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* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 28.04.2026**Date of decision: 06.08.2026**Uploaded on: 06.08.2026*

CNR No: DLHC010184541999

+ W.P.(C) 2551/1999

A.I.I.M.S.

.....Petitioner

Through: Mr. V.S.R. Krishna and Mr. V.
Shashank Kumar, Advs.

Versus

MOHD. RAFIQ & ORS.

.....Respondents

Through: Ms. L. Gangmei, Adv.

CNR No : DLHC010195992000

+ W.P.(C) 2447/2000

MOHD. RAFIQ

.....Petitioner

Through: Ms. L. Gangmei, Adv.

Versus

P O LABOUR COURT

.....Respondent

Through: Mr. V.S.R. Krishna and Mr. V.
Shashank Kumar, Advs.**CORAM:****HON'BLE MS. JUSTICE SHAIL JAIN****JUDGMENT****SHAIL JAIN, J.**

1. The present writ petitions have been filed under Article 226 of the Constitution of India assailing the Award dated **10.12.1998** passed by the learned Presiding Officer, Labour Court No. X, Delhi in I.D. No. 240/95. W.P.(C) No. 2551/1999 has been preferred by the Petitioner/Management, All



India Institute of Medical Sciences (AIIMS), challenging the findings of the learned Labour Court whereby the resignation of the Respondent/workman was held to be involuntary and the Respondent/workman was directed to be reinstated in service with continuity of service and 40% back wages. W.P.(C) No. 2447/2000 has been preferred by the Respondent/workman challenging the Award to the limited extent that the learned Labour Court restricted the relief of back wages to 40% instead of granting full back wages. Since both the writ petitions arise out of the same Award and involve common questions of fact and law, they are being decided by this common judgment.

BRIEF FACTS OF THE CASE:

2. Brief facts emerging from the record, necessary for adjudication of the present writ petitions, are that the Respondent/workman was appointed as a Nursing Orderly with the Petitioner/Management on 18.08.1964 and was confirmed in service with effect from 01.02.1965. The Respondent/workman continued to serve the Petitioner/Management in the said capacity for about fifteen years.

3. The record reflects that during the year 1979, the Respondent/workman remained absent from duty for a certain period. According to the Respondent/workman, the said absence was occasioned by the serious illness of his wife, who was undergoing treatment outside Delhi. Upon his return, the Respondent/workman reported to the Petitioner/Management on 15.10.1979 for resumption of duties. It is the case of the Petitioner/Management that, on the said date, the Respondent/workman voluntarily tendered his resignation on account of his domestic circumstances and inability to continue in service, whereafter the same was accepted by the competent authority. The Respondent/workman, however, disputed the voluntary nature of the said



resignation and asserted that he had never intended to sever his relationship with the Petitioner/Management. According to the Respondent/workman, he had reported for joining duties and his signatures were obtained on a document represented to him to be necessary for facilitating his rejoining, which was subsequently treated by the Management as a letter of resignation. The dispute between the parties thus centres around the validity and voluntary nature of the alleged resignation dated 15.10.1979.

4. The record further reflects that soon after the cessation of his employment, the Respondent/workman addressed several representations to the Petitioner/Management requesting that he be permitted to resume duties and disputing the action taken by the Management. As the dispute remained unresolved, conciliation proceedings were initiated. Upon failure of the conciliation proceedings, the appropriate Government, in exercise of powers under Section 10 of the Industrial Disputes Act, 1947, referred the industrial dispute for adjudication to the learned Labour Court *vide* Reference dated 25.07.1981 on the following terms:

“Whether the resignation obtained from Shri Mohd. Rafiq is legal and justified and, if not, to what relief is he entitled and what directions are necessary in this respect?”

5. Pursuant thereto, the Respondent/workman filed a Statement of Claim before the learned Labour Court contending, *inter alia*, that the alleged resignation had not been voluntarily submitted and that he had been illegally deprived of his employment. The Respondent/workman sought reinstatement in service with continuity of service, full back wages and all consequential benefits.

6. The Petitioner/Management contested the claim by filing its Written



Statement. It was contended that the Respondent/workman had remained absent from duty for a considerable period due to personal difficulties and had voluntarily tendered his resignation, which was accepted by the competent authority. It was, accordingly, contended that the relationship of employer and employee had come to an end on account of the voluntary resignation of the Respondent/workman and that there was no termination of service by the Management.

7. The Respondent/workman filed a rejoinder reiterating the averments made in the Statement of Claim and denying the assertions contained in the Written Statement. Upon completion of the pleadings, the learned Labour Court framed the necessary issues for adjudication. Thereafter, both parties led oral as well as documentary evidence in support of their respective cases. The Respondent/workman examined himself as WW-1, whereas the Petitioner/Management examined MW-1 and MW-2 and relied upon the documentary record pertaining to the service of the Respondent/workman and the alleged resignation.

8. Upon appreciation of the pleadings, evidence and material placed on record, the learned Labour Court passed the impugned Award dated 10.12.1998, holding that the resignation relied upon by the Petitioner/Management could not be regarded as a voluntary resignation. Consequently, the learned Labour Court directed reinstatement of the Respondent/workman with continuity of service and awarded 40% back wages from the date of cessation of service till reinstatement.

