
(2025) 02 SC CK 0052

Supreme Court Of India

Case No: Civil Appeal No.13834 Of 2024

Maharashtra State
Road Transport
Corporation

APPELLANT

Vs

Mahadeo Krishna Naik

RESPONDENT

Date of Decision: Feb. 14, 2025

Acts Referred:

- Constitution of India, 1950 - Article 41, 43, 136, 226
- Code of Civil Procedure, 1908 - Section 114, Order 47
- Motor Vehicles Act, 1988 - Section 166
- Industrial Disputes Act, 1947 - Section 11A, 17B
- Evidence Act, 1872 - Section 106

Hon'ble Judges: Dipankar Datta, J; Sandeep Mehta, J

Bench: Division Bench

Advocate: Mayuri Raghuvanshi, Vyom Raghuvanshi, Akanksha Rathore, Kinjal Sharma,
Pravin Waman Satale, Rishabh Jain, Rajiv Shankar Divedi

Final Decision: Disposed Of

Judgement

Dipankar Datta J

THE APPEAL,

1. This appeal by the Maharashtra State Road Transport Corporation
by special leave, is directed against the judgment and
order

dated 30th November 2018 impugned order of Hon'ble S.C.
Gupte, J single judge of the High Court of Bombay High

Court allowing a petition for review of Review Petition No. 18 of 2018 of his earlier order dated 7th February 2017 of dismissal of a writ

petition Writ Petition No. 154 of 2007 instituted by the respondent Mahadeo. The single judge not only set aside the order of dismissal of the writ petition passed by him but also set aside the award passed against Mahadeo by the 4th Labour Court at Mumbai Labour Court.

While so reviewing, the single judge also directed the Corporation to pay all benefits and emoluments including back wages to Mahadeo.

2. The Corporation has taken exception to the impugned order and contends that the High Court erred in interfering with the decisions of the Writ

Court and the Labour Court in its review jurisdiction.

FACTUAL MATRIX

3. The facts emerging from a perusal of the records would reflect that Mahadeo was appointed by the Corporation as a bus driver on 19th April, 1988.

The incident which formed the genesis of the present proceedings occurred on 10th May 1996. A lorry coming from the opposite direction collided at

about 22.45 hours with a bus of the Corporation, driven by Mahadeo, resulting in a fatal accident. Two passengers travelling on the bus succumbed to

their injuries while several others (around ten) suffered injuries. The monetary loss to the Corporation arising from the accident was calculated at Rs.

45,000/.

4. As a consequence of this accident, disciplinary action followed against Mahadeo. Consequent upon an inquiry, the Divisional Traffic Officer

disciplinary authority dismissed Mahadeo from service of the Corporation on 27th May, 1997. Aggrieved by his dismissal, Mahadeo preferred

a departmental appeal which proved abortive. The Union of which Mahadeo was a member, thereafter, raised an industrial dispute. A reference was

made by the Deputy Commissioner of Labour requiring the Labour Court The Labour Court, upon considering the evidence led and hearing the parties

to the dispute, held that the inquiry conducted was fair vide preliminary award dated 26th May, 2004; the findings of the inquiry officer were

not perverse. The preliminary award dated 9th December, 2005; and the punishment inflicted was in proportion to the misconduct proved;

therefore Mahadeo was not entitled to reinstatement in service. Resting on these findings, the Labour Court answered the reference by holding that

Mahadeo was not entitled to any relief. The final award dated 16th May, 2006.

5. Crestfallen, Mahadeo invoked the writ jurisdiction of the High Court by applying under Article 226 of the Constitution of India W.P. 154 of

2007. The single judge dismissed the challenge observing that there was enough material before the Labour Court to support the findings of the

Inquiry Officer and hence, no interference was warranted.

6. While the reference and then the writ petition was pending, proceedings for compensation had been initiated by the family members of the

deceased and injured victims of the road accident under the Motor Vehicles Act, 1988. The 1988 Act before the Motor Accidents Claims

Tribunal at Mumbai. Mahadeo, after becoming aware of the proceedings before the MACT, more particularly the contrary stand

taken by the Corporation where the entire blame for the fatal accident was laid on the feet of the lorry driver as well as the award of the MACT

dated 9th July, 2004. The said award, applied for review before the High Court. Review Petition No.18 of 2018. The review proceeding

succeeded before the High Court, triggering this appeal.

