receipt of notice from the Chandigarh Administration demanding the payment of the amount with interest uptodate. If the plaintiff fails to pay the demanded amount within the aforesaid period, it is open to the Chandigarh Administration to put the disputed property to auction within three months thereafter. It is always open to the 4th respondent to recover the amount, if any, paid to the Chandigarh Administration in appropriate proceedings.

(34) The Regular Second Appeal is accordingly allowed. No order as to costs.

R.N.R.

Before Arun B. Saharya, C.J. & V. K. Bali, J

BHIM SAIN PRABHAKAR.—*Petitioner*

versus

THE PRESIDNG OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR AND ANOTHER.—*Respondents*

LPA No. 59 of 1996

25th January, 2000

Letters Patent Appeal, 1919—Cl. X—Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—Ss. 2(k), 10 & 33-A—Dismissal of the workmen from service—Labour Court holding the dismissal illegal & wrong while directing the reinstatement with 50% back wages—Workman challenging the award in writ for non-grant of full back wages—Learned Single Judge dismissing the writ and confirming the findings of the Labour Court—Workman represented the workers of various companies before the Labour Courts/Industrial Tribunals during the period of his forced idleness—Gainfully employed—Workman not entitled to full back wages—orders of Labour Court and learned Single Judge upheld—Appeal dismissed.

Held, that the Labour Court and the learned Single Judge were absolutely justified in granting only 50% back wages to the workman while reinstating him in service after invalidating the order of his dismissal. It is no doubt true that normal rule while setting aside the order of dismissal and reinstating the workman is to grant full back wages and the only exception wherein such an order i.e. an order of full back wages, is not made, is when the workman is gainfully employed. The appellant was well versed with the labour laws and he also held a position in the trade union. He had acquainted himself with all the relevant laws pertaining to welfare of the workman by

appearing for them for over a decade. When order of termination came to be passed. He continued appearing for the workmen before the Labour Courts/Industrial Tribunals throughout and a legitimate presumption that he was, at least after the order of termination was passed, being paid remuneration, can well be drawn. The Labour Court and the learned Single Judge, were justified in presuming that the appearances made by the appellant before the Labour Court/Industrial Tribunals were not gratuitous or in other words, it could not be said that he was not earning anything during the relevant period.

(Para 9)

R. S. Mittal, Sr. Advocate, with Sudhir Mittal, Advocate *for the appalleant*

H. N. Mehtani, Advocate, *for the respondents.*

JUDGMENT

V. K. Bali, J.

(1) In wake of firm finding recorded by the Labour Court that appellant-workman had been representing the workmen of various companies before the Labour Courts and Industrial Tribunals since 1978, based upon the statement of none other than the appellant himself, while holding that he had been dismissed from service on 5th October, 1988 in contravention of the provisions of section 33 of the Industrial Disputes Act, 1947, it granted 50% back wages, learned single Judge, on challenge to the award, rendered by the Labour Court, to the limited extent of denial of 50% back wages, did not find any merit in the writ petition and, thus, dismissed the same. The only question that has been raised before us in this Letters Patent Appeal filed by the workman-appellant under clause X of the Letters Patent is as to whether, during his so called period of idleness, appellant was not gainfully employed and, thus, entitled to full back wages. Before we may, however, answer the only question that has been raised in the present appeal, as noted above, it will be useful to give backdrop of the events culminating into filing of the present appeal.

(2) An Industrial dispute under Section 2(k) of the Industrial Diputes Act, 1947 (here-in-after referred to as the Act.) in regard to payment of bonus for the year 1984-85 was pending before the Tribunal in reference No. 7 of 1988. During the currency of this dispute, the respondent-Management dismissed the workman from service without obtaining permission as envisaged under the Act, thus, constraining the appellant to file an application under Section 33-A of the Act to the Labour Court before which the industrial dispute was pending. The Labour Court treating the complaint as a dispute referred to it under

