PART VII

LAY-OFF, RETRENCHMENT, CLOSURE AND TRANSFER

I. LAY-OFF AND RETRENCHMENT

A. Lay-Off

Freedom of contract, an entrenched tenet of *laissez faire*, authorised an employer to discharge workmen whenever a breakdown of machinery, or a similar cause beyond the employer's control, enforced a stoppage of work. This exposed workmen to intermittent but grave hazards of unemployment. But with the erosion of *laissez faire*, and more state-intervention in industrial relations, the lot of the worker, at least in this regard, has improved to some extent. He may now be "laid off" temporarily.

Section 2 (kkk) of the Industrial Disputes, Act, 1947 defines "lay-off" with its grammatical variation and cognate expressions to mean :

> "The failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or on the accumulation of stocks or the break-down of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched."

The Industrial Disputes Act, 1947[1] provides stipulated compensations for lay-off (of workmen on the muster rolls of the industry) caused by "failure, refusal or inability of an employer"[2] because of shortage of coal, power, or raw materials, or breakdown of machinery, accumulation of stocks or natural calamity or for any other connected reason. The words "for any other connected reason" are construed *ejusdem generis*, so as to mean some reason allied to those specified.

Lock-out differs from lay-off.[3] The difference lies primarily in that a lock-out is resorted to deliberately by the employer as a coercive measure; and usually involves

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[1] See Sections 2 (KKK) and 25 C.

[2] These words are held to be key words in the definition.

[3] See *Kairbetta Estate* v. *RajaMcnickom*, (1960) 2 LLJ 275, discussed in Part VI of this book.

a temporary closure of the place of business. A legal lock-out does not entail payment of compensation. A lay-off, on the contrary, occurs in a continuing business and does require compensation.

Retrenchment differs, again, from lay-off. Retrenchment is a permanent measure to remove surplus staff, because of some basic change in the nature of business. Retrenchment results in a complete severance of the master and servant relationship.

Establishments employing fifty or more workmen, where the work is not of a seasonal character,[4] must pay lay-off compensation to workmen who have completed a year of service (with an attendance of 240 days). Compensation is payable at the rate of half the daily wage upto a lay-off period of 45 days.

Establishments employing one hundred or more workmen are further required to seek the prior approval of the appropriate government before lay-off of his workmen unless lay-off is due to shortage of power or natural calamity. Beyond that period lay-off compensation is also payable, in theory unless there is an agreement to the contrary. In practice the employer usually avoids payment beyond 45 days by resorting to retrenchment. Badli and (casual) workmen are not entitled to any lay- of compensation.[5]

Special Provisions Relating to Lay-off

Section 25M of the Industrial Disputes (Amendment) Act, 1984 provides:

1. No workman (other than a Badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid off by his employer except "with the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion".

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner staling clearly the reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where the workmen (other than *badli* workmen or casual workmen) of an industrial establishment, being a mine, have been laid off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement, of such lay-off, apply, in the prescribed manner, to the appropriate

[4] See Section 25 A.
[5] See Section 25 C.

Government or the specified authority for permission to continue the lay-off.

(4) Where an application for permission under sub-section (1) or sub-section (3) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off may, having regard to the genuineness and adequacy of the reasons for such lay-off, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(5) Where an application for permission under sub-section (1) or sub-section (3) has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(6) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(7) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (4) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that, where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(8) Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.

(9) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub- section (3) shall not apply in relation to such establishment for such period as may be specified in the order."

(10) The provisions of Section 25C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this Section.

Workmen not entitled to compensation in certain cases : -

No compensation is payable to a workman who has been laid off;

(1) if he refuses to accept any alternative employment in the same establishment or another situated nearby, which does not call for any special skill;

(2) if he does not report for work at the establishment every day, at the appointed time;

(3) if his laying-off has been due to a strike of slow-down in any other part of the establishment.[6]

B. Retrenchment

Until 1953 there was no statutory provisions to immunize workmen from the hazards of involuntary unemployment. Protective measures were enacted in 1953 defining retrenchment and stipulating, *inter alia*, for payment of compensation as a condition precedent to a valid retrenchment.

Section 2 (oo) defines retrenchment to mean :

"Termination of service by the employer for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action, but does not include:

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of a workman as a result of the non-renewal of such contract in accordance with the provisions therein;

(c) termination of the service of a workman on the ground of continued ill-health.

The management alone can determine when workmen have to be retrenched, and how many have to go. A tribunal can only interfere where retrenchment has been resorted in bad faith.[7]

In retrenching workmen the management has to follow the rule "last come, first go". If in any case it does not follow that rule, it must record its reasons therefor. Departure from this rule without valid reasons renders a retrenchment invalid.

Retrenchment is ordinarily resorted to in a continuing business. But a 1957 amendment—a sequel to Supreme Court decision[8] has brought discharge of

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[6] See Section 25 E.

[7] Tea *Districts Labour Association* v. *Ex-Employees of Tea District Labour Association*, (1960) I LLJ 802 (SC).

[8] *Hari Prasad Shiv Shankar Shukla* v. *A.D. Dwelkar*, AIR 1957 SC 121.

workmen consequent on a *bona fide* closure of a business within the scope of retrenchment.

Since 1953 a retrenchment of workmen with at least one year's continuous service, employed in a non-seasonal factory having fifty or more workers,[9] is valid only when it satisfies the following conditions:[10]

(i) service of one month's notice of the workmen, or payment of wages for the notice-period;

(ii) payment of retrenchment compensation to the workmen; and

(iii) service of notice on the appropriate government or the specified authority in the prescribed manner.

Conditions Precedent to Retrenchment of Workmen

By the Industrial Disputes (Amendment) Act, 1984 the following conditions precedent to retrenchment of workmen in industrial establishments employing one hundred or more workmen have been laid down:

"25N. Conditions precedent to retrenchment of workmen.—(1) No workmen employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

(a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid *in lieu* of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and

[9] Section 25A.
[10] See Section 25F.

for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under subsection (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4) every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months."

By the Industrial Disputes (Amendment) Act, 1984, industrial establishments which are factories, mines and plantations employing one hundred or more workmen, a new provision was added for preventing the closure. A new provision has also been made under section 25 R for restarting of an already closed undertaking under

stated circumstances. The penal provisions for violation of the provisions relating to closure has also been made under section 25I.

K.T. ROLLING MILLS v. MEHER
Bombay High Court, (1962) 2 LLJ 667

[The company runs a steel rolling mill. It employs less than fifty workmen on an average per working day. It laid off some workmen without paying lay-off compensation. They claimed such compensation because they had suffered involuntary unemployment. Conciliation proceedings having failed, the dispute was referred to an industrial tribunal. The tribunal held that the workmen were not entitled to lay-off compensation under the provisions of the Industrial Disputes Act, 1947. But it held that they were so entitled on grounds of equity and social justice, and because of the strong financial position of the company. The company moved the high court under art. 226. The petition was heard by K.T. Desai J.; he agreed with the tribunal. The company then appealed to the division bench of the high court. There being a difference of opinion between the judges (S.T. Desai J. and Shah J.) the matter was referred to Mudholkar, J., for final disposal. Excerpts from the judgments of Shah J., S.T. Desai J. and Mudholkar J. follow :]

Per J.C. Shah, J. : By S. 25C of the Act an obligation to pay lay-off compensation to workmen employed in certain establishments, and whose names are borne on the muster rolls of the Industrial establishment, is imposed upon the employers. By the express provision contained in Sub-sec. (1) of S. 25A industrial establishments in which less than fifty workmen on an average per working day have been employed or industrial establishments which are of a seasonal character or in which work is performed only intermittently are not entitled to the benefit of the provisions relating to lay-off. Similarly, by the explanation to S. 25A, a special definition has been devised of the expression "industrial establishment," and factories, mines and plantations only are included within the connotation of that expression. Evidently by S. 25C* liability to pay lay-off compensation is imposed upon the employer only in an "industrial establishment" as defined in Chap. V-A, such industrial establishment not falling within the exceptions contained in Sub-sec. (1) of S. 25A.

Appellant 1 is not an "industrial establishment" to which the provisions of Ss. 25C to 25E apply and it has under S. 25C incurred no obligation to pay lay-off compensation because the number of workmen employed by it was at all material times less than fifty. But the question still remains whether there is authority vested in the industrial tribunal in adjudicating upon an industrial dispute to award lay-off compensation apart from the provision of S. 25C of the Industrial Disputes Act... .

* Prior to the Industrial Disputes (Second Amendment) Act, 1964, effective in 1966, for which see below. Eds.

Chapter V-A undoubtedly deals with the obligation imposed upon employers to pay lay-off compensation, but it does not derogate from the right, which a workman may have apart from the terms of S. 25C to lay-off compensation. It is implicit in Cl. (a) of the explanation to S. 25B that lay-off of a workman may arise under an agreement or may be permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act or under any other law applicable to the industrial establishment. A claim made by the workmen for incorporation in the terms of employment a provision for payment of lay-off compensation and refusal of that claim, or a claim for payment of lay-off compensation accrued due and denial thereof by the employer, in my judgment, raises an industrial dispute. It is open to the appropriate Government under the Industrial Disputes Act to refer that dispute to the industrial tribunal, and there is nothing in S. 25C of the Act which precludes the tribunal in such reference from awarding lay-off compensation to workmen having regard to the conditions of the industry, the earnings of the employer and the other relevant considerations which may be taken into account in ascertaining lay-off compensation....

Mr. Justice K.T. Desai was, therefore, in my judgment, right in holding that the award made by the industrial tribunal awarding lay-off compensation was made in the exercise of jurisdiction which that tribunal was, apart from the provisions of S. 25C of the Industrial Disputes Act, invested with.

Per S.T. Desai, J.: I regret I cannot agree.... The point of controversy is whether, after the insertion of those provisions, [Ch. V-A in 1953] the law relating to an industrial dispute in respect of compensation for lay-off has now to be gathered only from those provisions which expressly and specifically deal with the matter of lay-off; or has the legislature left it open to the industrial tribunal to determine on the ground of social justice and equity any such dispute in case of workmen employed in an industrial establishment in which less than fifty workmen are employed....

The explanation to S. 25A gives the meaning of the expression "industrial establishment" which, as I shall presently point out, is in effect both inclusive and exclusive. That explanation has to be read not only with S. 25A, but as expressly stated in it, also with Ss. 25C, 25D, and 25E. Section 25D imposes upon an employer in any "industrial establishment," as defined in the explanation, the duty to maintain a muster roll and to provide for the making of entries therein by workmen who present themselves for work. Section 25E empowers an employer in such "industrial establishment" to offer alternative employment to a workman who is laid off in any other establishment belonging to the employer in certain circumstances. This section also lays down some other cases where lay-off compensation cannot be claimed by the workmen.

Reading S. 25C with the explanation, as it must be read, it is abundantly clear that the right to claim lay-off compensation is not recognized in favour of workmen in every "industrial establishment" in the general sense in which that expression

would have to be understood having regard to the very wide meaning given to the expression "industry" in the definition clause [S. 2(k)] but in the limited and restricted sense given to the expression "industrial establishment" by the explicit language of the explanation. If the safe and reliable course of construction, that as far as reasonably possible the Court should not depart from the obvious and grammatical meaning, be adhered to, the effect of those provisions plainly seems to me to be that S: 25C recognizes the right to claim lay-off compensation only in case of those industrial establishments which are expressly enumerated in CIs. (i), (ii) and (iii) of the explanation... .

The entire contention of the respondents rests upon an instance that when a right is declared by a section in an enactment as is done in S 25C and it is laid down that the section is not applicable to certain categories of workmen, it can only mean that for those categories there is no legislation whatever and the matter, so far as those workmen are concerned is left at large to be decided on grounds of social justice and equity. There is a fallacy underlying this argument. It seems clear to me that the provisions of Chap. V-A confer certain new rights on the Workmen in matters of lay-off and retrenchment....

All these considerations seems to me to afford strong reason for reaching the conclusion that the effect of S. 25C read with S. 25A is that the legislature has by inserting Chap. V-A settled what was disputable and with a view to avoiding difficulties and uncertainty declared what the law relating to lay-off is and by saying that S. 25C has limited application it has ruled that the right extends only to those who fall within the ambit of S. 25C and are not excluded from its applicability by S. 25A....

Even so the law-maker has taken care to insert S. 25J and the conclusion seems to me inescapable that the rights and liabilities of employers and workmen in the matter of lay-off are now crystallized and to be gathered only from Chap. V-A and it is not open to a workman to claim any right relating to lay-off dehors the provisions of that chapter on the grounds of social justice and equity.

I would, therefore, allow the appeal and make the rule absolute.

Per Curiam :—In view of the difference of opinion, we direct that the papers be placed before the learned Chief Justice for passing orders under S. 98 of the Code of Civil Procedure for decision on the following question of law:

"Whether it is open to the industrial tribunal under the Industrial Disputes Act, 1947, to award lay-off compensation to workmen employed in an "industrial establishment" to which S. 25C of the Act does not apply?"

[The appeal then came up for hearing before Mudholkar, J.]

Per Muldholkar, J. : It seems to me that where the right governing certain human relations are not covered by any statute law or common law, the Courts would, in order to do substantial justice, have regard to the principles of equity or

natural justice or social justice. Therefore, when, with regard to a particular kind of right, the legislature has enacted a law for the first time, it is necessary to ascertain whether its intention was to deal completely with a right of that kind or only partially.. Where, as here, the right incorporated in a new statute had rested formerly on grounds of social justice and was of nebulous character, the legislature must be presumed to have intended to define that right. Thus, where the legislature steps in and purports to regulate the rights flowing from a particular kind of human relations, such rights can be enforced by the Courts only to the extent permitted by the statute. The legislature has the unlimited power to limit or curtail a right, whether it originates from a statute or common law or is founded on the principles of natural or social justice or equity, and to confine it within the ambit of the statute. When the legislature legislates on a subject, it must be presumed to have known the preexisting law thereon and enacted a complete law on the subject. Now it is an admitted fact that in the past the right to lay-off compensation was assumed to be available in all industries and to all establishments irrespective of their sizes. Knowing this when the legislature confers a statutory right only on employees in establishments of particular sizes and in particular industries, it must be deemed to have limited the preexisting unlimited right, unless the legislature has expressly or by necessary implication left the pre-existing right untouched. There is no express saving of the old right nor is there any valid ground for implying that it must be deemed to have been saved....

Upon this view I answer the question in the negative.

ASSOCIATED CEMENT COMPANIES LTD. v. THEIR WORKMEN
AIR 1960 SC 56

[T]he Associated Cement Companies were the owners of Chaibasa Cement Works and Rajanka limestone quarry, both situated in the State of Bihar, about a mile and a half apart. Limestone is the chief raw material needed for the manufacture of cement. The cement works, therefore, depended exclusively on the quarry for its limestone. Unions of the workers in the quarry gave a notice of a general stay-in strike if certain demands were not met. All conciliation efforts failed and the strike began. Consequently, the management closed down some parts of the cement works because of the shortage of limestone, and laid-off certain workers. Renewed conciliation then brought the strike to an end. The unions demanded lay-off compensation for the workers of the cement works for the period of the closure. The management refused. This gave rise to an industrial dispute, which the Bihar Government referred to an industrial tribunal. The question, specifically, was whether the lay-off of workers in parts of the cement works, caused by the strike in the adjacent quarry, was within the meaning of section 25E : "No compensation shall be paid to a workman who has been laid-off... (iii) if such laying off is due to a strike ... on the part of workmen in another part of the establishment...."

In other Words, was the quarry a part of the establishment of the cement works? The Industrial tribunal held that the quarry was not a part of the cement works. The company appealed to the Supreme Court. Excerpts from the judgment of S.K. Das J. follow:]

This appeal by special leave from an award... made by the Industrial Tribunal, Bihar, raises an important question of interpretation in the matter of a disqualification for lay-off compensation under S. 25E read with S. 25C of the Industrial Disputes Act, 1947 (hereinafter called the Act), and so far as we know, this is the first case of its kind in which the expression "in another part of the establishment"... has come up for an authoritative interpretation... .

The Act not having prescribed any specific tests for determining what is 'one establishment', we must fall back on such considerations as in the ordinary industrial or business sense determine the unity of an industrial establishment, having regard no doubt to the scheme and object of the Act and other relevant provisions of the Mines Act, 1952, or the Factories Act, 1948. What then is 'one establishment' in the *ordinary industrial or business sense*? The question of unity or oneness presents difficulties when the industrial establishment consists of parts, units, departments, branches etc. If it is strictly unitary in the sense of having one location and one unit only, there is little difficulty in saying that it is one establishment. Where, however, the industrial undertaking has parts, branches, departments, units, etc., with different locations, near or distant, the question arises what tests should be applied for determining what constitutes 'one establishment'. Several tests were referred to in the course of arguments before us, such as geographical proximity, unity of ownership, management and control, unity of employment and conditions of service, *functional integrality*, general unity of purpose, etc.. It is, perhaps, impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, units, etc. If in their true relation they constitute one integrated whole, we say that the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the right of unemployment compensation and also prescribes a disqualification therefor. Thus, in one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test; and in still another case, the important test may be the unity of employment. Indeed, in a large number of cases several tests may fall for consideration at the same time. The difficulty of applying these tests arises because of the complexities of modern industrial organisation : many enterprises may have functional integrality between factories which are separately owned : some may be integrated in part with units or factories having the same ownership and in part with factories or plants which are independently owned. In the midst of all these complexities it maybe difficult to discover the real thread of unity. ....

There are unity of ownership, unity of management, supervision and control, unity of finance and employment, unity of labour and conditions of service of workmen, functional integrality, general unity of purpose and geographical proximity. We shall presently deal with the legal difficulties at which the Tribunal has hinted and which have been elaborated by learned counsel for the respondent. But apart from them, the only fair conclusion from the facts proved in the case is that the Chaibasa Cement Works consisting of the factory and the limestone quarry form one establishment. The existence of two sets of Standing Orders and a separate attendance register for the limestone quarry have already been adverted to. They have been sufficiently explained by Mr. Dongary, [appellant], particularly the existence of two sets of Standing Orders by reason of the statutory requirement of approval by different authorities—one set by the Labour Commissioner, Bihar, and the other by the relevant Central authority.

