



2026:DHC:7620



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on:24.07.2026
Judgment pronounced on:08.09.2026
Judgment uploaded on:08.09.2026

CNR No. DLHC010735882006
+ **W.P.(C) 5535/2006**

BANWARI SINGH RANA

.....Petitioner

versus

MANGT. OF M/S ASHOK HOTEL & ANR.

..... Respondents

CNR No. DLHC010721272006
+ **W.P.(C) 2551/2006**

THE MANAGEMENT OF ASHOK HOTEL

.....Petitioner

versus

ALL INDIA ITDC MAZDOOR JANTA U

..... Respondent

Advocates who appeared in this case:

For the Petitioner

: Mr. Karan Luthra and Mr. Rohan Dua,
Advs. in W.P.(C)5535/2006.
Mr. Rajeev Goyal, Mr. Anshul Misra and
Ms. Rashi Agarwal, Advs. in W.P.(C)
2551/2006.



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For the Respondents : Mr. Rajeev Goyal, Mr. Anshul Misra and
Ms. Rashi Agarwal, Advs. in W.P.(C)
5535/2006.
Mr. Karan Luthra and Mr. Rohan Dua, Advs.
in W.P.(C) 2551/2006.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN
JUDGMENT

1. The present cross petitions are filed assailing order dated 07.02.2005 (hereinafter '**impugned order**') passed by the learned Labour Court in I.D. No. 543/96 whereby Shri Banwari Singh was directed to be reinstated into service without back wages or continuity of service.
2. Briefly stated, Shri Banwari Singh was appointed on a temporary post of Tandoori Cook at Airport Hotel, Calcutta on 29.01.1975. Subsequently, Shri Banwari Singh was transferred and posted at Frontier Restaurant in Ashok Hotel as Chef De Parte. Thereafter, a complaint was filed against Shri Banwari Singh and 23 other employees by the then Senior Chef, Ashok Hotel *vide* letter dated 02.07.1993 regarding unauthorised absence.
3. The management of Ashok Hotel issued a charge sheet dated 04.09.1993 against Shri Banwari Singh under Rule 4(4.1)(vi) and 4(4.1)(xi) of the Indian Tourism Development Corporation Conduct Discipline & Appeal Rules, 1978. Pursuant to the departmental



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enquiry, Shri Banwari Singh was removed from services as he had remained unauthorisedly absent for a period of about 500 days. Shri Banwari Singh preferred an appeal against his termination before the Vice President (H), however, the same was rejected *vide* order dated 25.05.1995.

4. Aggrieved thereby, Shri Banwari Singh and All India ITDC Mazdoor Janta Union filed a claim petition before the Assistant Labour Commissioner & Conciliation Officer and thereafter, the same was sent to the learned Labour Court *vide* Reference No. F 24(1545)/96-Lab/35926-30 dated 01.07.1996.

5. The learned Labour Court *vide* order dated 31.07.2004 observed that the enquiry in the present case had been undertaken by an individual who was not an employee of Ashoka Hotel, which was in violation of Section 16(iii) of the Certified Standing Order and hence the enquiry against the workman stood vitiated.

6. The learned Labour Court *vide* the impugned order further noted that the enquiry against Shri Banwari Lal had been held illegal *vide* order dated 31.07.2004 only on a technical ground and he had admitted the charges for remaining absent for more than a year without any intimation or permission. Thus, the learned Tribunal concluded that the workman had committed a grave misconduct which could not be awarded in any manner by awarding back wages or continuity of service and directed simple reinstatement in favour of Shri Banwari Lal.



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7. Aggrieved thereby, the present cross petitions have been filed. The challenge in W.P(C) 5535/2006 is limited to denial of back wages to the workman.

8. This Court *vide* order dated 19.05.2023 noted that the workman expired on 13.11.2015 and allowed the application for impleadment of his LRs.

9. The learned counsel for the workman (Petitioner in W.P(C) 5535/2006) submitted that the learned Labour Court has erred in failing to grant back wages to the workman.

10. He submitted that the learned Labour Court conclusively held that the termination of the workman was illegal and that the management failed to prove that the workman was gainfully employed during the period of termination, thus, he ought to have been granted back wages from the date of his illegal termination.

