Joseph Zimik Vs State of Manipur and Others

Court: Gauhati High Court (Imphal Bench)

Date of Decision: June 13, 2007

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: (2007) 3 GLT 568

Hon'ble Judges: K. Meruno, J; B.D. Agarwal, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

B.D. Agarwal, J.
Both the appeals are being decided by this common judgment inasmuch as both the appeals are arising out of the same

judgment and facts of both the appeals are also intimately connected with each other.

2. Writ Appeal No. 23 of 2005 has been filed by the delinquent Police Officer; whereas Writ Appeal No. 66 of 2005 has been filed by the State.

In the former appeal, the delinquent is praying for modification of the impugned judgment only with regard to payment of back wages; whereas the

later appeal has been filed by the State seeking restoration of the order of dismissal ordered by the Appellate Authority vide order dated 6.8.2002.

In this way, findings of the learned Single Judge, rendered in the judgment and order dated 7.3.2005 in W.P. (C) No. 675 of 2003, in its entirety

have been challenged by both sides from two different angles.

3. We have heard Mr. H.N.K. Singh, learned Sr. Advocate assisted by Mr. Kh. Babulindro Singh, learned Counsel for the delinquent; whereas

the State was represented by Md. Jalal Uddin, learned Addl. G.A. We have also perused the impugned judgment, records of the writ petition as

well as the relevant file of Disciplinary Inquiry No. 1 of 2001.

4. Facts necessary for disposal of the appeals are summarized below:

At the relevant time, one Shri L. Ragui, Inspector of Police was the Officer in-charge of Ukhrul Police Station. On 29.6.2000 the said Police

Officer went to Imphal on official duty to collect some court exhibits. Before leaving for Imphal, the Officer in-charge handed over the charge of

the Police Station to the writ petitioner, S.I. Mr. Joseph Zimik. While the delinquent was holding the charge of Ukhrul Police Station, he got a

message in the evening of 1.7.2000 through one Assistant Teacher of his village that his wife was seriously ill. In view of the aforesaid urgency, the

delinquent handed over the charge of the Police Station to one Assistant S.I. of Police, Shri Azar Thomas. Co-incidentally in the same night some

unknown miscreants had stolen few small arms and ammunitions from Malkhana (Kote) of the Police Station. Because of this incidence, the writ

petitioner was placed under suspension by the Superintendent of Police of Ukhrul District vide his order dated 3.10.2000.

5. A regular departmental inquiry was held and the following charges were levelled against the writ petitioner:

i. That, while working as Officer-in-charge of Ukhrul Police Station in the absence of Inspector Ragui Officer-in-Charge was at Imphal on

temporary duty you had absented yourself in the night of 1.7.2000 without any leave or permission from the competent authority, which resulted in

loss of one 38 Revolver (Titan Tiger) No. N-408748, one 9 MM Pistol No. T. 17123 with two magazines and 49 rounds of 9MM ammunition

from the Kote of Ukhrul Police Station in the night of 1.7.2K which shows your dereliction of duty and thus you have committed a grave

misconduct.

ii. That, you were detailed as night duty Officer on 1.7.2K and did not perform the duty of night duty Officer in the same night, which resulted in

loss of one 38 Revolver (Titan Tiger) No. N-408748, one 9 MM Pistol No. T-17123 with two magazines and 49 rounds of 9 MM ammunition

from the Kote of Ukhrul Police Station in the night of 1.7.2000 which shows your dereliction of duty and thus you have committed a grave

misconduct.

iii. That, in the evening of 1.7.2000 you had consumed liquor with your Sub-Ordinate Officers and men, thus you have committed a grave

misconduct.

6. Charge Nos. (i) and (ii) were proved whereas charge (iii) could not be established. It is also worth mentioning here that the delinquent remained

content with the punishment of withholding of 3 (three) increments and no appeal was preferred against the said sentence. In fact, the delinquent

failed to produce any documentary evidence to show that he had left the Police Station after obtaining any leave or intimating any superior officer.

The delinquent conceded the fact of leaving the Police Station without any permission in his show cause reply submitted before the DIG on

29.7.2002. Relevant portions of the reply need to be made a part of this judgment, which are reproduced below:

That, I pray you to excuse me for the past record which have not been upto the expectation of my superiors and that, now on, I shall be more

deligent and committed to my service.