We proceed now to consider the legal difficulties which according to learned counsel for the respondent stand in the way of treating the limestone quarry and the factory as one establishment. The Tribunal has merely hinted at these difficulties by saying that an anomalous position will arise if the quarry and the factory are treated as one establishment. It is necessary to refer briefly to the scheme and object of lay-off compensation and the disqualifications therefor as envisaged by the relevant provisions in Chapter VA of the Act.... The right of workmen to lay-off compensation is obviously designed to relieve the hardship caused by unemployment due to no fault of the employee; involuntary unemployment also causes dislocation of trade and may result in general economic insecurity. Therefore, the right is based on grounds of humane public policy and the statute which gives such right should be liberally construed, and when there are disqualifying provisions, the latter should be construed strictly with reference to the words used therein. Now S. 25G gives the right, and there are three disqualifying clauses in S. 25E. They show that the basis of the right to unemployment compensation is that the unemployment is involuntary;... that is why no unemployment compensation is payable when suitable alternative employment is offered and the workman refuses to accept it as in cl. (i) of S. 25E; or the workman does not present himself for work at the establishment as in cl. (ii); or when the laying-off is due to a strike or slowing down of production on the part of workmen in another part of the establishment as in cl. (iii). Obviously, the last clause treats the workmen in an establishment as one class and a strike or slow-down by some resulting in the laying-off of other workmen disqualifies the workmen laid-off from claiming unemployment compensation, the reason being that the unemployment is not really involuntary....

We must have regard to the provisions of the statute under which the question falls to be considered; if the statute itself says what is one establishment, then there is no difficulty. If the statute does not, however: say what constitutes one establishment, then the usual tests have to be applied....

In our view, the [the quarry and the factory] constituted one establishment within the meaning of cl. (iii) of S. 25E of the Act. It was conceded on behalf of the respondent workmen that the lay-off in the factory was due to the non-supply of limestone by reason of the strike in the limestone quarry and the strike was decided on by the same Union which consisted of the workmen at the factory and the quarry. That being the position, the disqualification in cl. (iii) aforesaid clearly applied and the workmen at the factory were not entitled to claim lay-off compensation....

WORKMEN OF DEWAN TEA ESTATE v. THEIR MANAGEMENT
AIR 1964 SC 1458

[T]he management laid off certain workmen due to non-receipt of financial assistance for forty-five days. The concerned workmen contended that the lay-off was unjustified under the provisions of the relevant standing orders of the company and that they were entitled to full wages for the period of lay-off. The management denied their claim and contended that they were not entitled to compensation provided under section 25C of the Industrial Disputes Act, 1947. The dispute as to the claim of full wages for the period of lay-off was referred for adjudication.

The industrial tribunal partially allowed the claim of the workmen in respect of certain managements but negatived their claim in respect of certain others. The concerned workmen preferred an appeal by special leave. Excerpts from the judgment of the court, delivered by Gajendragadkar J. follow:]

The first question which arises for our decision is whether the Tribunal was justified in holding that S. 25C recognises the common law right of the respondent to declare a lay-off for reasons other than those specified in the relevant clause of the Standing Order, ... Section 25C(1) which recognises the right of the workmen who are laid-off, for compensation, provides that whenever a workman therein specified has been laid off, he shall be paid by the employer for whole of the period of the lay-off, except for such weekly holidays as may intervene, compensation at the rate prescribed by the section. The proviso to this section lays down that the compensation payable to a workman during any period of twelve months shall not be for more than 45 days, and this proviso seems to indicate that the legislature thought that normally the period of lay-off within 12 months may not exceed 45 days. Section 25C(2), however, contemplates the possibility that the period of lay-off may exceed 45 days and it lays down that if during any period of 12 months, a workman is laid off for more than 45 days, whether continuously or intermittently, he shall be paid compensation in the manner indicated by it. Thus, the position is that workmen who are laid-off are entitled to compensation and the method in which the said compensation has to be calculated has been prescribed by the two clauses of S. 25C.

It is however, significant that when S. 25C deals with workmen who are laid-off and proceeds to prescribe the manner in which compensation should be paid to them, it is inevitably referring to the lay-off as defined by S.2 (kkk) of the Act....

It would be legitimate to hold that lay-off which primarily gives rise to a claim for compensation under S.25C must be a lay-off as defined by S. 2 (kkk). If the relevant clauses in the Standing Orders of industrial employers make provisions for lay-off and also prescribe the manner in which compensation should be paid to them for such lay-off, perhaps the matter may be covered by the said relevant clauses; but if the relevant clause merely provides for circumstances under which lay-off may be declared by the employer and a question arises as to how compensation has to be paid to the workmen thus laid-off. Section 25C can be invoked by workmen provided, of course, the lay-off permitted by the Standing Order also satisfies the requirements of S. 2(kkk). Whether or not S. 25C can be invoked by workmen who are laid off for reasons authorised by the relevant clause of the Standing Order applicable to them, when such reasons do not fall under S. 2 (kkk), is a matter with which we are not directly concerned in the present appeal. The question which we are concerned with at this stage is whether it can be said that S. 25C recognises a common law right of the industrial employer to lay-off his workmen. This question must, in our opinion, be answered in the negative. When the laying off of the workmen is referred to in S. 25C, it is the laying off as defined by S. 2(kkk) and so, workmen who can claim the benefit of S. 25C must be workmen who are laid off for reasons contemplated by S. 2(kkk) : that is all that section 25C means. If any case is not covered by the Standing Orders, it will necessarily be governed by the provisions of the Act, and lay-off would be permissible only where one or the other of the factors mentioned by S. 2(kkk) is present, and for such lay-off compensation would be awarded under S. 25C. Therefore, we do not think that the Tribunal was right in holding that S. 25C recognises the inherent right of the employer to declare lay-off for reasons which he may regard as sufficient or satisfactory in that behalf. No such common law right can be spelt out from the provisions of S. 25C.

That takes us to the question whether the lay-off in the present case is justified under R. 8 of the Standing Orders which have been duly certified under the Industrial Employment (Standing Orders) Act (No. 20 of 1946). The relevant portion of R. 8 reads thus :

"....(a) (i) The manager may at any time in the event of fire, catastrophe, breakdown of machinery, stoppage of power or supply, epidemic, civil commotion, strike, extreme climate conditions or other causes beyond his control, close down either the factory or field work or both without notice, (iii) In cases where workmen are laid off for short periods on account of failure of plant or a temporary curtailment of production, the period of unemployment shall be treated as compulsory leave either with or without pay, as the case may be : when, however workmen have to be laid-off for an indefinitely long period, their services may be terminated after giving them due notice or pay *in lieu* thereof.

It will be seen that the circumstances under which a lay-off can be declared have been specifically described by R. 8(a)(i). Two grounds have been urged before

us by Mr. Banerji in support of the Tribunal's conclusion that the impugned lay-off is justified. He contends that the clause "stoppage of supply" may cover cases of stoppage of financial assistance.... In our opinion, this argument is wholly misconceived. Stoppage of supply must in the context, mean stoppage of raw material or other such thing. In regard to the factory, the stoppage of supply may mean the stoppage of tea leaves, or in the case of field work, it may mean the stoppage of supply of other articles necessary for field operations. It is impossible to accept the argument that "supply" in the context can mean money or funds.

The other argument urged before us is that the last clause of R. 8(a)(i) which refers to "other causes beyond his control" would take in the financial difficulties of the companies. We are not inclined to accept this argument also. Other causes beyond his control for one thing should be similar to the causes that have preceded; even otherwise, we see no justification for the argument that the financial difficulty which is alleged to have confronted the respondent was beyond its control.... Therefore, we are satisfied that the Tribunal was in error in holding that the impugned lay-off could be justified by R. 8(a)(i). Rule 8(a)(iii) which refers to temporary curtailment of production must obviously be read in the light of R. 8(a)(i) and if the case of the present lay-off does not fall under R. 8(a)(i), R. 8(a)(iii) would not improve the position.

Sri Banerjee has then urged .... that the ... definition of the lay- off as prescribed by S. 2(kkk)... was wider than R. 8(a)(i) of the respondent's Standing Orders and would take in the trading reasons on which he relies. We are not prepared to accept the argument... Assuming without deciding that S. 2(kkk) may include the trading reasons as suggested by Mr. Banerjee, the definition prescribed by S. 2(kkk) is not a part of the operative provisions of the Act, and so, the argument that there is inconsistency between the definition and the relevant Rule of Standing Orders does not assist Mr. Banarjee's case. If there had been a provision in the Act specifically providing that an employer would be entitled to lay-off his workmen for the reasons prescribed by S. 2(kkk), it might have been another matter... As alleged conflict between the definition of lay-off and the substantive rule of the standing orders would not, therefore, help the respondent to contend that the definition overrides the statutory condition as to lay-off included in the certified Standing Order ... [W]e are satisfied that the present dispute must be governed by R. 8(a)(i) of the respondent's Standing Orders.

The appeal is... allowed and the appellants' claim for full wages for the 45 days of lay-off in respect of the eleven tea gardens is awarded to them....

WORKMEN OF FIRESTONE TYRE AND RUBBER COMPANY OF INDIA LTD. v. THE FIRESTONE TYRE AND RUBBER COMPANY

Supreme Court, (1976) I LLJ 493

[The management, a tyre manufacturing company at Bombay, employed 30 workmen at its distribution office in Delhi. As a result of the strike in the company's factory,

and short supply of tyres to the Delhi distribution office, the management, laid-off 17 out of 30 workmen of the said office. The workmen were not given their wages or compensation for the period of lay-off. An industrial dispute was raised and the Delhi Administration referred the dispute to the industrial tribunal for adjudication. The tribunal held that the workmen were not entitled to any lay-off compensation. Aggrieved by the award the workmen appealed to the Supreme Court. Excerpts from the judgment of the court, delivered by Untwalia J. follow :]

The question which falls for our determination is whether the management had a right to lay-off their workmen and whether the workmen are entitled to claim wages or compensation.

The simple dictionary meaning according to the Concise Oxford Dictionary of the term "lay-off" is "period during which a workman is temporarily discharged". The term "lay-off" has been well known in the industrial arena. Disputes were often raised in relation to the "lay-off" of the workmen in various industries. Sometimes compensation was awarded for the period of lay-off but many a time when the lay-off was found to be justified workmen were not found entitled to any wages or compensation. In *Gaya Cotton and Jute Mills Ltd.* v. *Gaya Cotton and Jute Mills Labour Union*, (1952-11 LLJ 37), the standing orders of the company provided that the company could under certain circumstances "stop any machine or machines or department or departments, wholly or partially for any period or periods without notice or without compensation in lieu of notice." In such a situation for the closure of the factory for a certain period, no claim for compensation was allowed by the Labour Appellate Tribunal of India. We are aware of the distinction between a lay-off and a closure. But just to point out the history of the law we have referred to this case.

Then came an amendment in the Industrial Disputes Act, 1947—hereinafter referred to as the Act—by Act 43 of 1953. In S. 2, cl. (kkk) was added.... .

By the same Amending Act, Chapter V A was introduced in the Act to provide for lay-off and retrenchment compensation. Section 25A excluded the Industrial Establishments in which less than 50 workmen on an average per working day had been employed in the preceding calendar month from the application of Ss. 25C to 25E. Section 25C provides for the right of laid-off workmen for compensation and broadly speaking compensation allowable is 50% of the total of the basic wages and dearness allowance that would have been payable to the workman had he not been laid off. It would be noticed that the sections dealing with matters of lay-off in Chapter VA are not applicable to certain types of Industrial Establishments. The respondent is one such Establishment because it employed only 30 workmen at its Delhi office at the relevant time. In such a situation the question beset with difficulty of solution is whether the laid-off workmen were entitled to any compensation, if so, what ?

[The Court then quoted the provisions of Section 25J.]

The effect of the provisions [of S. 25J] is that for the period of lay-off in an industrial establishment to which the said provisions apply, compensation will have to be paid in accordance with S. 25C. But if a workman is entitled to benefits which are more favourable to him than those provided in the Act, he shall continue to be entitled to the more favourable benefits. The rights and liabilities of employers and workmen in so far as it relate to lay-off and retrenchment, except as provided in S. 25J, have got to be determined in accordance with the provisions of Chapter VA.

The ticklish question which does not admit of an easy answer is as to the source of the power of management to lay-off a workman. The employer has a right to terminate the services of a workman. Therefore, his power to retrench presents no difficulty as retrenchment means the termination by the employer of the service of a workman for any reason whatsoever as mentioned in cl. (oo) of S. 2 of the Act. But lay-off means the failure, refusal or inability of employer on account of contingencies mentioned in cl. (kkk) to give employment to a workman whose name is borne on the Muster Rolls of his Industrial Establishment. It has been called a temporary discharge of the workman or a temporary suspension of his contract of service. Strictly speaking, it is not so. It is merely a fact of temporary unemployment of the workman in the work of the Industrial Establishment. Mr. S.N. Andley submitted with reference to the explanation and the provisos appended to cl. (kkk) that the power to lay-off a workman is inherent in the definition. We do not find any words in the definition clause to indicate the conferment of any power on the employer to lay-off a workman. His failure or inability to give employment by itself militates against the theory of conferment of power. The power to lay-off for the failure or inability to give employment has to be searched somewhere else. No section in the Act confers this power.

There are two small matters, which present some difficulty in the solution of the problem. In explanation (i) appended to sub-s. (2) of S. 25B the words used are :

> "he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the industrial establishment,"

indicating that a workman can be laid-off under the Industrial Disputes Act also. But it is strange to find that no section in Chapter VA in express language or by necessary implication confers any power, even on the management of the Industrial Establishment to which the relevant provisions are applicable, to lay-off a workman. Clause (ii) of S. 25E lays:

> "No compensation shall be paid to a workman who has been laid-off if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day."

This indicates that there is neither a temporary discharge of the workman nor a temporary suspension of his contract of service. Under the general law of Master and Servant, an employer may discharge an employee either temporarily or

permanently but that cannot be without adequate notice. Mere refusal or inability to give employment to the workman when he reports for duty on one or more grounds mentioned in cl. (kkk) of S. 2 is not a temporary discharge of the workman. Such a power, therefore, must be found out from the terms of contract of service or the Standing Orders governing the establishment. In the instant case the number of workmen being only 30, there were no Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946. Nor was there any term of contract of service conferring any such right of lay-off. In such a situation the conclusion seems to be inescapable that the workmen were laid-off without any authority of law or the power in the management under the contract of service. In Industrial Establishments where there is a power in the management to lay-off a workman and to which the provisions of Chapter VA apply, the question of payment of compensation will be governed and determined by the said provisions. Otherwise Chapter VA is not a complete Code as was argued on behalf of the respondent-company in the matter of payment of lay-off compensation. This case, therefore, goes out of Chapter VA. Ordinarily and generally the workmen would be entitled to their full wages but in a reference made under S. 10(1) of the Act, it is open to the Tribunal or the Court to award a lesser sum finding the justifiability of the lay-off....

In *Veiyra*, (M.A.), v. *Fernandez*, (C.P.) (1956-1 LLJ 547)...a Bench of the Bombay High Court opined that under the general law the employer was free to dispense with the services of a workman, but under the Industrial Disputes Act he was under an obligation to lay him off; that being so, the action of lay-off by the employer could not be questioned as being *ultra vires*. We do not think that the view expressed by the Bombay High Court is correct.

There is an important decision of this Court in *Workmen of Dewan Tea Estate* v. *The Management*, (1964-5 SCR 548) on which reliance was placed heavily by Mr. M.K. Ramamurti appearing for the appellant and also by Mr. Andley for the respondent. One of the questions for consideration was whether S. 25C of the Act recognises the common law right of the management to declare a lay-off for reasons other than those specified in the relevant clause of the Standing Orders. While considering this question, Gajendragadkar, J., as he then was, said .. .at page 554:

"The question which we are concerned with at this stage is whether it can be said that S. 25C recognises a common law right of the industrial employer to lay-off his workmen. This question must, in our opinion, be answered in the negative. When the laying-off of the workmen is referred to in S. 25C, it is the laying-off as defined by S.2(kkk), and so, workmen who can claim the benefit of S. 25C must be workmen who are laid-off and laid-off for reasons contemplated by S. 2(kkk); that is all that S. 25C means."

Then follows a sentence, which was pressed, into service by the respondent. It says:

"If any case is not covered by the Standing Orders, it will necessarily be governed by the provisions of the Act, and lay-off would be permissible only where one or the other of the factors mentioned by S. 2(kkk,) is present, and for such lay-off compensation would be awarded under S. 25C."

In our opinion, in the context, the sentence aforesaid means that if the power of lay-off is there in the Standing Orders but the grounds of lay-off are not covered by them, rather, are governed by the provisions of the Act, then lay-off would be permissible only on one or the other of the factors mentioned in cl. (kkk). Subsequent discussions at pages 558 and 559... lend ample support to the appellant's argument that there is no provision in the Act specifically providing that an employer would be entitled to lay-off his workmen for the reasons prescribed by S. 2(kkk).

Mr. Andley placed strong reliance upon the decision of this Court in *Sanghvi Jeevaraj Ghewar Chand and others* v. *Secretary Madras Chillies, Grains Kirana Merchants Workers' Union and another*, (1969-1 SCR 366)...

In a case of compensation for lay-off the position is quite distinct and different. If the term of contract of service or the statutory terms engrafted in the Standing Orders do not give the power of lay-off to the employer, the employer will be bound to pay compensation for the period of lay-off which ordinarily and generally would be equal to the full wages of the concerned workman. If, however, the terms of employment confer a right of lay-off on the management, then, in the case of an industrial establishment which is governed by Chapter V A, compensation will be payable in accordance with the provisions contained therein. But compensation or no compensation will be payable in the case of an industrial establishment to which the provisions of Chapter VA do not apply, and it will be so as per the terms of the employment.