IMPUGNED ORDER

7. The single judge, in review, noticed the stand taken by the Corporation before the MACT that the accident was entirely due to the negligence of the

lorry driver, who was driving carelessly without observing traffic norms. It was stated before the MACT that the driver of the lorry drove it into the

Corporation's bus and that no fault could have at all been attributed to Mahadeo for the accident. Furthermore, in its defence, the Corporation led

evidence before the MACT of the conductor of the bus and a passenger who emphatically stated that the lorry driver was completely at fault for the

accident. The single judge noticed the fact that the proceeding before the MACT culminated into an award for compensation in favour of the

claimants therein, where the MACT recognising the fact that the lorry driver was at fault, did not affix any liability on the Corporation. Based on the

pleadings and the evidence presented by the Corporation, the MACT categorically held that the accident took place because of the negligence of the

lorry driver.

8. It became clear to the single judge that such relevant evidence was suppressed before the Labour Court. This material, in the opinion of the single

judge, had a crucial and conclusive bearing on the case before the Labour Court.

9. The single judge relied on a decision of this Court, reported in *An associate Builders v. Delhi Development Authority*

2015 (3) SCC 49, where it was held that disregard of a vital piece of evidence is one of the factors to be considered while examining whether an order

is perverse. The single judge further held that if the material produced before the MACT had been produced before it, the Labour Court would have

reached a diametrically opposite conclusion than the one it reached in the present case.

10. The Corporation contended that a conclusion reached by a claims tribunal under the 1988 Act is not binding on the Labour Court, with which the

single judge agreed. However, the single judge held that the Corporation had admitted in a sworn pleading that the accident was not due to the

negligence of Mahadeo. This newly produced material, which existed when the Labour Court made its award and the order dismissing the writ petition

was made, could not be produced by Mahadeo, yet, it was of such a clinching nature that on the face of this material, no court could come to the

conclusion that Mahadeo was rightly dismissed from service due to gross negligence on his part amounting to misconduct.

11. Mahadeo pleaded his inability to produce this material before as he only became aware of the proceedings before the MACT in June, 2017 and

received the certified copies of the materials by 23rd June 2017. This was neither challenged by the Corporation before the single judge nor was it

shown that Mahadeo, despite being aware of the proceedings before the MACT, went into slumber.

12. Hence, recording satisfaction that a case for review had been set up, the single judge proceeded to observe that no useful purpose would be

served by remanding the matter to the Labour Court as the materials spoke for themselves and no case of negligence could be made out against

Mahadeo by the Corporation. Consequently, the Corporation suffered an order for payment of all benefits and emoluments including back wages on

the basis of continuous service of Mahadeo from the date of his wrongful termination till his superannuation. Since Mahadeo had attained the age of

superannuation, reinstatement was denied.

13. The writ petition, thus, stood allowed on review of the earlier order of dismissal.

CONTENTIONS OF THE PARTIES

14. On behalf of the Corporation, exception is taken to the impugned order on the following grounds:

(i) Mahadeo was a trained driver who was responsible for the safety of the passengers travelling in the bus. It is a fact that there was extensive

damage to the bus and its passengers by the lorry and even though Mahadeo might have swerved to avoid the collision, there was a massive impact on

account of the high speed of the bus. To bolster this submission, the Corporation relied on a decision of this Court in T.N. State Transport Corpn.

(Coimbatore) Ltd. v. M. Chandrasekaran (2016) 16 SCC 16 where it was held that the injuries caused to the passengers and the nature of impact

raises an inference that the bus was being driven negligently by the bus driver.

(ii) The proceedings before the MACT and the disciplinary proceedings stand on completely different footing. The disciplinary proceedings were

aimed at examining the role of Mahadeo in the collision, whereas the MACT proceedings aimed to determine the negligence of the drivers involved in

the collision.

(iii) Judicial review is limited to analysis of the decision-making process and the High Court could not have ventured into the correctness of the

decision itself. Once it has been established that no ground for review was made out on the aspects of fairness and propriety of the inquiry, the High

Court should not have interfered with the decision of the Labour Court.

(iv) The single judge has substituted its view in the place of the competent authority and erred in not remanding the matter to the Labour Court.