Section 10 of the Act, renderd its awared on 5th August, 1993 holding that the dismissal of the workman from service was illegal and wrong. The order of dismissal was, thus, set aside directing the respondent-management to reinstate the workman with continuity of service and other consequential benefits but with 50% back wages which were to be paid in two equal monthly instalments within a period of three months from the date of award, failing which the workman was to be entitle to interest @12% per annum from the date of award till the date of actual payment.Constrained, the respondent-Management challenged the award aforesaid by filing Civil Writ Petition No. 13358 of 1993. Meanwhile, since the respondent-Management did not implement the award, the workman moved the State Government under Section 33-C(1) of the said Act claiming recovery of money due from the management under the Award. The Labour Commissioner, Haryana, exercising the powers of the State Government,—*vide* order dated 28th March, 1994/12th April, 1994 issued recovery certificate for Rs. 71,638.55 plus interest @ 12%. This recovery certificate was challenged by the respondent-management by way of Civil Writ Petition No 16522 of 1994. Appellant, as mentioned above, also challenged the award by way of Civil Writ Petition No. 15834 of 1993 to the limited extent, i.e., non-grant of full back wages. Both writs. ie. one filed by the respondent-Management and the other filed by the appellant, came up for decision before the learned Single Judge, who did not find any merit in either of the writ petitions and dismissed the same,—*vide* order dated 29th May, 1995. We are not concerned with the writ petitions filed by the respondent-management which have assumed finality by now.

(3) Mr. R. S. Mittal, learned counsel representing the appellant, vehemently contends that the normal rule that follows reinstatement by invalidating an order of termination, is to grant full back wages. The circumstances deviating from this rule, have to be shown by the Management. The mere fact that the appellant was representing the workmen of various companies before the Labour Courts/Industrial Tribunals, can not be termed to be a gainful employment and, therefore, the order of Labour Court, so confirmed by the learned Single Judge, needs modification so as to grant full back wages to the appellant, further contends the counsel. Reliance for the relief asked for, has been placed on two decisions of Hon'ble the Supreme Court in *Rajinder Kumar Kindra* v. *Delhi Administration (1)* and *Om Parkash Goel* v. *The Himachal Pradesh Tourism Development Corporation Ltd. Shimla (2).* Before we may, however, notice the facts of the two judicial precedents,

(1) AIR 1984 S.C. 1805
(2) 1991 Lab. I.C. 1414

cited before us, and find out as to whether the same do support the cause of the appellant, it will be useful to see the statement of the appellant which was taken into consideration by the Labour Court in awarding only 50% back wages as also as to how it proceeded to determine the issue. It shall also be relevant to notice the observations made by learned Single Judge in confirming the findings of the Labour Court with regard to payment of 50% back wages. On a question put to the appellant-workman that as to whether it was correct that he had been representing the workers of various companies before the Labour Court/Industrial Tribunals since 1978, the appellant answered in affirmative.

(4) On the basis of the statement of appellant, as noted above, learned Labour Court observed as under :—

> "it has come in the statement of Shri B.S. Prabhakar, WW1 that he has been appearing as A.R. of workmen in Labour Court/ Industrial Tribunals since 1978 on behalf of the workers of various companies. In this way, it is admitted by the workman that he is gainfully representing the workman in Labour Court/ Industrial Tribunal. Keeping in view these factors, I am of the opinion that it is a fit case to award 50% back wages to the workman payable in two equal monthly instalments and these 50% back wages will be payable from 5th October,1988, the date of dismissal till date".

(5) When the matter came up before the learned Single Judge, he proceeded in the matter by observing thus :—

> Now coming to the writ petition filed by the workman, the Labour Court while setting aside the order of dismissal has directed his reinstatement but with 50 per cent back wages. 50 per cent of the wages were denied on the ground that the workman while appearing before the Tribunal admitted in his cross-examination that he had been representing the workers of various companies before the Labour Court/ Industrial Tribunals since the year 1988. In view of this admission made by the workman, the Labour Court was justified in presuming that he was gainfully employed during the period of his forced idleness. The award of back Wages is essentially a matter of discretion to be exercised by the Labour Courts keeping in view the facts and circumstances of each case. The exercise of discretion in the instant case cannot be said to be arbitrary so as to call for any interference by this Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution".