11. He submitted that the learned Labour Court erred in denying back wages to the workman by observing that his termination was held to be illegal only on a technical ground. He submitted that the enquiry officer in the workman's enquiry not being authorised to conduct an enquiry under the Standing Orders completely vitiates the proceedings and renders it wholly without jurisdiction and the same cannot be held to be a mere "technical ground". In this regard reliance has been placed upon the judgment of the Hon'ble Apex Court in ***Central Bank of India v. C. Bernard : (1991) 1 SCC 319.***



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12. He submitted that even if the charge of un-authorised absence against the workman stood proved, the punishment awarded for the same is wholly disproportionate to the alleged misconduct. He submitted that similarly placed employees, namely Sh. Yash Pal and Smt. Mehak Singh, who were also named in the complaint dated 02.07.1993 for the same allegation of unauthorised absence, were not terminated but were instead issued caution/warning letters or had increments stopped. He submitted that the same makes it evident that the management adopted a discriminatory approach against the workman in the present case.

13. He submitted that the learned Labour Court while denying back wages to the workman erroneously relied upon the alleged admission of the workman, which formed part of the inquiry proceedings. He submitted that once the learned Labour Court found the inquiry proceedings to have been vitiated, it was no longer open to the learned Labour Court to place reliance upon any part of those proceedings. In this regard reliance has been placed upon the judgment in **Workmen of Motipur Sugar Factory Pvt. Ltd. vs The Motipur Sugar Factory : AIR 1965 SC 1803** and **Phulbari Tea Estate vs Workmen : AIR 1959 SC 1111**.

14. He submitted that the learned Labour Court has rightly placed reliance upon the judgments in **Central Bank of India v. C. Bernard : (1991) 1 SCC 319** and **Hotel Kanishka v. Delhi Administration : 1 LIJ 1996** to observe that in absence of any rules in the standing



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order that the enquiry officer can be from anywhere, the same has to be from the department and cannot be an outsider.

15. The learned counsel for the management (respondent in W.P.(C) 5535/2006 and petitioner in W.P.(C) 2551/2006) submitted that the learned Labour Court has erred in granting reinstatement to the workman. He submitted that the learned Labour Court has erroneously observed that the enquiry proceedings stood vitiated as the same had been in violation of Section 16(iii) of the Certified Standing Orders.

16. He submitted that Section 16(iii) of the Certified Standing Orders does not mandate that the enquiry against an employee ought to be held by an officer of the employer, rather it only mandated that the enquiry officer not be an officer who is lower in rank to the accused.

17. He submitted that the reliance placed by the learned Labour Court upon the judgment of this Court in ***Hotel Kanishka v. Delhi Administration : 59 (1995) DLT553***, in order to determine that the enquiry was not held by a proper officer as per the standing orders in the present case, is misplaced. He submitted that the aforesaid judgment can be distinguished from the facts of the present case. He submitted that in ***Hotel Kanishka (supra)***, the relevant standing order provided for an enquiry to be conducted by an *officer/ employee of the Hotel/Corporation*, who should not be lower in rank than the accused, while in the present case the standing order only provides that an



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enquiry shall be held by an officer/employer not lower in status than the accused.

18. He submitted that the reliance placed upon the judgment in **Central Bank of India v. C. Bernard** (*supra*) is misplaced and the same can be distinguished on facts.

19. He submitted that the standing order in the present case does not expressly provide that the officer holding the inquiry ought to be an employee of the Hotel and the term 'officer' has not been defined in the standing orders. He submitted that in view of the same, the learned Labour Court could not have construed Section 16(iii) of the standing order to mean that the inquiry ought to be conducted by "an officer of the company". In this regard reliance has been placed upon the judgment of the the Hon'ble Rajasthan High Court in **Capstan Meters (India) Ltd. v. The Judge Labour Court : 1991 (2) WLN417**.