9. Aggrieved by the aforesaid Award, the Petitioner/Management has preferred W.P.(C) No. 2551/1999 challenging the findings of the learned Labour Court directing reinstatement of the Respondent/workman with



continuity of service and back wages. The Respondent/workman has also preferred W.P.(C) No. 2447/2000 challenging the Award to the limited extent that the learned Labour Court awarded only 40% back wages instead of full back wages.

10. It is pertinent to note that during the pendency of the present writ petition, the respondent-workman expired. Consequently, upon an application being moved in that regard, his legal representatives were brought on record and have been substituted in his place for the purposes of the present proceedings.

SUBMISSIONS OF THE PARTIES:

11. Learned counsel appearing on behalf of the Petitioner/Management, AIIMS, assailed the impugned Award dated 10.12.1998 on the ground that the learned Labour Court had erred in holding that the resignation of the Respondent/workman was not voluntary. It was submitted that the findings returned by the learned Labour Court are contrary to the pleadings and evidence available on record and are therefore liable to be set aside.

12. It is submitted that the respondent/workman, being employed as a Nursing Orderly, was governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as well as the applicable Recruitment Rules. It is contended that the respondent/workman was a civil servant governed by the statutory service rules and, therefore, the provisions of the Industrial Disputes Act, 1947 were inapplicable to his case. Reliance is placed upon *The Director of Postal Services (South), Kerala Circle & Ors. v. K.R.B. Kaimal & Ors.* MANU/KE/0097/1983 in support of the proposition that the provisions of the Industrial Disputes Act are not applicable to an employee holding a civil post.



13. It is further submitted that the Labour Court travelled beyond the terms of reference made by the Appropriate Government. Learned counsel submits that the reference was confined to determining whether the services of the respondent/workman had been illegally and/or unjustifiably terminated. However, the Labour Court exceeded the scope of the reference by framing and adjudicating an issue as to whether the respondent/workman had tendered or withdrawn his resignation. According to the petitioner, the question of resignation did not form part of the reference and, therefore, the Labour Court lacked jurisdiction to adjudicate the said issue. It is contended that although the Labour Court itself observed that it could not travel beyond the terms of reference, it nevertheless proceeded to decide an issue dehors the reference, thereby rendering the Award unsustainable in law.

14. The petitioner/Management further contends that the Labour Court failed to appreciate the evidence on record in its proper perspective and instead proceeded on a selective and piecemeal appreciation of the material available before it. It is submitted that the respondent/workman had tendered his resignation on 15.10.1979 and his case before the Labour Court was that the same had been withdrawn on 20.10.1979, prior to its acceptance on 31.10.1979. However, according to the petitioner/Management, none of the subsequent communications addressed by the respondent/workman, including his letters dated 05.11.1979 and 12.11.1979, or the notice issued under Section 80 of the Code of Civil Procedure, made any reference whatsoever to the alleged withdrawal of resignation.

15. Lastly, it is submitted that the Labour Court erred in granting back wages despite there being no evidence on record to establish that the respondent/workman remained unemployed during the intervening period. It



is contended that the burden of proving non-gainful employment rested upon the respondent/workman, who neither pleaded nor adduced any evidence to show that he was not gainfully employed after cessation of service. In the absence of any such evidence, the grant of back wages is stated to be contrary to settled principles of law and liable to be interfered with.

16. *Per contra*, learned counsel appearing on behalf of the Respondent/workman supported the findings recorded by the learned Labour Court insofar as they declared the cessation of service to be illegal and directed reinstatement with continuity of service. It was submitted that the Respondent/workman had served the Petitioner/Management since the year 1964 and had remained absent only on account of the serious illness of his wife. Upon reporting back for duties on 15.10.1979, he was not permitted to resume duties and his signatures were obtained on certain papers under the representation that they were required for his joining report. It was contended that the said document was subsequently treated by the Petitioner/Management as a resignation letter without the knowledge or consent of the Respondent/workman.

17. Learned counsel for the Respondent/workman further submitted that the conduct of the Respondent/workman immediately after the alleged resignation clearly demonstrated that he had never intended to sever his relationship with the Petitioner/Management. Attention of this Court was drawn to the several representations dated 20.10.1979, 05.11.1979, 13.11.1979, 07.12.1979 and 20.12.1979 addressed by the Respondent/workman requesting the Management to permit him to rejoin duties. It was submitted that the last representation dated 20.12.1979, which stood exhibited during the evidence of the Management, was admittedly



received by the Petitioner/Management, yet no action was taken thereon. It was thus contended that the learned Labour Court rightly concluded that the Respondent/workman had never voluntarily resigned from service and, in any event, any such resignation stood withdrawn immediately.

