400 020.

2. Divisional Railway Manager,
W. Rly., Kothi Compound,
Rajkot.

.. Respondents

(Advocate-Mr. B.R. Kyada)

O.A. No. 536 of 1989

Present : Counsel for the applicant

Counsel for the respondents

Date : 26.6.1990

(Per : Hon'ble Mr. S.K. Jain .. Judicial Member)

Shri Sajubha Khimaji, the applicant, has made the present application against his non-engagement as a casual labourer. Learned counsel for the applicant submits that he had worked as a labourer from 9.6.81 to 30.8.81 and then from 7.4.82 to 20.4.82, but the service card attached with the O.A. does not support his claim. Learned counsel submits that the entries regarding the service rendered by the applicant were not made in the service card and further that a representation dt. 30.6.1983 (Annexure A-2) was made by the applicant to the Divisional Railway Manager, Western Railway, Rajkot to which no response was shown by the respondents. Learned counsel further prays that he will make a fresh request for appointment ~~inviting~~ to the respondents and the learned counsel for the respondents submits that the same will be duly

CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No.

536

of 1989

Transfer application No.

Old Write Pet. No.

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

Dated:

Countersigned.

Section Officer/Court Officer.


Signature of the Dealing Assistant.

MGIPRRND—17 CAT/86—T. S. App.—30-10-1986—150 Pads.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT AHMEDABAD BENCH

INDEX SHEET

CAUSE TITLE O. A. 536 OF 1989
NAMES OF THE PARTIES Shri Sojubhai Khimaji
VERSUS
Union of India & others.
PART A B & C

PART A B & C

DESCRIPTION OF DOCUMENTS

51-6 5/10/88
7/11/88
BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD

ORIGINAL APPLICATION NO: 536 /89

Shri Sajubha Khimaji,
JAMNAGAR

:: APPLICANT

Versus

Union of India & one another

:: RESPONDENTS

INDEX

Sr. No.	Details of documents relied upon	Page No.
01.	Application	01 - 06
02.	A/1 - Copy of casual labour card	07 - 08
03.	A/2 - Copy of application dt.30.6.83 addressed to Respondent No.2	09
04.	A/3 - Copy of judgement in Spl.CA No.3435 /86 decided by the honourable High Court of Gujarat on 8.9.1986	10 - 13

Rajkot/Ahmedabad

Date: 7/11/88

PERSON SIGNING
(APPLICANT)

B.B.GOGIA

ADVOCATE FOR APPLICANT

For use in Tribunals Office

13/11/88
2X2
Date of filing

or

date of receipt by post

Registration No;

Signature
for Registrar

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD

ORIGINAL APPLICATION NO: 536 /89

Shri Sajubha Khimaji,
Hindu, Adult, Occ: Nil,
Qr.No.E-14, Gandhinagar,
JAMNAGAR

:: APPLICANT

Versus

Union of India,
Through: General Manager,
Western Railway,
Churchgate,
BOMBAY - 400 020

2) Divisional Railway Manager,
Western Railway,
Kothi Compound,
RAJKOT

:: RESPONDENTS

DETAILS OF APPLICATION

1. Particulars of the order against which the application is made.

i) Order No.	:	The application is against
ii) Date	:	non-engagement of the
iii) Passed by	:	applicant as Casual Labour/
iv) Subject in brief	:	Substitute in violation of
	:	Section 25(H) of the Indu-
	:	trial Disputes Act and
	:	Rules 77 and 78 of the Indu-
	:	trial Disputes(Central)
	:	Rules 1957

2. Jurisdiction of the Tribunal

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

3. Limitation

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

4. Facts of the case

The applicant begs to submit that he was initially engaged as a Casual Labour on 9.6.1981 ~~1980~~ and continued upto 30.8.1981. Again he was re-engaged on 7.4.1982 and continued upto 20.4.1982. Thereafter he was not

offered employment by the respondents. He was granted casual labour card by the respondents. However, in this card no entry of his services were recorded by the respondents. He approached time and again to the IOW Dwarka to record his service particulars in the casual labour card, but it was refused to him. A copy of the casual labour card is annexed herewith as Annexure A/1.