In *Kanhaiya Lal Gupta* v. *Ajeet Kumar Dey and others* (1967-11 LLJ 761), a learned single Judge of the Allahabad High Court seems to have rightly held that in the absence of any terms in the contract of service or in the statute or in the statutory rules or standing orders an employer has no right to lay-off a workman without paying him wages. A learned single Judge of the Punjab and Haryana High Court took an identical view in the case of *Steel and General Mills Co. Ltd. v. Additional District Judge Rohtak and others.* (1972) 1 LLJ 284. The majority view of the Bombay High Court in *K.T. Rolling Mills Private Ltd. and others* v. *M.R. Meher* (AIR 1963 Bombay 146), that it is not open to the Industrial Tribunal under the Act to award lay-off compensation to workmen employed in an "Industrial Establishment" to which S. 25C does not apply, is not correct. The source of the power of the employer to lay-off workmen does not seem to have been canvassed or discussed by the Bombay High Court in the said judgment.

For the reasons stated above all the appeals are allowed....

HARIPRASAD SHIV SHANKER SHUKLA v. A.D. DIVELKAR (BARSI LIGHT RLY. CO. v. K.N. JOGLEKAR) AIR 1957 SC 121

[These were two civil appeals which raised common questions of law. The judgment governs both. In one appeal the workmen of the Barsi Light Railway Co., and in the other the workmen of the Dinesh Woollen Mills Ltd., were involved.

I. The Government of India decided to take over the undertaking of the Barsi Light Railway Co. with effect from January, 1954. The company served a notice on its workmen that due to termination of its contract with the government, their services would also be terminated from January, 1954. When the undertaking was actually taken over, about 77% of the staff of the company were re-employed; those who were not, filed applications for payment of retrenchment compensation under section 25 F of the Industrial Disputes Act. The Bombay High Court held that the workmen were entitled to retrenchment compensation. The company appealed.

II. Because of certain business difficulties, Dinesh Woollen Mills Ltd. issued a notice to its workmen closing the business, and terminating their services. The workmen moved the Bombay High Court for payment of retrenchment compensation, and again the court held that the workmen were entitled to it. The company appealed.

Excerpts from the judgment of S.K. Das J. follow :]

Section 25-F occurs in Chapter V-A of the Act; that chapter dealing with 'lay-off and retrenchment' was inserted by an amending Act (Act 43 of 1953) in 1953. Section 25-F is in these terms :

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

[(a) a month's notice (with reasons) or pay : (b) pay for 15 days for every year's service and (c) notice to the appropriate government]. Leaving out the excluding sub-cls. (a), (b) and (c) for the time being-these sub-clauses not being directly applicable to the cases under our consideration—the definition when analysed consists of the following four essential requirements—(a) termination of the service of a workman; (b) by the employer; (c) for any reason whatsoever; and (d) otherwise than as a punishment inflicted by way of disciplinary action. It must be conceded that the definition is in very wide terms. The question, however, before us is—does this definition merely give effect to the ordinary, accepted notion of retrenchment in an existing or running industry by embodying the notion in apt and readily intelligible words or does it go so far beyond the accepted notion of retrenchment as to include the termination of services of all workmen in an industry when the industry itself ceases to exist on a bona fide closure or discontinuance of his business by the employer?.... It has been argued that by excluding bona fide closure of business as one of the reasons for termination of the service of workmen by the employer, we

are cutting down the amplitude of the expression 'for any reason whatsoever' and reading into the definition words which do not occur there. ...What after all is the meaning of the expression 'for any reason whatsoever' ? When a portion of the staff or labour force is discharged as surplusage in a running or continuing business, the termination of service which follows may be due to a variety of reasons; e.g., for economy, rationalisation in industry, installation of a new labour-saving machinery, etc. The legislature in using the expression 'for any reason whatsoever' says in effect: 'It does not matter why you are discharging the surplus; if the other requirements of the definition are fulfilled, then it is retrenchment'. In the absence of any compelling words to indicate that the intention was even to include a *bona fide* closure of the whole business, it would, we think, be divorcing the expression altogether from its context to give it such a wide meaning.... What is being defined is retrenchment, and that is the context of the definition. It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition : but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended....

The provisions of the Act, almost in their entirety, deal with an existing or continuing industry. All the provisions relating to lay-off in Ss. 25-A to 25-E are also inappropriate in a dead business....

Retrenchment means discharge of surplus workmen in an existing or continuing business; it had acquired no special meaning so as to include discharge of workmen on bond fide closure of business, though a number of Labour Appellate Tribunals awarded compensation to workmen on closure of business as an equitable relief for a variety of reasons. It is reasonable to assume that in enacting S. 25-F, the legislature standardised the payment of compensation to workmen retrenched in the normal or ordinary sense in an existing or continuing industry; the legislature did away with the perplexing variety of factors for determining the appropriate relief in such cases and adopted a simple yard stick of the length of service of the retrenched workmen. If the intention of the legislature was to give statutory effect to those decisions which awarded compensation on real and bona fide closure of business, the legislature would have said so instead of being content by merely adding a definition clause, every requirement of which is fulfilled by the ordinary, accepted meaning of the word 'retrenchment'....

There is in fact a distinction between transfer of business and closure of business; but so far as the definition clause is concerned, both stand on the same footing if they involve termination of service of the workmen by the employer for any reason whatsover, otherwise than as a punishment by way of disciplinary action. On our interpretation, in no case is there any retrenchment, unless there is discharge of surplus labour or staff in a continuing or running industry....

So far as a running or continuing industry is concerned, an obvious answer may be that unemployment relief is not the only purpose or object of S. 25-F. We

have pointed out earlier that it is reasonable to assume that standardisation of retrenchment compensation and doing away with a perplexing variety of factors for granting retrenchment compensation may well have been the purposes of S. 25-F though the basic consideration must have been the granting of unemployment relief. However, on our view of the construction of S. 25-F, no compensation need be paid by the appellants in the two appeals....

STATE BANK OF INDIA v. N. SUNDARA MONEY
AIR 1976 SC 1111

[The respondent was appointed as cashier off and on, by the State Bank of India between July 31, 1972 and August, 29, 1973. The last spell of appointment was purely a temporary one for a period of 9 days but it could have been terminated earlier . The letter of appointment provided that "the employment unless terminated earlier will automatically cease at the expiry of the period *i.e.*, 18-11-72." However, the respondent had completed 240 days service in a year in the bank. The termination of his employment without payment of retrenchment compensation was successfully challenged by him before the high court. The high court held that the employee was entitled to retrenchment compensation which, not having been paid 'the termination would be invalid'. Aggrieved by this order the employer appealed before the Supreme Court on the ground that there was no "retrenchment". Excerpts from the judgment of Krishna Iyer J. follow :]

....Statutory construction, when courts consider welfare legislation with an economic justice bias, cannot turn on cold print glorified as grammatical construction but on teleological purpose and protective intendment. Here Sections 25F, 25B and 2 (oo) have a workers' mission and the input of Part IV of the Constitution also underscores this benignant approach. While canons of traditional sanctity cannot wholly govern, courts cannot go haywire in interpreting provisions, ignoring the text and context. With these guidelines before us, we seek to decode the implications of the order of appointment. But before doing so, an analysis of the legal components of Section 25F will facilitate the diagnostic task....

Without further ado, we reach the conclusion that if the workman swims into the harbor of Sec. 25F, he cannot be retrenched without payment, at the time of retrenchment, compensation computed as prescribed therein read with Section 25B (2)....

For any reason whatsoever—very wide and almost admitting of no exception. Still, the employer urges that when the order of appointment carries an automatic cessation of service, the period of employment works itself out by efflux of time, not by act of employer. Such cases are outside the concept of "retrenchment" and cannot entail the burdensome conditions of Section 25F. Of course, that a nine-days' employment hedged in with an express condition of temporariness and automatic cessation, may look like being in a different street (if we may use a

colloquialism) from telling a man off by retrenching him. To retrench is to cut down. You cannot retrench without trenching or cutting. But dictionaries are not dictators of statutory construction where the benignant mood of a law and, more emphatically, the definition clause furnish a different denotation. Section 2 (oo) is the master of the situation and the Court cannot truncate its amplitude.

A break-down of Sec. 2 (oo) unmistakably expands the semantics of retrenchment. "Termination....for any reason whatsoever" are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is has the employee's service been terminated ? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. Maybe, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25F and Section 2 (oo). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita but area covered by an expansive definition. It means 'to end, conclude, cease'. In the present case the employment ceased, concluded, ended on the expiration of nine days-automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Sec. 25F(b) is inferable from the proviso to ... S. 25F(a). True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25F and automatic extinguishment of service by effluxion of time cannot be sufficient. An English case *R* v. *Secretary of State* (1973) 2 All ER 103 was relied on where Lord Denning, M.R. observed :

> "I think that the word 'terminate' or 'termination' is by itself ambiguous. It can refer to either of two things—either to termination by notice or to termination by effluxion of time. It is often used in that dual sense in landlord and tenant and in master and servant cases. But there are several indications in this paragraph to show that it refers here only to termination by notice".

Bucklay, L.J., concurred and said :

> "In my judgment the words are not capable of bearing that meaning. As counsel for the Secretary of State has pointed out, the verb 'terminate' can be used either transitively or intransitively. A contract may be said to terminate when it comes to an end by effluxion of time, or it may be said to be terminated when it is determined at notice or otherwise by some act of one of the parties. Here in my judgment the word 'terminated' is used in this passage in para 190 in the transitive sense, and it postulates some act by somebody which is to bring the appointment to an end, and is not applicable to a case in which the appointment comes to an end merely by effluxion of time."

Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened, we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order, one giving employment and the other ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A preemptive provision to terminate is struck by the same vice as the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision.

What follows? Had the State Bank known the law and acted on it, half-a-month's pay would have concluded the story. But that did not happen, And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Reinstatement is the necessary relief that follows. At what point ? In the particular facts and circumstances of this case, the respondent shall be put back where he left off, but his new salary will be what he would draw were he to be appointed in the same post today de novo. As for benefits, if any flowing from service he will be ranked below all permanent employees in that cadre and will be deemed to be a temporary hand upto now. He will not be allowed to claim any advantages in the matter of seniority or other priority inter se among temporary employees on the ground that his retrenchment is being declared invalid by this Court. Not that we are laying down any general proposition of law, but make this direction in the special circumstances of the case. As for the respondent's emoluments, he will have to pursue other remedies, if any.

[Appeal dismissed.]

SANTOSH GUPTA v. STATE BANK OF PATIALA
Supreme Court, (1980) 2 LLJ 72

[The State Bank of Patiala terminated the services of one of its woman workmen, who had put in 240 days of service in the preceding year on the ground of her failure to pass the prescribed test provided for confirmation in service. She was neither served with a notice required under section 25F (a) nor paid retrenchment compensation under section 25B. The appellant contended that the termination of her services was "retrenchment". The tribunal rejected the contention. It is against this order that she appealed to the Supreme Court by special leave. Excerpts from the judgment of the court delivered by Chinnappa Reddy J. follow:]

If the definition of "retrenchment" is looked at unaided and unhampered by precedent, one is at once struck by the remarkably wide language employed and particularly by the use of the words "termination .... for any reason whatsover". The definition expressly excludes termination of service as a "punishment inflicted by way of disciplinary action". The definition does not include, so it expressly says, voluntary retirement of the workman or retirement of the workman on reaching the

age of superannuation or termination of the service of the workman on the ground of continuous ill-health. Voluntary retirement of a workman or retirement of the workman on reaching the age of superannuation can hardly be described as termination, by the employer, of the service of a workman. Yet the Legislature took special care to mention that they were not included within the meaning of "termination by the employer of the service of a workman for any reason whatsoever". This in our opinion, emphasizes the broad interpretation to be given to the expression "retrenchment". In our view if due weight is given to the words "the termination by the employer of the service of a workman for any reason whatsoever" and if the words "for any reason whatsoever" are understood to mean what they plainly say, it is difficult to escape the conclusion that the expression "retrenchment" must include every termination of the service of a workman by an act of the employer. The underlying assumption, of course, is that the undertaking is running as an undertaking and the employer continues as an employer but where either on account of transfer of the undertaking or on account of the closure of the undertaking the basic assumption disappears, there can be no question of "retrenchment" within the meaning of the definition contained in S. 2(oo). This came to be realised as a result of the decision of the Court in *Hariprasad Shivshankar Shukla* v. *A.D. Divelkar* (*supra*). The Parliament then stepped in and introduced Ss. 25FF and 25FFF by providing that compensation shall be payable to workmen in case of transfer of undertaking or closure of undertaking as if the workmen had been retrenched. We may rightly say that the termination of the service of a workman on the transfer or closure of an undertaking was treated by Parliament as "deemed retrenchment". The effect was that every case of termination of service by act of employer even if such termination was a consequence of transfer or closure of the undertaking was to be treated as "retrenchment" for the purposes of notice, compensation, etc. Whatever doubts might have existed before Parliament enacted Ss. 25FF and 25FFF about the width of S. 25F there cannot be any doubt that the expression "termination of service for any reason whatsoever" now covers every kind of termination of service except those not expressly included in S. 25F or not expressly provided for by other provisions of the Act such as Ss. 25F and 25FFF.

In interpreting ... Ss. 25F, 25FF and 25FFF one must not ignore their object. The manifest object of these provisions is to so compensate the workmen for loss of employment as to provide him the wherewithal to subsist until he finds fresh employment. The non-inclusion of "voluntary retirement of the workmen", "retirement of workmen on reaching the age of superannuation", 'termination of the service of a workman on the ground of continued ill health" in the definition of "retrenchment" clearly indicate and emphasise what we have said about the true object of Ss. 25F, 25FF and 25FFF and the nature of the compensation provided by those provisions. The nature of retrenchment compensation has been explained in *Indian Hume Pipe Co. Ltd.* v. *The Workmen* (1959-2 LLJ 830); (1960) 2 SCR 32, as follows:

"As the expression "retrenchment compensation" indicates it is compensation paid to a workman on his retrenchment and it is intended to give him some relief and to soften the rigor of hardship which retrenchment inevitably causes. The retrenched workman is, suddenly and without his fault, thrown on the street and has to face the grim problem of unemployment. At the commencement of his employment a workman naturally expects and looks forward to security of service spread over a long period; but retrenchment destroys his hopes and expectations. The object of retrenchment compensation is to give partial protection to the retrenched employee and his family to enable them to tide over the hard period of unemployment".

Once the object of Ss. 25F, 25FF and 25FFF is understood and the true nature of the compensation which those provisions provide is realised, it is difficult to make any distinction between termination of service for one reason and termination of service for another... .

In *State Bank of India* v. *Shri N. Sundara Money*, (1976-1 LLJ 478); (1976) 3 SCR 160, a Bench of three judges of this Court consisting of Chandrachud, J. (as he then was), Krishna Iyer, J. and Gupta, J. considered the question whether S. 25F of the Industrial Disputes Act was attracted to a case where the order of appointment carried an automatic cessation of service, the period of employment working itself out by efflux of time and not by an act of employer. Krishna Iyer, J., who spoke for the Court observed :

"Termination .....for any reason whatsoever" are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is—has the employee's service been terminated ? Verbal apparel apart the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced... True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract S. 25P and automatic extinguishment of service by efflux of time cannot be sufficient.... Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order, one giving employment and the other ending or limiting it. A separate subsequent determination is not the sole magnetic pull of the provision. A pre-emptive provision to terminate is struck by the same vice as the post-appointment termination. Dexterity of decision cannot defeat the articulated conscience of the provision.

In *Hindustan Steel Ltd.* v. *The Presiding Officer, Labour Court, Orissa and others*.... (1977) I SCR 586, the question again arose whether termination of service by efflux of time was termination of service within the definition of retrenchment in

S. 2(oo) of the Industrial Disputes Act. Both the earlier decisions of the Court in *Hariprasad Shivshankar Shukla* v. *A.D. Divelkar* and *State Bank of India* v. *N. Sundara Money* (*supra*) were considered. There was also a request that *N. Sundara Money's case* (*supra*) conflicted with the decision in *Hariprasad Shivshanker Shukla* v. *A.D. Divelkar* and therefore, required reconsideration. A Bench of three Judges of this Court consisting of Chandrachud, J. (as he then was), Goswami, J. and Gupta, J. held that there was nothing in *Hariprasad Shivshanker Shukla* v. *A.D. Divelkar* (*supra*) which was inconsistent with the decision in *N. Sundara Money's* case. They held that the decision in *Hariprasad Shivshanker's* case was that the words "for any reason whatsoever" used in the definition of retrenchment would not include a *bona fide* closure of the whole business because it would be against the entire scheme of the Act. The learned Judges then observed that, on the facts before them to give full effect to the words "for any reason whatsoever" would be consistent with the scope and purpose of S. 25 of the Industrial Disputes Act and not contrary to the scheme of the Act. In *Delhi Cloth & General Mills Ltd.* v. *Shambhu Nath Mukherjee and others* .... (1978) I SCR 591, Goswami, Shinghal and Jaswant Singh, JJ., held that striking off the name of a workman from the rolls by the management was termination of the service which was retrenchment within the meaning of S. 2(oo) of the Industrial Disputes Act....

We hold, as a result of our discussion, that the discharge of the workman on the ground she did not pass the test, which would have enabled her to be confirmed was "retrenchment" within the meaning of S. 2(oo) and therefore, the requirements of S. 25F had to be complied with....

SURENDRA KUMAR VERMA v. CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NEW DELHI
AIR 1981 SC 422

[Usha Kumari and Madhubala two of the seven appellants were in the employment of the bank from May, 4, 1974 to January 29, 1975 and had worked for 258 and 266 days respectively during the said period. The management terminated their services on their failure to pass the prescribed test for permanent absorption into the service of the bank. The labour court directed the employer to pay them compensation of six months' salary to each of the workmen in addition to the retrenchment compensation. Against this decision the appellants appealed to the Supreme Court. Excerpts from the judgments of the court delivered by Chinnappa Reddy and Pathak JJ. follow :]

Per Chinnappa Reddy J.: In the cases before us we are unable to see any special impediment in the way of awarding the relief. The Labour Court appears to have thought that the award of the relief of reinstatement with full back wages would put these workmen on par with those who had qualified for permanent absorption by passing the prescribed test and that would create dissatisfaction

amongst the latter. First, they can never be on par since reinstatement would not qualify them for permanent absorption. They would continue to be temporary, liable to be retrenched. Second, there is not a shred of evidence to suggest that their reinstatement would be a cause for dissatisfaction to anyone. There is no hint in the record that any undue burden would be placed on the employer if the same relief is granted as was done in *Santosh Gupta* v. *State Bank of Patiala* (AIR 1980 SC 1219)....

