

**SUPREME COURT OF INDIA**

Malwa Vanaspati & Chemical Co. Ltd.

Vs.

Rajendra

C.A.No.2874 of 2009

(Tarun Chatterjee and H. L. Dattu JJ.)

28.04.2009

**JUDGEMENT**

**Tarun Chatterjee, J.**

1. Leave granted.
2. Delay condoned.
3. On 11th of January, 2008, this Court passed the following order:-

“Issue notice limited to question whether the respondent was entitled to full back wages or not. Issue notice also on the application for condonation of delay.”

4. The respondent filed an application before the Labour Court alleging that he was illegally terminated by an oral order dated 5th of March, 1998 and that he was not given any Show Cause Notice nor was he paid retrenchment compensation.
5. The appellant contested the said application alleging that the services of the respondent had not been terminated and since the services had not been terminated, the question of payment of retrenchment compensation or issuance of Show Cause Notice did not arise at all.
6. In February, 2000, in the light of the above matter, the Labour Court directed the respondent to report for duty and it is now an admitted position that the respondent reported for duty on that date.
7. By a final award, the Labour Court passed an award on 27th of September, 2002, directing the appellant to take him on duty and directed payment of back wages.

In appeal, the Industrial Court dismissed the appeal of the appellant.

8. Feeling aggrieved and dissatisfied with the aforesaid award passed by the Labour Court, the appellant filed a writ petition, which was also dismissed by the High Court. A Special Leave Petition against the order of the High Court dismissing the writ petition and affirming the award of the Labour Court has been filed, which on grant of leave, was heard in the presence of the learned counsel for the parties.

9. Since a limited notice was issued on the question whether the respondent was entitled to full back wages or not, we did not go into the question of reinstatement or otherwise. On the aspect of payment of full back wages, we are of the view that the appellant had already taken the respondent in service and considering the fact that the case of the appellant was that he was not terminated at all, we are of the view that in the facts and circumstances of the case, the back wages should be paid to the extent of 50 per cent (50%) of the salary.

“Accordingly, we dispose of this appeal by modifying the award to the extent that the employee/respondent would be entitled to back wages to the extent of 50 per cent (50%) and not full back wages.”

10. The award is accordingly modified and the order of the High Court is set aside in part. The appeal is disposed of accordingly with no order as to costs.