18. Learned counsel further submitted that the plea raised by the Petitioner/Management that AIIMS is not an "industry" and that the reference was incompetent is wholly untenable. It was argued that the issue regarding the competence of the appropriate Government had been specifically framed and decided by the learned Labour Court after appreciating the evidence on record. It was further submitted that the Petitioner/Management never challenged the reference order independently and cannot be permitted to question the validity of the reference for the first time after the culmination of the adjudicatory proceedings. Reliance was placed upon *AIIMS v. Raj Singh*, 2007 SCC OnLine Del 1713, affirmed in 2008 SCC OnLine Del 1603 and subsequently by the Hon'ble Supreme Court in (2017) 12 SCC 803, as well as *National Buildings Construction Corporation Ltd. v. M.K. Jain*, 1980 SCC OnLine Del 504 and *Municipal Corporation of Delhi v. Mahavir Singh*, 2002 SCC OnLine Del 251.

19. Learned counsel for the Respondent/workman further submitted that the findings returned by the learned Labour Court are pure findings of fact based upon oral as well as documentary evidence led by the parties and do not warrant interference in exercise of the limited jurisdiction of this Court under Article 226 of the Constitution of India. Reliance was placed upon the decision of the Hon'ble Supreme Court in *Syed Yakoob v. K.S. Radhakrishnan*, AIR 1964 SC 477, to contend that this Court ought not to reappreciate the evidence while exercising its supervisory jurisdiction.



20. Insofar as W.P.(C) No. 2447/2000 preferred by the Respondent/workman is concerned, learned counsel submitted that having held the termination of service to be illegal and having directed reinstatement with continuity of service, the learned Labour Court committed a manifest error in restricting the relief of back wages to only 40% without assigning any reasons whatsoever. It was contended that the denial of the remaining back wages is unsupported by any discussion in the impugned Award and is therefore legally unsustainable.

21. Learned counsel for the Respondent/workman submitted that the Respondent/workman had specifically pleaded in the Statement of Claim as well as deposed in his affidavit that he remained unemployed throughout the period during which he was kept out of service. It was argued that once such a plea had been raised, the burden shifted upon the Petitioner/Management to establish that the Respondent/workman was gainfully employed elsewhere, which burden was never discharged. Reliance was placed upon *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*, (2013) 10 SCC 324, *Hindustan Tin Works Pvt. Ltd. v. Employees*, (1979) 2 SCC 80, *Surendra Kumar Verma v. Central Government Industrial Tribunal*, AIR 1981 SC 422, *Manorama Verma v. State of Bihar*, 1995 SCC (L&S) 193 and *B.R. Rasaily v. Presiding Officer, Labour Court*, 1996 SCC OnLine Del 178, to contend that reinstatement ordinarily carries with it the consequential relief of full back wages unless exceptional circumstances are pleaded and proved by the employer. It was submitted that no such exceptional circumstance was either pleaded or established by the Petitioner/Management and, therefore, the Respondent/workman is entitled to full back wages.

**DISCUSSION:**

22. This court has heard the learned counsel for the parties and perused the pleadings, impugned Award dated 10.12.1998 and other documents placed on record.

23. Before advertng to the rival submissions, it would be apposite to identify the issues which arise for consideration in the present batch of writ petitions. Since both petitions arise from the same Award but challenge different parts thereof, the following questions fall for determination:

(I) Whether the impugned Award suffers from any jurisdictional infirmity on account of (i) the alleged inapplicability of the Industrial Disputes Act, 1947 to the Respondent/workman, and (ii) the learned Labour Court having travelled beyond the terms of reference?

(II) Whether the finding recorded by the learned Labour Court that the alleged resignation dated 15.10.1979 was not voluntary suffers from perversity, patent illegality or any jurisdictional infirmity warranting interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India?

(III) If Issue No. (II) is answered against the Petitioner/Management, whether the learned Labour Court was justified in restricting the relief of back wages to 40%, or whether the Respondent/workman is entitled to full back wages with all consequential benefits?

24. Since Issue No. I concerns the preliminary objections raised by the Petitioner/management regarding the jurisdiction of the learned Labour Court and the maintainability of the industrial dispute, the same is required to be



decided at the threshold. In the event the said objections do not merit acceptance, this Court shall proceed to examine Issue No. II, namely, whether the findings recorded by the learned Labour Court on the question of the alleged resignation warrant interference in exercise of jurisdiction under Article 226 of the Constitution. The issue concerning the quantum of consequential relief shall be considered thereafter.

ISSUE NO. I

Whether the impugned Award suffers from any jurisdictional infirmity on account of (i) the alleged inapplicability of the Industrial Disputes Act, 1947 to the Respondent/workman, and (ii) the learned Labour Court having travelled beyond the terms of reference?

25. Learned counsel for the Petitioner/management contended that the Respondent/workman, being employed as a Nursing Orderly (Hospital Attendant Grade-III) in the Petitioner-institution, was holding a Group 'D' civil post governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and the applicable Recruitment Rules. It was, therefore, submitted that the Respondent/workman was governed by a special statutory service regime and consequently the provisions of the Industrial Disputes Act, 1947 were wholly inapplicable.