As the period from May 4, 1974 to January 29, 1975 was not one year, it was conceded before the Labour Court that there was no violation of the provisions of S. 25 F of the Industrial Disputes Act. Before us, the concession was questioned and it was argued that there was non-compliance with the requirements of S. 25 F of the Act. Since the facts were not disputed, we entertained the argument and heard the counsel on the question. The concession was apparently based on the decision of this Court in *Sur Enamel and Stamping Works (P) Ltd.* v. *Their Workmen* (AIR 1963 SC 1914). That decision was rendered before S. 25-B, which defines "continuous service" for the purposes of Chapter V-A of the Industrial Disputes Act was recast by Act 36 of 1964. The learned counsel for the employer submitted that the amendment made no substantial difference. Let us take a look at the statutory provisions. Section 25-F then and now, provides that no workman employed in any industry who have been in continuous service for not less than one year under an employer shall be retrenched by that employer until certain conditions are fulfilled. Section 25-B's marginal title is "Definition of continuous Services". To the extent that it is relevant S. 25-B (2) as it now reads is as follows :

"Where a workman is not in continuous service....for a period of one year or six months, he shall be deemed to be in continuous service under an employer :

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine and

(ii) two hundred and forty days in any other case;

(b) .....

Explanation....."

The provision appears to be plain enough. Section 25-F requires that a workman should be in continuous service for not less than one year under an employer before that provision applies. While so, present S. 25-B (2) steps in and says that even if a workman has not been in continuous service under an employer for a period of one year, he shall be deemed to have been in such continuous service for a period of one year, if he has actually worked under the employer for 240 days in the preceding period of twelve months. There is no stipulation that he should have

been in employment or service under the employer for a whole period of twelve months. In fact, the thrust of the provision is that he need not be. That appears to be the plain meaning without gloss from any source.

Now, S. 25-B was not always so worded. Prior to Act 36 of 1964, it read as follows :

> "For the purposes of S. 25-C and 25-F, a workman who, during a period of twelve calendar months, has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year's continuous service in the industry. Explanation....."

The difference between old 25-B and present 25-B is patent. The clause "where a workman is not in continuous service.... for a period of one year" with which the present S. 25-B (2) so significantly begins, was equally significantly absent from old S. 25-B. Of the same degree of significance was the circumstance that prior to Act 36 of 1964 the expression "Continuous Service" was separately defined by S. 2 (eee) as follows:

"(eee) 'continuous service' means uninterrupted service and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal, or lock-out or a cessation of work which is not due to any fault on the part of the workman".

Section 2 (eee) was omitted by the same Act 36 of 1964 which recast S. 25-B. Section 25-B as it read prior to Act 36 of 1964, in the light of the then existing S. 2 (eee), certainly lent itself to the construction that a workman had to be in the service of the employer for a period of one year and should have worked for not less than 240 days before he could claim to have completed one year's continuous service so as to attract the provisions of S. 25-F. That precisely was what was decided by this Court in *Sur Enamel and Stamping Works (Ltd.)* v. *Their Workmen*. ...The Court said:

> "On the plain terms of the section (S. 25-F) only a workman who has been in continuous service for not less than one year under an employer is entitled to its benefit. 'Continuous Service' is defined in S. 2 (eee) as meaning uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal or a lock-out or a cessation of work which is not due to any fault on the part of the workman. What is meant by 'one year of continuous service' has been defined in S. 25-B. Under this section a workman who, during a period of twelve calendar months, has actually worked, in an industry for not less than 240 days shall be deemed to have completed one year of continuous service in the industry.... The position, therefore, is that during a period of employment for less than II calendar months these two persons worked for more than 240 days. In our opinion that would not satisfy the requirement of S. 25-B. Before a workman can be considered to have completed one year of continuous service in an

industry it must be shown first that he was employed for a period of not less than 12 calendar months, and, next that during those 12 calendar months had worked for not less than 240 days. Where, as in the present case, the workmen have not at all been employed for a period of 12 calendar months it becomes unnecessary to examine whether the actual days of work numbered 240 days or more...."

In the result, all the appeals are allowed and the workmen—appellants are directed to be reinstated with full back wages.

Per Pathak J. : I entirely agree with my learned brother Chinnappa Reddy in the order proposed by him....

No question arises before us whether the termination of the services of the appellants amounts to "retrenchment" within the meaning of S. 2 (oo) of the Act. The respondent-Bank of India has apparently accepted the finding of the Industrial Tribunal-cum-Labour Court that the termination amounts to retrenchment. It has not preferred any appeal. I mention this only because I should not be taken to have agreed with the interpretation of S. 2 (oo) rendered in *Santosh Gupta* v. *State Bank of Patiala* (1980-2, L.LJ. 72)....

On the other question decided by my learned brother I have no hesitation in agreeing that having regard to the simultaneous amendments introduced in the Industrial Disputes Act, 1947, by Act No. 36 of 1964—the deletion of S. 2 (eee) and the substitution of the present S. 25 B for the original section—it is no longer necessary for a workman to show that he has been in employment during a preceding period of twelve calendar months in order to qualify within the terms of S. 25—B. It is sufficient for the purposes of S. 25 B (2) (a) (ii) that he has actually worked for not less than 240 days.... The law declared by this Court in *Sur Enamel and Stamping Works (P) Ltd.* v. *Their Workmen*,.... does not apply to situations governed by the subsequently substituted S. 25 B of the Act. With these observations, I concur with the order proposed by my learned brother.

[Appeals allowed.]

UPTRON INDIA LTD. v. SHAMMI BHAN
(1998) 6 SCC 538

[For facts of the case see Part II. Excerpts relating to scope of the word "retrenchment" under section 2(oo) from the judgment of the court delivered by S. Saghir Ahmed J. follow:]

We may now consider the question of "retrenchment" which is defined in section 2(oo) as under :

"2 (oo) 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but dos not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf or

(bb) termination of the service of a workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health."

The definition of "retrenchment" was introduced in the Act by Act 43 of 1953 with effect from 24-10-1953. Clause (bb) was inserted in the definition by Act 49 of 1984 with effect from 18-8-1984.

The definition is conclusive in the sense that "retrenchment" has been defined to mean the termination of the service of a workman by employer for any reason whatsoever. If the termination was by way of the punishment as a consequence of disciplinary action, it would not amount to "retrenchment". Originally, there were two exceptions, namely,

(i) voluntary retirement of the workman and

(ii) retirement of the workman on reaching the age of superannuation if the contract of employment contained a stipulation to that effect.

By the Amending Act 49 of 1984, two further exceptions were introduced in the definition by inserting clause (bb) with effect from 18-8-1984; one was the termination of service on the ground of continued ill-health of the workman and the other was termination of service on account of non-renewal of the contract of employment on the expiry of the term of that contract. If such contract of employment contained a stipulation for termination of service and the service of the workman are terminated in accordance with that stipulation, such termination, according to clause (bb), would also not amount to "retrenchment".

What was contended before the Tribunal as also before the High Court was that the termination of the services of the respondent was covered by clause (bb) of Section 2(oo) and, therefore, it could not be treated as "retrenchment" with the result that other statutory provisions, specially those contained in Section 25-F of the Act were not required to be complied with. This argument which was not accepted by the Tribunal and the High Court has been stressed before us also and here also it must meet the same fate as it is without any substance or merit.

From the facts set out above, it would be seen that the respondent was a permanent employee of the petitioner. There was no fixed-term contract of service between them. There was, therefore, no question of services being terminated on the expiry of that contract. In the absence of a fixed-term contract between the

parties, the question relating to the second, contingency, namely, that the termination was in pursuance of a stipulation to that effect in the contract of employment, does not arise.

The contract of employment referred to in the earlier part of clause (bb) has to be the same as is referred to in the latter part. This is clear by the use of words "such contract" in the earlier part of this clause. What the clause, therefore, means is that there should have been a contract of employment for a fixed term between the employer and the workman containing a stipulation that the services could be terminated even before the expiry of the period of contract. If such contract, on the expiry of its original period, is not renewed and the service are terminated as a consequence of that period, it would not amount to "retrenchment". Similarly, if the services are terminated even before the expiry of the period of contract but in pursuance of a stipulation contained in that contract that the services could be so terminated, then in that case also, the termination would not amount to "retrenchment". This view finds support from a decision of this Court in *Escorts Ltd.* v. *Presiding Officer* (1997) 11 SCC 521: 1988 SCC (L&S) 235.

This case does not fall in either of the two situations contemplated by clause (bb). The "Rule of Exception", therefore, is not applicable in the instant case and consequently the finding recorded by the Tribunal on "retrenchment" cannot be disturbed

For the reasons stated above, we find no merit in this petition, which is dismissed at the SLP stage.

HARYANA STATE F.C.C.W. STORE LTD. v. RAM NIWAS

Supreme Court, (2002) 2 LLJ 1153

[The appellant – management appointed respondents – chowkidar/labourers, on contract basis on payment of daily wages till the stocks were disposed of or for a period of three months whichever was less. Their numbers were also to be reduced in proportion to the clearance of stock lying in the open place. After the stock lying in the open place was cleared, management terminated the services of respondents without complying the provision of section 25F of the Industrial Disputes Act, 1947. They raised an industrial dispute which was referred by the state government to the Labour Court, Faridabad for adjudication. The labour court held that the respondents were not entitled to any relief as they were engaged by the appellant for specific purpose and for specified period. Aggrieved by this the respondent filed a writ petition before the high court. The high court set aside the order of labour court and ordered reinstatement. Against this order the management appellant filed an appeal by special leave before the Supreme Court. Excerpts from the judgment of the court delivered by Mohapatra J. follow :]

On a plain reading of (...section 2(oo) of the Industrial Disputes Act) it is clear that any termination of service of a workman by the employer for any reason

whatsoever comes within the meaning of the expression 'retrenchment' as defined in section 2(oo) of the Act. Further the Section further provides certain exceptions to the wide and comprehensive definition of the term 'retrenchment'. The exceptions are :

"(1) Termination of appointment inflicted by way of disciplinary action.

(2) Voluntary retirement of the workman

(3) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(4) termination of the service of the workman , as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(5) termination of the service of a workman; on the ground of continued ill-health."

It follows therefore that if the case of termination of the workman comes within any of the exceptions enumerated in the Section then the said termination will not be a case of 'retrenchment' within the meaning of Section 2(oo).

In the case of *Uptron India Ltd.* v. *Shammi Bhan & Anr.*, AIR 1998 SC 1681 : 1998 (6) SCC 538 : 1998-I-LLJ-1165, this Court considering the definition of 'retrenchment' in Section 2(oo) observed at pp. 1170 & 1171 of LLJ:

The definition of "retrenchment" was introduced in the Act by Act 43 of 1953 with effect from October 24, 1953. Clause (bb) was inserted in the definition by Act 49 of 1984 with effect from August 18, 1984.

The definition is conclusive in the sense that "retrenchment" has been defined to mean the termination of the service of a workman by the employer for any reason whatsoever. If the termination was by way of punishment as a consequence of disciplinary action, it would not amount to "retrenchment". Originally, there were two other exceptions namely,

(i) voluntary retirement of the workman and

(ii) retirement of the workman on reaching the age of superannuation if the contract of employment contained a stipulation to that effect.

By the Amending Act 49 of 1984, two further exceptions were introduced in the definition by inserting Clause (bb) with effect from August 18, 1984; one was the termination of service on the ground of continued ill-health of the workman and the other was termination of service on account of non-renewal of the contract of employment on the expiry of the term of that contract. If such contract of employment contained a stipulation for termination of service and the services of the workman are terminated in accordance with that stipulation, such termination, according to Clause (bb) would also not amount to "retrenchment".

The position was reiterated in *Harmohinder Singh* v. *Kharga Canteen, Ambala. Cantt.*, 2001 (5) SCC 540 : 2001-II-LLJ-488.

In such a case the question of complying with the conditions precedent to retrenchment of workman provided in Section 25-F of the Act will not arise, in the present case the Labour Court relying on the oral and documentary evidence cited on behalf of the management, particularly the order of the Managing Director sanctioning engagement of the workmen concerned held that the engagement/ appointment of the workmen concerned was for a specific purpose and for a particular period and since the purpose for their engagement/appointment was over and the period of appointment had expired their disengagement was in terms of the contract of service, and therefore, not a 'retrenchment' within the meaning of Section 2(oo) of the Act. The High Court has not recorded a finding that there was no contract of service between the management and the workmen concerned. In view of the evidence on record the High Court could not and indeed has not recorded any finding that there was no contract of service between the management and the workmen concerned. Since there exists a contract of service with the terms and conditions as noted earlier the position is inescapable that the case of disengagement/termination of the workman concerned did not amount to retrenchment. In particular facts and circumstances of the case the Labour Court rightly came to the conclusion that the workmen were entitled to no relief in the case. The High Court was clearly in error in interfering with the Award passed by the Labour Court. Accordingly the appeal are allowed.

ANAND BIHARI v. RAJASTHAN STATE ROAD TRANSPORT CORPORATION

Supreme Court, 1991 Lab IC 494

[The Rajasthan State Road Transport Corporation terminated the services of the drivers of buses who had put in a long service and were above 40 years of age but much less than the age of superannuation of 58 years, on the ground that they do not have the required vision for driving heavy motor vehicle like buses for which they were engaged by the corporation. Aggrieved by this order the workman filed three individual writ petitions before the high court mainly on two grounds, namely (i) the termination amounted to "retrenchment" under section 2(oo) and since the retrenchment was effected without following the mandatory provisions of section 25F of the Industrial Disputes Act, it was illegal (ii) the termination of service was illegal because the order was passed against the circular issued by the corporation which provided that job of helper would be given to an unfit driver. In two cases the high court dismissed the petitions and in the third case on the similar facts-situation the high court held that although the workman had lost the vision of one eye, he was fit to discharge the duties of any technician or helper or any other employee of that cadre. Accordingly the high court, directed the corporation to absorb him in the post of a helper or any other equivalent post for which he might be found fit. The workmen in the first two cases and the corporation in the third case filed an appeal

by special leave before the Supreme Court challenging the decision of the high court. Excerpts from the judgment of the court delivered by Sawant J. follow :]

The definition of "retrenchment" under Section 2(oo) of the Act is as follows :

"2(oo). "retrenchment': means the termination by the employer of the service of a workman for any, reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include -

. . .

(c) termination of the service of a workman on the ground of continued ill-health."

There is no dispute before us that the only sub-clause of the definition which can cover, the present termination of service is sub-clause (c). There was some debate before us as to the exact import of the expression "continued ill-health". While it was urged on behalf of the workmen that ill-health which is spoken of there does not cover the cases of a loss of limb or an organ or of its permanent use; and covers cases only of a general physical or mental debility or incapacity to execute the work the argument on behalf of the Corporation was that it would include also cases of a permanent loss or incapacity of a limb or an organ such as eye or eye-sight, ear or hearing capacity, of hand or leg etc. which is necessary for discharging the duty in question. For this purpose, reliance was placed on behalf of the Corporation on a decision of this Court in *Workmen of the Bangalore Woollen, Cotton and Silk Mills Co. Ltd.* v. *Its Management* (1962)1 LLJ 213. In that case the Court while interpreting the definition of retrenchment has held as follows at page 216 ...:

"The definition "retrenchment" in Section 2(oo) of the Act means termination of service. A service cannot be said to be terminated unless it was capable of being continued. If it is not capable of being continued, that is to say, in the same manner in which it had been going on before and it is, therefore, brought to an end, that is not a termination of the service. It is the contract of service which is terminated and that contract requires certain physical fitness, in the workmen. Where therefore a workman is discharged on the ground of ill-health, it is because he was unfit to discharge the service which he had undertaken to render and therefore it had really come to an end itself. That this is the idea involved in the definition of the word "retrenchment" is also supported by Section 25G of the Act which provides that whereas any workmen are retrenched, and the employer proposes to take in his employ any person, he shall give an opportunity to the retrenched workmen to offer themselves for re-employment and the latter shall have preference over other persons in the matter of employment. Obviously, it was not contemplated that one whose services had been terminated on grounds of physical unfitness or ill-health would be offered re-employment; it was because his physical condition prevented him from carrying out the work which he had been given that he had to leave and no question of asking such a person to take up the work again arises. If he could not do

the work, he could not be offered employment again. It would follow that such a person cannot be said to have been retrenched within the meaning of the Act as, amended by the Ordinance.

Even otherwise, it can scarcely be disputed that the expression "ill-health" used in sub-clause (c) has to be construed relatively and in its context. It must have a bearing on the normal discharge of duties. It is not any illness but that which interferes with the usual orderly functioning of the duties of the post which would be attracted by the sub-clause. Conversely, even if the illness does not affect general health or general capacity and is restricted only to a particular limb or organ but affects the efficient working of the work entrusted it will be covered by the phrase. For it is not the capacity in general but that which is necessary to perform the duty for which the workmen is engaged which is relevant and material and should, be considered for the purpose. The expression "ill-health" is defined in the new Collins Concise English Dictionary to mean "not in good health; sick" in Webster's Comprehensive Dictionary (International Edition) to mean 'disordered in physical condition; diseased; unwell: sick"; in the Concise Oxford Dictionary (3rd Edition) to mean "out of health; sick; with disease; with anxiety (of health); unsound; disordered; morally bad", and in Shorter Oxford English Dictionary to mean : "Unsound, disordered, out of health, not well". Therefore, any disorder in health which incapacitates an individual from discharging the duties entrusted to him or affects his work adversely or comes in the way of his normal and effective functioning can be covered by the said phrase. The phrase has also to be construed from the point of view of the consumers of the concerned products and services. If on account of a workmen's disease or incapacity or debility in functioning, the resultant product or the service is likely to be affected in any way or to become a risk to the health, life or property of the consumer, the disease or incapacity has to be categorized as ill-health for the purpose of the said sub-clause. Otherwise, the purpose of production for which the services of the workman are engaged will be frustrated and worst still in cases such as the present one they will endanger the lives and the property of the consumers. Hence, we have to place a realistic and not a technical or pedantic meaning on the said phrase. We are, therefore, more than satisfied that the said phrase would include cases of drivers such as the present ones who have developed a defective or subnormal vision or eye-sight which is bound to interfere with their normal working as drivers

In the view we have taken of the said sub-clause, it is obvious that the termination of the services of the workers in the present case being covered by sub-clause (c) of Section 2(oo) would not amount to retrenchment which the meaning of Section 2(oo) of the Act. Hence, the termination per se is not illegal because the provisions of Section 25F have not been followed while effecting it.