(v) Full back wages have been awarded to Mahadeo without any evidence that he was not gainfully employed during the period from his termination

to his superannuation. The single judge erred in ignoring the fact that Mahadeo had a blemished service record, and several

punishments had been meted out to him during his short service period. Reliance has been placed on the decision

Rajasthan State Road Transport Corporation, Jaipur v. Phool Chand (2018) 18 SCC 229 to contend that it is settled law that back wages are not

automatic even if termination is set aside; hence, the single judge erred in not supplying reasons for award of full backwages.

15. Mahadeo, supporting the impugned order, advanced the following arguments:

(i) The Corporation has indulged in committing fraud on the Court, by not disclosing the fate of the judicial proceedings before the MACT and the

pleadings filed therein, to obtain favourable orders.

(ii) Mahadeo has been fighting this legal battle since 1997 and due to dismissal from service, he has been unable to find any other permanent

employment as a driver. He has been victimised by the Corporation and has suffered irreparable financial loss due to its condemnable actions.

(iii) The impugned order of the single judge granting relief is justified having regard to the decision of this Court in Deepali Gundu Surwase v. Kranti

Junior Adhyapak Mahavidyala (2013) 10 SCC 324, where this Court has held that if an employee is terminated on the basis on frivolous allegations

in violation of natural justice, that in itself will be ample justification to award full backwages.

Issues

16. To our mind, the present controversy tasks us to address four issues. The first is whether, the Corporation is guilty of suggestio falsi by not

disclosing what it had pleaded before the MACT and suppressio veri by suppressing the said award. Depending on an affirmative answer to the first

issue, the second issue would be whether, on facts and in the circumstances, the single judge was justified in exercising review jurisdiction. Again, an

affirmative answer to the second issue would require serious consideration as to whether any interference with the direction for payment of full back

wages is called for or not. Fourthly and finally, subject to our answers to all the three issues, what would be the appropriate relief for Mahadeo needs

to be considered.

WRITTEN STATEMENT OF THE CORPORATION BEFORE THE MACT

17. To answer the above issues, we need to appreciate what was the nature of claim before the MACT, what precisely was the defence raised by the

Corporation to avoid liability for payment of compensation, and what was the outcome of such proceedings.

18. The road accident taking the lives of two young children and causing injury to several others had given rise to a First Information Report

Ã¢â¬ÅFIRÃ¢â¬Å. Mahadeo was not named as an accused therein. The driver of the lorry, involved in such accident, was the sole accused in the FIR. This

fact was known to the Corporation from day one of the accident. The parents of Nitin Vardekar Ã¢â¬ÅclaimantsÃ¢â¬Å, a deceased passenger aged 17

years, had approached the MACT with a claim for compensation Ã¢â¬ÅApplication No. 2901/1996Ã¢â¬Å under section 166 of the 1988 Act, impleading

the Corporation Ã¢â¬ÅOP-1Ã¢â¬Å, the owner of the lorry Ã¢â¬ÅOP-2Ã¢â¬Å and the insurer of the lorry Ã¢â¬ÅOP-3Ã¢â¬Å as opposite parties.

19. To contest the claim of the claimants, the Divisional Controller of the Mumbai Division of the Corporation, Kurla, Mumbai filed the written

statement, on solemn affirmation, for consideration of the MACT. Relevant passages from the said written statement read as follows:

4. It is true that when the said S.T. Bus reached at Pen Phata on Mumbai Goa Highway at Nagothane at about 22:45 hrs on 10.05.1996 at that time one M/Lorry bearing Registration no. MRL 8226 came from the opposite direction in a very fast speed and in rash and negligent manner and gave heavy dash to the driver side of the S.T. Bus. It is also true that due to the said impact, the right side of the S.T. was cut off and the deceased who was sitting on the right side in the said S.T. Bus sustained injuries.