26. This Court is unable to accept the aforesaid contention. The mere fact that the Respondent/workman's conditions of service and disciplinary proceedings were governed by the CCS (CCA) Rules does not, *ipso facto*, exclude the applicability of the Industrial Disputes Act, 1947. The two operate in distinct fields. While the CCS (CCA) Rules regulate the conditions of service and disciplinary control over employees of the Petitioner, the



Industrial Disputes Act provides a statutory forum for adjudication of industrial disputes concerning a workman employed in an industry. The applicability of the Industrial Disputes Act is to be determined on the touchstone of the statutory requirements contained therein, namely, whether the establishment answers the description of an "industry" and whether the employee is a "workman" within the meaning of Section 2(s) of the Act.

27. In the present case, it is not the Petitioner/Management's case that the Respondent/workman was employed in a managerial, administrative or supervisory capacity so as to fall outside the ambit of Section 2(s) of the Industrial Disputes Act. Equally, the status of the Petitioner-Institute as an "industry" has already attained finality. The Labour Court, therefore, cannot be said to have lacked jurisdiction merely because the Respondent/workman was also governed by the CCS (CCA) Rules. The existence of statutory service rules regulating the conditions of service does not, in the absence of an express statutory exclusion, divest the Labour Court of the jurisdiction otherwise conferred upon it by the Industrial Disputes Act.

28. The reliance placed by the Petitioner/Management upon *The Director of Postal Services (South), Kerala Circle & Ors. v. K.R.B. Kaimal & Ors.* (*supra*) is misplaced. The said decision turned upon the statutory scheme applicable in that case and cannot be read as laying down a general proposition that every employee governed by the CCS (CCA) Rules is, for that reason alone, excluded from the remedies available under the Industrial Disputes Act. The first preliminary objection is, accordingly, rejected.

29. The next contention urged on behalf of the Petitioner/Management is that the Labour Court travelled beyond the terms of reference made by the Appropriate Government. It was submitted that the reference merely required



the Labour Court to determine whether the services of the Respondent/workman had been terminated illegally or unjustifiably. However, according to the Petitioner/Management, the Labour Court proceeded to frame and adjudicate an altogether different issue as to whether the Respondent/workman had voluntarily tendered his resignation and thereby enlarged the scope of the reference. The relevant issue framed by the learned Labour Court reads as under:

“1. Whether the workman has himself voluntarily resigned from his services as alleged by the management? If so, its effect?”

30. This court finds that this contention of Petitioner/Management is equally devoid of merit. The reference required the Labour Court to adjudicate whether the cessation of the Respondent/workman's employment was legal and justified. The Petitioner/Management's consistent defence before the Labour Court was that there was no termination at its instance as the Respondent/workman had voluntarily resigned from service. The Respondent/workman, on the other hand, specifically disputed the alleged resignation and asserted that his services had been illegally terminated.

31. In these circumstances, the question whether the Respondent/workman had in fact voluntarily resigned constituted the very foundation of the dispute and was intrinsically connected with the question referred for adjudication. Unless the Labour Court first determined whether the cessation of service was on account of a voluntary resignation or an act attributable to the employer, it could not have effectively answered the reference concerning the legality of the termination. The issue framed by the Labour Court was, therefore, merely incidental and ancillary to the principal issue arising out of the reference and



did not amount to travelling beyond the terms of reference. The Labour Court neither enlarged the scope of the dispute nor adjudicated upon an independent controversy dehors the reference. It merely examined the rival pleas raised by the parties to determine the true nature of the cessation of employment.

32. In view of the foregoing discussion, neither of the preliminary objections raised by the Petitioner/Management merits acceptance. The learned Labour Court possessed the jurisdiction to adjudicate the industrial dispute, and its examination of the voluntariness of the alleged resignation was integral to the determination of the dispute referred to it. **Issue No. I is accordingly answered against the Petitioner/Management and in favour of the Respondent/workman.**

ISSUE 2

Whether the finding of the learned Labour Court that the resignation dated 15.10.1979 was not voluntary warrants interference under Article 226 of the Constitution of India?

33. At the outset, it is necessary to bear in mind the nature and scope of jurisdiction exercised by this Court while examining an award passed by a Labour Court in proceedings under Article 226 of the Constitution. It is trite that the High Court, while exercising powers of judicial review, does not sit as a Court of appeal over the findings recorded by the Industrial Adjudicator. The jurisdiction is supervisory and not appellate. Consequently, this Court is not expected to reassess or reappraise the entire evidence merely because another view may also be possible. Interference is warranted only where the findings recorded are shown to be wholly unsupported by evidence, are perverse, suffer from manifest illegality or disclose a jurisdictional error



apparent on the face of the record.

34. The contours of the writ jurisdiction under Article 226 have been authoritatively delineated by the Constitution Bench of the Hon'ble Supreme Court in **Syed Yakoob v. K.S. Radhakrishnan**, AIR 1964 SC 477. The Supreme Court observed:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that



would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque [(1955) 1 SCR 1104] Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam [(1958) SCR 1240] and Kaushalya Devi v. Bachittar Singh [AIR 1960 SC 1168])”

[Emphasis supplied]

35. The same principle has repeatedly been reiterated by the Hon'ble Supreme Court. In **Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union**, (2000) 4 SCC 245, the Hon'ble Supreme Court held that the High Court cannot substitute its own appreciation of evidence for that of the Tribunal merely because another view appears to be possible. Unless the conclusions reached by the Labour Court are shown to be irrational, unsupported by evidence or such as no reasonable person could have arrived at, interference under Article 226 would be wholly unwarranted.

