IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA Nos. 203, 205 & 212 of 2022, LPA Nos. 3, 6, 7, 8, 36, 37, 38, 40, 41, 79, 80 of 2023
Decided on : 30.09.2026

---

1. **LPA No.203 of 2022**

M/s Biogenetic Drugs Private Limited.

…Appellant.

Versus

Surjeet Kumari

…Respondent.

---

2. **LPA No.205 of 2022**

M/s Biogenetic Drugs Private Limited.

…Appellant.

Versus

Sandeep Kumar

…Respondent.

---

3. **LPA No.212 of 2022**

M/s Biogenetic Drugs Private Limited.

…Appellant.

Versus

Rakesh Kumar

…Respondent.

---

4. **LPA No.3 of 2023**

M/s Biogenetic Drugs Private Limited.

…Appellant.

Versus

Vikram Singh

…Respondent.

---

5. **LPA No.6 of 2023**

M/s Biogenetic Drugs Private Limited.

…Appellant.

Versus

Surinder Pal.

…Respondent.

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

6. **LPA No.7 of 2023**
M/s Biogenetic Drugs Private Limited.
…Appellant.

Versus

Prithi Chand
…Respondent.

---

7. **LPA No.8 of 2023**
M/s Biogenetic Drugs Private Limited.
…Appellant.

Versus

Raghubir Singh
…Respondent.

---

8. **LPA No.36 of 2023**
Sandeep Kumar
…Appellant.

Versus

M/s Biogenetic Drugs Private Limited.
…Respondent.

---

9. **LPA No.37 of 2023**
Surinder Pal.
…Appellant.

Versus

M/s Biogenetic Drugs Private Limited.
…Respondent.

---

10. **LPA No.38 of 2023**
Surjeet Kumari
…Appellant.

Versus

M/s Biogenetic Drugs Private Limited
…Respondent.

---

11. **LPA No.40 of 2023**
Rakesh Kumar
…Appellant.

Versus

M/s Biogenetic Drugs Private Limited
…Respondent.

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

12. **LPA No.41 of 2023**
Vikram Singh

…Appellant.

Versus

M/s Biogenetic Drugs Private Limited.

…Respondent.

13. **LPA No.79 of 2023**
Raghubir Singh.

…Appellant.

Versus

M/s Biogenetic Drugs Private Limited.

…Respondent.

14. **LPA No.80 of 2023**
Prithi Chand.

…Appellant.

Versus

M/s Biogenetic Drugs Private Limited.

…Respondent

Coram

Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.

Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?[1]

For the appellant(s) : Mr. Ashok Sharma, Senior Advocate with Ms. Anubhuti Sharma, Advocate, for the appellant(s), in LPA No.203, 205 and 212 of 2022 and for respondents in LPA Nos.3, 6 to 8, 36 to 41, 79 and 80 of 2023.

For the respondent(s) : Mr. Nishant Khidtta, Advocate, for the respondents in in LPA No.203, 205 and 212 of 2022 and for the

[1] *Whether the reporters of the local papers may be allowed to see the Judgment? Yes*

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

appellant(s) in LPA Nos.3, 6 to 8, 36 to 41, 79 and 80 of 2023.

Bipin Chander Negi, Judge

Since common questions of law and fact are involved in the present appeals, they have been taken up together for disposal. The details of the writ petitioner/employee in all LPAs are as under:-

Sr. No.	LPA No.	Name of the Employee	Designation	Date of Employment	Date of Termination
1.	8/2023	Raghubir Singh	Helper	13/09/2005	15/07/2010
2.	36/2023	Sandeep Kumar	Operator	03/08/2006	27/03/2010
3.	37/2023	Surinder Pal	Operator	25/05/2005	27/03/2010
4.	38/2023	Surjeet Kumari	Operator	17/07/2005	27/03/2010
5.	40/2023	Rakesh Kumar	Operator	06/12/2005	27/03/2010
6.	41/2023	Vikram Singh	Helper	13/06/2005	27/03/2010
7.	80/2023	Prithi Chand	Operator	13/09/2005	27/03/2010

2. As per the employer (M/s Biogenetic Drugs), the writ petitioners/employees on 21.08.2009 had stopped work at about 3:00 PM and had not allowed anyone to perform their duties. Thereafter, on 25.08.2009, the writ petitioners/employees entered the factory, went to different departments, instigated other workmen to stop work and to

Hig Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

resort to a strike. On account of the grave misconduct committed by the writ petitioners/employees, they were suspended from duty vide letter dated 25.08.2009. The same was supplied to the writ petitioners/employees on 26.08.2009, who refused to accept the same, and hence the same was sent through post and copies of the same were affixed on the main gate of the factory.