5. With reference to para 22(ii) of the application, this and by the correct side of the road (sic). The said S.T. Bus was fully under the control of the Bus Driver of this

Opp. Party. When the said S.T. Bus came near Pen Phata, at Nagothane, at that time one M/Lorry bearing registration no. MRL8226 which was being driven by the

driver of the Opp. Party No. 2, at a fast speed, rashly, negligently and without any care, caution and proper lookout from the opposite direction of the S.T. Bus, could

not control his vehicle, came on the wrong side of the road and dashed against the bus very heavily. The impact was so heavy that the right portion of the S.T. Bus

from the driver's side was tore and the passenger i.e. the deceased sustained injuries. The S.T. Bus driver, on seeing the M/Lorry coming towards the bus, tried to

save his vehicle to his left side to avoid the accident. However, as the driver of the Opp. Party No.2 came abruptly in front of the bus in a rash and negligent manner,

it came in contact of the right side of the S.T. sustained injuries and was removed to the hospital. It will be observed that there was no negligence whatsoever on

the part of the S.T. Bus driver, but it was sheer negligence on the part of the driver of the Opp. Party No. 2 who drove his M/lorry rashly, carelessly and Opp. Party

denies that the accident is of such a nature that it would not have taken place but for the gross negligence and rashness of the driver of this Opp. Party and puts the

applicants to the strict proof thereof. This Opp. Party further denies that the driver of the S.T. Bus was rash and negligent while driving the same in as much as he

drove the said vehicle at a high, excessive and improper speed or that he drove the said S.T. Bus without taking precautions and/or keeping proper lookout or watch

for the traffic and puts the applicant to the strict proof thereof. This opp. Party further denies that the driver of the S.T. Bus failed and neglected to apply the breaks

and/or failed to apply the breaks efficiently and/or in sufficient time to avoid the accident or neglected to manoeuvre the vehicle so as to avoid the accident and puts

the applicant to the strict proof thereof.~

(emphasis supplied)

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AWARD OF THE MACT

20. MACT, Mumbai, considering the claim raised by the claimants and the defence of the Corporation recorded the evidence of, inter alia, a

passenger named Anant Chindarkar ~P.W.2~ and the conductor of the Corporation~s bus named Chandrakant Lokhe ~D.W.1~,

respectively. On the basis of appreciation of the materials on record, the MACT proceeded to deliver the said award. We consider it appropriate to

extract relevant passages from the said award hereinbelow:

~“2. ~!Applicant Nos.1 and 2 are father and mother respectively of the deceased Nitin. On 10.5.1996 the deceased was travelling by S.T. Bus No.MH-12-Q-8712. It

was going along Mumbai Goa Highway. At about 10.45 p.m., it reached at Nagothane. At that time, one Motor Lorry No.MRL-8226 came from the front side in very

fast speed and gave dash to the said S.T. Bus at its~s driver~s side. Therefore, right side of S.T. Bus was cut off. The deceased was seriously injured and died

on the spot.

3. Opposite party No.1 M.S.R.T.C. filed written statement Exhibit-8. It~s case is that: The said Motor lorry came on wrong side of the road and dashed the S.T. Bus

heavily. The accident occurred due to sole negligence of the driver of the said lorry.

****~, ~, ~, ~, ~,

~, ISSUES~,

~, FINDINGS~, ~,

1) Whether the Applicants prove that the accident, took place due to rash and negligent driving of, vehicle No.MRL-8226? Yes

2) Whether the Applicants prove that the deceased died in the said accident? Yes

3) Whether the Applicants prove that they are entitled to compensation as alleged?
Rs.1,40,000/- Yes,

8. Applicants examined one Anant Chindarkar as P.W.2 as an eye witness. P.W.2 stated that: On 10.5.1996 he was accompanying the deceased in the said S.T. Bus.

Deceased was sitting on seat No.25. Near Pen fatta, one lorry came from front side and gave dash to the S.T. Bus. That lorry was in great speed. It hit S.T. Bus as

it's middle portion of the right side. Therefore right side of the S.T. Bus was torn. The deceased got injuries on his head and chest. He became unconscious.

Police came on the spot after about 15 to 20 minutes and removed the deceased to Nagothane Rural Hospital by one private car. P.W.2 and his friends also went to

that hospital. Doctor examined the deceased and declared him dead. Number of that S.T. Bus is MH-12-Q-8712. Number of that lorry is MRL-8226.

