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SUPREME COURT ON CLAIM FOR BACK WAGES

A. Introduction:

Supreme Court (“**SC**”), in the *Allahabad Bank* case of April 2022,¹ held that the primary obligation to prove non-existence of gainful employment lies on the employee. The burden to prove that he was gainfully employed, would shift on the employer only when such a claim is made by the employee.

B. Brief Facts:

1. Avtar Bhushan Bhartiya (“**Bhartiya**”) was appointed as a clerk with Allahabad Bank (“**Bank**”) in 1974 and was promoted as manager in 1987. In 1988, he was issued with a charge memorandum. Departmental enquiry proved all charges against him. He was dismissed from service on March 31, 1989.
2. Although he appealed against the dismissal order contending that the findings were not enclosed, it was dismissed. However, the appellate authority corrected the defect by dispatching the enquiry report, which remained undelivered.
3. Bhartiya then approached the High Court of Allahabad (“**HC**”), which directed the Bank to supply a copy of the enquiry report gave liberty to Bhartiya to file fresh appeal.
4. In May 2012, Bank responded to Bhartiya that the enquiry report was untraceable. He filed a fresh writ petition before the HC, which ordered setting aside of the dismissal order and reinstatement with 50% back wages but with all other consequential benefits N(“**Order**”).
5. Bhartiya approached the SC challenging the order through an SLP. The Bank also preferred an SLP challenging the quantum of back wages.

C. SC Order & Reasoning:

1. SC dismissed the both the SLPs and held that that the HC has struck a balance by limiting the back wages to 50%.²
2. It took note of the rules in past judgments on reinstatement and awarding back wages³ and observed as follows:

¹*Allahabad Bank & Ors, v. Avtar Bhushan Bhartiya*, Special Leave Petition (Civil) No. 3255 of 2018.

² Paragraph 27 and 38 of the Judgement.

³*Deepali Gundu Survase vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Ors.* (12.08.2013 - SC): MANU/SC/0942/2013; *Pawan Kumar Agrawala vs. General Manager-II and Appointing Auth. State Bank of India and Ors.* (17.11.2015 - SC): MANU/SC/1380/2015; *Jayantibhai Raojibhai Patel vs. Municipal Council, Narkhed and Ors.* (21.08.2019

- a. “Courts should always keep in mind the different yardsticks to be applied in the cases of workman category employees and managerial category employees.”⁴
 - b. “[T]here was nothing to show that the employee was gainfully employed after the date of dismissal. It is needless to point out that in the first instance, there is an obligation on the part of the employee to plead that he is not gainfully employed. It is only then that the burden would shift upon the employer to make an assertion and establish the same.”⁵
3. Considering that Bhartiya worked for about 15 years and was out of employment for 24 years, the SC opined that the HC was right in awarding 50% of back wages.

D. Conclusion:

1. Various HCs and the SC have taken differential views on the burden of proving non-existence of gainful employment. In a plethora of cases prior to 2008,⁶ the courts placed the burden on the employer.
2. In the *Talwara* case of 2008,⁷ the SC made a paradigm shift in the matter of proving gainful employment. Based on Section 106 of the Indian Evidence Act, 1872,⁸ the burden was shifted on the workman, observing that this is a negative burden. A similar view was taken in various other cases,⁹ including in the present case. Therefore, a consistent view is taken post 2008.

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- SC): MANU/SC/1133/2019; and *Hindustan Tin Works Pvt. Ltd. vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Ors.* (07.09.1978 – SC): MANU/SC/0272/1978.

⁴ Paragraph 30 of the Judgement.

⁵ Paragraph 33 of the Judgement.

⁶ *Hindustan Tin Works Pvt. Ltd. vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Ors.* (07.09.1978 – SC): MANU/SC/0272/1978.; and *Rajasthan State Road Transport Corporation, Jaipur vs. Phool Chand (Dead) through L.Rs.* (20.09.2018 - SC): MANU/SC/1020/2018.

⁷ *Talwara Coop. Credit and Service Society Ltd. vs. Sushil Kumar* (01.10.2008 - SC): MANU/SC/4523/2008.

⁸ Sec. 106 (*Burden of proving fact especially within knowledge*).

⁹ *Pradeep S/o Rajkumar Jain vs. Manganese Ore (India) Limited and Ors.* (25.10.2021 - SC Order): MANU/SCOR/39972/2021; *National Gandhi Museum vs. Sudhir Sharma* (24.09.2021 - SC): MANU/SC/0705/2021 and *Jayantibhai Raojibhai Patel vs. Municipal Council, Narkhed and Ors.* (21.08.2019 - SC): MANU/SC/1133/2019.

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