A/1

ii) Since he was not offered employment by the respondents after 20.4.1982, he personally contacted IOW Dwarka and other officials of the Railways. However no reply was given to him ~~xxxxx~~ by any of them. He had also represented to the Divisional Railway Manager Rajkot vide his application dated 30.6.1983, copy of which is annexed herewith as annexure A/2. to which also he has no response from the respondents

A/2

iii) The applicant submits that even though he has no details, he came to know several casual labours engaged along with him and engaged after the discontinuation of the applicant are still serving on Rajkot Division. The applicant submits that appointing fresh faces denying employment to the applicant and continuing the juniors in preference to the applicant is in flagrant violation of the section 25(H) of the Industrial Disputes Act.

The relevant portion of the rule is as reproduced below

" 25-H - Re-employment of retrenched workmen - Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, given an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen (a) who offer themselves for re-employment shall have preference over other persons."

As can be seen from section 25-H of the I.D. Act if the employer proposes to take into his employ any persons, the applicant has a right to be re-engaged in preference

to others. Rules 77 and 78 of the Industrial Disputes (Central) Rules 1957 stipulates the manner in which the retrenched employees are to be engaged. These rules are reproduced below for the convenience of the hon'ble Tribunal.

"77-Maintenance of seniority list of workmen- The employer shall ~~not~~ prepare a list of all workmen in the ~~particular~~ particular category from which ~~retrench~~ retrenchment is contemplated arrage according to the seniority of their service in that category and cause a copy thereof to be pasted on notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment."

"78 - Reemployment of retrenched workmen (1) At least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice board in a conspicuous place in the premises of the industrial Establishment details of whose vacancies and shall also give intimation of those vacancies by registered post to every one of the retrenched workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or at any time thereafter".

The applicant submits that in violation of rule 77 mentioned above, ~~is~~ no seniority list of the employees retrenched was prepared and notified by the DRM(E)RJT, the respondent No.2 nor the copy of the seniority list pasted on the notice board or at a conspicuous place in the office of the subordinate under whom the applicant was working at the time of retrenchment. The respondents have also violated rule 78 quoted above, since the applicant has not been offered re-engagement despite his personal and written representations, when further new candidates were offered employment. The applicant submits that the provisions of Industrial Disputes Act and Industrial Disputes (Central) Rules are not dependent upon the railway instructions, which are purely executive orders. Thus, the provisions of I.D. Act are above all the railway instructions and circulars and these are compulsorily to be followed. Therefore the applicant also has ~~is~~ an independent right to be re-engaged and brought

4

on the live register of substitutes/casual labours in view of the provisions in the I.D. Act. The applicant draws the attention of the hon'ble tribunal to a judgement delivered by the hon'ble High Court of Gujarat on 8.9.'86 in Spl.C.A.No.3435 of 1986 between Gujarat State Machine Tools Corpn., Bhavnagar and Deepak I Desai, reported in 1987 GLB 1982, the relevant portion is as reproduced below:

"Industrial Disputes Act, 1947 - S.25H - Re-employment of retrenched workman-I.D.(Gujarat)Rules 1966- R.82(1)(b)-Retrenched workmen to be given opportunity for employment before employing fresh hands - Such opportunity to be given as per rules - No intimation given to the retrenched workman - S.25 H not complied with."

A/3

Xerox copy of the above judgement is annexed herewith as annexure A/3. The applicant submits that the case of the applicant is fully covered by the above judgement, since he was not given opportunity for employment before employing fresh hands and he was not given intimation about the availability of work while taking fresh hands.

5. Grounds for relief with legal provisions

- 1) Violation of section 25-H of the Industrial Disputes Act read with Rules 77 and 78 of the Industrial Disputes(Central) Rules 1957.
- 2) Denial of equal opportunity in the matter of public employment in violation of articles 14 and 16 of the constitution of India.

3. Details of the remedies exhausted

The applicant begs to submit that he has no remedies available as per the statutory rules of the respondent railways.