10. Opposite party No.1 M.S.R.T.C. examined one Chandrakant Lokhe as D.W.1. He stated that on 10.5.1996 he was conductor of the said S.T. Bus. Accident

happened near Nagothane Fatta at about 10.45 p.m. Speed of S.T. Bus was about 30 K.M.P.H. There was vehicular traffic on the road. The S.T. Bus was on the left

side of the road. The said lorry came from front side in great speed and gave dash to middle portion of right side of S.T. Bus. The accident happened because lorry

came to wrong side of the road. Body of S.T. Bus was torn. The lorry went further ahead and then overturned. The S.T. Bus was stopped immediately after the

accident. Lorry driver was responsible for the accident.

13. Spot panchnama Exhibit-23 further shows that: The said truck No. MRL 8226 after giving dash to the S.T. Bus went towards western side of the road. Then it hit

and uprooted six stones on the kacha road. Thereafter, it went below the road and dashed one tree. It was standing there facing towards the road. Trucks body is of iron. Upper side of truck's cabin was broken and was lying near it. It stopped about 115 feet away from the place of accident. Driver's side body of the truck was seen damaged.

16. P.W.2 Anant Chindarkar was one of the passengers in the said S.T. Bus. That fact is not disputed by the other side. D.W.1 Chandrakant Lokhe was the conductor of the said S.T. Bus. It is also not disputed. P.W.2 and D.W.1 were, therefore, supposed to have personal knowledge and experience of the circumstances in which the accident occurred. Both of them blamed driver of the said lorry for the occurrence.

20. For the aforesaid reasons I find that the accident took place because of rash and negligent driving of the said truck No.MRL-8226. Issue No.1 is, therefore, answered affirmatively.

25. Consequently, the applicants are entitled to get total compensation of Rs.1,40,000/- (Rs.1,30,000 + Rs.10,000). Admittedly: Deceased died in the accident in

question. The said motor lorry was involved in it. It was insured with the New India Assurance Co. Ltd., on the date of the accident. The Opposite party No.2,

Ramesh Suryawanshi is owner of the said lorry. Therefore, I find that Opposite Party No.2 and Insurer are liable to pay aforesaid compensation of Rs.1,40,000/- to the applicants. Issue No.3 is answered accordingly.

27. Hence, the following order:

ORDER

Application is partly allowed with proportionate costs.

Opposite party No.2 Ramesh Suryawanshi and the Insurer the New India Assurance Co. Ltd. Both are ordered to pay jointly and severally Rs.1,40,000 (Rupees One

Lakh Forty Thousand Only) to the applicants alongwith interest at the rate of 6% p.a. From the date of the filing of the application i.e. 27.8.1996 till payment.

It is inclusive of payment under sec.140 of Motor Vehicles Act by way of No-Fault Liability.

The case against Opposite party No.1, M.S.R.T.C. is dismissed. (emphasis supplied)

ANALYSIS AND REASONS

21. We now proceed to address each of the first three issues, in seriatim, with the answer to the fourth and final issue being made part of the answer

to the third issue.

22. The Latin phrases *suggestio falsi* and *suppresio veri* embody concepts of unethical conduct of a party having serious consequences in various

fields including law.

23. According to Black's Law Dictionary 11th Edition, *suggestio falsi*, is a false representation or a misleading

suggestion while *suppresio veri* connotes suppression of the truth; an indirect lie, whether by words, conduct, or artifice. It is a type of fraud.

24. That the Corporation indulged in the misadventure of *suggestio falsi* and *suppresio veri* is incontrovertible.

25. Before the Labour Court, the Corporation did not leave any stone unturned to establish that not only was the inquiry conducted against Mahadeo

fair, but the conclusion arrived at in course of such inquiry that Mahadeo was guilty of misconduct in rashly and negligently driving the bus of the

Corporation leading to loss suffered by it was established upon due consideration of the materials on record. Having regard to the clear and specific

stand taken before the MACT in its written statement, which has been quoted above, the Corporation did make a false representation before the

Labour Court amounting to *suggestio falsi*. Also, having not disclosed before the Labour Court the outcome of the proceedings before the MACT, a

fortiori, that it had not been found liable to pay any compensation to the passengers who either died and were injured based on what the version in the

written statement was and the argument advanced on its behalf to absolve itself of any liability, the Corporation is also guilty of suppressio veri.

