

**IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.306 of 1990**

SARJUG PRASAD Son of late Keshav Prasad, Resident of Village- Amawan,
P.S.a Asthawan, District- Nalanda.

... .. Appellant/s

Versus

1. Union of India as owner of General Insurance company through the secretary Ministry of Finance (Department of Revenue and Insurance) Govt. of India, New Delhi.
2. United India Fire @ Insurance Company Ltd. Registered Office, at 24, while Road Madras-600014 through the Chairman cum-Managing Director
3. The Divisional Manager, United India, Fire and General Insurance Company Ltd.2, Brabone Road, 3rd Floor Calcutta-700001, Now at Dak Banglaw Road , P.S. Kotwali, District- Patna-800001.
4. Sri. R.L. Khosla Deputy Manager, United India Fire and General Insurance Company Ltd. New Delhi.
5. Sri. M.J. Augustine, United India, Fire and General Insurance Company, 16 Hare Street, Calcutta-1.
6. The Branch Manager, United India , Fire and General Insurance Company Ltd. 2nd Floor, Fatima Manzil, Exhibition Road, P.S. Kotwali, Distt. Patna-800001
7. The Regional Manager, United India Fire and General Insurance Compancy, Ltd. Himalaya House, 38, Chowranghee Road, Calcutta-700001.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Brajesh Sharma, Advocate
For the Respondent/s	:	Mr. Rupak Kumar, Advocate Mr. Subodh Kr. Jha, Sr. CGC Mr. Ram Tujabh Singh, CGC

**CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT**

Date : 25-11-2025

The present second appeal has been preferred against the judgment and decree dated 08.06.1990 passed by the 13th Additional District Judge, Patna, in Title Appeal No. 132/89, which was filed against the judgment and decree dated 20.07.1989 passed by the Munsif III, Patna, in Title Suit No. 01 of 1979.



2. The substantial question of law has been framed in the present second appeal vide Order No. 6 dated 10.03.1992 is as follows:

“Whether the Court below could refuse to grant decree for payment of salary when it set aside the order of dismissal ?”

3. The present appellant has filed a title suit seeking a declaration that the allegations and enquiry set up against the plaintiff were malafide, and the dismissal order dated 12.02.1976 was illegal, malafide, void, and unconstitutional, with a further prayer for issuance of a mandatory injunction against the defendants to reinstate the plaintiff to his job, and to pass a decree for past and future damages in lieu of the emoluments payable to the plaintiff, together with costs and other reliefs. The said suit was dismissed vide order dated 15.09.1979 as not maintainable.

4. Being aggrieved and dissatisfied with the said order, the present appellant preferred Title Appeal No. 196 of 1979 / 35 of 1980, which was allowed on 12.02.1981. Thereafter, the original defendants (respondents) preferred Second Appeal No. 302 of 1981 as well as Miscellaneous Appeal No. 105 of 1981, which were heard together, and vide order dated 20.11.1986, the matter was allowed in favour of the



defendants. The plaintiff then preferred S.L.P. No. 3186 of 1987, which was granted, and the S.L.P. was registered as Civil Appeal No. 2499 of 1988. The said Civil Appeal was allowed vide order dated 01.08.1988. By that order, the Hon'ble Supreme Court of India was pleased to set aside the judgments passed by the Trial Court, First Appellate Court, and Second Appellate Court, and the matter was remitted back to the Trial Court for fresh disposal on merits. After remand from the Hon'ble Supreme Court of India, a fresh order was passed in Title Suit No. 01 of 1979 vide order dated 20.07.1989, by which Title Suit No. 01 of 1979 was dismissed.

5. Thereafter, the appellant preferred Title Appeal No. 132 of 1989, which was allowed in part vide order dated 08.06.1990. Subsequently, the appellant preferred present Second Appeal No. 306 of 1990, in which the substantial question of law was framed by this Hon'ble Court, as mentioned above, vide order dated 10.03.1992.

6. Both parties appeared and argued the case in detail to have the substantial question of law decided in their favour.

7. Learned counsel for the appellant submits that the appellant, who was an employee of the United India Fire and



General Insurance Company Limited, Exhibition Road, Patna, is entitled to payment of salary when the order of dismissal is set aside. In support of his argument, he relied on various judgments, including *Md. Hassan Ansari v. The State of Bihar and Ors.*, reported in *(2005) 3 PLJR 304*, and submits that any deduction made from the superannuation benefits of the petitioner shall be repaid to him within a period of four weeks from today with interest @ 9% per annum.

