



Malavika Ramanand
Associate

SUPREME COURT ON REINSTATEMENT WITH BACK WAGES

A. Introduction

The Supreme Court (SC) in the 2021 case of *National Gandhi Museum v. Sudhir Sharma*,¹ decided on aspects relating to a terminated employee discharging their burden of proving they are not gainfully employed, on reinstatement of an employee losing confidence of the management, and on back wages payable to an employee who was unable to prove unemployment during pendency of dispute.

B. Brief Facts

1. In 1996, Sudhir Sharma (**Sudhir**) was appointed as Museum Assistant by the National Gandhi Museum (**NGM**).
2. In 2002, NGM issued an office order cancelling the option of compensatory leave against extra attendance. Sharma, being aggrieved by this order, allegedly assaulted the NGM's Assistant Director.
3. Sharma was served a charge-sheet for his actions. He then challenged this, through a writ petition, which was subsequently disposed of, with the court giving him the liberty to challenge the Inquiry Report that detailed his alleged assault.
4. The Inquiry Report that was issued by NGM stated that Sharma had been guilty of acts of subordination, causing disturbance to others in performance of their duty and causing violence in office.
5. Following this, NGM imposed penalty of compulsory retirement on Sharma. Another subsequent application was filed by NGM, seeking approval for the imposition of this penalty.² However, this application was retracted on the basis that an approval was not necessary since it was a case of compulsory retirement.
6. Sharma then approached the Delhi High Court (**HC**) seeking that the compulsory retirement order be declared null and void due to NGM's failure to obtain necessary approvals.³
7. The HC disposed of the petition directing NGM to reinstate Sharma with back wages. NGM then appealed to the SC.

¹ On September 24, 2021 2021 LLR 1040.

² Under Section 33(2)(b) of the Industrial Tribunal Act, 1947 (the **Tribunal Act**).

³ Under Section 33(2)(b) of the Industrial Tribunal Act, 1947 (the **Tribunal Act**).

C. Order

1. The SC, considering the facts pertaining to reinstatement, held: “*In our view, considering the aims and object of the appellant (NGM) 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.*”⁴
2. It relied on its judgment in the 2003 case of *Indian Railway Construction Co. Ltd. v Ajay Kumar*,⁵ where it had held that: “*They are prima facie acts of misconduct. Therefore, the employer can legitimately raise a plea of losing confidence in the employee, warranting his non-continuance in the employment.*”⁶
3. It therefore observed that reinstatement with back wages is not in the interests of justice considering the nature of misconduct proved against Sudhir. The SC instead awarded him compensation.⁷
4. On the question of gainful employment, it held: “*(T)his Court has held that the fact whether an employee after dismissal was gainfully employed 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.*”⁸

D. Comment

Employers can usefully rely on the ratio of this judgment when defending claims of reinstatement and back wages by any employee dismissed on grounds of misconduct.

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⁴ Para. 7 of the Order.

⁵ MANU/SC/1327/2003.

⁶ *Supra* n. 4.

⁷ Total of Rs. 7 lacs including Rs. 4.5 lacs previously paid by NGM as compensation.

⁸ Para. 8 of the Order.