26. The conduct of the Corporation when Mahadeo was struggling to find a foothold before the single judge in view of the contours of judicial scrutiny

of awards of industrial adjudicators cannot also escape notice. Perhaps, the Corporation thought that the proceedings before the MACT not having

been brought to the notice of the Labour Court by Mahadeo previously, he was blissfully ignorant of the same and, therefore, the Corporation would

steal a march over him by not making the appropriate disclosure. The Corporation was caught off-guard when Mahadeo produced the written

statement and the award of the MACT before the single judge in his review petition.

27. The relevance of the MACT judgment and its probative value to the case at hand cannot be gainsaid. To be relevant, a piece of evidence relied on

by a party must be shown to have some logical connection to the case and its admission would be necessary to prove or disprove a fact. Once the

evidence is found to be relevant and is admitted arises the question of its probative value. Probative value, as is well-known, refers to the weight or

persuasive power of the evidence. It is not always necessary that a piece of evidence found relevant to a case would still demand significant probative

value. An assessment has to be made by the court as to how convincing or persuasive the evidence is and how effective it would be to prove or

disprove a fact.

28. We are conscious that the law of evidence per se does not apply to industrial adjudication. Nevertheless, the general principles do apply. In any

event, in industrial adjudication, principles of natural justice have to be complied with. Fairness in procedure has developed as the third limb of natural

justice. The manner in which the Corporation conducted itself before the Labour Court does not behove a creature of a statute. It has been far from

fair in its dealings with Mahadeo.

29. The Corporation did not deliberately refer to the award of the MACT at two different tiers, and thereby actively suppressed relevant material from

a court of law. We do not propose to enter the arena of controversy as to whether the award of the MACT is binding on the Labour Court. However,

the Corporation could not have at any rate resiled from what it pleaded in its own written statement before the MACT on a sworn affidavit and

deliberately withhold the same. This Court has always taken a serious view against suppression of evidence in a judicial proceeding. In *State of M.P.*

v. Narmada Bachao Andolan (2011) 7 SCC 639, a three-Judge bench of this Court observed:

“164. It is a settled proposition of law that a false statement made in the court or in the pleadings, intentionally to mislead the court and obtain a favourable order,

amounts to criminal contempt, as it tends to impede the administration of justice. It adversely affects the interest of the public in the administration of justice. Every

party is under a legal obligation to make truthful statements before the court, for the reason that causing an obstruction in the due course of justice “undermines

and obstructs the very flow of the unsoiled stream of justice, which has to be kept clear and pure, and no one can be permitted to take liberties with it by soiling its

purity.”

30. Even if we keep the award of the MACT aside, it is clear from the pleadings of the Corporation before the MACT and the Labour Court that the

Corporation has attempted to get the best of both worlds. The contradictory nature of the stances taken by the Corporation before the Labour Court

and the MACT reeks of the Corporation trying to approbate and reprobate on the same issue. It is bound to cause immense prejudice to Mahadeo if

the Corporation is allowed to reverse its stance to suit its own interests. This Court in *Union of India v. N. Murugesan* (2022) 2 SCC 25 while

holding that it will be inequitable and unfair if a party is allowed to challenge a position while enjoying its fruits, ruled:

“26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot

blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming

under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while

enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while

questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if

such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in

this principle.

(emphasis supplied)

31. The Corporation, without an iota of doubt, being in the dominant position has attempted and achieved success in stealing a march over Mahadeo by

indulging in suggestio falsi and suppressio veri. The actions of the Corporation have resulted in Mahadeo being robbed of a stable livelihood and has

caused irreparable harm to him. It would not behove any court, much less this Court, to allow such free reign to a party. Omission, neglect and/or

failure "whatever be the cause - the Corporation's non-disclosure of what its stand was before the MACT and what was ultimately held by the

MACT to the Labour Court as well as the single judge is suppression of such high magnitude that it can safely be held to be akin to a clear fraud on

court.

32. It also appears to us that the actions of the Corporation were motivated. The track record of Mahadeo would show that he had been involved in 8

collisions before the collision with the lorry. Why the Corporation did not get rid of Mahadeo before is best known to it. However, wanting to get rid of

Mahadeo, the Corporation on this occasion found a convenient excuse in the collision and went ahead to dismiss him in the most unfair manner.