20. He submitted that Shri Hardan Lal was engaged by India Tourism Development Corporation (ITDC) on retainership basis for conducting inquiries into departmental cases with the status equivalent to an officer in the scale of pay of Rs. 1500-2000/-, and has produced office order dated 30.07.1996 to support the same. He has further produced an LTC final settlement form issued by ITDC, Unit: Ashoka Hotel, wherein Shri Banwari Singh has mentioned his scale of pay as Rs.1350-2325. Thus, he submits that Shri Hardan Lal being an officer appointed by the General Manager of Ashoka Hotel and having being engaged by ITDC for conducting enquiries was at a higher pay scale



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than the workman at the time of enquiry and therefore, would indisputably be a proper officer to conduct the enquiry in terms of the standing order.

21. He submitted that Shri Hardan Lal was also appointed as the inquiry officer in other cases as well by the General Manager of Ashoka Hotel and has produced appointment letters dated 28.06.1989 and 15.07.2000 to support the same.

22. He submitted that no prejudice has been caused to the workman due to his enquiry having been undertaken by an outsider, as the charge of being on un-authorised leave for a period of 500 days was never contested by the workman. He submitted that the workman admitted the said charge only with the caveat that his absence was due to family disputes and marital problems, which caused him mental distress, while failing to lead any evidence in this regard.

23. He submitted that the plea of the workman regarding the management being discriminatory towards him by terminating him is wrong and misconceived. He submitted that the workman has failed to plead as to how his case was similar to that of Mehak Singh and Yash Pal. He submitted that Mehak Singh had remained absent for a period of 114 days and Yashpal had remained absent for a period of 118 days, while the workman in the present case was on un-authorised leave for a period of 500 days.



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24. He submitted that the workman has not led any evidence to prove that he remained unemployed during the relevant period and thus, the relief of back wages cannot be granted to him.

25. I have heard the arguments and perused the record.

26. At the outset, it is necessary to note that the scope of interference under Articles 226 and 227 of the Constitution of India with an Award passed by the Labour Court is limited. This Court does not sit as a Court of appeal over findings of fact rendered by the Labour Court. Interference is warranted only where the findings are perverse, based on no evidence, suffer from patent illegality, or disclose a jurisdictional error. Reference in this regard may be made to the judgment in ***International Airport Authority of India v. International Air Cargo Workers Union* : (2009) 13 SCC 374** where the Hon'ble Apex Court held as under:

"47. It is true that in exercising the writ jurisdiction, the High Court cannot sit in appeal over the findings and award of the Industrial Tribunal and therefore, cannot reappreciate evidence. The findings of fact recorded by a fact-finding authority should ordinarily be considered as final. The findings of the Tribunal should not be interfered with in writ jurisdiction merely on the ground that the material on which the Tribunal had acted was insufficient or not credible.

48. It is also true that as long as the findings of fact are based on some materials which are relevant, findings may not be interfered with merely because another view is also possible. But where the Tribunal records findings on no evidence or irrelevant evidence, it is certainly open to the High Court to interfere with the award of the Industrial Tribunal."



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27. In the present case, the learned Labour Court held the inquiry in the present case to have been vitiated for having violated Section 16 (iii) of the Certified Standing Order, which provides as under:

*“III. An employee against whom an enquiry has to be held shall be given a chargesheet clearly setting forth the charges against him indicating therein the nature of offence as laid down in any of the sub-sections of Section 14 above and the full particulars thereof. The charge-sheet will invariably end up by calling upon the employee to give his explanation in writing by a stipulated date. If his reply is not considered satisfactory by the departmental head concerned **an enquiry shall be held by an officer/employer not lower in status than the accused.** During the enquiry.....”*

28. Section 16(iii) of the Standing Orders provides that an employee against whom an enquiry is to be held shall be taken up by an *officer/employer* who is not lower in status than the accused employee. The learned Labour Court has construed the provision to mean that such *officer* must be an employee of the Corporation/Department and must not be lower in rank or status than the accused. Though the Management contends that Section 16(iii) does not expressly stipulate that the officer must be an employee of the Corporation, this contention, in the opinion of this Court, cannot be accepted.