That, I have accepted and complied with the terms of punishment, whatever have been rested upon me and I promise to repay my lapses by

faithfully discharging my duties.

7. After regular departmental inquiry, the said Disciplinary Authority inflicted the punishment of withholding of 3 (three) annual increments with

cumulative effect vide order dated 6.6.2002. With this order, the delinquent was reinstated in service. The said punishment order was not

challenged by the delinquent. Despite that the Deputy Inspector General of Police (IV), Manipur reviewed the order of the Disciplinary Authority

suo moto and inflicted the punishment of dismissal of the delinquent from service vide order dated 6.8.2002. This order was implemented by the

S.P., Ukhrul vide his order dated 20.8.2002. These orders were, however, assailed by the delinquent before this Court by filing Writ Petition (C)

No. 675 of 2003.

8. The writ petition was decided on 7.3.2005. The operative directions are reproduced below:

13. Considering the totality of the facts and circumstances of the present case extreme penalty of removal from service imposed to the petitioner

for the unauthorized absence of one night from his duty in Ukhrul P.S. i.e., on 1.7.2000 shocks the judicial conscience of this Court and shockingly

disproportionate for absence of one night without permission of the higher authority.

14. For the reasons above mentioned the impugned order dated 6.8.2002 (Annexure-A/9 to the Writ Petition) and 20.8.2002 (Annexure-A/10 to

the Writ Petition) are hereby quashed and I leave it to the authority to impose any other minor penalty save and except dismissal from service to

the petitioner. Further, it is made clear that the petitioner shall not be entitled to back wages. The order of reinstatement should be issued within a

period of three months from the date of receipt of this order.

9. Md. Jalal Uddin, learned Addl. G.A. submitted that the learned Single Judge has transgressed his power of judicial review in the matter of

punishment in a disciplinary proceeding. According to the learned Addl. G.A., the order of dismissal from service was passed after affording

opportunity of hearing to the delinquent and only after receiving a reply from the delinquent, the order of dismissal was issued. In support of his

submission, the learned Addl. G.A. cited the judgment of Hon''ble Supreme Court rendered in High Court of Judicature at The High Court of

Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, . The learned Addl. G.A., further, contended that under Rule

66(x) of the Assam Police Manual (which has also been adopted in the State of Manipur). The Appellate Authority is competent enough to revise

the order of the Disciplinary Authority and as such the DIG was within his competence to enhance the sentence. To prove the powers of the

Appellate Authority to enhance the sentence, the learned Addl. GA. relied upon the judgment of the Apex Court given in Ganesh Santa Ram Sirur

Vs. State Bank of India and Another,

10. The learned Addl. G.A. has basically challenged the impugned judgment on the ground that there being no disproportionate punishment to the

delinquent, the learned Single Judge ought not to have interfered with the same. In this regard, the learned Addl. GA. placed reliance upon the

judgments of the Hon''ble Supreme Court, rendered in Dr Anil Kapoor Vs. Union of India (UOI) and Another,

11. On the question of claims of the delinquent to get back wages for the period of suspension, the learned Addl. G.A. pleaded that such

consequential reliefs cannot be asked for as a matter of right nor the back wages can be granted in a routine manner. According to the learned

Addl. G.A. for getting back wages, a delinquent is to prove that during the suspension period he was not gainfully employed. This submission was

made on the basis of judgments from the Apex Court rendered in the case of (1) Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma,

and (2) State of Rajasthan and Another Vs. Mohammed Ayub Naz,

12. Per contra, Mr. H.N.K. Singh, learned Sr. Advocate representing the delinquent submitted that the DIG being the Appellate Authority was

duty bound to assign reasons for enhancing the punishment. To buttress his submission, the learned Sr. counsel relied upon the judgment of this

Court rendered in the case of Laisram Tomba Singh v. State of Manipur and Ors. (1984) 2 GLR 225. It was also contended by the learned

Counsel for the delinquent that Rule 66(x) of the Assam Police Manual does not vest the power of enhancement of punishment, sans any appeal.

According to the learned Sr. counsel, the power of reviewing the order of the disciplinary authority can be invoked only if the matter is brought to

the appellate authority by way of filing an appeal by either party. However, in the instant case, the power was exercised suo moto without there

being any appeal. Hence, the impugned order of dismissal from service was rightly interfered with by the learned Single Judge.