33. The first issue is, thus, answered in the affirmative.

34. Moving on to the second issue, the same need not detain us for long in view of our answer to the first issue.

35. Section 114 read with Order XLVII, CPC does permit the court to look into any document, having a bearing on the issue decided earlier, which was

not on record because despite exercise of due diligence the same could not be produced by a party. It would invariably reduce to an examination as to

whether the document has such intrinsic worth that if the same had been produced, the outcome could have been different.

36. The written statement of the Corporation filed before the MACT and its award are documents of immense significance which were sufficient to

tilt the balance in favour of Mahadeo. The objection of the Corporation to the single judge receiving such document as evidence in course of exercise

of review jurisdiction is wholly without any substance and merits outright rejection.

37. Accordingly, the second issue too is answered in favour of Mahadeo.

38. It is now time to consider the important point of award of back wages.

39. There is no dearth of judicial precedents on such point. While not referring to all the precedents, we may notice only a couple of them here.

40. Hindustan Tin Works (P) Ltd. v. Employees (1979) 2 SCC 80 is a decision rendered by a bench of three Judges of this Court. The following

passage from the judgment authored by Hon'ble D.A. Desai, J. (as His Lordship then was) is instructive:

“9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman

continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of

damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid.

It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously

deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer

could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically,

where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout

the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law

proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself,

ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of

penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back

wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted

litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's

demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be

followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. *It is*

(emphasis supplied)

41. Close on the heels of Hindustan Tin Works (P) Ltd. (supra) came another seminal decision on entitlement to back wages by another three-Judge

Bench in Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court (1980) 4 SCC 443. Hon'ble O. Chinappa Reddy, J. (as

His Lordship then was) in His Lordship's inimitable style remarked:

"6. Semantic luxuries are misplaced in the interpretation of bread and butter statutes. Welfare statutes must, of necessity receive a broad interpretation.

Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions. *Void ab*

invalid and inoperative or call it what you will, the workmen and the employer are primarily concerned with the consequence of striking down the

order of termination of the services of the workmen. Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily

lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be

exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For

instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment

elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of

reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would

place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be

reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional

hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if

the relief is denied than to the employer if the relief is granted.

(emphasis supplied)

42. There have been decisions of this Court rendered thereafter where a shift in approach on awarding full back wages is clearly discernible.

However, a coordinate bench of this Court in *Deepali Gundu Surwase* (supra) considered a dozen precedents on award of back wages upon

reinstatement (referred to in paragraphs 13 and 14). Speaking through Hon'ble G. S. Singhvi, J. (as His Lordship then was), the legal position was

neatly summed up in the following words:

“22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be

put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed

or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-

employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are

deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has

to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of

the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that

the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If

the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove

that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has

suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the

obligation to pay back wages including the emoluments.

x x x

38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the

length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer

and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact.

Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages.

In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's

obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the

sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the

employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has

taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay

in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back

wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in

mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for

prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame.

Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees [(1979) 2 SCC 80].

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal [(2007) 2 SCC 433] that on reinstatement the employee/workman cannot claim continuity of service

as of right is contrary to the ratio of the judgments of three-Judge Benches referred to hereinabove [Hindustan Tin Works (P) Ltd. (supra) and Surendra Kumar Verma

(supra)] and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman. "It is not

(emphasis supplied)

It is,

43. We cannot but endorse our wholehearted concurrence with the views expressed in the aforesaid decisions. Taking a cue therefrom, it can safely

be concluded that ordering back wages to be paid to a dismissed employee - upon his dismissal being set aside by a court of law "It is not

automatic relief; grant of full or partial back wages has to be preceded by a minor fact-finding exercise by the industrial adjudicator/court seized of the

proceedings. Such exercise would require the relevant industrial court or the jurisdictional high court or even this Court to ascertain whether in the

interregnum, that is, between the dates of termination and proposed reinstatement, the employee has been gainfully employed. If the employee admits

of any gainful employment and gives particulars of the employment together with details of the emoluments received, or, if the employee asserts by

pleading that he was not gainfully employed but the employer pleads and proves otherwise to the satisfaction of the court, the quantum of back wages

that ought to be awarded on reinstatement is really in the realm of discretion of the court. Such discretion would generally necessitate bearing in mind

two circumstances : the first is, the employee, because of the order terminating his service, could not work for a certain period under the employer and

secondly, for his bare survival, he might not have had any option but to take up alternative employment. It is discernible from certain precedents, duly

noticed in *Deepali Gundu Surwase* (supra), that the courts are loath to award back wages for the period when no work has been performed by such

an employee. Such a view is no doubt debatable, having regard to the ratio decidendi in *Hindustan Tin Works (P) Ltd.* (supra), *Surendra Kumar*