29. The expression “*officer/employer*” has to be understood in the context of the Standing Orders governing the service conditions of the Corporation's employees. The reference to an “*officer*”, particularly when read with the requirement that such officer must not be lower in status than the accused, necessarily contemplates a person holding a position within the organisational hierarchy of the employer. The



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requirement of relative status would have little meaning if the Enquiry Officer were to be an outsider to the Corporation.

30. Thus, although Section 16(iii) does not expressly state that the Enquiry Officer must be an employee of the Corporation, such requirement necessarily follows from the language and scheme of the provision. The learned Labour Court was, therefore, justified in holding that the “*officer*” contemplated under Section 16(iii) must be an officer/employee of the Corporation.

31. Having decided that the “*officer*” contemplated under Section 16(iii) must be an officer/employee of the Corporation, the question that arises is whether Shri Hardam Lal, who was the appointed enquiry officer in the present case, can be regarded as an officer of the Corporation.

32. The Management has produced the Office Order dated 02.07.1986, whereby Shri Hardam Lal was engaged by ITDC on retainership basis for conducting enquiries in departmental cases. The said Office Order further stipulates that he would enjoy the status equivalent to that of an officer in the scale of pay of ₹1,500-2,000/-. The relevant extract of the said Office Order is reproduced hereinbelow:

“Shri Hardam Lal resident of 4D/57, Rajendra Nagar(Old), New Delhi-110060, Phone: 5711999 has been engaged by ITDC on retainership basis with immediate effect for conducting enquiries in the departmental cases. Sh. Hardam Lal will enjoy status equivalent to an officer in the scale of pay of Rs.1500-2000/- He



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will be entitled to payment of a retainership fee of Rs.325/- per enquiry, and reimbursement of conveyance expenses at the rate of Rs.30/- per sitting.”

(emphasis supplied)

33. The Management has also produced the Office Orders dated 28.06.1989 and 15.07.2000, whereby Shri Hardam Lal was appointed as the Enquiry Officer in two other cases of misconduct by the General Manager of Ashoka Hotel. Further, in the present case itself, Shri Hardam Lal was appointed as the Enquiry Officer by the Resident Manager, Ashoka Hotel, vide order dated 28.10.1993.

34. In the opinion of this Court, the mere description of a person as enjoying a status equivalent to that of an officer, or the conferment of a notional scale of pay, cannot by itself make such person an officer of the Corporation.

35. In the present case, the Office Order dated 02.07.1986 itself records that Shri Hardam Lal was engaged “on retainership basis” for conducting departmental enquiries and was to be paid a retainership fee of ₹325/- per enquiry, besides conveyance expenses. Thus, his engagement was specifically for the limited purpose of conducting departmental enquiries and did not constitute an appointment to any office or post under the Corporation. The mere stipulation that he would enjoy a status equivalent to that of an officer cannot, in the opinion of this Court, alter the nature of his engagement or make him an officer/employee of the Corporation for the purposes of Section 16(iii).



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36. Reliance in this regard may be placed upon the judgment of a Division Bench of this Court in ***Hotel Kanishka v. Delhi Administration & Ors. : 1995 SCC OnLine Del 321***. In the said case, the Division Bench was considering an identical provision contained in Standing Order 16(iii), which required the enquiry to be conducted by an “*officer/employee of the Hotel/Corporation not lower than the accused*”. The Enquiry Officer therein had, like Shri Hardam Lal in the present case, been engaged on a retainership basis for conducting departmental enquiries and was accorded a status equivalent to that of an officer in the scale of ₹1,500–2,000/-. The Division Bench nevertheless observed that such engagement did not make him an officer/employee of the Corporation. The relevant observations are reproduced hereinbelow:

“5. In order to appreciate the contention of the learned counsel for the appellant, it is necessary to reproduce Para 16(iii) of the Standing Orders, which admittedly is the provision applicable to the facts and circumstances of the present case:

“16. Procedure for dealing with cases of misconduct”

x x x

(iii) An employee against whom an enquiry has to be held shall be given a charge-sheet clearly setting forth the charges against him indicating therein nature of the offence as laid down in any of the sub-clauses of Cl. 14 above and the full particulars thereof. The chargesheet will invariably end up by calling upon the employee to give his explanation in writing by a stipulated date. If his reply is not considered satisfactory by the management or if no reply is received within stipulated time or any extension thereof, an enquiry shall be held by an officer/employee of the Hotel/Corporation not lower than the accused.