8. Counsel further relied on another judgment decided by this Hon'ble Court in *Shashi Bhushan Pandey v. The State of Bihar and Ors.*, reported in *(2005) 4 PLJR 575*, and submits that the appellant did not work for the period in question at his own sweet will, but rather because he was not allowed to work as he was not given a place of posting. In such circumstances, the principle of "no work, no pay" shall not be attracted. He further relied on another judgment, namely, *Ratan Kumar Sharma v. The State of Bihar*, reported in *(2006) 3 PLJR 365*, and submits that the appellant is entitled to get his salary for the period during which he was kept out of service. He also relied on another judgment, namely, *Rajendra Kumar Kindra v. Delhi Administration*, reported in *AIR 1984 SC 1805*, and submits that maintaining the family of the appellant, helping



his father-in-law in his coal depot, and living with him is not gainful employment, therefore, he is entitled to payment.

9. Counsel further submits that, admittedly, against his dismissal the appellant has contested the matter from the Civil Court up to the Hon'ble Supreme Court of India. The Hon'ble Supreme Court remitted the matter back for passing a fresh order, but the Trial Court as well as the Appellate Court ignored the established principles of law as laid down in the aforesaid judgments. According to him, once the dismissal of the plaintiff has been set aside, the plaintiff is entitled to a decree for payment of salary, particularly when his dismissal has already been set aside.

10. Learned counsel for the respondent, on the other hand, submits that it is true that the orders passed by the Original Court, First Appellate Court, and Second Appellate Court had been remitted back to the Trial Court, to pass a fresh order. Thereafter, T.S. No.01/1979 was heard and dismissed, against which the appellant preferred Title Appeal No.132/89, which was partly allowed vide order dated 08.06.1990. The first order of dismissal was set aside as it appeared to be disproportionate to the charge, and it was suggested to impose a minor penalty under Rule 23 of the United India Insurance



Company (Conduct, Discipline and Appeal) Rules, 2014 (hereinafter referred to as the Rules of 2014). These rules came into force with immediate effect and replaced General Insurance (Conduct, Discipline & Appeal) Rules 1975. The minor penalties prescribed under Rule 23 of the Rules of 2014 are as follows:-

(a) Censure.

(b) Withholding of one or more increments for a specified period.

(c) Recovery of the whole or part of any pecuniary loss caused to the Company by negligence or breach of orders from pay or such other amount as may be due to him.

(d) Reduction to a lower stage in the time-scale for a period not exceeding three years cumulative effect.

11. Counsel further submits that the appellant was imposed the penalty of withholding two increments pursuant to the judgment dated 08.06.1990 passed by the First Appellate Court in T.A. No. 132 of 1989. Counsel further submits that in the present Second Appeal No. 306 of 1990, the appellant moved this Hon'ble Court for payment of salary during the pendency of penalty of dismissal against the appellant, which was denied by the learned First Appellate Court, i.e., the learned Additional District Judge-13, Patna. In response thereto, and in



compliance of the appellate order, the respondent authorities has taken a decision due to which the appellant retired as a Record Clerk on 31.05.2014, and his pensionary benefits have already been granted to him.

12. In support of his argument, counsel for the respondents relied on judgment passed by the Hon'ble Supreme Court of India, namely, *Banshi Dhar v. State of Rajasthan and Anr.*, reported in *2007 (1) SCC 324*, and further on another judgment, namely, *P. Karupiah v. General Manager, Thruvulluvar Transport Corporation Limited*, reported in *2018 (12) SCC 663*, and submits that the grant of back wages is not automatic. An employee is not entitled to claim back wages as a matter of right unless the order of reinstatement itself in express terms directs such payment on setting aside the order of dismissal/removal.

13. In this background, counsel for the respondent submits that the appellant is not entitled to any relief, and the substantial question of law may not be decided in favour of the appellant.

14. In the light of the submissions made, particularly considering that this is the second round of litigation, this Court is very cautious regarding the order by



which the dismissal was set aside. The operative part of the order by which the dismissal was set aside is as follows:-

“The order of dismissal does not appear to be justified, proper, or proportionate to the charge, rather, it appears to be shockingly disproportionate to the charge, arbitrary, and unjust. Therefore, the order of dismissal should be declared invalid, and the competent authority should be directed to substitute the punishment of dismissal of the plaintiff from the service by a minor penalty as provided under Rule 23 by an order of mandatory injunction. A specific finding has been given that, however, the plaintiff-appellant cannot claim any salary for the period during which he was not on duty on account of the order of dismissal, so the plaintiff is entitled to this relief.”