Verma (supra) and *Deepali Gundu Surwase* (supra). Though the latter decision was cited before the coordinate bench when it decided *Phool Chand*

(supra), any thoughtful discussion appears to be absent.

44. There is one other aspect that would fall for consideration of the court. In certain decisions, noticed in *Deepali Gundu Surwase* (supra), it has been

opined that whether or not an employee has been gainfully employed is within his special knowledge and having regard to Section 106 of the Evidence

Act, 1872, the burden of proof is on him. What is required of an employee in such a case? He has to plead in his statement of claim or any subsequent

pleading before the industrial tribunal/labour court that he has not been gainfully employed and that the award of reinstatement may also grant him

back wages. If the employee pleads that he was not gainfully employed, he cannot possibly prove such negative fact by adducing positive evidence. In

the absence of any contra-material on record, his version has to be accepted. Reference in this connection may be made to Section 17-B of the

Industrial Disputes Act, 1947, which confers a right on an employee to seek "full wages last drawn" from the employer while the challenge of the

employer to an award directing reinstatement in a higher court remains pending. There too, what is required is a statement on affidavit regarding non-

employment and with such statement on record, the ball is in the court of the employer to satisfy the court why relief under such section ought not to

be granted by invoking the proviso to the section. We see no reason why a similar approach may not be adopted. After the employee pleads his non-

employment and if the employer asserts that the employee was gainfully employed between the dates of termination and proposed reinstatement, the

onus of proof would shift to the employer to prove such assertion having regard to the cardinal principle that "he who asserts must prove". Law,

though, seems to be well settled that if the employer by reason of its illegal act deprives any of its employees from discharging his work and the

termination is ultimately held to be bad in law, such employee has a legitimate and valid claim to be restored with all that he would have received but

for being illegally kept away from work. This is based on the principle that although the employee was willing to perform work, it was the employer

who did not accept work from him and, therefore, if the employer's action is held to be illegal and bad, such employer cannot escape from

suffering the consequences. However, it is elementary but requires to be restated that while grant of full back wages is the normal rule, an exceptional

case with sufficient proof has to be set up by the employer to escape the burden of bearing back wages.

45. We hasten to add that the courts may be confronted with cases where grant of lumpsum compensation, instead of reinstatement with back wages,

could be the more appropriate remedy. The courts may, in such cases, providing justification for its approach direct such lumpsum compensation to be

paid keeping in mind the interest of the employee as well as the employer.

46. Mahadeo has admitted in his counter affidavit filed before this Court of being engaged in badli work on a daily wage basis. At the same time, it is

his specific case that because his service was terminated by the Corporation, he could not find a permanent employment elsewhere. There is no

material on record to disbelieve Mahadeo. Since the exact quantum of wages earned by Mahadeo is not available and at the same time it is clear as

crystal that the Corporation succeeded in its attempt to get rid of Mahadeo by indulging in the misadventure of suppressio veri and suggestio falsi, we

are of the considered opinion that interest of justice would be sufficiently served if, in modification of the order of the single judge awarding 100%

back wages, Mahadeo is awarded 75% of the back wages from the date of his termination till the date of his superannuation.

47. The third issue having thus been answered, we are left with the fourth and final issue.

48. It is ordered that Mahadeo is entitled to 75% of the back wages from the date of his termination till the date of his superannuation.

This would be apart from Mahadeo being entitled to full terminal benefits, along with interest @ 6% per annum, had he never been dismissed from

service. It is ordered accordingly.

49. The amounts Mahadeo is entitled to in terms of this order shall be released in his favour by the Corporation within three months from date of its

communication; in default, the said amount shall carry further interest @ 2% from such default till full payment.

CONCLUSION

50. With the aforesaid modification of the impugned order, this civil appeal stands disposed of.

51. Parties shall bear their own costs.