36. The rationale underlying the aforesaid principle is not far to seek. The Labour Court is the primary fact-finding authority constituted under the Industrial Disputes Act, 1947. It has the advantage of recording oral evidence, observing the demeanour of witnesses during examination and cross-



examination and appreciating the evidence in its entirety. The writ Court, on the other hand, examines the legality of the decision-making process and not the correctness of every factual inference. Unless the appreciation of evidence is shown to be demonstrably perverse or contrary to the settled principles of law, the findings of fact recorded by the Labour Court ordinarily deserve deference.

37. It is in the backdrop of the aforesaid settled principles that the correctness of the impugned Award is required to be examined. In order to appreciate the challenge raised by the Petitioner/Management, it becomes necessary to first examine the reasoning adopted by the learned Labour Court while returning its finding that the alleged resignation dated 15.10.1979 was not voluntary. The conclusion recorded in the impugned Award, which form the foundation of the present controversy, deserve reproduction.

“So, I have come to the conclusion that infact, the workman has never tendered the resignation and assuming that he has tendered the resignation, he has withdrawn the same by his letter dt.20.10.79.”

38. A careful reading of the impugned Award shows that the learned Labour Court did not proceed on the premise that the resignation merely stood proved or disproved by the oral testimony of either party. Rather, it approached the controversy in two distinct stages. It first examined whether the document dated 15.10.1979 could at all be regarded as a voluntary resignation of the Respondent/workman. Secondly, and in the alternative, it considered whether even assuming the document to be a resignation, the same had already been withdrawn before its acceptance by the competent authority. The learned Labour Court thus rested its conclusion on two independent foundations.



39. The principal submission advanced on behalf of the Petitioner/Management is that the learned Labour Court misread the evidence on record and returned findings contrary to the documentary material. It was argued that the resignation had been voluntarily submitted by the Respondent/workman owing to his personal and domestic difficulties and stood duly accepted by the competent authority. According to the Petitioner/Management, the Labour Court erroneously relied upon subsequent representations made by the workman while overlooking the unequivocal resignation submitted on 15.10.1979.

40. Elaborating the aforesaid submission, learned counsel contended that the Labour Court appreciated the evidence in a selective and piecemeal manner instead of considering the record as a whole. According to the Petitioner/Management, the very foundation of the Respondent/workman's case was that he had withdrawn his resignation by means of a letter dated 20.10.1979 before its acceptance on 31.10.1979. However, it was urged that in the subsequent letters addressed by the Respondent/workman dated 05.11.1979 and 12.11.1979, as also in the notice issued under Section 80 of the Code of Civil Procedure, there was not even a whisper regarding the alleged withdrawal dated 20.10.1979. It was submitted that had the resignation in fact been withdrawn, the Respondent/workman would naturally have referred to the same in the aforesaid communications. The omission to do so, according to the Petitioner/Management, completely demolishes the Respondent/workman's case and demonstrates that the withdrawal letter was subsequently introduced into the official records. Reliance was also placed upon the testimony of MW-1, Shri Ajit Singh, to contend that the Labour Court ignored material evidence while recording its findings.



41. This Court is unable to accept the aforesaid contention. At the outset, the contention that the learned Labour Court appreciated the evidence on a piecemeal basis is not borne out from the Award. A perusal of the impugned Award reveals that the Labour Court did not confine itself to any isolated document. On the contrary, it examined the pleadings of the parties, the oral testimony of the workman as well as the management witnesses, the contemporaneous correspondence exchanged between the parties and the official records maintained by the Management before arriving at its conclusion. The findings are, therefore, the result of a cumulative appreciation of the evidence and not of a fragmented consideration of individual documents.

42. The Labour Court first noticed the consistent stand of the Respondent/workman that on 15.10.1979 he had reported back for duty after attending to his ailing wife and had submitted an application seeking permission to resume duties. According to the Respondent/workman, he was thereafter directed to meet Shri Ajit Singh, who instructed Shri Ramesh Chand Ahuja to prepare a document in English. Being an illiterate person capable only of signing his name, the Respondent/workman asserted that he signed the document believing it to be his joining report and not a resignation. This version was reiterated by him both in the Statement of Claim as well as in his affidavit by way of evidence.

43. The learned Labour Court thereafter examined whether the aforesaid version found corroboration from the evidence led by the Management itself. It was noticed that while the Management pleaded ignorance as to the authorship of the resignation letter, MW-1, Shri Ajit Singh, admitted during cross-examination that Shri Ramesh Chand Ahuja was working under him on



the relevant date. Significantly, MW-1 also expressed inability to identify the handwriting of Shri Ramesh Chand Ahuja despite having worked with him for nearly two years. The Labour Court found this explanation to be unnatural and inconsistent with the ordinary course of official functioning.

44. Equally significant was the testimony of MW-2, Shri Ramesh Chand Ahuja. While the Management asserted that the Respondent/workman himself had requested MW-2 to draft the resignation letter owing to his domestic difficulties, the Labour Court juxtaposed this version with the Respondent/workman's plea that the document had been represented to him as a joining report. Upon evaluating the surrounding circumstances, the Labour Court found the latter version to be more probable. Such an exercise plainly falls within the domain of appreciation of evidence entrusted to the fact-finding authority.