Although the order of termination of service per se cannot be faulted on the ground of the breach of the Act, the important question that still remains to be considered is whether in the circumstances of the case and against the background

of the relevant provisions of our Constitution, it can be said that the action of the Corporation is proper, equitable and justified. The facts on record show that the workmen have put in service with the corporation for long periods. All of them are above 40 years of age. Their superannuation age is 58 years. There is no dispute that they developed a weak or sub-normal eye-sight or lost their required vision on account of their occupation as drivers in the Corporation. As is commonly known, the drivers of the buses run by the Corporation such as the present one, have to drive the heavy motor vehicles in sun, rain, dust and dark hours of night. In the process they are exposed to the glaring and blazing sun light and beaming and blinding lights of the vehicles coming from the opposite direction. They are required to strain their eye-sight every moment of the driving, keeping a watchful eye on the road for the bumps, bends and slopes, and to avoid all kinds of obstacles on the way. It is this constant training of eyes on the road which takes its inevitable toll of the vision. The very fact that in a short period, the corporation had to terminate the services of not less than 30 drivers who are before us shows the extent of the occupational hazard to which the drivers of the Corporation are exposed during their service. It also shows that weakening of the eyesight is not an isolated phenomenon but a widespread risk to which those who take employment of a driver expose themselves. Yet the Corporation treats their cases in the same manner and fashion as it treats the cases of other workmen who on account of reasons not connected with the employment suffer from ill-health or continued ill-health. That by itself is discriminatory against the drivers. The discrimination against the employees such as the drivers in the present case, also ensues from the fact that whereas they have to face premature termination of service on account of disabilities contracted from their jobs, the other employees continue to serve till the date of their superannuation. Admittedly, no special provision is made and no compensatory relief is provided in the service condition for the drivers for such premature incapacitation. There is no justification in treating the cases of workmen like drivers who are exposed to occupational diseases and disabilities on par with the other employees. The injustice, inequity and discrimination is writ large in such cases and is indefensible. The service conditions of the workmen such as the drivers in the present case, therefore, must provide for adequate safeguards to remedy the situation by compensating them in some form for the all-round loss they suffer for no fault of theirs.

It is for this reason that we had suggested to the Corporation to frame a suitable scheme of compensatory relief to the drivers. The Corporation has filed two affidavits -one dated 9th October, 1990 by one Shri Navin Chaturvedi, Depot Manager at Delhi and the other dated 17th Nov. 1990 by one Shri LN. Shah, Executive Director (Administration) who is also incharge of the present litigation. In paragraph 2 of the first affidavit an amusing statement has been made that "the Corporation considered the difficulties of the drivers who have been terminated from their service under Section 2(oo) of the Industrial Disputes Act" without realizing that it has all

along been the case of the Corporation that the services of the drivers were not terminated under Section 2(oo) of the Act.

. . .

Although as stated by the Corporation, the workmen are covered by the ESI Act no provision is made there for compensation of the occupational injury such as the present one. Item 4 of Part I of the Second Schedule of the ESI Act talks of "loss of sight to such an extent as to render the claimant unable to perform any work for which eye-sight is essential" and classifies such injury as permanent total disablement resulting in hundred percent loss of earning capacity. Items 31, 32 and 32A of part of the same Schedule refer respectively to (i) "loss of one eye, without complications, the other being normal (ii) loss of vision or one eye without complications or disfigurement of eye-ball, the other being normal (iii) partial loss of vision of one eye" and classify all the said injuries as permanent partial disablement resulting in 40, 30 and 10 percent loss of earning capacity respectively. Item 11 in Third Schedule refers to occupational cataract due to infra red radiations incurred in "all work involving exposure to the risk concerned" and classifies it as one of the occupational disease.

It is, therefore, clear from the provisions of the ESI Act that the present case, *viz.*, that of sub-normal eye-sight or loss of the required vision to work as a driver would not be covered by the provisions of that Act as an employment injury or as an occupational disease, for no provision is made there for compensation for a disability to carry on a particular job. The present workmen cannot be said to have suffered either a permanent, total or partial disablement to carry on any job or to have developed cataract due to infrared radiations. The workmen are and will be able to do any work other than that of a driver with the eyesight they possess. Hence, a provision for a compensatory relief for such workmen has to be made separately on a different basis suitable to the peculiar loss that they suffer on account of the premature retirement necessitated by their unfitness to work as drivers.

In view of the helplessness shown by the Corporation, we are constrained to evolve a scheme which, according to us, would give relief as best as it can to the workmen such as the ones involved in the present case. While evolving the scheme and giving these directions we have kept in mind that the workmen concerned are incapacitated to work only as drivers and are not rendered incapable of taking any other job either in the Corporation or outside. Secondly, the workmen are at an advanced age of their life and it would be difficult for them to get a suitable alternative employment outside. Thirdly, we are also mindful of the fact that the relief made available under the scheme should not be such as would induce the workmen to feign disability which, in the case of disability such as the present one, viz., the development of a defective eye-sight, it may be easy to do. Bearing in mind all the aforesaid factors, we direct the Corporation as follows :

(i) The Corporation shall in addition to giving each of the retired workmen his retirement benefits, offer him any other alternative job which may be available and which he is eligible to perform.

(ii) In case no such alternative job is available, each of the workmen shall be paid along with his retirement benefits, an additional compensatory amount as follows :

(a) where the employee has put in 5 years or less than 5 years service, the amount of compensation shall be equivalent to 7 days salary per year of the balance of his service;

(b) where the employee has put in more than 5 years but less than 10 years service, the amount of compensation shall be equivalent to 15 days salary per year of the balance of his service;

(c) where the employee has put in more than 10 years but less than 15 years service, the amount of compensation shall be equivalent to 21 days salary per year of his balance of his service;

(d) where the employee has put in more than 15 years service but less than 20 years service, the amount of compensation shall be equivalent to one month's salary per year of the balance of his service;

(e) where the employee has put in more than 20 years service, the amount of compensation shall be equivalent to two months salary per year of the balance of his service.

The salary will mean the total monthly emoluments that the workman was drawing on the date of his retirement.

(iii) If the alternative job is not available immediately but becomes available at a later date, the Corporation may offer it to the workman provided he refunds the proportionate compensatory amount.

(iv) The option to accept either of the two reliefs, if an alternative job is offered by the Corporation, shall be that of the workman.

The scheme proposed by us in above paragraph disposes of Civil Appeals Nos. 1859-61 of 1990. Since the workmen involved in these appeals have been retired already, in case suitable jobs are available to be offered and the Corporation offers them and the workmen concerned accept them, they would be employed on such jobs from the date they resume their duty. They should be paid proportionate compensation under the above scheme for the interregnum from the date of their retirement till they resume the duty. In case no such job is available then they should be paid the compensatory amount as indicated in the scheme.

As far as Civil Appeal No. 1862 of 1990 is concerned, admittedly the workman was given employment as a helper from August 1985 since he developed weak eyesight on account of an accident in the course of his employment and he was

working as such helper till he was retired from service on and from April 27, 1988. There is no dispute that he was not unsuitable to work as a helper. The termination of his services as a helper was, therefore, clearly unjustified and also illegal being in contravention of the provisions of Section 25F of the Act The High Court obviously erred in treating his case on par with those of the workmen involved in Civil Appeals Nos. 1859-61 1990. The appellant-workman will therefore, be entitled to his retirement benefits as a driver as if he had retired from service as a driver from the date of the employment as a helper. He would further be entitled to be reinstated in service as a helper with all arrears of back wages as a helper. In case he opts for receiving the compensatory amount under the scheme, which we have framed above, he may do so for the period beginning from the date from, which his services as a helper were terminated.

As regards Civil Appeal No. 1863 of 1990 preferred by the Corporation, the impugned decision of the High Court is hereby set aside and the Corporation is directed to give the concerned workman the benefit of the scheme propounded by us.

The appeals are disposed of in the above terms. In the circumstances of the case, the parties will bear their own costs.

Questions

1. What do you understand by the expression "continued ill health" under clause (c) of section 2(oo) ?
2. What meaning has been suggested to the aforesaid expression by the employer and workmen ?
3. Do you agree with the view taken by the Supreme Court that the above expression covers weak or sub-normal eyesight or loss of required vision ?
4. Do you suggest any amendment in the Employees' State Insurance Act, 1948 and the Workmen's Compensation Act, 1923 to cover cases of loss of required vision, weak or sub-normal eye-sight arising out of and in the course of employment.
5. How far the social security measures suggested by the court would meet the needs of workmen whose services are terminated on account of loss of required vision?

THE HARYANA STATE AGRICULTURAL MARKETING BOARD v. SUBHASH CHAND & ANR.

Supreme Court, 2006 LLR 393

[The Haryana State Agricultural Marketing Board terminated the services of the respondent who was appointed as Arrival Record clerk on contract basis first from

17.10.1997 to 15.1.1998 second from 4.4.1998 to 1.7.1998 and third from 16.9.1998 to 13.12.1998. He, therefore, raised an industrial disputes which was referred by the Government of Haryana to the Industrial Trubunal-cum-Labour Court. The labour court, *inter alia*, held that the termination of services of the workman was in violation of the provision of section 25G of the Act and the management took recourse to unfair labour practice. A writ petition was, therefore, filed by the appellant before the High Court of Punjab and Haryana which was dismissed. Against this decision the board filed an appeal before the Supreme Court. Excerpts from the judgment of the court deliverd by S.B. Sinha J. follow:]

'Retrenchment' has been defined in section 2(oo) of the Act to mean:

"..... 2(oo)' retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include

(a)-(b) xxx xxx xxx

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;"

... A bare perusal of the offer of appointment clearly goes to show that the appointments were made on contract basis. It was not a case where a workman was continuously appointed with artificial gap of 1 day only. Indisputably, the respondent had been re-employed after termination of his services on contract basis after a considerable period(s).

In *Municipal Council, Samrala* v. *Raj Kumar, Civil Appeal Nos.* 299-300 of 2006, disposed of on 6th January, 2006, wherein, in the offer of appointment it was specifically averred that "his services will be availed till it is considered as fit and proper and necessary. After that his services will be dispensed with", which was accepted by the employee by affirming an affidavit to the effect that he would not have any objection, if Municipal Corporation dispensed with his services and thereby acknowledged its right to that effect, this Court held:

" Clause (oo)(bb) of section 2 contain an exception. It is in two parts. The first part contemplates termination of service of the workman as a result of the non-renewal of the contract of employment or on its expiry; whereas the second part postulates termination of such contract of employment in terms of stipulation contained in that behalf..."

[See also *Punjab State Electricity Board* v. *Darbara Singh*, (2006) 1 SCC 121 and *Kishore Chandra Samal* v. *Orissa State Cashew Development Corpn. Ltd. Dhenkanal*, (2006) 1 SCC 253]

The question as to whether Chapter VA of the Act will apply or not would dependent on the issue as to whether an order of retrenchment comes within the purview of section 2(oo)(bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a 'retrenchment', the question of applicability of Chapter VA thereof would not arise.

Central Bank of India v. *S. Stayam & Ors.* 1996 (5) SCC 419, whereupon reliance was placed by Mr. Singh, is itself an authority for the proposition that the definition of 'retrenchment' as contained in the said provision is wide. Once it is held that having regard to the nature of termination of services it would not come within the purview of the said definition, the question of applicability of section 25G of the Act does not arise.

In *State of U.P.* v. *Neeraj Awasthi and Ors.*, 2006 (1) SCC 667, wherein this Court upon taking into consideration the provisions of the U.P. Agricultural Produce Markets Board (Officers and Staff Establishment) Regulations, 1984 held that it is not permissible to regularize the services of the employees although they might have worked for more than 240 days within a period of twelve months preceding such termination.

In *Regional Manager, SBI* v. *Rakesh Kumar Tewari,* 2006 (1) SCC 530, a distinction was made between the provisions of sections 25G and 25H in the following terms:

"...No conditions of services were agreed to and no letter of appointment was given. The nature of the respondents' employment was entirely *ad hoc.* They had been appointed without considering any rule. It would be ironical if the persons who have benefited by the flouting of the rules of appointment can rely upon those rules when their services are dispensed with."

For the foregoing reasons, we are of the opinion that the impugned judgment cannot be sustained which is set aside accordingly. The Award of the Industrial Tribunal-cum-Labour Court is set aside. In the facts and circumstances of the case, the parties shall bear their own costs. [Appeal allowed.]

KISHORE CHANDRA SAMAL v. DIVISIONAL MANAGER, ORISSA STATE CASHEW DEVELOPMENT CORPORATION LTD.

Supreme Court, (2006) 1 LLJ 685

[The appellant was appointed by the Orissa State Cashew Development Corporation on N.M.R. basis as typist with effect from July 12, 1982 for a specific period. He was engaged time and again on daily wage basis for specific period. When no extension was given, he raised an industrial dispute which was referred by the appropriate government to the labour court for adjudication. The labour court held that as the appellant served continuously for many years covering the requisite period of continuous service in a calendar year the termination of his service was illegal for

non-compliance of section 25-F of the Industrial Disputes Act, 1947. The labour court, therefore, directed the corporation to reinstate the appellant in his former post. On a writ petition the high court set aside the order of labour court since the appellant Typist was on N.M.R. basis for a fixed period. Against this order the typist filed an appeal before the Supreme Court. Excerpts from the judgment of the court delivered by Arijit Pasayat J. follow:]

In support of the appeal, learned counsel for the appellant submitted that the High Court failed to notice that the period fixed was a camouflage to avoid regularisation. Reliance was placed on a decision of this Court in *S.M. Nilajkar & Ors.* v. *Telecom District Manager, Karnataka* AIR 2003 SC 3553: 2003 (4) SCC 27 : 2003-II-LLJ-359, where it was held that, mere mention about the engagement being temporary without indication of any period attracts Section 25-F of the Act if it is proved that the concerned workman had worked continuously for more than 240 days.

The position of law relating to fixed appointments and the scope and ambit of Section 2(oo) (bb) and Section 25-F were examined by this Court in several cases. In *Morinda Co-op. Sugar Mills Ltd.* v. *Ram Kishan and Ors.* AIR 1996 SC 332: 1995 (5) SCC 653 : 1996-I-LLJ-870 it was observed as follows at p. 871 of LLJ.

"It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.

The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in clause (bb) of Section 2(oo) of the Act. Under these circumstances we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated hereinbefore and when the new season starts the appellant should make a publication in neighboring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority at a exigency of work."

The position was reiterated by a three Judge Bench of this Court in *Anil Bapurao Kanase* v. *Krishna Sahakari Sakhar Karkhana Ltd. and Anr.* AIR 1997 SC 2698 : 1997 (10) SCC 599 : 1998-I-LLJ-343. It was noted as follows at pp. 343 & 344 of LLJ:

"The learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned order dated March 28, 1995 in Writ Petition No. 488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In *Morinda*

Co-op. Sugar Mills Ltd. v. *Ram Kishan,* AIR 1996 SC 332 : 1995 (5) SCC 653 : (1996) 2 LLJ 870 this Court has dealt with engagement of the seasonal workman in sugarcane crushing; it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, it was held that it is not 'retrenchment' within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application. However, this Court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above."

Recently, the question was examined in *Batala Co-operative Sugar Mills Ltd.* v. *Sowaran Singh* (2006) 1 LLJ 12 (SC):

Section 2(oo) of the Act reads as follows:

"Section 2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include

(a) ..... (b) .....

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein."

The decision in *S.M. Nilajkar's* case (*supra*) has no application because in that case no period was indicated and only indication was the temporary nature of engagement. In the instant case in all the orders of engagement, specific periods have been mentioned. Therefore, the High Court's order does not suffer from any infirmity.

The High Court had noted that its order would not stand in the way of Corporation considering the case of the workman for appointment. It is submitted by learned counsel for the appellant that representation was made in this regard, which has been turned down. Learned counsel for the respondent-Corporation submitted that the representation was for a permanent absorption. Since there was no post vacant, the representation was rejected. The dismissal of the present appeal shall not stand on way of the Corporation engaging appellant taking into account his experience and while considering the appellant's case the claims of others making similar claims shall be considered in proper perspective.

[Appeal is allowed.]

Questions

1. When can fixed term appointment be brought under section 2(oo) (bb).
2. What is the effect of fixed term appointment on the claim of compensation and other benefits under Chapter V-A and V-B?

SURENDRANAGAR DISTRICT PANCHAYAT v. JETHABHAI PITAMBERBHAI

Supreme Court, 2006 LLR 250

[The Surendranagar District Panchayat (appellant) terminated the services of a daily-wager (respondent) who was allegedly in the said employment for the last three years. Thereupon the respondent raised an industrial dispute, which was referred by the government to the labour court. The labour court set aside the order of termination declaring it to be illegal and awarded 25 percent amount of his salary. Against this order the management filed a writ petition in the high court, which was dismissed. Aggrieved by this order the management filed an appeal before the Supreme Court. Excerpts from the judgment of the court delivered by Naolekar J. follow:]

From the tenor of the judgment of the Labour Court and the High Court, it is apparent to us that the judgments have proceeded on the premise as if the burden of proof lies on the employer to prove that the employee had not worked with him for 240 days in the preceding year immediately before the date of his termination. Even if we assume that the burden of proof lies on the employer, we find from the record that the employer has filed a xerox copy of the attendance register and the muster-roll which indicate that in the year 1984 the workman has worked for 38 days, in the year 1985 - not a single day, in 1986 –72 days, in 1987 –25 days, in 1988 – not a single day in 1989–92 days, in 1990–82 days, and in 1991 not a single day. The attendance register and the muster-roll clearly indicate that in none of the years from 1984 to 1991 had the workman ever worked in the department of his employer continuously for a year to constitute continuous service of one year. The claimant, apart from his oral evidence has not produced any proof in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days to get the benefit under section 25F of the Industrial Disputes Act. It is now well settled that it is for the claimant to lead evidence to show that he had in fact worked for 240 days in a year preceding his termination.