3. In pursuance to the aforesaid, a joint charge-sheet dated 05.09.2009 was issued to the writ petitioners/employees. Reply filed thereto by the writ petitioners/employees was not found to be satisfactory. The employer (management) decided to hold a domestic inquiry vide letter dated 14.09.2009. One Shri Krishna Mohan Tripathi was appointed as an Inquiry Officer to conduct the inquiry. Post conducting the inquiry, show-cause notice was issued to the writ petitioners/employees against the proposed punishment of dismissal along with the inquiry report. The writ petitioners/employees were dismissed from employment vide letter dated 27.03.2010/15.07.2010.

4. In the aforesaid backdrop, reference bearing Nos.13, 18, 19, 20, 21, 22, 23 and 24 of 2011 were

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

instituted before the Industrial Tribunal-cum-Labour Court, Shimla. The question which arose for consideration before the Labour Court in terms of the reference pertained to the legality of the dismissal order dated 27.03.2010/15.07.2010 qua the writ petitioners/employees based on the domestic inquiry. Further, the Labour Court was to consider the question of back wages and service benefits that the writ petitioners/employees would be entitled to if the dismissal in pursuance to the domestic inquiry was held not to be legal and valid.

5. Before the Labour Court, vide order dated 20.07.2013, a preliminary issue qua the legality of the domestic inquiry conducted against the writ petitioners/employees was framed. Vide order dated 02.12.2015, it was held that the domestic inquiry conducted by Shri Krishna Mohan Tripathi was in violation of the principles of natural justice and hence the same was set aside and quashed.

6. On 02.12.2015 itself, issues were framed before the Labour Court. The same pertained to the alleged misconduct stated to have been committed by the writ

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

petitioners/employees in the charge-sheet dated 05.09.2009 and the service benefits to which the writ petitioners/employees would be entitled to, in case the misconduct as alleged in the charge-sheet dated 05.09.2009 is not proved.

7. Insofar as the alleged misconduct reported in the charge-sheet dated 05.09.2009 is concerned, the employer (M/s Biogenetic Drugs) failed to prove the same. Hence, dismissal of service of the writ petitioners/employees on the basis of the charge-sheet dated 05.09.2009 was held to be illegal and unjustified. Based on the aforesaid, the writ petitioners/employees were held entitled to reinstatement in service with seniority and continuity in service. However, they were held not entitled to any back wages in the award dated 8th May, 2018 passed by the Industrial Tribunal-cum-Labour Court, Shimla.

8. Feeling aggrieved of the impugned award dated 8th May, 2018, the writ petitioners/employees preferred writ petitions. The employer (M/s Biogenetic Drugs) did not prefer any writ petition against the impugned award dated 8th May, 2018.

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

9. The writ petitions preferred by the employees were allowed. The award dated 08.05.2018 was quashed and set aside to the extent it refused to grant back wages to the writ petitioners/employees. The employer (M/s Biogenetic Drugs) was directed to pay 50% of back wages along with up-to-date interest from the date of termination with seniority and continuity in service.

10. Feeling aggrieved of the same, both the employer and the employees have preferred the present appeals. The claim of the employees in the appeal preferred is for grant of 100% back wages. Per contra, the employer (M/s Biogenetic Drugs) seeks quashing of the relief granted to the extent of 50% back wages by the learned Single Judge in the judgment dated 28th October, 2022.

11. Qua the fact of the writ petitioners/employees being unemployed from the date of their illegal termination, it would be appropriate to refer to the relevant averment made in this respect in the claim petitions preferred. The same reads as under:

> *"Petitioner is unemployed from the date of his illegal termination and is meeting his day to day*

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

expenses from borrowing the money from his relatives."