45. The Labour Court, however, attached the greatest significance to the contemporaneous conduct of the Respondent/workman immediately after 15.10.1979. It treated the representation dated 20.10.1979 (Ex. MW1/W-6), produced from the Management's own records, as the most crucial piece of evidence. The Labour Court observed:

"This letter dated 20.10.79 Ex. MW1/W-6 exposes the entire thing and supports the plea of the workman that he never tendered the resignation. Had the workman been aware of the fact that the letter dated 15.10.79 purported to be a resignation is in fact resignation letter then definitely he would have mentioned this fact in this letter dated 20.10.79 rather he has stated that he may be permitted to join the duty."

46. The Petitioner/Management's submission that the subsequent letters dated 05.11.1979 and 12.11.1979 and the notice under Section 80 CPC do not



expressly refer to the alleged withdrawal dated 20.10.1979 undoubtedly constitutes a circumstance which the Management is entitled to rely upon. However, the absence of such a reference is not, by itself, conclusive of the issue. The evidentiary value of the omission must necessarily be assessed in the backdrop of the entire factual matrix, including the admitted existence of the contemporaneous representation dated 20.10.1979 forming part of the Management's own official records. The Labour Court was required to weigh all these circumstances together and not in isolation.

47. More importantly, the Petitioner/Management's submission essentially invites this Court to reassess the relative weight to be assigned to different pieces of evidence and to substitute its own inference for that drawn by the Labour Court. Such an exercise is impermissible while exercising supervisory jurisdiction under Article 226 of the Constitution. Once the findings recorded by the Labour Court are supported by evidence and represent a plausible view of the material on record, this Court would not interfere merely because another inference may also be possible.

48. This Court is, therefore, unable to accept the contention that the findings recorded by the Labour Court are the result of selective appreciation of evidence. The Award reflects a comprehensive consideration of the oral testimony, the contemporaneous documentary evidence and the official records maintained by the Management. The criticism levelled by the Petitioner/Management essentially relates to the weight assigned by the Labour Court to different pieces of evidence, which lies within the exclusive province of the fact-finding authority.

49. Having examined the reasoning adopted by the learned Labour Court, this Court now proceeds to examine whether the said reasoning accords with



the settled principles governing resignation from service. The controversy in the present case is not merely whether a document styled as a resignation letter bears the signature of the Respondent/workman. The real issue is whether the said document represented a conscious, voluntary and unequivocal intention on the part of the Respondent/workman to sever the jural relationship of employer and employee. The law is well settled that resignation is not merely a physical act of signing a document; it is a voluntary relinquishment of office accompanied by a clear intention to abandon service.

50. The Hon'ble Supreme Court has consistently held that the essence of a valid resignation lies in the intention of the employee to relinquish the employment voluntarily. In **G.T. Lad v. Chemicals & Fibres India Ltd.**, (1979) 1 SCC 590, the Apex Court observed that:

“6. [...]to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham & Carnatic Co. v. Venkatiah (1964) 4 SCR 265, it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”

51. The aforesaid principles assume considerable significance in the facts of the present case. The learned Labour Court did not merely compare the



competing oral versions of the parties. Rather, it examined whether the contemporaneous conduct of the Respondent/workman was consistent with the hypothesis that he had voluntarily abandoned service. It found that within five days of the alleged resignation, the Respondent/workman addressed a representation to the Director requesting that he be permitted to join duties. Thereafter, he continued to submit representations dated 05.11.1979, 13.11.1979, 07.12.1979 and 20.12.1979 seeking reinstatement. Such conduct, according to the learned Labour Court, was fundamentally inconsistent with the conduct of an employee who had consciously decided to sever his employment.

52. This Court finds considerable force in the aforesaid reasoning. Human conduct often constitutes the best evidence of intention. Ordinarily, an employee who has voluntarily resigned from service with a clear intention of terminating the relationship of employment would not, within a matter of days, repeatedly beseech the employer to permit him to resume duties. The immediate and persistent representations made by the Respondent/workman, particularly the representation dated 20.10.1979, constituted relevant contemporaneous evidence from which the learned Labour Court was entitled to infer that the Respondent/workman never intended to relinquish his employment voluntarily.

53. Equally significant is the fact that the said representation dated 20.10.1979 was not a document subsequently manufactured for the purposes of litigation. As noticed by the learned Labour Court, the said representation formed part of the official records of the Petitioner/Management itself and was duly proved through the Management witness as Ex. MW1/W-6.

54. Furthermore, the principle that resignation becomes effective only



upon acceptance, has been consistently recognised in service jurisprudence. In **Raj Kumar v. Union of India** AIR 1969 SC 180, while considering the legal effect of resignation from service, the Hon'ble Supreme Court explained that where acceptance of resignation is contemplated under the service rules, the jural relationship between the employer and employee ordinarily comes to an end only upon such acceptance by the competent authority. Until then, the employee continues in service and retains the right to withdraw the resignation unless the governing rules provide otherwise. The Supreme Court observed:

"5. [...] When a public servant has invited by his letter of resignation determination of his employment, his service normally stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter."

