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## MADRAS HIGH COURT ON WRONGFUL TERMINATION OF WORKMAN

### **A. Introduction**

The Madras High Court (**HC**), in *Hindustan Institute of Engineering and Technology* case,<sup>1</sup> determined whether an employee was a workman under the Industrial Disputes Act, 1947 (**ID Act**). It relied on an apex court decision which laid down that (a) in case of wrongful termination, reinstatement with continuity of service and back wages was the normal rule and (b) prescribed test to be followed for not awarding back wages.

### **B. Brief Facts**

1. A.E. Rajendran (**Rajendran**) was appointed as an Accounts Officer in the Hindustan Institute of Engineering and Technology, Chennai (**HIET**) in 1996.
2. He was dismissed from service in 2000. He challenged it before the Labour Court, Chennai (**LC**) under Section 2A of the Industrial Disputes Act, 1947.
3. HIET contended that he was not a workman under the ID Act since the nature of his duties does not fall within the definition.<sup>2</sup>
4. The LC observed that the College had failed to establish its case and ordered Rajendran's reinstatement, together with continuity of service and full back wages.
5. Aggrieved by the LC's order, HIET appealed before the HC.

### **C. Judgment & Reasoning of HC**

1. HC dismissed HIET's petition and directed reinstatement of Rajendran together with continuity of service and full back wages. It held that he was a workman under the ID Act as established by him before the LC.<sup>3</sup>
2. It held so "*when the order of termination is per se illegal and such a termination is considered to be an act of victimization, amounting to unfair labour practice.*"<sup>4</sup>
3. It relied on the decision of the Supreme Court in the *Deepali Gundu Survase* case of 2013<sup>5</sup> and reiterated the below basic principles:
  - a. In cases of wrongful termination, reinstatement with continuity of service and back wages is the normal rule.

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<sup>1</sup>*The Director, Hindustan Institute of Engineering and Technology v. The Presiding Officer, III Additional Labour Court & Anr* (W.P.23798 of 2013) available at this [link](#).

<sup>2</sup> Section 2(s) of the ID Act.

<sup>3</sup> Paragraph 3 of the Judgement.

<sup>4</sup> Paragraph 8 of the Judgement.

<sup>5</sup>*Deepali Gundu Survase vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Ors.* (12.08.2013 - SC) : MANU/SC/0942/2013.

- b. However, while deciding back wages, courts or the adjudicating authorities may consider factors like length of service, nature of misconduct, and financial status of employer.
- c. To receive back wages, a workman must prove that they were not gainfully employed or were employed on lesser wages. If an employer wants to avoid paying full back wages, it must prove that the workman was gainfully employed and was receiving wages equal to or greater than prior to termination. The burden of proof lies on the party making positive claims, as it is easier to prove a positive fact than a negative fact. Once the workman shows they were not employed, the burden of proof shifts to the employer to prove otherwise.
- d. In cases where the Labour Courts or Industrial Tribunals exercises power under Section 11-A of the ID Act and finds that the though enquiry against the workman was conducted in compliance with the principles of natural justice and certified Standing Orders, however the punishment was disproportionate to the proven misconduct, the court may choose not to award full back wages at its discretion.

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