13. In support of his Writ Appeal for awarding back wages, the learned Sr. counsel contended that the learned Single Judge remained

conspicuously silent as to why this pecuniary benefit was withheld. In other words, it was the submission of the learned Counsel that before

depriving the delinquent from back wages the learned Single Judge ought to have assigned reasons. In support of his submissions, the learned Sr.

counsel cited the judgment of the Hon"ble Supreme Court given in the case of Ramesh Chander and Others Vs. Delhi Administration and Others, .

The learned Sr. counsel also cited 2 (two) more judgments from the Apex Court rendered in the case of (1) Gammon India Limited Vs. Niranjan

Dass, and (2) Narotam Chopra Vs. Presiding Officer, Labour Court and Others, The contention is that back wages should be awarded

simultaneously to the reinstatement of the employee.

14. First of all, we would like to advert to he legal question regarding the contours of the powers of the Appellate Authority to revise orders of the

disciplinary authority. Procedures for filing appeal and inflicting punishments have been laid down under Rule 66. Rule 66 (iv) relates to the powers

of Disciplinary Authority, Rule (v) relates to the procedure of appeal and Rules (vi) and (x) deals with the powers of appellate authority. These

rules are quoted below for ready reference:

66 (iv). The punishment prescribed in Rule 2 to the extent specified in column 4 of the Schedule to these rules may be awarded to the police

officers mentioned in column 1 by the authorities mentioned in column 3 subject to appeal to the appellate authority mentioned in column 5.

66 (v). A member of the service shall be entitled to appeal from an order imposing on him any of the penalties specified in rule II for major

punishment--

(a) If such order was passed by an authority specified in the relevant column of the schedule, to the authority specified in the last column thereof,

(b) If such order was passed by an authority higher than that specified in the relevant column of the schedule, to the higher authority to whom the

former authority is administratively subordinate, provided that no appeal shall lie beyond the Inspector General of Police.

66 (vi). In the case of an appeal against an order imposing any penalty specified in rule II, the appellate authority shall consider-

(a) Whether the facts on which the order was based have been established;

(b) Whether the facts established afford sufficient ground for taking action; and

(c) Whether the penalty is excessive, adequate or inadequate; and after such consideration shall pass order as if thinks proper.

66 (x). The authority by whom an order imposing a penalty under rule IV may be reserved or altered in cases in which no appeal is preferred shall

be the appellate authority specified in Rule V.

15. There was no dispute at the bar that no appeal was preferred either by the delinquent or by the State against the order of the Disciplinary

Authority The learned Counsel for both sides made conflicting submissions about the powers of the appellate authority about the modification of

the orders of the disciplinary authority. According to the learned Addl. G.A. the appellate authority is competent to do so; whereas, according to

the learned Counsel for the delinquent, no such power of suo moto revision of punishment is vested upon the appellate authority.

16. As has been noted earlier, Rules 66 (iv) & (v) prescribe the right of preferring an appeal and the authority before whom such appeal can be

filed. Rule 66(vi) specifies the powers of appellate authority. Since no appeal was preferred by either side, the appellate authority had no occasion

to re-appreciate the order of disciplinary authority under Rule 66 (vi). Hence, the order of the DIG is necessarily under Rule 66 (x). In our

considered opinion, it is a kind of supervisory power of the appellate authority, to ensure that ad-equate and proportionate sentences are inflicted

upon the delinquents. This rule will be applicable only in the eventuality of non-filing of an appeal. In the present case, since no appeal was filed, the

DIG was within his competence to re-examine the proportionality of the sentence inflicted upon the delinquent.

17. Now, the question is whether in the disguise of supervisory power the Appellate Authority, i.e. the DIG exceeded his jurisdiction by converting

the punishment of with-holding of increments into an order of dismissal from service. The learned Single Judge has adverted to a number of

authorities from the Hon''ble Supreme Court dealing with the powers of High Court to interfere with the punishments inflicted by the disciplinary

authorities. Noticiable judgments relied upon by the learned Single Judge are that of (1) B.C. Chaturvedi Vs. Union of India and others, (2) U.P.