(6) It is now time to find out as to whether the two judicial precedents in Rajinder Kumar Kindra and Om Parkash Goel's cases (supra), relied upon by the learned counsel for the appellant, do really apply to the facts of this case so that he may be held entitled to grant of full back wages. Rajinder Kumar Kindra was charge-sheeted on 11th December, 1975. The Enquiry Officer, who was appointed to go into the charges, submitted his report on 22nd June,1976 holding him guilty of gross negligence and misconduct in the discharge of his duties. The workmen raised an industrial dispute, *inter alia,* contending that the findings of the Enquiry Officer were perverse. The Presiding Officer, Labour Court, ultimately held that the services of Shri Rajinder Kumar Kindra were not terminated illegally or unjustifiably but on account of charges having been successfully proved against him as also that the enquiry proceedings were not vitiated by the principles of natural justice. The workman filed a writ petition under Article 226 of the Constitution of India in the High Court of Delhi questioning the correctness, validity and legality of the award. The Division Bench of the High Court dismissed the writ petition in limine observing that the matter depended upon assessment of evidence and the court could not reappraise the same under Article 226 of the Constitution. This led the workman to file a Special Leave Petition before the Apex Court. The impugned order could not be sustained in wake of the findings of the Hon'ble Supreme Court that "where the order of dismissal is sought to be sustained on a finding in the domestic enquiry which is shown to be perverse and the enquiry is vitiated as suffering from non-application of mind, the only course open to the court is to set it aside and consequently relief of reinstatement must be granted where there was nothing against granting the same". It is thereafter that the question of back wages was gone into. The workman in his cross-examination had admitted that during his forced absence from employment since the date of termination of his service, he was maintaining his family by helping his father-in-law Tara Chand, who owned a coal-depot and that he and the members of his family lived with his father-in-law and that he had no alternative source of maintenance. Prompt came an answer from the Hon'ble Supreme Court that "the employer had approached this case with gross perversity and further that if the employer, after an utterly unsustainable termination order of service, wanted to deny back wages on the ground that the appellant and the members of his family were staying with the father-in-law of the appellant as there was no alternative source of maintenance and during this period appellant was helping his father-in-law Tara Chand who had a coal depot, it could not be said that the appellant was gainfully employed". It was further held that " this was the only evidence in support of the submission that during his forced absence from service

he was gainfully employed and this could not be said to be gainful employment so as to reject the claim for backwages". The workman in the case aforesaid was held to be entitled to full back wages.

(7) In Om Parkash Goel's case (supra), the workman had been practising as a lawyer ever since his services were terminated. In the rejoinder filed by him he merly stated that he was not earning much in that profession and that he had incurred debts. It was the contention of counsel representing the Management that since the workman was admittedly practising as a lawyer, the question of granting him back, wages in any event did not arise and that even otherwise there could not be a roving enquiry to the earnings he had made as a lawyer at this distance of time. The workman, however, at this juncture filed a further affidavit that his total income from 1985 onwards was only Rs. 15,550 and that he had not received any other income during all these years. The workman relied upon an earlier decision of the Supreme Court in *S. M. Saiyad* v. *Baroda Municipal Corporation* (3), wherein the Hon'ble Supreme Court had awarded back wages in similar circumstances.

(8) The Supreme Court then observed that in the case in hand, affidavits were filed by the workman wherein it was stated that he was practising as an income tax advocated ever since his enrolment in October, 1982. But he asserted that he got his first brief in the year 1985. These averments were contradicted by the other side. On the aforesaid facts of the case, the Supreme Court observed that "it could not make a roving enquiry nor would it be possible for the Corporation to unearth the income which the petitioner would have derived as a practising advocate and there were many imponderables and conjectures too". Under these circumstances, the counsel representing both the parties were asked to give a suggestion to solve the problem. Counsel representing the workman submitted that even if the relevant period is to be treated as one of suspension pending enquiry, the workman would have been entitled to the subsistence allowance till his reinstatement and that atleast should be the criteria in granting the back wages in a situation like this. The Apex Court thought it to be reasonable and fair suggestion. The workman was, thus, held entitled to full back wages upto the date of his enrolment as a lawyer. From the date of his enrolment upto the date of reinstatement he was held entitled to the back wages at the rate of half of the subsistence allowance per month and the total amount was to be computed on that basis. Out of that the income of Rs. 15,550 admittedly earned by him as a practising lawyer, was to be deduced and the balance amount was to be paid to the workman.