12. In response thereto, the following has been submitted by the employer:

"The workman is not unemployed, he is gainfully employed elsewhere. He is concealing his employment with ulterior motives. It is denied that he is borrowing money from his relatives for meeting his day to day expenses."

13. The rationale for grant of back wages has been explained by the Apex Court in ***Hindustan Tin Works Private Limited v. Employees, (1979) 2 SCC 80***. The relevant extract whereof reads as follows:

"9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to the work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. 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 be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages..."

(Emphasis supplied)

14. In the same judgment, it has been held that payment of full back wages would be the normal rule. Departure from it can be made when necessary circumstances have been established. Relevant extract whereof reads as follow:

"*11. In the very nature of things there cannot to a straight jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion ofs the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The*

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular (See Susannah Sharp v. Wakefield [(1891) AC 173, 179])".

15. In ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and Others, (2013) 10 SCC 324***, it has been held:

"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money…The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emolument."

(Emphasis supplied).

The Court laid down the following principles to govern the payment of back wages:

"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.

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

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 wants to avoid payment of full back wages, then it has to plead and also 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.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees (1979) 2 SCC 80 : 1979 SCC (L&S) 53] .”

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

16. In the aforesaid legal backdrop, the finding returned by the Labour Court that the writ petitioners/employees had failed to discharge their burden by placing concrete material on record that they were not gainfully employed after the dismissal has correctly been set aside by the learned Single Judge by correctly holding that the writ petitioners/employees are only required to plead or at least make a statement before the Labour Court that they were not gainfully employed. Which as has already been stated supra has been pleaded in the claim petitions preferred before the Labour Court by the employees. Once the employee makes such a plea, the onus shifts upon the employer to specifically plead and prove that the employee was gainfully employed and was getting the same and substantially similar emoluments. In this respect, the learned Single Judge has correctly placed reliance upon ***Deepali Gundu Surwase (cited supra)***.

17. Learned Senior Counsel appearing on behalf of the employer has placed reliance upon the authoritative pronouncement of the Apex Court in ***Management of Regional Chief Engineer, Public Health and Engineering***

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

Department, Ranchi Vs. Their Workmen represented by District Secretary, ***(2019) 18 SCC 814***. Herein despite no pleadings, evidence adduced by either party to the lis qua factum of having been gainfully employed during the relevant period the Supreme Court while excising powers under Article 142 of the Constitution of India granted 50% back wages. Judgement relied upon would, therefore, be of no assistance to further the cause of the employer in the present case at hand. Relevant extract whereof reads as follows:

> *"11. It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.*
>
> *14. Coming now to the facts of the case at hand, we find that neither the Labour Court and nor the High Court kept in consideration the aforesaid principles of law. Similarly, no party to the proceedings either pleaded or adduced any evidence to prove the material facts required for*

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

> *award of the back wages enabling the Court to award the back wages.*
>
> *18. However, having regard to the facts and circumstances of the case, we consider it just and proper and in the interest of justice to award to these 37 workmen 50% of the total back wages.*
>
> *19. This we award to the workmen in exercise of our powers under Article 142 of the Constitution of India for doing substantial justice to the parties concerned having reiterated the legal principles which govern the question of award of back wages."*

18. Learned Senior Counsel appearing on behalf of the employer has also placed reliance upon the authoritative pronouncement of the Apex Court in ***National Gandhi Museum Vs. Sudhir Sharma, (2021) 12 SCC 439***. Herein keeping in view the fact that the mis-conduct in the case had been established reinstatement ordered and back wages granted were set-aside, however, compensation in lieu of reinstatement was granted in the peculiar facts of the case. Moreover, no plea was taken by the workman that he was not gainfully employed during the relevant period. Therefore, the judgement is clearly distinguishable on facts, as in the

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

case at hand mis-conduct could not be established by the employer (M/s Biogenetic Drugs), and will not further the case of the employer in denying 50% back wages granted to the employees in the case at hand by the learned Single Judge in the impugned judgement. Relevant extract whereof reads as follow:

> *7……In our view, considering the aims and object of the appellant and the serious nature of misconduct proved against the respondent, instead of granting reinstatement, by balancing the conflicting interests, appropriate compensation needs to be awarded. Moreover, considering the nature of the misconduct proved against the respondent, the grant of reinstatement will not be in the interest of justice. The long gap of 17 years will also be one of the considerations for not granting reinstatement*
>
> *especially considering the nature of the activities of the appellant and the conduct of the respondent. All these relevant factors borne out by the record were glossed over by the High Court.*
>
> *"8. In the case of Talwara Cooperative Credit and Service Society Ltd. (2008) 9 SCC 486, this Court has held that the fact whether an employee after dismissal was gainfully employed*

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

is within his special knowledge and therefore, considering the principles laid down in Section 106 of the Indian Evidence Act, 1872, the burden is on the employee to come out with a case that he was not gainfully employed during the relevant period. We must note that whether such burden is discharged or not is an issue to be decided in the facts of each case. The issue has to be decided by taking into consideration the entire material on record.

9. In the present case, at no stage, even such a plea has been made by the respondent. Even in the counter filed to these appeals, no such statement has been made. The amount of back wages payable up to June, 2010 was deposited in this Court. The said amount of Rs. 4,43,380/- has been withdrawn by the respondent in the year 2010. From the year 2004, when order of compulsory retirement was passed, the respondent has not worked with the appellant. Moreover, he has not even pleaded that from the date of the compulsory retirement till date, he was not gainfully employed."

19. In rejecting the claim of back wages reliance has been placed by the Labour Court on ***Kanpur Electricity Supply Company Limited Vs. Shamim Mirza, (2009) 1 SCC 20***, wherein some of the relevant factors to be kept in view while considering grant of back-wages is concerned

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

have been enumerated. On account of non-fulfilment of the same therein the claim of back-wages was denied by the apex court. Relevant extract whereof reads as follow:-

> *"29. It is true that once the order of termination of service of an employee is set aside, ordinarily the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. While dealing with the prayer of backwages, factual scenario, equity and good conscience and a number of other factors, like the manner of selection; nature of appointment; the period for which the employee has worked with the employer etc.; have to be kept in view. All these factors are illustrative and no precise formula can be laid down as to under what circumstances full or partial back-wages should be awarded. It depends upon the facts and circumstances of each case."*
>
> ***31.....***"*In both the cases, though the respondents have succeeded in establishing that they were in the employment of the appellant when their services were terminated but nothing has been brought on record to show that they were selected through a regular recruitment process. It has also not been shown whether they were actually qualified for the post*

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

> *of a cashier. Besides, on their own showing they had worked with the appellant for about two years when their services were terminated. These circumstances, in our view, disentitle them from their claim for back wages".*

20. Besides the aforesaid the Labour Court has placed reliance on ***Kendriya Vidyalaya Sangathan and Anr. Vs. S.C. Sharma, (2005) 2 SCC 363*** to deny back wages. The case pertained to a judgment passed by the Central Administrative Tribunal and the same pertained to an inquiry conducted under the CCS Rules whereby the employee therein after had been terminated. Qua the question of determining the entitlement of a person to back wages the apex court therein held that the employee must plead that during the relevant period he was not gainfully employed elsewhere. No opinion with respect to back wages was given in the peculiar facts and circumstances of the case as the said question was left open to be decided by the departmental proceedings to which the parties had been relegated therein. On the question of back wages, in the said case, the following was stated:

> *"13. The residual question relates to direction for back wages.*

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

14. In P.G.I. of Medical Education and Research, Chandigarh v. Raj Kumar this Court found fault with the High Court in setting aside the award of the Labour Court which restricted the back wages to 60% and directing payment of full back wages. It was observed thus:

> *"9. The Labour Court being the final Court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect."*

Again at paragraph 12, this Court observed:

> *"12. Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straitjacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety."*

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

15. The position was reiterated in Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya and Anr. Indian Railway Construction Co. Ltd. v. Ajay Kumar and M.P. State Electricity Board v. Jarina Bee (Smt.) .

16. Applying the above principle, the inevitable conclusion is that the respondent was not entitled to full back wages which according to the High Court was natural consequence. That part of the High Court order is set aside. When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard."