15. Meaning thereby, the punishment of dismissal has been set aside and converted into a minor penalty, subject to the condition that the appellant cannot claim any salary for the period during which he was not on duty on account of the order of dismissal. There are two types of judgments that have been cited by the parties in this appeal. The first type of judgments were decided by this Hon'ble Court, whereas the judgments relied upon by the respondent were decided by the Hon'ble Supreme Court of India. It is a clear proposition of law that the decisions of the Hon'ble Supreme Court of India are binding on



all the High Courts of India.

16. The extract of findings, particularly paragraphs Nos. 9, 11, and 13 of *Banshi Dhar (supra)*, are as follows:-

“9. No hard-and-fast rule can be laid down in regard to grant of back wages. Each case has to be determined on its own facts. A grave charge of criminal misconduct was alleged against him. He was also found guilty of the charges levelled against him by the Special Judge. The High Court while delivering its judgment dated 16-1-2001 in SB Criminal Appeal No. 68 of 1985 inter alia held that the prosecution has not been able to prove that any demand had been made by him.

*11. Departmental proceedings, however, could not be held as on the date of passing of the judgment of acquittal, he had already reached his age of superannuation. The learned counsel may be right that the decisions of this Court referred to hereinbefore involved the respective appellants therein on charge of murder under Section 302 of the Indian Penal Code, but, as noticed, it has also been laid down that each case has to be considered on its own facts. The High Court refused to exercise its discretionary jurisdiction having regard to the aforementioned decision of this Court in *Ranchhodji Chaturji Thakore*. We do not see any reason to take a different view. Grant of back wages, it is well settled, is not automatic. Even in cases where principles of natural justice have been held to have not been complied with, while issuing a direction of reinstatement, this Court had directed placing of the delinquent*



employee under suspension.

13. Even in relation to the industrial disputes, this Court, in many judgments, has held that back wages need not be granted automatically although the order of termination passed against the workman concerned was found to be invalid. (U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, and Municipal Council, Sujampur v. Surinder Kumar.)”

17. Similarly, paragraphs Nos. 10 to 14 of *P. Karupaiah (supra)* are also very relevant, which are as follows:

“10. The law on the question of award of back wages has taken some shift. It is now ruled in cases that when the dismissal/removal order is set aside/withdrawn by the courts or otherwise, as the case may be, directing employee's reinstatement in service, the employee does not become entitled to claim back wages as of right unless the order of reinstatement itself in express terms directs payment of back wages and other benefits. (See M.P. SEB v. Jarina Bee².)

11. Indeed, the employee in order to claim the relief of back wages along with the relief of reinstatement is required to prove with the aid of evidence that from the date of his dismissal order till the date of his rejoining, he was not gainfully employed anywhere. The employer too has a right to adduce evidence to show otherwise that an employee concerned was gainfully employed during the relevant period and hence not entitled to claim any relief of back wages.

12. On proving such facts to the



satisfaction of the Court, the back wages are accordingly awarded either in full or part or may even be declined as the case may be while passing the order of reinstatement. The courts have also applied in appropriate cases the principle of "no work no pay" while declining to award back wages and confining the relief only to the extent of grant of reinstatement along with grant of some consequential reliefs by awarding some benefits notionally, if any, in exercise of discretionary powers depending upon the facts of each case.

13. Having seen the record of the case, we are satisfied that there was no evidence brought on record by the appellant (employee) in his writ petition to claim the back wages for the period in question either in full or part. Moreover, we find that the issue in question was raised in the writ petition and not before the Industrial or Labour Tribunal where the parties could adduce evidence on such question. (See the proviso to Section 17-B of the Industrial Disputes Act, C 1947.)

14. Be that as it may, the writ court and the appellate court yet examined the question in its writ jurisdiction and finding no merit therein declined to award any back wages. This Court does not find any good ground to interfere in the discretion exercised by the two courts below and accordingly uphold the orders impugned herein calling no interference."

18. Upon going through those judgments, as well as the facts of the case, it becomes crystal clear that there is no



specific finding in favour of the appellant at the time of setting aside the dismissal order to grant payment of salary. Rather, there was a specific finding that the appellant shall not be entitled to any wages for the period during which he did not work. Further, the finding of the Hon'ble Apex Court is that the grant of back wages is not automatic, and an employee is not entitled to claim back wages as a matter of right unless the order of reinstatement contains an express direction to make such payment.

19. In light of the discussions made above, this Court hereby decides the substantial question of law against the appellant and in favour of the respondent, holding that the order setting aside the dismissal does not automatically entitle the appellant to a decree for payment of salary.

20. Accordingly, the Second Appeal is hereby dismissed.

(Dr. Anshuman, J.)

Aman Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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