6. In this connection it is also necessary to refer to the office order appointing Sri S.P.S. Ahluwalia for conducting the enquiry in departmental cases, which according to the learned counsel for the



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appellant is his appointment order appointing him as an officer/employee of the Hotel/Corporation.

“Sri S.P.S. Ahluwalia has been engaged on retainership basis with effect from 23 May 1984 for conducting enquiries in the departmental cases. He will enjoy status equivalent to an officer in the scale of Rs. 1500-2000.”

Sd/-
(P.C. ARORA)
Deputy General Manager (E)”

7. From a bare perusal of the aforesaid provision of Para. 16(iii) of the Standing Orders it is apparent that the disciplinary enquiry against a workman is required to be conducted by an officer/employee of the Hotel/Corporation, who also should not be lower than the accused (workman).

8. Now the question that is to be determined is whether Sri S.P.S. Ahluwalia, who was appointed as the enquiry officer in the present case was an officer/employee of the Hotel/Corporation and not lower than the workman. From the aforesaid appointment order it cannot be said that Sri S.P.S. Ahluwalia, the enquiry officer was an officer of the Corporation. The aforesaid appointment order categorically states that he is engaged on retainership basis for conducting enquiries enjoying the status equivalent to an officer in the scale of Rs. 1500-2000. Although in terms of the aforesaid order the enquiry officer was enjoying the status equivalent to an officer in the scale of Rs. 1500-2000, he was himself not appointed to the said scale but was engaged on retainership basis only. That being the position it cannot be held that Sri S.P.S. Ahluwalia was an employee/officer of the Corporation. The source of power of appointment of an enquiry officer being the Standing Order which categorically lays down that he must be an officer employee of the Corporation/Hotel not lower than the employees against whom an enquiry is to be held, no other person than an officer/employee of the Corporation/Hotel could function as an enquiry officer in disciplinary proceedings conducted against any workman of the Corporation/Hotel.

9. On perusal of the impugned judgment and order challenged before us, we find that the learned Single Judge has considered the provisions of the Standing Order 16(iii) and also the order appointing Sri Ahluwalia for conducting enquiries in departmental



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cases and on consideration of the same has come to a categorical finding that Sri Ahluwalia was not an officer/employee of the Corporation and accordingly in terms of the Standing Order No. 16(iii) he was not entitled to conduct an enquiry. In coming to the aforesaid conclusion the learned Single Judge also considered the decision of the Supreme Court in the case of Central Bank of India [1991 (1) L.L.N. 1111] (vide supra), relied upon by the learned Counsel for the appellant and came to the conclusion that in the facts and circumstances of the present case the ratio of the said decision is not applicable inasmuch as the present case stands on a different footing, as in the present case one is faced with a Standing Order which has the force of law.

10. On careful consideration of the findings and the decision arrived at by the learned Single Judge we find that the decision arrived at by him does not suffer from any infirmity and is based on reasons and proper appreciation of the provisions of the Standing Orders, and the order of appointment of Sri S.P.S. Ahluwalia as the enquiry officer.”

(emphasis supplied)

37. The Office Order dated 02.07.1986 records that Shri Hardam Lal was engaged on a retainership basis for conducting departmental enquiries and that he would enjoy a status equivalent to that of an officer in the scale of ₹1,500–2,000/-. As in **Hotel Kanishka** (supra), the fact that he was accorded a status equivalent to that of an officer does not alter the nature of his engagement. He was not appointed to the said scale or to any office under the Corporation.

38. The subsequent orders appointing Shri Hardam Lal as an Enquiry Officer in other cases, also do not alter the aforesaid position. Such appointments merely show that his services were utilised by the Management for conducting departmental enquiries and have no bearing on whether he otherwise satisfied the requirement of being an



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officer of the Corporation under Section 16(iii) of the Standing Orders.

39. In view of the aforesaid, this Court finds no infirmity in the conclusion of the learned Labour Court that the enquiry conducted against the workman was in violation of Section 16(iii) of the Standing Orders and, consequently, stood vitiated. The termination of the workman, being founded upon such enquiry, is therefore rendered illegal.