(3) 1984 Lab. I.C. 1446

(9) After hearing Mr. R.S. Mittal, learned counsel for the appellant and Mr. H. N. Mehtani, learned counsel for the respondent-Management and going through the records of the case, we are, however, of the view that the Labour Court and the learned Single Judge were absolutely justified in granting only 50% back wages to the workman while reinstating him in service after invalidating the order of his dismissal. It is no doubt true that normal rule while setting aside the order of dismissal and reinstating the workman is to grant full back wages and the only exception wherein such an order i.e. an order of full back wages, is not made, is when the workman is gainfully employed. It can also not be disputed that gainful employment has to be such which must have some element of certainty, stability and continuity. In other words, gainful employment can not mean picking up an odd job here and an odd job there. Whereas, it may be true, as mentioned above, that gainful employment must have some element of continuity, it is equally true that it is not necessary that it may be the like where a regular employee in a permanent establishment works. To illustrate, if certainty, stability and continuity must be protected in the way a permanent employee, either in government or private sector is protected, all professionals, whether Lawyers, Architects, Doctors, or for that matter, even those who do any trade, shall have to be held as if doing nothing and, thus, earning nothing. We are confronted with a case where the appellant, as per his own showing, was an office bearer of the Haryana INTUC from 1977-78 to 1994-95 and was assisting various workman in the matters before the Industrial Tribunals and Labour Courts. (Reference may be made to para 8 of the writ petition). It is no doubt true that the appellant, for the first time before the writ court, further states that he was appearing for the workmen without any remuneration, but the same, if at all true, could be only upto the time he was in the employment of the respondent-Management. After his services were terminated and till such time he was reinstated, it can not possibly be imagined that he was appearing gratuitous. The facts of this case, thus, manifest that the appellant was well versed with the labour laws and he also held a position in the trade union. He had acquainted himself with all the relevant laws pertaining to welfare of the workmen by appearing for them for over a decade, when order of termination came to be passed. He continued appearing for the workmen before the Labour Courts/Industrial Tribunals throughout and as mentioned above, a legitimate presumption that he was, at least after the order of termination was passed, being paid remuneration, can well be drawn. This kind of job done by the appellant during the period under contention i.e., from the date of his services were terminated till the date order reinstating him in service was passed, cannot be said to be of earning livelihood by taking up odd jobs as and when

available. The Labour Court and the learned Single Judge, in our view, were justified in presuming that the appearances made by the appellant before the Labour Court/Industrial Tribunals were not gratuitous or in other words, it could not be said that he was not earning anything during the relevant period

(10) Coming now to the facts of the case in Rajinder Kumar Kindra's case *(supra)*, suffice it to say that the work therein was living with his father-in-law and helping him in the coal-depot. There was no evidence to show that the help given by the workman to his father-in-law was in lieu of pay or remuneration. At the most, the father-in-law,in turn, maintained the workman and his family. The plea raised by the management that workman being gainfully employed in such a situation, naturally had to meet with kind of observations by the Supreme Court, as have already been mentioned above.

(11) The facts of Om Parkash Goel's case *(supra)*, rather than supporting the cause of appellant, in our view, would turn against him. The only difference in the said case and the one in hand is that whereas, in the former workman had started practising as a lawyer and in the latter workman represented the workers of various companies in Labour Courts/Industrial Tribunals as their authorised representative. This difference does not appear to be of much significance as the job carried out by both is same, even though field of their operation may be different.

(12) In view of the discussion made above, we find no merit in this appeal and dismiss the same, leaving however, the parties to bear their own costs.

S.C.K.

Before Iqbal Singh, J.

JAGMAIL SINGH.—*Petitioner*

versus

AMARJEET KAUR & OTHERS.—*Respondents*

C.R. No. 3990 of 1997

3rd November, 1999

Code of Civil Procedure, 1908—o.1 Rl. 10-Necessary party—Impleading of—Whether purchaser lis—pendente is a necessary party.

Held, that while deciding question of impleadment of a person as a party to the suit, whether such person who has applied for being