State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others, , (3) Dev Singh Vs. Punjab Tourism Development

Corporation Ltd. and Another, , (4) Om Kumar and Anr. v. Union of India reported in (2001) 2 SCC 386 and (5) Syed Zaheer Hussain Vs.

Union of India (UOI) and Others, . In all these cases, it has been reiterated by the Apex Court that though the power of judicial review cannot be

exercised by the High Courts at random, more particularly substituting its own conclusion and imposing a new penalty. At the same time, the Apex

Court has taken a consistent view that if the penalty shocks the conscience of the court and if the punishment is found to be shockingly

disproportionate to the charges levelled against the delinquent; the same can be judicially interfered with. We do not propose to burden this

judgment with more rulings in the same line. We agree with the learned Single Judge regarding the legal principle for interfering with the punishment.

18. The case of Dr. Anil Kapoor (supra) cited on behalf of the State is of not much help to us in this case. In this referred case the disciplinary

authority had itself awarded the punishment of removal from service which was reiterated by the appellate authority and was also upheld by the

Tribunal. In such a situation, the Apex Court held that the punishment cannot be interfered with only on the ground that two views were possible.

In the case before us, the disciplinary authority had awarded the punishment of withholding of increments; whereas the appellate authority upwardly

revised the punishment suo moto.

19. The judgment of the Apex Court given in the case of Ganesh Santa Ram Sirur (supra) has been cited by the learned Addl. G.A. to make a

point that the appellate authority can enhance the sentence. We do not dispute this legal position. The question before us is whether the

enhancement of punishment by the DIG was justified or not in the facts and circumstances of the case and whether the learned Single Judge has

rightly interfered with the said order.

20. The case of Shashikantthis Court Patil (supra) was pressed into service to reiterate that extra ordinary powers conferred under Article 226 of

the Constitution of India should be invoked only in extra-ordinary situation. There is no scope to distinguish the authority of the Apex Court.

Rather, we also reiterate that the High Court should exercise its supervisory power with circumspection and only when the delinquent makes a

strong case of perversity. In the judgment of the Apex Court in Ramesh Chander (supra), the Apex Court had approved the sentence of removal

from service in a case where the delinquent was found to be habitual absentee and not found to be retained in service. However, the case before

us stands on different footing. Hence, it has to be examined on its own merit.

21. The relevant portions of the order of the DIG are quoted below, which will give sufficient idea whether it can be termed as arbitrary or

reasoned order. It runs as follows:

3. Whereas the Superintendent of Police agreed with the findings of the Enquity Officer awarded the delinquent Sub-Inspector the punishment of

stoppage of three increments with accumulative effect vide his order No. D-6/99-SP(UKL) dated 6.6.2002;

4. Whereas the undersigned in his capacity as the superior to the Disciplinary Authority (SP/Ukhaul) reviewed the Departmental proceedings and

came to the conclusion that the punishment of stoppage of three increments does not meet the ends of justice keeping in view the gravity of

misconduct;

5. Whereas the delinquent Sub-Inspector Joseph Zimik was given yet another opportunity by issuing a sou cause notice vide this office No. W-

10/12/2001 (R-IV)/1811 dated 20th July, 2002 following which his reply was received on 29th July, 2002;

6. Whereas he has nothing new to explain in his reply to the aforesaid sou cause notice and only accepted the commission of his misconduct;

7. Now, therefore, I.D. Misra, Dy. Inspector General of Police (Range-IV), Manipur reject the punishment as ordered by S.P., Ukhrul and award

Sub-Inspector Joseph Zimik the punishment of dismissal from service with immediate effect.

22. The order is totally silent to justify the necessity to revise the sentence of the delinquent. No reason, whatsoever, has been assigned in the said

order about the need of enhancing the sentence. In the case of Laishram Tomba Singh (supra), this Court has reiterated that reasons must be

assigned in quasi-judicial orders. On this ground alone, the order of the appellate authority is not sustainable in law.

23. The enhancement of sentence is also de-hors to the doctrine of proportionality of sentence. We find from the record that A.S.I. Azar Thomas

has submitted that he was put in-charge of the police station by the delinquent before leaving for his village. Hence, it can not be said that entire

police station was abandoned or left uncared by the delinquent. Besides this, it is also on record that the Head Constable,this Court Koireng Singh,

was the in-charge of the Kote (Malkhana/Almirah). Hence, the theft of arms and ammunitions cannot be directly imputed to the present delinquent.