In *Mohan Lal* v. *Bharat Electronics Ltd.*, 1981 (2) LLN 23, it is said by this Court that before a workman can claim retrenchment not being in consonance with section 25F of the Industrial Disputes Act, he has to show that he has been in continuous service for not less than one year with the employer who had retrenched him from service.

In *Range Forest Officer* v. *S.T Hadimani*, 2002 LLR 339 (SC): 2002 (2) LLN 391, this Court held that, in Para. 3, at pages 391 and 392:

"In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence...then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone the award is liable to be set aside...."

More recently, in *Rajasthan State Ganganagar S. Mills Ltd.* v. *State of Rajasthan and another*, 2004 (4) LLN 845; *Municipal Corporation, Faridabad* v. *Siri Niwas*, 2004 LLR 1022 (SC): 2004 (4) LLN 785 and *Madhya Pradesh Electricity Board* v. *Hariram*, 2004 (4) LLN 839: 2005 LLR 1 (SC), this Court has reiterated the principle that burden of proof lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his alleged retrenchment and it is for the workman to adduce evidence apart from examining himself to prove the factum of his being in employment of the employer.

On the face of the aforesaid authorities, the Labour Court and the High Court committed an error in placing the burden on the employer to prove that the workman had not worked for 240 days with the employer. The burden of proof having been on the workman, he has to adduce evidence in support of his contention that he has complied with the requirement of section 25B of the Industrial Disputes Act. In the present case, apart from examining himself in support of his contention the workman did not produce any material to prove the fact that he worked for 240 days. In fact the employer had produced before the Labour Court the attendance register of the workman and the muster roll clearly showing that the workman had not worked continuously in the preceding year with the employer or that he had worked with the employer for 240 days in the preceding 12 months prior to his alleged retrenchment. In the absence of evidence on record the Labour Court and the High Court have committed an error in law and fact in directing reinstatement of the respondent-workmen. That being the case, the award of the Labour Court and the judgment of the High Court, are set aside. The appeal is allowed. Howevere, in the circumstances of the case, there shall be no order as to costs. If the workman has been reinstated in pursuance of the order of the Labour Court, salary and other emoluments paid to him shall not be recovered.

NOTES

1. The net effect of the Supreme Court decision in *Delhi Cloth & General Mills Ltd.* case (1978) I LLJ I (SC) was explained by the Supreme Court in *L. Robert D'*

Souza v. *Executive Engineer, Southern Railway* (1982) I LLJ 330. The Court observed that the "definition of expression "retrenchment" in S. 2(oo) is so clear and unambiguous that no external aids are necessary for its proper construction. Therefore, we adopt as binding the well settled position in law that if termination of service of a workman is brought about for any reason whatsoever, it would be retrenchment except if the case falls within any of the excepted categories, *i.e.*, (i) termination by way of punishment inflicted pursuant to disciplinary action; (ii) voluntary retirement of the workman; (iii) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workmen concerned contains a stipulation in that behalf; or (iv) termination of the service on the ground of continued ill-health. Once the case does not fall in any of the excepted categories the termination of service even if it be according to automatic discharge from service under agreement would none the less be retrenchment within the meaning of the expression in S. 2(oo)".

2. In *Karnataka State Road Transport Corporation* v. *Sheikh Abdul Khader*, (1984) I LLJ 110 at 115, the Supreme Court held that :

Once the conclusion is reached that retrenchment as defined in S. 2(oo) of the Industrial Disputes Act covers every case of termination of service except those, which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment.

3. Consider the following :

The following clauses be added after clause (c) in Section 2(oo) of the Industrial Disputes Act, 1947 :

(d) voluntary abandonment of service without intimation,

(e) failure to pass confirmation test or failure to have satisfactory completion of probation;

(f) loss of confidence for prejudicial actions and conduct of the workman;

(g) compulsory retirement by giving notice after the minimum prescribed years of service not for reasons of disciplinary action.

[From the agenda of the National Labour Conference, New Delhi, 17th and 18th September, 1982 (mimeographed).]

4. Consider the following :

"*Barsi Light Railway Company* on the one hand, and *State Bank of India* v. *Sundara Money* and *Santosh Gupta* and *Gujarat Steel Tubes* on the other, took extreme views of the matter; if the former unduly restricted the coverage of "retrenchment" the latter gave a wide meaning and, thus, threw the revised scheme of the Industrial Disputes Act out of gear. Further, the consequences of reopening of the issue after several amendment in the Industrial Disputes Act is tremendous... [I]t would be relevant to note that Pathak J. who wrote a separate judgment in

Swendra Kumar v. *Industrial Tribunal-cum-Labour Court* ... was inclined to disagree with the decision in *Santosh Gupta* which is evident from the following observation:

No question arises before us whether the termination of the services of the appellants amounts to "retrenchment" within the meaning of S. 2(oo) of the Act. The respondent Bank of India has apparently accepted the finding of the Industrial Tribunal-cum-Labour Court that the termination amounts to retrenchment. It has not preferred any appeal. I mention this only because I should not be taken to have agreed with the interpretation of S. 2(oo) rendered in *Santosh Gupta* v. *State Bank of Patiala*....

Under the circumstances it is suggested that not only Section 2(oo) be amended but consequential amendment be made in the Industrial Disputes Act." [See Suresh C.Srivastava, "Labour Law", XVI, *ASIL* 117(1980).]

BOMBAY UNION OF JOURNALISTS v. STATE OF BOMBAY
Supreme Court, (1964) 1 LLJ 351

[In this case the issue was whether section 25 F(c) is mandatory. Section 25 F dealing with conditions precedent to retrenchment, requires in clauses (a) and (b) service of one month's notice on and payment of retrenchment compensation to workmen. In clause (c) that section requires that no workman shall be retrenched until notice is served on the government. There is no doubt that clauses (a) and (b) are mandatory. But there was a cleavage of judicial opinion on whether clause (c) also is mandatory. Excerpts from the judgment of Gajendragadkar J. follow :]

It is the latter provision of Cl. (a) [permitting payment of wages in lieu of notice] which requires careful consideration in dealing with the character of the requirement prescribed by S. 25 F (c). This latter provision allows the employer to retrench the workmen on paying him his wages in lieu of notice for one month prescribed by the earlier part of Cl. (a), and that means that if the employer decides to retrench a workman, he need not give one month's notice in writing and wait for expiration of the said period before he retrenches him; he can proceed to retrench him straightaway on paying him his wages in lieu of the said notice. Take a case where retrenchment is effected under this latter provision of Cl. (a); how would the requirement of Cl. (c) operate in such a case ? If it is held that the notice in the prescribed manner has to be served by the employer on the appropriate Government before retrenching the employee in such a case, it would mean that even in a case where retrenchment is effected on payment of wages *in lieu* of notice, it cannot be valid unless the requisite notice is served on the appropriate Government; and that does not appear to be logical or reasonable. Reading the latter part of Cls. (a) and (c) together, it seems to follow that in cases falling under the latter part of Cl. (a) the notice prescribed by Cl. (c) has to be given not before retrenchment, but after retrenchment; otherwise

the option given to the employer to bring about immediate retrenchment of the workman on paying him wages in lieu of notice would be rendered nugatory. Therefore, it seems that Cl. (c) cannot be held to be a condition precedent even though it has been included under S. 25 F along with Cls. (a) and (b) which prescribed conditions precedent.

The argument based on the negative form in which the provision is enacted and the use of the word "until" no doubt are in favour of the appellant's contention, but the context seems to require a different treatment to the provision contained in Cl. (c). Besides, the requirement introduced by the use of the word "until" is complied with even on the view we are inclined to take about the nature of the condition prescribed by Cl. (c) because after the retrenchment is effected, the employer has to comply with the condition of giving notice about the said retrenchment to the appropriate Government and that is where the provision in Cl. (c) that the notice has to be served in the prescribed manner assumes significance. Rules have been framed by the Central Government and the State Governments in respect of this notice and, stated broadly, it does appear that these rules do not require a notice to be served in everycase before retrenchment is effected. In regard to retrenchment effected on paying the workmen his wages in lieu of notice, the rules seem to provide that the notice in that behalf should be served within the specified period prescribed by them; that is to say, under the rules, notice in such a case has to be served not before the retrenchment, but after the retrenchment within the specified period.... We are therefore satisfied that S. 25 F (c) cannot be said to constitute a condition precedent which has to be fulfilled before retrenchment can be validly effected....

The object which the legislature had in mind in making these two conditions [(a) and (b) of S. 25 F] obligatory and in constituting them into conditions precedent is obvious. These provisions have to be satisfied before a workman can be retrenched. The hardship resulting from retrenchment has been partially redressed by these two clause, and so, there is every justification for making them conditions precedent. The same cannot be said about the requirement as to Cl. (c). Clause (c) is not intended to protect the interests of the workmen as such. It is only intended to give intimation to the appropriate Government about the retrenchment, and that only helps the Government to keep itself informed about the conditions of employment in the different industries within its region. There does not appear to present any compelling consideration which would justify the making of the provision prescribed by Cl. (c) a condition precedent as in the case of Cls. (a) and (b)....

[Appeal dismissed.]

NOTE

In *Workmen of Subong Tea Estate* v. *Subong Tea Estate* (1964) I LLJ 333

Subong Tea Estate was transferred to the Hindustan Tea Co. and it was agreed the such transfer would take effect from January 1959. Pending the execution of the conveyance (which took place on the 17th February, 1959) and the Reserve Bank's approval (which was obtained on the 15th of July, 1959) the Hindustan Tea Co. was put in possession of the tea garden and all its employees got instructions about their work, and received their salaries, from it. The vendor wanted to lay-off certain employees as a measure of economy in respect of all the tea gardens under its management. It asked the vendee whether the proposed lay-off should apply to the estate transferred. The vendee replied that it wanted to retain members of the staff (whom it listed) in its employ, but it asked the manager to terminate the services of the members of the staff who were surplus. Consequently, the manager of the vendor on August 31, 1959 issued notices to eight workmen terminating their services at once. They were paid retrenchment compensation, which they received under protest. The workmen's Union challenged the validity of the retrenchment on the basis that it contravened the provisions of sections 25F and 25G of the Act. Exerpts from the judgement of Gojendragadka] follow:

"[A]ll the relevant facts in regard to the running of the estate and its management after the estate was delivered over to the vendee on 17 February, 1959, clearly thus unambiguously show that the vendee took charge of the estate and in fact, became the employer of the employees who were working in the estate... If that be so, whether or not the transfer of management took place on 17 February 1959, there can be little doubt that after 15 July 1959 the vendee accepted the employees as its workmen and became answerable to them in that character. The impugned retrenchment cannot therefore, be taken to attract the operation of S.25FF at all. It is not retrenchment consequent upon transfer; it is retrenchment effected after the transfer was made and it had been brought about by the transferee who, in the meanwhile had become the employer of the retrenched workmen...."

The court accordingly held that the retrenchment of the eight work men was invalid in law and it cannot be said to have terminated the relationship of employer and employee between the vendee, and the eight workmen concerned. They are accordingly entitled to reinstatement with continuity of service; they would also be entitled to recover their full wages for the period between the date of the retrenchment and the date of their reinstatement.

MAY AND BAKER (INDIA) LTD. v. THEIR WORKMEN
AIR 1967 SC 678

[The company appealed from several provisions of an award by the industrial tribunal, Delhi dated October 19, 1957. Excerpts dealing with two of the issues are quoted below from the judgment of the court delivered by Wanchoo J.]

The company next attacks the provision as to working hours. Its main intention is that fixation of working hours is peculiarly a management function and there was no reason for the tribunal to interfere with the hours of work fixed by the company,

particularly when they were well within the hours allowed under the Delhi Shops and Establishments Act. It appears that the company's working hours are from 9 a.m. to 5 p.m. with three rest intervals—one hour for lunch, 15 minutes for morning tea, and 15 minutes for afternoon tea. The tribunal changed the hours to 9.30 a.m. to 5 p.m. with one hour's interval for lunch. Theoretically, therefore, there was no reduction in the working hours but practically there was because the tribunal directed that instead of the two intervals of 15 minutes each for tea, which was supplied by the company to its workmen, it should see that the tea is supplied to the workmen at their tables. Obviously, therefore, what will happen is that the workmen will take their time for tea because they cannot both work and take tea at the same time, and the tribunal has in effect reduced the working hours by half an hour each day. There is in the circumstances no justification for this reduction. Similarly, the tribunal has reduced the working hours for the subordinate staff for which again we find no justification. In the circumstances the existing working hours which are well within the hours of work prescribed under the Delhi Shops and Establishments Act will continue and the tribunal's modification of them is set aside.

The last contention raised on behalf of the company is regarding Iqbal Singh who has been awarded retrenchment compensation as well as gratuity. So far as retrenchment compensation is concerned, the tribunal has held that Iqbal Singh was entitled to retrenchment compensation under S. 25-F of the Industrial Disputes Act. This view of the tribunal is in our opinion incorrect. Section 25-F came into force on October 24, 1953, while the services of Iqbal Singh were terminated on September 30, 1953,... and he was directed to take one month's salary in lieu of notice, as he was surplus. The tribunal was not right in holding that this meant that Iqbal Singh continued in service till October 30, 1953, and was therefore, entitled to the benefit of S. 25-F. This is a case where the services were terminated from September 30, 1953 on payment of one month's salary in lieu of notice. In such a case the service comes to an end on the date from which it is terminated. The matter would be different if one month's notice had been given to Iqbal Singh and after that month his services had been terminated. In that case he would be actually working for the month of notice and his services would have terminated after the notice period.... But, though the tribunal was wrong in holding that S. 25-F applied to Iqbal Singh, we see no reason to interfere with the order allowing one month's average pay as retrenchment compensation to Iqbal Singh, for it is not disputed that industrial tribunals used to give retrenchment compensation even before S. 25-F was enacted and that section merely standardised the practice which was generally prevalent. In the circumstances, the order as to payment of one month's average salary as retrenchment compensation to Iqbal Singh must stand. However, the other part of the order with respect to payment of gratuity is clearly unjustified. Under the scheme in force in the company at the relevant time, gratuity could only be awarded to an employee who had been in service for five years, Iqbal Singh was not in service for that period. In the

circumstances no gratuity could be granted by the tribunal under the scheme. The tribunal has noted that the company granted gratuity to some workmen who had less than five years' service. That is so but that was a voluntary act of the company. The tribunal, however, cannot compel the company to grant gratuity against the scheme of gratuity in force. In the circumstances, the order allowing one month's basic salary as gratuity to Iqbal Singh must be set aside.

Questions

1. Here the Supreme Court dealt with a detailed award of ten years old. Consider the disadvantages and confusions created by such delays.
2. Was affirmation of retrenchment compensation technically correct ? If not, why?

SUR ENAMEL AND STAMPING WORKS v. THEIR WORKMEN

Supreme Court, (1963) II LLJ 367

[The company terminated the services of two temporary workmen. During the period of employment for less than eleven calendar months these two workmen worked for more than 240 days. An industrial dispute with regard to their dismissal was referred to the Fifth Industrial Tribunal, West Bengal. The tribunal held that the order of termination of their services was bad only on account of non-compliance of the provisions of section 25 F of the Industrial Disputes Act. The company preferred an appeal by special leave. Excerpts from the judgment of the court, delivered by Das Gupta J. follow :]

On the plain terms of the section only a workman who has been in continuous service for not less than one year under an employer is entitled to its benefit.... What is meant by "one year of continuous service" has been defined in S. 25-B. Under this section a workman who during the period of twelve calendar months has actually worked in an industry for not less than 240 days shall be deemed to have completed one year of continuous service in the industry....

Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than twelve calendar months and, next that during those twelve calendar months he had worked for not less than 240 days. Where as in the present case, the workmen have not at all been employed for a period of twelve calendar months it becomes unnecessary to examine whether the actual days of work numbered 240 days or more. For, in any case, the requirements of S. 25-B would not be satisfied by the mere fact of the number of working days being not less than 240 days.

We have therefore come to the conclusion that the tribunal was wrong in thinking that these two workmen were entitled to the benefit of S. 25-F.

[Appeal partly allowed.]

WORKMEN OF SUDDER WORKSHOP OF JOREHAUT TEA CO. LTD. v. MANAGEMENT OF JOREHAUT TEA CO. LTD.

Supreme Court, (1980) Lab IC 742

[The management retrenched 23 of its workmen. Out of these the services of seven workmen were terminated without following the rule of "last come, first go" under section 25G. The government referred the dispute relating to termination of service of the workmen to the industrial tribunal for adjudication. The tribunal upheld the validity of retrenchment of the 16 workmen but set aside the termination order of the other seven and directed their reinstatement. The high court confirmed the findings of the tribunal. The management then appealed to the Supreme Court. Excerpts from the judgment of Krishna Iyer J. follow:]

Admittedly, the rule in S. 25G of the Act, which postulates that ordinarily the 'last come, first go' will be the methodology of retrenchment, has not been complied with provided we treat all the workmen in the category as one group. It makes for better appreciation of the point if we read S. 25G at this stage:

Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman....

The rule is that the employer shall retrench the workman who came last, first, popularly known as 'last come first go'. Of course, it is not an inflexible rule and extraordinary situations may justify variations. For instance, a junior recruit who has a special qualification needed by the employer may be retained even though another who is one up is retrenched. There must be a valid reason for this deviation, and, obviously, the burden is on the Management to substantiate the special ground for departure from the rule....

There is none made out here, nor even alleged, except the only plea that the retrenchment was done in compliance with S. 25 G grade-wise. Absence of male fides by itself is no absolution from the rule in S. 25 G. Affirmatively, some valid unjustifiable grounds must be proved by the Management to be exonerated from the 'last come first go' principle.

It must be remembered that the above provision insists on the rule being applied category-wise. That is to say, those who fall in the same category shall

suffer retrenchment only in accordance with the principle of, last come first go. The court upheld the findings of the Tribunal, concurred in by the High Court and held that they fell in the same category.