7. Matter not ~~pend~~ previous filed or ~~pending~~ pending with any other court.

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench

of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought

A) The respondents may please be directed to re-engage the applicant and place his name on the live register of substitute/casual labours of the Engg. Department of Rajkot Division and offer him such appointment in accordance with the same and grant him all consequential benefits from the date he is/was due in accordance with his position in the said register.

B) In addition or in alternative the respondents may please be directed to show him/supply him the seniority list prepared by DRM RJT at the time of his discontinuation in accordance with the provisions contained in Section 25(H) of the I.D. Act read together with rules 77 and 78 of the Industrial Disputes (Rule) 1957 indicating his name in the seniority list taking into account his date of original engagement under IOW DWK and appoint him according to his position in the said seniority list with all consequential benefits, with any other better relief as deemed fit.

9. Interim order, if any prayed for

NIL

10. In the event of application being sent by Registered post, it may be stated whether the applicant desires to have oral hearing at the admission stage and if so, he shall attach a self-addressed Post Card or Inland Letter at which intimation regarding the date of hearing would be sent to him.

NOT APPLICABLE

11. Particulars of postal order filed in respect of the Application Fee.

1. Number of Indian Postal Orders: P6 227318
2. Name of issuing Post office : Jamnagar P.O.
3. Dt. of issue of Postal Orders : 2-11-89
4. Post office at which payable : Ahmedabad.

12. List of enclosures

1. Indian Postal Order as per the details given in para 11.
2. Vakalatnama
3. Copies of Annexures from Annexure A/1 to A/3

VERIFICATION

I, Sajubha Khimji, son of Shri Khimaji aged about 24 years working as: AT PRESENT UNEMPLOYED, resident of Jamnagar do hereby verify that the contents of paras 1 to 3 and from 6 to 12 are true to my personal knowledge and paras 4 to 5 believed to be true on legal advice and that I have not suppressed any material fact.

Rajkot/Ahmedabad

Date : 7/11/89

Applicant
(APPLICANT)

Through:
Mr. B. B. Gogia
 Shri B. B. Gogia,
 Advocate,
 RAJKOT

filed by Mr. B. B. Gogia
 Learned Advocate for Petitioners
 with second set & 2 copies
 copy served/not served to
 other side

Dt. 7/11/89
C. G. G.
 Dy. Registrar C.A.T (J)
 A'bad Bench

VAKALATNAMA

In the Central Administrative Tribunal

Rajkot/Ahmedabad

O.A. No.

19 89

Between

Shri Bajubha Khimay

Plaintiff

Appellant

Applicant

Complainant

Defendant

Respondent

Opposite Party

Accused

And

(1) Union of India & others

I/We abovenamed do hereby nominate, appoint and authorise, Mr. BASHARAM B. GOGIA B.A. LL. B. Advocate and Miss N. M. PANDYA B. Com, LL. B. Advocate and _____ Advocate to act, appear and plead for me/us in the above matter AND to engage and appoint any other Advocates or Advocate to act, appear or plead for me/us in the above matter whenever my/our said Advocate thinks proper to do so.

AND to do all acts legally necessary to conduct the said matter in all respects, whether herein specified or not, as may be proper and expedient.

AND I/We hereby, agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this VAKALATNAMA or of the usual practice in such matter.

In witness whereof I/We set my/our hand to writing this 7th day

of November 1989

Signature RAJESH GOPIKHAN KHIMAY

Accepted

B. B. GOGIA

(N. M. PANDYA)

Advocates

Gujarat High Court.

The address for service of the said Advocates is :

"BABA-AMA", Swami Tahiliaram marg 10, Junction Plot, RAJKOT (360 001)

PHONE : O. 42029 R. 41754

Amritsar D.B. 7



Western Railway

G. 116 B.

SERVICE CARD OF
CASUAL LABOUR

Bhave P. Ltd. 68 NT 12/20,000

True Copy

D. Vasen

Advocate

Railway..... CT. 9. 5. 11.

Office/Department.....

Service card for Casual Labour.....