17. Since the present appeal arises from proceedings declaring the respondent as "absconder" we make it clear that if the appellants are desirous of initiating any departmental proceedings in terms of CAT's order they can do so within two months, if not already done. The proceedings shall be completed within further period of three months i.e. within five months from today. The respondent is directed to cooperate and

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

> *participate in the departmental proceedings. If he fails to do so it shall be at his own risk and peril. The entitlement of the service benefits, if any, for the period from the initial order of dismissal till final decision is taken will be decided in the departmental proceedings. We make it clear that we have not expressed any opinion on the merits of the case, and/or on the question of entitlement of any service benefit."*

21. The learned Tribunal has further placed reliance upon the judgment of the Apex Court in ***M/s. Reetu Marbles Vs. Prabhakant Shukla, 2010(1) SLJ (SC) 70*** wherein termination was found to be illegal by the labour court yet no back wages were granted. However, the High Court therein granted full back wages despite no material or evidence to show that the employee therein was not gainfully employed during the long spell of 15 years when he was out of service i.e date of termination till passing of award. In the facts of the case the apex court granted 50% back wages. The same does not further the contention of the learned senior counsel qua quashing the impugned judgement in so far as it grants back wages to the employees. The relevant extract of the same reads as under:-

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

"17. From the above observations it becomes apparent that payment of full back wages upon an order of termination being declared illegal cannot be granted mechanically. It does not automatically follow that reinstatement must be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the industry.

21. Applying the aforesaid ratio of law we have examined the factual situation in the present case. The services of the respondent were admittedly terminated on 11.6.87. The Labour Court gave its award on 27.9.02. Therefore, there is a gap of more than 15 years from the date of termination till the award of reinstatement in service. Labour Court upon examination of the entire issue concluded that the respondent would not be entitled to any back wages for the period he did not work. A perusal of the award also shows that the respondent did not place on the record of the Labour Court any material or evidence to show that he was not gainfully employed during the long spell of 15 years when he was out of service of the appellant. In the writ petition the respondent was mainly concerned with receiving wages in accordance with the Minimum Wages Act and for inclusion of the period spent in Conciliation Proceedings for the calculation of

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

financial benefits. The High Court without examining the factual situation, and placing reliance on the judgment in ***M/s. Hindustan Tin Works Pvt. Ltd. vs. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. and ors****. held that the normal rule of full back wages ought to be followed in this case. We are of the considered opinion that such a conclusion could have been reached by the High Court only after recording cogent reasons in support thereof. Especially since the award of the Labour Court was being modified. The Labour Court exercising its discretionary jurisdiction concluded that it was not a fit case for the grant of back wages. In the case of P.V.K. Distillery Ltd. (supra), it is observed as follows:*

> *"The issue as raised in the matter of back wages has been dealt with by the Labour Court in the manner as above having regard to the facts and circumstances of the matter in the issue, upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. There exists an obligation on the part of the High court to record in the judgment, the reasoning before however denouncing a judgment of an inferior tribunal, in the absence of which, the judgment in our view cannot*

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

stand the scrutiny of otherwise being reasonable."

22. In our opinion the High Court was unjustified in awarding full back wages. We are also of the opinion that the Labour Court having found the termination to be illegal was unjustified in not granting any back wages at all.

23. Keeping in view the facts and circumstances of this case we direct that the respondent shall be paid 50 per cent of the back wages from the date of termination of service till reinstatement."

22. Keeping in view the factual scenario (date of termination is March/July, 2010 and labour court award is dated 8th May, 2018, termination has been held to be un-justified as mis-conduct has not been proved), nature of appointment (Operator/Helper), the length of service of the employees/workmen (employed since 2005-2006 till termination in March/July, 2010),the financial condition of the employees/workmen (pleaded case-not working since retrenchment till the passing of the award, not dis-proved by the employer), equity, good conscience and the legal position discussed supra, we see no reason to interfere in the reasoned judgement of the learned Single Judge. Consequently, the appeals preferred by the employer as well

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS

as the employees are dismissed being devoid of merit, so also the pending miscellaneous application(s), if any.

(G.S. Sandhawalia) ***(Bipin Chander Negi)***
Chief Justice ***Judge***

30th September, 2026
(Gaurav Rawat)

High Court of H.P.

::: Downloaded on - 06/11/2026 10:11:46 :::CIS