In a nutshell, the only offence that stands proved against the present delinquent/writ petitioner is that he went home without obtaining fonnal

permission from his superiors. At this stage, it is also worth mentioning here that in paragraph-6 of the writ petition it was clearly mentioned that the

wife of the delinquent was ailing since a long time and the writ petitioner was transferred to Ukhrul Police Station on this ground alone. From this

angle also it can be said that the writ petitioner had to rush home in emergency and he had no opportunity to seek formal permission. For such a

minor lapse the extreme punishment of dismissal from service was totally uncalled for and the same has been rightly set aside by the learned Single

Judge. Hence, we find no difficulty to hold that the appeal of the State (W.A. No. 66 of 2005) has no merit.

24. Now, we turn to the prayer of the delinquent for back wages. Mr. H.N.K. Singh, learned Sr. counsel for the delinquent submitted that the

learned Single Judge ought to have assigned any reason for withholding back wages. According to the learned Counsel, the writ petitioner

deserved to be paid back-wages in the facts and circumstances of the case.

25. It is true that in the light of the principles laid down in the case of Laishram Tomba Singh (supra), the learned Single Judge should have

assigned reasons for not granting back-wages. However, it appears to us that the grounds have not been supplied but also the delinquent had

accepted the penalty of withholding of increments and no appeal was preferred against the said order. Besides this, in the order dated 22.3.2005

the Disciplinary Authority, i.e. the Superintendent of Police, Ukhrul District, also did not say anything about the entitlement of back wages.

26. We are of the considered view that deduction of pay and allowances is also a part and parcel of punishments that can be imposed upon

delinquent employees. It is an unwritten punishment, which is insulated in the punishments, prescribed in service laws. We draw this inference from

F.R. 54, wherein it has been prescribed that while re-instating an employee the disciplinary/appellate authority shall also pass appropriate order

regarding back-wages.

27. Relevant provisions of F.R. 54 are extracted below for ready reference:

54. (1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or re-view or

would have been so reinstated but for his retirement on superannuation while under suspensions or not, the authority competent to order

reinstatement shall consider and make a specific order--

(a) Regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of

suspension preceding his dismissal, removal or compulsory retirement, as the case may be and

(b) Whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or

compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of Sub-rule (6), be paid the full pay and

allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such

dismissal, removal or compulsory retirement, as the case may be:

Proviso *** ***

(3) to (7) *** ***

(8) Any payment made under this rule to Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by

him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date

of reinstatement. Where,, the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere,

nothing shall be paid to the Government servant.

54-B.(1)and(2) *** ***

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall,

subject to the provisions of Sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended.

Proviso *** ***

(4) to (9) *** ***

28. In this way a specific order for grant of back-wages, at the time of reinstatement of an employee, is the requirement of law. As a corollary, if

an employee is found to have committed any offence, like misconduct, indiscipline, insubordination or dereliction in duty, etc., and if the delinquent

is punished for that, the non-statutory punishment of withholding of wages (wholly or partially) should ordinarily be a part of the substantive

punishment. As mentioned earlier it is a concomitant to the statutory punishment. However, the disciplinary/appellate authority can give

administrative reprieve of back-wages, under certain circumstances, to the delinquent by incorporating a specific direction in the reinstatement

order. Absence of any such direction in this regard would mean attaching of pecuniary punishment also with the substantive punishment. However,

in the case before us the disciplinary authority confined itself to the subsistence allowance, as the reinstatement order did not spell-out payment of

back-wages. As such, it can not be said that the learned Single Judge has given a new direction for non-entitlement of back-wages.

29. As noted above, the disciplinary authority was silent regarding back-wages. During the argument, the learned Counsel for the writ petitioner

also failed to show any representation of the delinquent either to the disciplinary authority or before any superior authority requesting for back

wages. Strangely no specific prayer was also made for back wages in the writ petition. The primary relief sought for by the writ petitioner was to

set aside the order dated 7.3.2005 passed by the Appellate Authority. In such a situation, it is difficult to hold that the order for withholding back

wages by the learned Single Judge is perverse and not based on the pleadings and evidence of the delinquent.