1. Name in full
in block letters
GADUBHAI BHIMRAJJI
BHARS

2. Father's Name BHIMRAJJI.....

3. Date of birth 15-3-64.....

4. Age at initial
casual employ-
ment and date
of initial
appointment

5. Personal marks
of identifica-
tion.

6. Nature of job
on initial
employment

Record of Service as Casual Labour

Period of employment	Nature of assign. ment	Signature and designation of the Supervisor with date
From 18		

True Copy
AB Vasam

Advocate

From:- Sajjubha Khimaji,
son of Shri Khimaji A.
Retired SPA,
Western Railway,
Bhopalka.

Dated, 30.6.1983.

To
The Divisional Railway Manager,
Western Railway,
Rajkot.

Respected sir,

Sub:- Request for employment in Railway.

I, the undersigned beg to lay the following few lines
for your kind and sympathetic consideration.

My father, Shri Khimaji A. SPA retired from Bhopalka
station on and from 31.3.1983 and I am his eldest son to
look after his welfare. I have worked as substitute for
the following period under IOW DWK.

9.6.81 to 30.8.81.
7.4.82 to 20.4.82

Also worked as hotweather waterman from
1.4.83 to 30.6.1983.

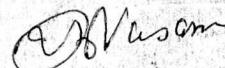
I request your kind honour to please consider
my case and employ me in the Railway service under the
circumstances narrated above.

Hoping for a favourable reply.

Yours faithfully,

(Sajjubha K.).

True Copy



D. N. Vusam
Advocate

is quite legal and proper for reason mentioned hereinabove. It has been further stated that he has not only relied on the bare assertion of the said persons but has satisfied himself keeping in view the evidence on record and the history of the case of the detenu that there was danger to the lives of these persons in case of disclosure of their names to the detenu and further that non-disclosure of the said names would be in the public interest. It has been further stated that if their names are disclosed, it would amount to breach of trust and no one else would come forward in public in future to give statement against such type of person. To say the least, the aforesaid explanation given in the affidavit-in-reply nowhere suggests as to how the detaining authority came to the conclusion that it was in public interest to withhold these names, save and except baldly saying that non-disclosure was in public interest. A close reading of the averments found in para 15 of the affidavit-in-reply shows two reasons which weighed with the detaining authority for withholding these names and addresses: (1) the witnesses were apprehending danger to their persons and properties from the petitioner and, therefore, they had requested for keeping their names and addresses a close secret from the petitioner and (2) if names and addresses were disclosed, it would amount to breach of trust. None of these grounds by themselves can be said to fall legitimately within the concept of withholding of material in public interest as envisaged by Section 8(2) of the Act or for that matter by Article 22(6) of the Constitution. These grounds pertain to the feeling of the persons promised of confidentiality and the need to fulfil such promise. It must, therefore, be held that the detaining authority was not genuinely satisfied in public interest about the need to withhold

names and addresses of six witnesses from the detenu at the time when he passed the impugned order of detention supported by relevant grounds. As there was no such genuine satisfaction it must be held that no legal privilege was available to the detaining authority enabling it to withhold the said material from the detenu. Still such material was withheld. Consequently, the remaining material which was supplied to the petitioner in the shape of statements of unnamed persons and unknown persons became vulnerable as vague material which could not permit the petitioner to make an effective representation against the detention order based on such vague and impermissible material. Hence the material comprised in these six statements has to be ruled out while considering the efficacy of the detention order as passed against the petitioner. If this material comprised in the statements of six persons is taken out, there is nothing left on the record of this case to support the detention order and which can be pressed in service in the light of Section 5A of the NASA by the respondents to salvage the situation.

(DBD/ISS) Rule made absolute.

1987 G.L.H. 192

P. R. GOKULAKRISHNAN, C.J.
AND R. A. MEHTA, J.

Gujarat State Machine
Tools Corporation
Limited, Bhavnagar Petitioner
Versus

Deepak J. Desai ... Respondent
Special Civil Application
No. 3435 of 1986
D/- 8-9-1986

*Application praying to quash and set aside the award dated 7-3-1986, passed by the Labour Court, Rajkot in Ref. (L.C.R) No. 833/83 (Annexure 'A') and directing the Company to reinstate the respondent with continuity of service and etc.