55. The official notings maintained by the Petitioner/Management also assume significance. The Labour Court noticed that even as on 30.10.1979, the office note merely sought approval whether the resignation of the Respondent/workman should be accepted. The relevant office noting, extracted in the Award, reads as follows:

"It is submitted for consideration and orders if the resignation tendered by Shri Mohammad Rafiq is accepted w.e.f. 15.10.79 without insisting upon three months' pay and allowances in lieu of the notice period."



56. The Labour Court held that this noting itself demonstrated that no final decision accepting the resignation had been taken till that stage. The Labour Court further found that despite the assertion that the resignation had been accepted on 31.10.1979, no contemporaneous order evidencing such acceptance was produced. Instead, the file continued to reflect consideration of the Respondent/workman's repeated requests to be taken back in service.

57. The submission of the Petitioner/Management that another view of the evidence was possible also does not advance its case. It is well settled that where two views are reasonably possible on the evidence available on record, the writ Court would not substitute its own view merely because it may have arrived at a different conclusion had it been exercising appellate jurisdiction. So long as the view adopted by the Labour Court is a plausible one founded upon evidence, the same does not become vulnerable to interference under Article 226 merely because another inference could also have been drawn.

58. Viewed in the aforesaid light, this Court is unable to hold that the finding recorded by the learned Labour Court suffers from perversity or patent illegality. The findings recorded by the learned Labour Court that the Respondent/workman had not voluntarily resigned from service and that the cessation of his employment was illegal are based upon a proper appreciation of the oral and documentary evidence available on record. The conclusions are neither perverse nor unsupported by evidence and do not suffer from any patent illegality or jurisdictional infirmity warranting interference under Article 226 of the Constitution.

59. Consequently, this Court answers **Issue No. II** in the negative.

ISSUE NO. III

Whether the learned Labour Court was justified in restricting the relief to



40% back wages or whether the Award calls for modification?

60. Having upheld the findings of the learned Labour Court on the illegality of the cessation of service, this Court must now examine the rival challenge to the relief granted by the learned Labour Court. While AIIMS contends that no back wages ought to have been awarded, the legal representatives of the deceased workman contend that the Labour Court committed an error in restricting the award to only 40% back wages despite holding the termination to be illegal. The controversy, therefore, shifts from the legality of the termination to the nature and extent of the consequential relief.

61. The law relating to grant of back wages has witnessed a gradual evolution. While earlier decisions often proceeded on the footing that reinstatement ordinarily carried with it the consequence of full back wages, subsequent judicial pronouncements have consistently held that the grant of back wages is not an automatic or inevitable consequence of every order declaring termination to be illegal. The relief has to be moulded upon consideration of the facts and circumstances of each case so as to balance the equities between the employer and the workman.

62. In ***Hindustan Tin Works (P) Ltd. v. Employees***, (1979) 2 SCC 80, the Hon'ble Supreme Court observed that where termination is found to be illegal, the normal rule is to restore the workman to the position which he would have occupied but for the illegal action of the employer. The Court observed:

“9...Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would give a premium to the unwarranted action of the employer.”



63. The legal position was revisited in ***J.K. Synthetics Ltd. v. K.P. Agrawal***, (2007) 2 SCC 433, wherein the Hon'ble Supreme Court clarified that payment of back wages is not a natural or automatic consequence of every declaration of illegality. The Court emphasised that several relevant considerations including the nature of misconduct, length of service, delay in adjudication, conduct of the parties and other equitable circumstances must inform the exercise of judicial discretion.

64. Subsequently, in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya***, (2013) 10 SCC 324, the Hon'ble Supreme Court reconciled the earlier authorities and observed that where termination is found to be patently illegal, reinstatement ordinarily carries with it full back wages unless the employer establishes circumstances disentitling the employee to such relief. The Court, however, clarified that the rule is not absolute and that the ultimate relief must always depend upon the facts of the individual case. The Hon'ble Supreme Court observed:

“38.The propositions which can be culled out from the judgments of this Court while deciding the issue of back wages are:

(38.1) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

(38.2) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

(38.3) Ordinarily, an employee or workman whose



services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer seeks to avoid payment of full back wages, it must specifically plead and lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.”

65. Thus, the consistent thread running through the aforesaid decisions is that while back wages are an important consequence flowing from an illegal termination, the quantum thereof remains a matter of judicial discretion to be exercised upon sound principles and supported by reasons. The discretion cannot be exercised arbitrarily; equally, it cannot be fettered by any rigid formula requiring grant either of full back wages or none at all.

66. Examining the impugned Award in the light of the aforesaid principles, this Court finds that the learned Labour Court, after holding the termination to be illegal, proceeded to award only **40% back wages**. The entirety of the reasoning on the aspect of relief is contained in paragraphs 25 and 26 of the Award, wherein the learned Labour Court observed that the Respondent/workman had remained absent on several occasions and, therefore, “the interest of justice” would be served by awarding only 40%



back wages till the date of superannuation.

