

**SUPREME COURT OF INDIA**

First Flight Couriers Ltd

Vs.

Madan Lal

C.A.No.1818 of 2008

(A.K.Mathur and Altamas Kabir,JJ.)

05.03.2008

**ORDER**

(Arising out of SLP(C) No.6346 of 2006)

1. We have heard learned counsels for the parties.
2. Leave granted.
3. This appeal by special leave is directed against the judgment and order dated 19th December, 2005 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No.19680 of 2005 whereby the Division Bench has upheld the Award passed by the Labour Court and found that the respondent has been wrongly terminated in violation of Section 25-F of the Industrial Disputes Act, 1947. The Labour Court has granted reinstatement with full backwages by the Order dated 16th September, 2005. Aggrieved against this, the appellant challenged the same before the High Court and the High Court affirmed the order of the Tribunal. Hence the present appeal. A notice was issued by this Court on 17th April, 2006 confined to the question of payment of full back wages. Learned counsel for the appellant submitted that the respondent is not entitled to full back wages as he has to plead and prove that he was not gainfully employed. There is no such averment made by the workmen either before the Labour Court or in any proceedings that he was not gainfully employed. Learned counsel for the appellant has invited our attention to the decision of this Court titled *Kendriya Vidyalaya Sangathan and another versus S.C.Sharma reported in<sup>1</sup>* wherein this Court has held that the initial burden is on the employee, he has to show that he was not gainfully employed. It is thereafter that the employer can bring on record the material to rebut the claim of the employee. In that case also the employee has neither pleaded nor placed on record any material in that regard. Therefore, this Court has held that the incumbent is not entitled to full back wages. Similarly in present case also there is no such averment made by workman.
4. Learned counsel for respondent invited our attention to the decision of this Court titled *U.P. SRTC Ltd. versus Sarada Prasad Misra and another reported in<sup>2</sup>* in which this Court

has observed that what should be the backwages depends upon case to case and no hard and fast rule can be laid down. In this case this Court has observed that the incumbent is entitled to 50% of the back wages from the date of the Award till the date of reinstatement. Having regard to the facts and circumstances of the case, we are of the opinion that the ends of justice would be met by giving the respondent 50% of the back wages from the date of the termination till the date of the Award. Learned counsel for the respondent submits that the incumbent has not been reinstated despite his appearing before the authorities. For that relief, he can approach the appropriate forum.

5. The appeal is accordingly, disposed of.

Judgment Referred.

<sup>1</sup>(2005) 2 SCC 0363

<sup>2</sup>(2006) 4 SCC 0733