Industrial Disputes Act, 1947 —
— S. 25-H — Re-employment of retrenched workman — Industrial Disputes (Gujarat) Rules, 1966 —
R. 82(1)(b) — Retrenched workman to be given opportunity for employment before employing fresh hands — Such opportunity to be given as per Rules — No intimation given to the retrenched workman — S. 25-H not complied with.

S. 25H of the Industrial Disputes Act, 1947 is very clear to the effect that the workmen who are retrenched should be given an opportunity as prescribed by the rules before the Management recruits fresh hands for the same post. R. 82 of the Gujarat Industrial Disputes Rules clearly envisages the method and manner in which such intimation has to be given to the discharged employee. In this case, R. 82(1)(b) will squarely apply. Hence failure to give registered notice which is admittedly not done in this case is fatal to the argument advanced by the Management as regards compliance of S. 25H. Even on this aspect of the case, the Labour Court is correct in coming to the conclusion that there is violation of S. 25H and on that ground also, the workman has to be reinstated in service. (Para 4)

Case Referred:

Special Leave Petition (Civil) No. 3982 of 1981 decided by Supreme Court

Appearances:

Mr. K. S. Nanavati for the Petitioner.
 Mr. Subodh Mehta, party-in-person.

PER GOKULAKRISHNAN, C.J.:

1. This Special Civil Application is for issuing appropriate writ, order or direction to quash the award Annexure-A to the Special Civil Application. The

respondent raised a dispute to the effect that he should be reinstated in original post with full back wages. According to the respondent, he was treated as a permanent workman, that he served the Company from 12-10-82 to 11-4-83, that he has been discharged without following the procedure and that as such he must be reinstated in service with back wages. It was the contention of the appellant before the Labour Court that the workman was employed purely on a temporary basis and that he has been correctly discharged from service and as such he is not entitled to have the benefit of reinstatement or back wages. The Labour Court, after referring to the Model Standing Order and also the provisions of Section 25H of the Industrial Disputes Act, came to the conclusion that the respondent must be reinstated in service with continuity of service, but without back wages. Questioning this award, the present Special Civil Application has been filed by the Management. Mr. Nanavati, the learned Counsel appearing for the petitioner submits that the Labour Court had refused to adjourn the matter inspite of the fact that the Counsel for the Management wanted the case to be adjourned till afternoon. That without any pleading as regards the violation of Section 25H, the Labour Court has taken into consideration Section 25H of the Industrial Disputes Act and has passed the order and that in any event, Section 25H will not apply to the facts of the case since the respondent cannot have the benefit of Section 2(oo) of the Industrial Disputes Act.

2. It is clear from the facts of the case and also admitted by Mr. Nanavati that the case arose prior to 1983 and Section 2(oo)(bb) came into force only on 18-8-1984. From the facts of the case, it is clear that the Labour

Court has examined the workman and also the evidence adduced by the respondent herein. The petitioner did not lead any oral evidence. According to the workman who is the respondent herein, he was doing the work which is of permanent nature. That subsequently he is discharged. Fresh recruitment has been made to the Accounts Deptt. in which he was working and that the Company has also advertised this post in the dailies. Taking all these aspects into consideration, the Labour Court came to the conclusion that the respondent herein is entitled to have the benefit of Model Standing Order and also should be termed as a person employed against a permanent vacancy. As far as this Model Standing Order is concerned, the Supreme Court had an occasion to consider Clause 2(a) and 2(b) of the said Model Standing Order in Special Leave Petition (Civil) No. 3882 of 1981 in which the Supreme Court has observed as under:

"A bare reading of the relevant standing order shows that on the expiration of the period of probation, either the workman is discharged as being unsuitable or he acquires the status of a permanent workman. There is no hiatus. That is the view taken by the Labour Court and High Court and this view is unassailable."