30. In a recent case, J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, the Hon''ble Supreme Court had the occasion to deal with the theory of

back wages at a considerable length. In this case. Their Lordships have held that the theory of granting back wages, while ordering reinstatement

of an employee, has undergone a significant change and it cannot be considered as an automatic or natural consequence of reinstatement. Their

Lordships have further held that there is also a misconception that whenever reinstatement is directed, ""continuity of service"" and ""consequential

benefits"" should also follow as a matter of course. In this case their Lordships have also approved the judgment of Kendriya Vidyalaya Sangathan

and Another Vs. S.C. Sharma, wherein it has been held that to get an order of back wages, the employee has to show that he was not gainfully

employed during the period of suspension/ termination.

31. In the aforesaid case, the Apex Court has also approved the view taken in the case of U.P. State Brassware Corpn. Ltd. and Another Vs.

Udai Narain Pandey, wherein the following trend-setting observations have been made:

Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result, but now, with the

passage of time, a pragmatic view of the matter is being taken by the court realizing that an industry may not be compelled to pay to the workman

for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result

whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.

The changes brought about by the subsequent decisions of the Supreme Court, probably having regard to the changes in the policy decisions of the

Government in the wake of prevailing market economy, globalization, privatization and outsourcing, is evident.

No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends

upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted

mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-

N of the U.P. Industrial Disputes Act. While granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full

back wages cannot be the natural consequence.

32. In the case of J. K. Synthetics Ltd. (supra), their Lordships were also called-upon to define the distinction for directing back wages if the

employee"s termination is found to be illegal and if an employee is terminated on the ground of misconduct. After deep analysis of the issue, the

Apex Court has held that reinstatement in different situations would follow different consequential benefits. In the matter of reinstatement of an

employee after an enquiry for misconduct, the Apex Court is of the following view:

19.*** *** *** What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as

contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is

not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser

punishment, neither back wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such

reinstatement. In cases where the misconduct is held to be proved and reinstatement is itself a consequential benefit arising from imposition of a

lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee

and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even

where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments,

promotions, etc.

20. But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being

found not guilty of the misconduct. Second is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty

misconduct, as a camouflage to get rid of the employee or victimize him, and the disproportionately excessive punishment is a result of such scheme

or intention. In such cases, the principles relating to back wages, etc. will be the same as those applied in the cases of an illegal termination.

33. The learned Counsel for the delinquent relied upon the judgment of the Hon''ble Supreme Court given in the case of Gammon India Ltd.

(supra) as well as the judgment of/arotam Chopra (supra) of the Apex Court. Both these cases are arising out of reinstatement of employees on the

ground that retrenchment/terminations were illegal and void ab initio. The ratio of these judgments are not applicable in the present case. Similarly,

the authority of the Supreme Court rendered in the case of Mohd. Ayub Naz (supra) relied upon by the learned Addl. GA. is also on different

footings. In this case, the back wages were not allowed on the ground that the Government servant was willfully absent for a period of 3 (three)

years. Be that as it may, we are approving the impugned order regarding with-holding of back wages on the ground that the delinquent had

committed a serious misconduct for not obtaining prior permission from his superior officers before going home. It is needless to mention here that

the Officer-in-Charge of a Police Station is a sensitive assignment. In this context, the minor procedural lapse has been treated as a serious

misconduct. On the relevant day, the writ petitioner was the in-charge of Ukhrul Police Station and because of his sudden abstention a serious

incidences of theft of arms and ammunition had taken place. It is true that the writ petitioner cannot be directly held responsible for this incidence,

but theft of arms and weapons might not have been taken place had the Police Station remained in the charge of a responsible officer. However,

the writ petitioner left the Police Station without any intimation, far less obtaining any formal leave from his superior authority. Under such

circumstances, the writ petitioner is not entitled to back wages.

34. For the reasons alluded hereinabove, we hold that both these appeals are devoid of merit. Consequently, the appeals stand dismissed, albeit

with a clarification that the initial punishment of withholding of 3 (three) increments with cumulative effect awarded by he Superintendent of Police

of Ukhrul District vide order dated 22.3.2005 is maintained. The state respondents are not required to take any fresh decision about imposing any

other penalty. No order as to costs.