The seniority list is the same, which is a telling circumstance to show that they fell in the same category. Grading for purposes of scales of pay and like considerations will not create new categorisation. It is a confusion or unwarranted circumvention to contend that within the same category if grades for scales of pay, based on length of service etc., are evolved, that process amounts to creation of separate categories. This fallacy has been rightly negatived by a detailed discussion in the Award. The High Court has avoided the pitfall and we decline to accept the submission. The result is that the Award must hold good in regard to the illegally retrenched seven workmen....

NOTE

The distinction between the effect of non-compliance of the procedure laid down in section 25 G and the conditions precedent under section 25F has been explained by the Calcutta High Court in *B.M. Gupta* v. *State of West Bengal* (1979) I LLJ 168. It was observed:

In my view non-compliance of the procedure laid down in S. 25G of the Act cannot be put at par with non-compliance with the conditions-precedent under S. 25F of the Act. In the former case the order of retrenchment is not *void ab-initio* as in the latter case but an order of retrenchment though otherwise valid is liable to be struck down if proper justification for such retrenchment is not established. From the marginal notes also it will appear that S. 25F lays down certain conditions required to be complied with before passing an order of retrenchment but S. 25G only lays down the procedure to be followed even when a retrenchment order is passed after complying with the conditions precedent for passing an order of retrenchment.

The aforesaid statement has clarified the confusion prevailing as regards the nature of the two sections. See Suresh C. Srivastava, "Labour Law," XV *ASIL* 372 (1979).

STATE OF HARYANA v. OM PRAKASH
(1998) 8 SCC 733

[The respondent workman, who was appointed on daily wages with effect from 10.8.1985 ceased to report for work after 30.6.1986. Almost three years later he served a demand notice claiming reinstatement. On reference of the dispute by the government, the Industrial Tribunal-cum-Labour Court held that as his termination of services amounted to 'retrenchment' and, therefore, the respondent was entitled to the protection under sections 25F and 25G of the Industrial Disputes Act. Accordingly the tribunal directed reinstatement with full back wages. Aggrieved

by this order the management filed a writ petition before the high court. The high court summarily rejected the petition. Thereupon the management filed an appeal before the Supreme Court. Excerpts from the order of the court follow :]

The High Court, in our view, was wrong in summarily rejecting the petition filed under Articles 226/227 of the Constitution because this, in our view, was a fit case where the jurisdiction was erroneously exercised by the Labour Court. The admitted facts show that after the first respondent was appointed with effect from 10.8.1985, he worked up to 30.6.1986 and thereafter ceased to report for work. The employer has not taken any step to terminate his service. He being a Daily rated Workman himself chose to remain absent and it was after a period of almost three years that he raised a demand and the same came to be referred to the Industrial Tribunal-cum-Labour Court. The second question is whether there was a violation of Section 25-F of the Act. The authority below has come to the conclusion that he had worked for a period from 10.8.1985 to 30.6.1986, which would be less than one year. Therefore, the authority was wrong in concluding that he had worked for 12 calendar months. There is also no evidence that he had worked for 240 days during 12 months immediately preceding the date of cessation of work. Besides no information was laid before the authority as to how many days during that period he had worked for, but in any case, he had not worked for 12 calendar months. There is also no evidence that he had worked for 240 days to satisfy Section 25-B of the Act. Therefore, the authority was wrong in coming to the conclusion that there was a violation of Section 25-F of the Act besides, as stated earlier, he himself voluntarily ceased to report for duty and there was no act on the part of the employer nor is there anything on record to suggest that the employer had refused to allow him to work. Retrenchment within the meaning section 2(oo) means termination by the employer of the service of the workman for any reason whatsoever. Therefore, it contemplates an act on the part of the employer which puts an end to service to fall within the definition of the expression 'retrenchment' in section 2(oo) of the Act. There was nothing of the sort in the instant case. It was the workman who ceased to report for duty and even after he ceased to report for duty, it is not his case that at any point of time he reported for duty and he was refused work. He straightway proceeded to invoke the provisions of the Act and, therefore, this is a case in which the employer has done nothing whatsoever to put an end to his employment and hence the case does not fall within the meaning of section 2(oo) of the Act. Therefore, the case does not attract section 2 (oo), nor does it satisfy the requirement of section 25-F.

By virtue of the interim order of this Court, the workman has been paid back wages. If he has not withdrawn the same, the State may withdraw the same. But if he has withdrawn, we would not like to make an order for refund having regard to his economic condition. The appeal will stand allowed accordingly with no order as to costs.

Questions

1. Comment on the orders of the court that "if (the workman) has not withdrawn the .. (back wages), the State of Haryana may withdraw the same. But if he has withdrawn, we would not like to make an order for refund having regard to his economic conditions".
2. Do you think that the aforesaid order is discriminatory and would affect that workman who has not withdrawn back wages? Would the order not place additional burden upon the employer in cases where workmen withdrew back wages?

STATE OF M.P. & ORS. v. ARJUNLAL RAJAK
JT 2006(3) SC 56

[The respondent-choukidar worked as daily wager in different departments of the State of Madhya Pradesh from August 1984 to July 8, 1992. However neither an offer of appointment was issued to him nor the recruitment rules were followed for filling up a permanent or temporary post. His services were terminated consequent to winding up of production unit of the forest department where the respondent was engaged at that time without complying with the requirements of section 25-F of the Industrial Disputes Act, 1947. There upon the respondent filed a complaint petition before the labour court. The labour court directed reinstatement with back wages on the ground that the respondent worked for more than 240 days in a calendar year and no retrenchment compensation was paid to him. Against this order the State of Madhya Pradesh filed a writ petition before the high court. The high court dismissed the petition. Thereafter the state filed an appeal before the Supreme Court. Excerpts from the judgment of the court delivered by S.B. Sinha J. follow:]

It is beyond any doubt or dispute that a daily wager does not hold a post. The Forest Department is wing of the State. Its employees hold a status. For acquiring that status and for obtaining the constitutional protection in terms of Article 311 of the Constitution of India, all appointments must be made in conformity with the Constitutional Scheme as laid down under Articles 14 and 16 of the Constitution of India as well as the rules made in terms of the proviso to Article 309 of the Constitution of India or in terms of a Legislative Act. Concededly, while appointing the respondent, the constitutional provision or the statutory provisions had not been followed. The rights and liabilities of the parties are, therefore, governed by the terms of the contract and/or the provisions of the statute applicable in relation thereto. The respondent was not given any offer of appointment in writing. He admittedly worked in different departments of the State. His last posting was in the production division of Forest Department in the District of Guna which as noticed above stood abolished. It is, however, true that while terminating the services of the respondent the appellants had

not complied with the mandatory requirements of Section 25F of the Industrial Disputes Act and thus, ordinarily, the workman could have been directed to be reinstated with or without back wages, but it is also well settled that a project or a scheme of an office itself is abolished, relief by way of reinstatement is not granted.

The question came up for consideration before a Division Bench of this Court in *Mahendra L. Jain & Ors.* v. *Indore Development Authority & Ors.* [JT 2004 (10) SC 1; 2005 (1) SCC 639], wherein it was categorically held:

" This case involves 31 employees. A distinction is sought to be made by Dr. Dhavan that out of them 27 had been appointee to a project and not in a project. The distinction although appears to be attractive at the first blush but does not stand a moment's scrutiny. As noticed hereinbefore, the High Court's observation remained unchallenged, that the project was to be financed by ODA. The project was indisputably to be executed by the Indore Development Authority; and for the implementation thereof, the appointments had to be made by it. If the appellants were appointed for the purpose of the project, they would be deemed to have been appointed therefore and only because such appointments had been made by the respondent would by itself not entitle them to claim permanency. The life of the project came to an end on 30-6-1997. The maintenance job upon completion thereof had been taken over by the Indore Municipal Corporation. The appellants were aware of the said fact and, thus, raised an alternative plea in their statements of claims. The Labour Court could not have granted any relief to them as prayed, for, as the Indore Municipal Corporation is a separate juristic person having been creates under a statute. Such a relief would have been beyond the scope and purport of the reference made to the Labour Court by the State Government. Furthermore, the Indore Municipal Corporation was not a party and, thus, no employee could be thrust upon it without its consent.

In *A. Umarani* (JT 2004 (6) SC 110) this Court held that once the employees are employed for the purpose of scheme, they do not acquire any vested right to continue after the project is over (See also *Karnataka State Coop. Apex Bank Ltd.* v. *Y.S. Shetty and M.D., U.P. Land Development Corpn.* v. *Amar Singh*). It is furthermore evident that the persons appointed as daily-wagers held no posts. The appointments, thus, had been made for the purpose of the project, which, as indicated hereinbefore, came to an end. The plea of Dr. Dhavan to the effect that the appellants in Civil Appeal No. 337 of 2002 were asked to perform other duties also may not be of much significance having regard to our foregoing findings. However, it has been seen that even services of one of them had been requisitioned only for the project work. The High Court, in our opinion, was right in arriving at the conclusion that the appellants were not entitled to be regularised in service."

It is also trite that even for grant of back wages, application of mind on the part of the Industrial Court is imperative, as a relief of full back wages may not be granted automatically. In *U.P. State Brassware Corpn. Ltd. & Anr.* v. *Uday Narain Panday* [2006 1 SCC 479] this Court opined:

"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 granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6N of the U.P. Industrial Disputes Act."

It was further held that while a decision to close down the establishment has been taken, ordinarily, back wages to a limited extent should be granted.

The onus to prove that he had completed 240 days of work or he had not been gainfully employed within the said period was on the workman.

Keeping in view the fact that the services of the respondent were terminated on the ground that the production unit in which he was working itself had been closed, we are of the opinion that interest of justice would be sub-served if a monetary compensation of Rs. 10,000/- is granted to him. It, however goes without saying that he would be entitled to the wages for the period he had actually worked pursuant to or in furtherance of the order of the Labour Court and as also of the High Court upon his reinstatement. The award of the Labour Court as also the judgment of the High Court are set aside.

For the reasons aforementioned, the appeal is allowed to the aforementioned extent. However, there shall be no order as to costs.

BATALA COOPERATIVE SUGAR MILLS LTD. v. SOWARAN SINGH

Supreme Court, 2005 LLR 1211

[The management terminated the services of a workmen engaged on casual basis on daily wages for the specified period for the specific work without any notice, pay or retrenchment compensation. Against this order the workman raised an industrial dispute which was referred by the appropriate government to the labour court for adjudication. The labour court held that despite the plea of employer that the workman was employed on daily wages for specific work and for specified period no attendance record was produced by him. Further no material was placed to show that the workman has left the job on his own accord. Moreover the employer has not proved that the workman had worked for less than 240 days in a calendar year. Accordingly the labour court directed reinstatement with 50% back wages. Thereupon the employer filed a writ petition before the high court. The high court dismissed the petition and held that the employer had failed to produce muster roll, which was mandatorily required to be maintained under section 25 D of the Act. Thereupon the employer field an appeal before the Supreme Court. Excerpts from the judgment of the court delivered by Arijit Pasayat J. follow:]

In support of the appeal, learned counsel for the appellant submitted that both the Labour Court and the High Court fell in grave error by acting on factually and

legally erroneous premises. The definite stand of the appellant was that the workman was engaged on casual basis on daily wages for specific work and for specified period. Details in this regard were undisputedly filed. Therefore, the provisions of Section 2(oo) (bb) of the Act are clearly applicable. In addition, the onus was wrongly placed on the employer to prove that the workman had not worked for 240 days in 12 calendar months preceding the alleged date of termination. No material was placed on record by the workman to establish that the workman had offered himself for job after 12-2-1994. The award of the Labour Court does not speak of the requirement to maintain the muster roll. This point was taken up *suo moto* by the High Court without any opportunity to the appellant to have its say.

In response, learned counsel for the respondent submitted that in the factual scenario as noticed by the Labour Court the award was made and the High Court has rightly refused to interfere with it. We find that the High Courts judgment is unsustainable on more than one count. In *Morinda coop. Sugar Mills Ltd.* v. *Ram Dishan and Ors.*, 1995 (5) SCC 653, it was observed as follows:

"4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.

5. The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in clause (bb) of Section 2(oo) of the Act. Under these circumstances, we are of the opinion that view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated hereinbefore and when the new season starts the appellant should make a publication in neighboring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work."

The position was reiterated by a three-Judge Bench of this Court in *Anil Bapurao Kanase* v. *Krishna Sahakari Sakhar Karkhana Ltd. and Anr.*, 1997 (10) SCC 599.

It was noted as follows:

"The learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned order dated 28-3-1995 in Writ petition No. 488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days he is to be treated as retrenched employee and if the procedure contemplated under Section 25F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In *Morinda Coop. Sugar Mills Ltd.* v. *Ram Kishan*, in para 3, this Court has dealt with engagement of the seasonal workman in sugarcanes crushing; in para 4 it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not

retrenchment within the meaning of Section 2(oo) of the Act As a consequence the appellant is not entitled to retrenchment as per clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application. However, this Court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above."

Section 2(oo) (bb) reads as follows:

"(oo) "retrenchments" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) Voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workmen concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein."

The materials on record clearly establish that the engagement of the workman was for specific period and specific work.

In view of the position as highlighted in *Morinda Coop. Sugar Mills* and *Anil Bapurao's* cases (*supra*), the relief granted to the workman by the Labour Court and the High Court cannot be maintained.

So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in *Range Forest Officer* v. *S.T. Hadimani,* 2002 LLR 339 (SC): 2003 (3) SCC 25, the onus is on the workman. It was noted in the said judgment as follows:

"2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal *vide* its award dated 10-8-1998 came to the conclusion that the service had been terminated, without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days the Tribunal stated that the burden was on the management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year."

"3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an 'industry' or not, though reliance is placed on the decision of this Court in State of *Gujarat* v. *Pratamsingh Narshinh Parmar*, 2001 (9) SCC 713. In our opinion, the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, infact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement of this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr. Hedge, appearing for the Department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two month from today."

14. The appeal, therefore deserves to be allowed which we direct. But at the same time as observed in paragraph 5 of Morinda Sugar Mills case (supra) the modalities indicated shall be followed by the appellant-employer. In fact before the Labour Court, it was clearly stated that the employer was willing to offer engagement to the workman as and when necessity arises. If there is any requirement for engagement the case of respondent-workman shall be considered in its proper perspective and necessary orders shall be passed. In the ultimate, the appeal is allowed but in the circumstances, there will be no order as to costs.

MANAGER, RESERVE BANK OF INDIA v. S. MANI
Supreme Court, (2005) 5 SCC 100

[The Reserve Bank of India intermittently appointed *ticca* mazdoors (*theka* or contract labour) whenever regular class IV employees were absent. For the purpose two waiting lists were maintained by the bank. The first waiting lists contained the names of such mazdoors who may be appointed as regular mazdoors. Whereas the second list is maintained for those who are to be engaged as ticca mazdoors. The respondents were appointed as ticca mazdoors, falling in the second list. The respondents were interviewed for appointment as regular mazdoors.

Allegedly, during interview, they produced transfer certificates but their answers to the questions posed in this behalf were not in conformity therewith, whereupon verification was made and it was found that the said certificates were forged and fabricated. Three first information reports were lodged against the respondents for furnishing false certifications. In the criminal case, however, they were acquitted. Between October 1987 and August 1988 the respondents submitted fresh school transfer certificates and requested the appellant herein to re-employ them. But their request for re-employment was not accepted. Thereupon the respondent raised an

industrial dispute which was referred by the central government for adjudication to the Central Government Industrial Tribunal, Bangalore. The Industrial Tribunal held that the respondents having completed 240 days of service, and their terminations having been brought about without complying with the provisions of section 25-F of the Industrial Disputes Act, and, that, being illegal, they were entitled to be reinstated in the bank's services as per the prevailing rules and conditions of the service with full back wages. Against this order the appellant filed a special leave petition which was dismissed as withdrawn with liberty to approach the high court. The appellant then filed writ petitions before the Karnataka High Court, which were dismissed where against writ appeals were filed by the appellant. The division bench allowed the said appeals in part modifying the award of the tribunal as also of the single judge to the effect that the back wages be paid from 23-7-1993 instead of their respective dates of retrenchment. The *sivision* bench, however, gave liberty to the appellant to hold domestic enquiry against the respondents for the alleged misconduct committed by them. The division bench in issuing the aforesaid direction, *inter alia*, held that as the respondents were not regularised in services for the alleged misconduct of producing false certificates, the same would amount to stigma and loss of confidence of the appellant in them. Thereupon the appeal was field before the Supreme Court. Excerpts from the judgment of the court delivered by S.B. Sinha J. follow:]

Status of Ticca Mazdoors

The service of *ticca* mazdoors being not permanent in nature can be dispensed with subject to compliance with the statutory or contractual requirements, if any. Their status is not higher than that of a temporary workman or a probationer. (See *Karnataka SRTC* v. *S.G. Kotturappa*, (2005) 3 SCC 409).

Section 25-F of the Industrial Disputes Act

The provisions contained in Section 25-F of the Industrial Disputes Act are required to be complied with if the workmen concerned had completed 240 days of service in a period of 12 months preceding the order of termination.... .

The workmen concerned in their evidence did not specifically state that they had worked for 240 days. They merely contended in their affidavit that they were reiterating their stand in the claim petition.

Pleadings are no substitute for proof. No workman, thus, took an oath to state that they had worked for 240 days. No document in support of the said plea was produced. It is, therefore not correct to contend that the plea raised by the respondents herein that they had worked continuously for 240 days was deemed to have been admitted by applying the doctrine of non-traverse. In any event the contention of the respondents having been denied and disputed, it was obligatory on the part of the respondents to add new evidence. The contention raised in the

letters of the union dated 30-5-1988 and 11-4-1990 containing statements to the effect that the workmen had been working continuously for 240 days might not have been replied to, but the same is of no effect as by reason thereof, the allegations made therein cannot be said to have been proved, particularly in view of the fact that the contents thereof were not proved by any witness. Only by reason of non-response to such letters, the contents thereof would not stand admitted. The Evidence Act does not say so.

The appellant, therefore, cannot be said to have admitted that the respondents had worked for more than 240 days.