3. As far as the present case is concerned, the respondent worked from 12-10-1982 to 11-4-1983. Hence, there is absolutely no difficulty in applying the principles laid down in the aforesaid Supreme Court's decision to the facts of this case. From the definition of Section 2(oo) of the Industrial Disputes Act, as regards the retrenchment, we do not find anything in this definition to exclude the temporary worker from such a definition. Hence, the argument of Mr. Nanavati to the effect that this defi-

nition as it stood at the time of discharge of the present respondent will not include temporary worker cannot be appreciated. Factually also, it cannot be said that the respondent was inducted into service against a temporary vacancy. If that be so, Section 25H will squarely apply to the present case. The argument to the effect that such a pleading has not been made by the workman in his statement cannot be made a ground to deny the workman the benefit of Section 25H of the Industrial Disputes Act. Section 25H reads as follows:

"Re-employment of retrenched workmen—

Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched workmen who offer themselves for re-employment, shall have preference over other persons."

4. Mr. Nanavati, the learned Counsel for the petitioner submitted that mere advertisement in the newspapers will not in any way offend Section 25H, but on the other hand, it should be taken as invitation for the discharged workman to apply and get himself reinstated. We are not able to appreciate this argument. Section 25H is very clear to the effect that the workman who are retrenched should be given an opportunity as prescribed by the rules before the Management recruits fresh hands for the same post. Rule 82 of the Gujarat Industrial Dispute Rules clearly envisages the method and manner in which such intimation has to be given to the discharged employee. In this case, Rule 82(1) (b) will squarely apply. Hence failure to give registered notice which is admittedly not done in this case is fatal to the argument advanced by the Ma-

nagement as regards compliance of Section 25H. Even on this aspect of the case, we are of the view that the Labour Court is correct in coming to the conclusion that there is violation of Section 25H and on that ground also, the workman has to be reinstated in service. The Labour Court, after taking into consideration, the gainful employment of the respondent somewhere has correctly denied the backwages.

5. For all these reasons, we are in complete agreement with the award passed by the Labour Court and as such this Special Civil Application is dismissed.

(DBD) **Petition dismissed**

1987 G.L.H. 195

**A. M. AHMADI AND
R. A. MEHTA, JJ.**
Advocate
Vijaykumar
Muljibhai Jasani
Petitioner

Versus

Gujarat State
Road Transport
Corporation, Rajkot
Respondent
Special Civil Application
No. 6143 of 1984
D/- 10-3-1986*

Industrial Disputes Act, 1947.—
S. 11A — Labour Court must apply mind before substituting the punishment imposed by employer — Dismissal for misconduct of unauthorised absence for two days — Labour Court ordering reinstatement but withholding 50% backwages — Held on facts that punishment imposed by Labour Court was disproportionate to the misconduct — Penalty of stoppage of two increments without cumulative effect imposed.

The Labour Court has rightly observed that the Corporation has not considered as to why lesser punishment should not be passed against the workman. However, the Labour Court itself fell into an error in not considering the alternative lesser punishment. There is a total non-application of mind on the part of the Labour Court in directing the respondent Corporation that refusal of 50% backwages is sufficient punishment without considering as to what that 50% would amount to. The monthly wages of the workman is about Rs. 1,600/- including dearness allowance and other allowances. He was dismissed from service on 15th November, 1980 and was actually reinstated on 15-4-1984. Thus he was out of service for more than 3 1/2 years. The total wages for this period would be running into a very large amount and even denial of 50% of the backwages would run into several thousands of rupees. The Labour Court has not at all applied its mind while observing that refusal of 50% backwages is sufficient punishment. The Labour Court does not appear to have realised as to what the substituted punishment would really amount to. For such a trivial misconduct of absence of two days the punishment should not have resulted into such a severe amount of fine of several thousands of rupees. (Para 4)

In the present case there is no particular reason shown to withhold 50% of the backwages which run into several thousands of rupees as punishment for a very minor misconduct. Such a minor misconduct could be punished only with a minor penalty like withholding of one or two increments without cumulative effect.

*Application praying for a writ of mandamus or other appropriate writ to set aside award/order dated 4-3-1983 in Ref. (LCR) Application No. 382 of 1981, and etc.