67. The difficulty with the aforesaid reasoning is not the exercise of discretion itself, but the absence of any discernible basis for the particular quantum awarded. The learned Labour Court has not indicated why it considered 40% to be the appropriate measure of compensation. While it has noticed that the Respondent/workman was a habitual absentee, it has not explained how that circumstance justified reducing the back wages by sixty per cent. Equally, there is no finding that the Respondent/workman was gainfully employed elsewhere during the interregnum, nor is there any evidence on record to suggest that he had secured alternative employment so as to mitigate the loss occasioned by the illegal termination. The restriction of back wages to 40%, therefore, lacks an articulated rationale.

68. At the same time, this Court is equally unable to accept the submission advanced on behalf of the legal representatives of the Respondent/workman that the Award necessarily deserves to be modified by directing payment of full back wages. Although the Respondent/workman pleaded that he remained unemployed after the cessation of service, no independent evidence was led to establish the extent of his unemployment during the entire period from 1979 till his superannuation in August, 1996. Equally, the Labour Court has recorded a finding that the Respondent/workman had remained habitually absent on several occasions prior to the dispute. While such conduct could not justify an illegal termination or a forced resignation, it nevertheless remains a relevant circumstance while moulding the consequential monetary relief.

69. It is also necessary to bear in mind that the relief of back wages is essentially an equitable relief. The object is to compensate the workman for the financial deprivation occasioned by the employer's illegal action, while at



the same time ensuring that the relief does not operate as a windfall divorced from the facts of the case. The Court is, therefore, required to balance the competing equities and mould the relief in a manner that achieves substantial justice.

70. In the facts of the present case, certain circumstances assume significance. **Firstly**, the Respondent/workman succeeded in establishing before the learned Labour Court that he had not voluntarily resigned from service and had been illegally kept out of employment. **Secondly**, the Petitioner/Management did not lead any evidence whatsoever to establish that the Respondent/workman had remained gainfully employed during the relevant period. **Thirdly**, the litigation has remained pending for over four decades and the Respondent/workman, who had been contesting the proceedings since 1981, unfortunately passed away during the pendency of the present writ petitions in the year 2013, without reaping the fruits of the adjudication in his favour. **Lastly**, the Respondent/workman had already attained the age of superannuation in August, 1996 and, therefore, what survives today is only the monetary entitlement payable to his legal representatives.

71. Having regard to the aforesaid circumstances, this Court is of the considered opinion that while the Award insofar as it restricts the relief to 40% back wages cannot be sustained for want of adequate reasons, the facts of the present case also do not justify grant of full back wages. Balancing the equities between the parties, taking into consideration the absence of evidence regarding gainful employment on the one hand and the findings recorded by the learned Labour Court regarding the Respondent/workman's service conduct on the other, this Court is of the considered view that the ends of



justice would be adequately met by enhancing the monetary relief to **50% back wages** from the date of the illegal cessation of service till the date of superannuation.

72. The Award is, accordingly, modified to the limited extent that the Respondent/workman shall be entitled to 50% back wages, together with continuity of service for the limited purpose of computation of retiral and terminal benefits up to the date of his superannuation in August, 1996. Since the Respondent/workman has admittedly expired during the pendency of the present proceedings, the aforesaid monetary and consequential benefits shall be computed and released to his legal representatives in accordance with law.

CONCLUSION:

73. In view of the foregoing discussion, this Court finds no perversity, patent illegality or jurisdictional infirmity in the findings recorded by the learned Labour Court holding that the Respondent/workman had not voluntarily resigned from service and that the cessation of his employment was illegal. The said findings are based on a proper appreciation of the oral and documentary evidence on record and do not warrant interference in exercise of the limited jurisdiction under Article 226 of the Constitution of India.

74. However, this Court finds that the restriction of back wages to 40% is unsupported by adequate reasons. At the same time, the facts and circumstances of the present case do not justify the grant of full back wages. Having regard to the findings recorded by the learned Labour Court, the absence of any evidence to establish gainful employment of the Respondent/workman during the interregnum, the long pendency of the



litigation spanning over four decades, and the fact that the Respondent/workman attained the age of superannuation in August, 1996 and expired during the pendency of the present proceedings, this Court is of the considered opinion that the ends of justice would be adequately served by enhancing the back wages from **40% to 50%**, together with continuity of service for the limited purpose of computation of consequential retiral and terminal benefits up to the date of superannuation.

75. Accordingly, **W.P.(C) No. 2551/1999** preferred by the All India Institute of Medical Sciences is dismissed, whereas **W.P.(C) No. 2447/2000** preferred by the legal representatives of late Shri Mohd. Rafiq is partly allowed to the aforesaid extent.

76. The Petitioner/Management shall compute and release the consequential monetary and retiral benefits to the legal representatives of the deceased Respondent/workman within a period of **twelve weeks** from the date of this judgment, failing which the outstanding amount shall carry simple interest **@ 6% per annum** from the expiry of the aforesaid period till the date of actual payment.

77. The writ petitions, along with all pending applications, stand disposed of in the aforesaid terms. There shall be no order as to costs.

SHAIL JAIN
JUDGE

AUGUST 06, 2026
DG