40. The next question that arises is with regard to the relief to which the workman would be entitled. The learned Labour Court, while holding the enquiry to be vitiated, noted that the workman had admitted the charges levelled against him during the enquiry and had merely sought a lenient view on account of family disputes and the resultant mental distress. The learned Labour Court, therefore, declined to grant full back wages or continuity of service and confined the relief to simple reinstatement.

41. It is, however, pertinent to note that the workman had already attained the age of superannuation, in 2004, before the award came to be passed and, consequently, the relief of reinstatement was no longer capable of being granted. Thereafter, as noted above, the workman expired on 13.11.2015.

42. The learned counsel for the workman has contended that once the enquiry against the workman stood vitiated, the learned Labour Court ought not to have considered the records of the said enquiry and



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denied the workman back wages and continuity of service. Be that as it may, the mere finding that the termination was illegal does not, by itself, confer an automatic right to reinstatement or back wages. The relief to be granted is required to be moulded having regard to the facts and circumstances of each case.

43. It is trite law that a finding of illegality in termination does not, by itself, mandate reinstatement and full back wages in every case. The Hon'ble Apex Court has repeatedly held that reinstatement is not an automatic or mechanical consequence of an order of termination being held illegal and that the relief must be moulded having regard to the nature of employment, length of service and the surrounding circumstances of the case. In **Allahabad Bank v. Krishan Pal Singh : (2021) 19 SCC 227**, the Hon'ble Supreme Court has held that reinstatement with full back wages is not automatic in every case where termination or dismissal is found to be not in accordance with the procedure prescribed under law and that the relief can be moulded depending upon the facts and circumstances of the case. The relevant extract of the same is reproduced hereinbelow:

“8. The directions issued by the High Court of Allahabad for reinstatement were stayed by this Court on 23-8-2019 [Allahabad Bank v. Krishan Pal Singh, 2019 SCC OnLine SC 2061] . During the pendency of these proceedings, the respondent workman had attained age of superannuation. Though, there was strong suspicion, there was no acceptable evidence on record for dismissal of the workman. However, as the workman has worked only for a period of about six years and he has already attained the age of superannuation, it is a fit case for modification of the relief granted by the High Court. The reinstatement with full back wages is not automatic in every case, where termination/dismissal is



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found to be not in accordance with procedure prescribed under law. Considering that the respondent was in effective service of the Bank only for about six years and he is out of service since 1991, and in the meantime, respondent had attained age of superannuation, we deem it appropriate that ends of justice would be met by awarding lump sum monetary compensation. We accordingly direct payment of lump sum compensation of Rs 15 lakhs to the respondent, within a period of eight weeks from today. Failing to pay the same within the aforesaid period, the respondent is entitled for interest @ 6% p.a., till payment.”

44. Hence, it is well crystallised that where the facts so warrant, the Court is empowered to award monetary compensation in lieu of reinstatement, in such cases where reinstatement is not feasible, and where such relief of compensation would better serve the ends of justice.

45. In the present case, the workman had been absent without authorisation for approximately 500 days and had himself admitted the charge during the enquiry, while seeking leniency on account of his personal circumstances. At the same time, the termination founded upon the vitiated enquiry cannot be sustained. Balancing these circumstances, this Court is of the considered view that neither reinstatement, which is no longer feasible, nor full back wages and continuity of service would constitute an appropriate relief.

46. Accordingly, while affirming the finding of the learned Labour Court that the termination of the workman was illegal on account of the enquiry having been conducted in violation of Section 16(iii) of the Standing Orders, this Court is of the considered view that the relief



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of reinstatement granted by the learned Labour Court warrants modification.

47. In the facts and circumstances of the present case, the ends of justice would be met by awarding a lump-sum compensation of ₹3,00,000/- to the LR's of the workman.

48. The said amount shall be paid by the Management within a period of eight weeks from the date of this order.

49. The petitions are accordingly disposed of in the aforesaid terms. Pending application(s), if any, also stand disposed of.

50. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

SEPTEMBER 8, 2026

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