Non-production of the documents

It is no doubt true that the Industrial Tribunal by an order dated 12-5-1993 inter alia directed the appellant to produce register of the workmen for the period between April 1980 and December 1982 in respect of the first party workmen and attendance register. The Tribunal, however, in its award noticed the explanation of the appellant that the attendance registers being old and hence could not be produced....

The learned Tribunal ... (therefore) held:

... the materials placed before this Tribunal lead to the only conclusion that the second party is not in a position to prove their case namely First Parties 1 to 11 concerned had abandoned themselves without any proper reasons.

An adverse inference, therefore, was drawn for non-production of the attendance register alone, and not for non-production of the wage-slips. Reference to "other relevant documents" must be held to be vague as the appellant herein had not been called upon to produce any other document for the said purpose.

It appears that the learned Tribunal considered the matter solely from the angle that the appellant had failed to prove its plea of abandonment of service by the respondents.

The question came up for consideration before this Court recently in *Siri Niwas*, (2002) 8 SCC 400 : 2003 SCC (L&S) 13 wherein it was held: (SCC p. 198, para 15)

"15. A court of law even in a case where provisions of the Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds."

Referring to the decision of this Court in *Indira Nehru Gandhi* v. *Raj Narain* 1975 Supp. SCC 1 this Court observed: (*Siri Niwas* case 3 SCC p. 199, para 19)

"19. Furthermore a party in order to get benefit of the provisions contained in Section 114 III. (g) of the Evidence Act must place some evidence in support of his case. Here the respondent failed to do so."

In *Hariram* this Court observed: (SCC p. 250, para 11)

"11. The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously."

As noticed hereinbefore, in this case also the respondents did not adduce any evidence whatsoever. Thus, in the facts and circumstances of the case, the Tribunal erred in drawing an adverse inference.

Burden of proof

The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service ...

The Tribunal, therefore, accepted that the appellant had denied the respondents' claim as regards their continuous service.

In *Range Forest Officer* v. *S.T. Hadimani* (2002) 3 SCC 25 : 2002 SCC (L&S) 367, it was stated; (SCC p. 26, para 3)

"3 ... In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

(See also *Essen Deinki* v. *Rajiv Kumar* (2002) 8 SCC 400 : 2003 SCC (L&S) 13.

In *Siri Niwas* (2004) SCC 195 this Court held: (SCC pp. 197-98, para 13)

"13. The provisions of the Evidence Act, 1872 per se are not applicable in an industrial adjudication. The general principles of it are, however, applicable. It is also imperative for the Industrial Tribunal to see that the principles of natural justice are complied with. The burden of proof was on the respondent workman

herein to show that he had worked for 240 days in the preceding twelve mo prior to his alleged retrenchment. In terms of Section 25-F of the Industrial Disp Act, 1947, an order retrenching a workman would not be effective unless conditions precedent therefor are satisfied. Section 25-F postulates the follow conditions to be fulfilled by an employer for effecting a valid retrenchment:

(i) one month's notice in writing indicating the reasons for retrenchment wages in lieu thereof;

(ii) payment of compensation equivalent to fifteen days' average pay fo every completed year of continuous service or any part thereof in excess of six months."

It was further observed: (SCC p. 198, para 14)

"14. ... As noticed hereinbefore, the burden of proof was on the workman. From the award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25-B of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the appellant herein including the muster rolls. It is improbable that a person working in a local authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. He did not even examine any other witness in support of his case."

Yet again in *Hariram* it was opined: (SCC p. 250, para 10)

"10. ... We cannot but bear in mind the fact that the initial burden of establishing the factum of their continuous work for 240 days in a year rests with the respondent applicants."

Mr Phadke placed strong reliance on *H.D. Singh* to contend that adverse inference was drawn therein for non-production of certain documents. *H.D. Singh* was rendered on its own facts. In that case, a special leave petition was entertained by this Court directly from the award passed by the Industrial Tribunal. Before this Court, both the parties filed affidavits and several documents. The workmen therein categorically disclosed the number of days they had worked in each year. In that case the name of the workman was struck off as he had allegedly concealed his educational qualification; purportedly on the basis of a confidential circular issued by the bank on 27-6-1976 to the effect that matriculates will not be retained in the list. As the workman therein in reply to the letter of the bank stated that he was not a matriculate in 1974 and he passed the examination only in 1975, he was not given any work even after July 1976 without issuing any written notice terminating his services. Holding that the workman had been retrenched from service, as noticed hereinbefore, affidavits of the parties were filed and, thus, some evidence had been adduced. The number of actual days worked by the workman therein was

brought on record by the respondent. The said decision, thus, having been rendered in the fact situation obtaining therein does not constitute a binding precedent.

Circumstantial evidence

The Tribunal also relied upon some purported circumstantial evidence to hold that the workmen had completed 240 days of work ...

It is difficult to accept the logic behind the said findings.

Only because the appellant failed to prove its plea of abandonment of service by the respondents, the same in law cannot be taken to be a circumstance that the respondents have proved their case.

The circumstances relied upon, in our opinion, are wholly irrelevant for the purpose of considering as to whether the respondents have completed 240 days of service or not. A party to the lis may or may not succeed in its defence. A party to the lis may be filing representations or raising demands, but filing of such representations or raising of demands cannot be treated as circumstances to prove their case.

Admission by MW 3

We have been taken through the deposition of Shri S. Nagarajan, MW 3. He was examined as a witness to prove production of the certificates by the respondents. He had verified transfer certificates filed subsequently by the respondents and the same were found to be all genuine. He did not make any admission as regards the continuous working of the respondents for a period of more than 240 days nor is there even a suggestion to that effect on behalf of the respondents herein.

The Tribunal's findings are, thus, based on no evidence and must be held to be irrational.

Judicial review

The findings of the learned Tribunal, as noticed hereinbefore, are wholly perverse. It apparently posed unto itself wrong questions. It placed onus of proof wrongly upon the appellant. Its decision is based upon irrelevant factors not germane for the purpose of arriving at a correct finding of fact. It has also failed to take into consideration the relevant factors. A case for judicial review, thus, was made out.

In *Cholun Roadways Ltd.* this Court held: (SCC p. 253, para 34)

"34. ... In the instant case, the Presiding Officer, Industrial Tribunal as also the learned Single Judge and the Division Bench of the High Court misdirected themselves in law insofar as they failed to pose unto themselves correct questions. It is now well settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by

the Industrial Tribunal was apparent insofar as it did not apply the principle of *res ipsa loquitur* which was relevant for the purpose of this case and, thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, that the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which is 'preponderance of probability' and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out."

The appellant in para 13.14 of the writ petition contended:

"13.14. For that the Industrial Tribunal erred in holding that all the ticca mazdoors are workmen as they have completed 240 days of continuous service during the years 1980-82, merely because the petitioner could not produce the attendance registers for the relevant period as the same being old and destroyed after expiry of its stipulated period of preservation of 5 years were not available with the petitioner Bank".

Neither the learned Single Judge nor the Division Bench adverted to the said question at all.

The Division Bench unfortunately proceeded on a presupposition that the Bank intended to reinstate the workmen. The Division Bench without any detailed discussion observed:

"The submission of Mr Kasturi, learned Senior Counsel for the Bank has some force insofar as both the order of the Tribunal and the learned Single Judge proceeded on the footing that the termination was contrary to Section 25-F of the Industrial Disputes Act."

Laying emphasis on the alleged right of the respondents to be regularised in their services and denial thereof by the appellant herein, the Division Bench held that discontinuance of the workmen on the ground that they filed forged certificates cast a stigma and, on that ground, it upheld the award of the learned Industrial Tribunal as also the judgment of the learned Single Judge.

The Division Bench, however, relying on or on the basis of the decision of this Court in *Chief G.M., RBI* (2004) 10 SCC 449, directed that the back wages shall be paid only from 23-7-1993.

Effect of the order of reinstatement

The terms and conditions of settlement by and between Reserve Bank of India and Reserve Bank Workers Federation although not produced before us, appear in a judgment of this Court in *M.G. Datania* v. *Reserve Bank of India*, (2004) 10 SCC 451: 2004 SCC (L&S) 774, (at SCC pp. 456-57, para 7) the relevant portion whereof is as under:

"Terms of settlement

(i) The existing arrangement or practice of engaging persons on daily wages purely on temporary and ad hoc basis in Class IV in various cadres shall be discontinued forthwith.

(ii) The leave reserve in the case of mazdoors employed in the Cash Department shall be increased from the existing level of 15% to 25%.

(iii) The leave reserve in other categories in Class IV shall be increased from the existing level of 15% to 20%.

(iv) The additional posts that may be created or may arise as a consequence of paragraphs (ii) and (iii) above, together with existing vacancies, if any, shall be utilised for giving (a) full-time employment to part-time employees to the extent possible, and (b) regular full-time or part-time employment, as the case may be, to the ticcas who have rendered continuous service of three years or more as on 19-11-1992. However, if the number of available vacancies at a particular center is less than the number of such ticcas at that centre to be given regular full-time/part-time appointments, the ticcas in excess of the available vacancies at that center shall have to move at their own cost to another center where vacancies are available after absorbing eligible ticcas at that center on a returnable basis as and when vacancies arise in the parent center. Such repatriation being in the nature of request transfer, shall be at their own cost and also subject to usual terms and conditions prescribed in respect of request transfers. Such of the ticcas who are not willing to the above arrangements shall have no claim to be absorbed in the Bank.

(v) The Federation shall not under any circumstances insist on engagement of ticcas on daily-wage basis for carrying out the Bank's work smoothly and without any hindrance or disturbance in any section/department including the Cash Department of the Bank irrespective of number of employees absent for any reason whatsoever. In other words, notwithstanding any absenteeism in Class IV cadre (any group), the work of the Bank shall be carried on by and with the assistance of the employees present on any given day. If, however, there is an increase in the Bank's normal work on a long-term basis it would review the overall strength in Class IV cadre at the center concerned in the normal course."

One of the terms, therefore, postulates that regular full-time or part-time ticcas whether in regular full-time or part-time employment who have rendered continuous service of three years or more as on 19-11-1992 were entitled to be considered for absorption in the additional posts that were required to be created by reason of such settlement. Such settlement had been arrived having regard to the fact that the same ticca mazdoors had been working for a long time.

Absorption of the ticca mazdoors in the service of the appellant was not automatic. The workmen concerned were required to fulfill the conditions laid down therefor.

Would, by reason of the order of reinstatement, the status of the responded change, is the question.

In law, 240 days of continuous service by itself does not give rise to claim of permanence. Section 25-F provides for grant of compensation if a workman is sought to be retrenched in violation of the conditions referred to therein (See *Maharashtra State Coop. Cotton Growers' Marketing Federation Ltd.* 1994 Supp. (3) SCC 385 See also *Madhyamik Shiksha Parishad, U.P.* v. *Anil Kumar Mishra*: AIR 1994 SC 1638: (2005) 5 SCC 122.)

In *A. Umarani* v. *Registrar, Coop. Societies,* (2004) 7 SCC 112 : 2004 SCC (L&S) 918 this Court held: (SCC p. 125, para 39)

"39. Regularisation, in our considered opinion, is not and cannot be the mode of recruitment by any 'State' within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act or the Rules framed thereunder. It is also now well settled that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualifications and other essential qualifications would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation. (See *State of H.P.* v. *Suresh Kumar Verma* (1996) 7 SCC 562 : 1996 SCC (L&S) 645 : (1996) 33 ATC 336.)"

Yet again, in *Executive Engineer, ZP Engg. Divn.* v. *Digunbara Rao* (2004) 8 SCC 262: 2004 SCC (L&S) 1097, this Court held: (SCC p. 269, para 20)

"20. It may not be out of place to mention that completion of 240 days of continuous service in a year may not by itself be a ground for directing an order of regularisation. It is also not the case of the respondents that they were appointed in accordance with the extant rules. No direction for regularisation of their services, therefore, could be issued."

Furthermore, a direction for reinstatement for non-compliance with the provisions of Section 25-F of the Industrial Disputes Act would restore to the workman the same status, which he held when terminated. The respondents would, thus, continue to be ticca mazdoors, meaning thereby their names would continue in the second list. They had worked only from April 1980 to December 1982. They did not have any right to get work. The direction of continuity of service *per se* would not bring them within the purview of the terms of settlement. Even in the case of a statutory corporation in *S.G. Kotturappa* this Court observed: (SCC pp. 417-18, para 18)

"18. It is not a case where the respondent has completed 240 days of service during the period of 12 months preceding such termination as contemplated under Section 25-F read with Section 25-B of the Industrial Disputes Act, 1947. The *Badli* workers, thus, did not acquire any legal right to continue in service, They were not even entitled to the protection under the Industrial Disputes Act nor were the mandatory requirements of Section 25-F of the Industrial Disputes Act required to

be complied with before terminating his services, unless they complete 240 days' service within a period of twelve months preceding the date of termination."

In *Haryana State Coop. Land Development Bank* v. *Neelam* (2005) 5 SCC 91 : JT (2005) 2 SC 600, this Court observed: (SCC pp. 98-99, para 18)

"18. It is trite that the courts and tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct a workman would automatically be entitled to relief. The procedural laws like estoppels, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of acceptance sub silentio."

Other contentions

We have noticed hereinbefore that the appellant herein raised a specific plea denying or disputing the claim of the respondents that they had completed 240 days of work. Such a plea having been raised both before the Industrial Tribunal as also before the High Court, we cannot accept that the appellant had abandoned such a plea. Even in this special leave petition, it is contended:

"(3) For that the High Court ought to have held that the disengagement of the ticca mazdoors (respondents), who were daily-wage casual workers, did not involve any retrenchment and as such there was no question of reinstatement of the respondents with full back wages from 23-7-1993."

The contention of Mr Phadke that they have abandoned the said plea cannot be accepted. Similarly, the contention of Mr. Phadke raised before as that the order passed by the Division Bench was a consent order is unacceptable. The Division Bench does not say so. The impugned order of the Division Bench, in our opinion, by no stretch of imagination, can be said to have been passed with consent of the parties. However, we agree with the opinion of the Tribunal that the plea of abandonment of service by the respondents in the facts and circumstances of the case was wholly misconceived.

Conclusion

For the reasons aforementioned, the impugned judgments cannot be sustained which are accordingly set aside. The appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

ADMINISTRATOR, KAMLA NEHRU MEMORIAL v. VINOD KUMAR
2005(10) SCALE 97

[Kamla Nehru Hospital (appellant) terminated the services of Vinod Kumar (respondent) who was employed as a clerk. Thereupon the respondent raised an

industrial dispute which was referred by the Government of Uttar Pradesh to the Labour Court, Allahabad. Before the labour court it was contended by the respondent that he had worked as clerk from 16.9. 1980 to 21.10. 1982 with some breaks and thereby completed 240 days of continuous service in one calendar year. Accordingly he was entitled to the protection of section 6(N) of the U.P Act. The labour court rejected the contention and held that the respondent had not established his claim, as he was appointed for a limited period and after the expiry of that period he was removed from job. On the basis of subsequent applications appointments used to be given and he used to get engagement accordingly. He remained in continuous service only for 5 months. Therefore, through he may have worked for 240 days or more during the period of his service he had not remained in continuous service for one year. The labour court found that he was engaged for a special work. Aggrieved by this order a writ petition was filed by the respondent. The high court (without indicating as to which provision it was referring to) held that the amendment brought in the Industrial Disputes Act, 1947 is prospective and not retrospective. The court also held that the findings of the labour court that the respondent had not completed 240 days's continuous service in one calendar year suffers from manifest error of law and therefore, was liable to be set aside. Against this order the appellant field an appeal before the Supreme Court Excerpts from the judgment of the court delivered by Arijit Pasayat J. follow:]

In support of the appeal, learned counsel for the appellant submitted that though some changes were introduced in the Act, so far as Section 6(N) of the U.P. Act is concerned the same was not amended and continued as before. The definition of "continuous service" is given in Section 2(g) of the U.P. Act and the same was clearly not applicable in case of the respondent. It was further submitted that the view expressed by respondent under Section 17-B of the Act is contrary to facts.

Learned counsel for the respondent on the other hand submitted that reference was made though it was not specifically mentioned by the High Court. Section 2 (oo) (bb) of the Act which was amended and the same was prospective and , therefore, the High Court's view is correct.

In order to appreciate rival submission reference to Section 2(g) of the U.P. Act and Section 25-B of the Act is necessary. The definitions read as follows:

U.P. Act

"Section 2(g): "Continuous Service' means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock out or a cessation of work which is not due to any fault on the part of the workman, and a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry".

Industrial Disputes Act
Section 25-B: DEFINITION OF CONTINUOUS SERVICE.

For the purposes of this Chapter,

1. a workman shall be said to be in continuous service for a period if he is , for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

2. where a workman is not in continuous service within the meaning of clause (1) for a period of one year of six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less then-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation: For the purpose of clause

2. the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid-off under and agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks."

In view of the clear definition of the continuous service in Section 2(g) which means uninterrupted service of not less than 240 days in one completed year, the respondent was clearly not entitled to any relief. The interruptions which are excluded while computing which are excluded while computing the uninterrupted service are

set out in the Section itself. They are on account of sickness or authorised leave or an accident or a strike which is not illegal or lock out or a cessation of work which is not due to any fault on the part of the workman. Further Section 2(g) provides that worker who during the period of twelve calendar months has actually worked in an industry for not less than 240 days shall be deemed to have completed one year of continuous service in the industry. As a matter of fact the Labour Court has found that the respondent had worked for 5 months which is clearly impermissible. Definition of "Continuous Service" given in Section 25-B of the Act is different from the definition of the said expression given in Section 2(g) of the U.P. Act. By 36 of 1964, with effect from 19.12. 1964, the definition in Section 25-B was substituted. Prior to that the definition of "Continuous Service" was same in the Act was omitted with effect from 19.12.1964 and changes were introduced in Section 25-B of the Act. But Section 2(g) of the U.P. Act remain unaltered. As per the pre-amended position it was necessary for the workman to continue in service in the 12 calendar months period to have actually worked for at least 240 days. After the amendment the position is different. But the earlier position remains the same so far as the U.P. Act is concerned. That being the case the High Court's Judgment is clearly unsustainable and is accordingly set aside.

KARNATAKA STATE ROAD TRANSPORT CORPORATION v. S.G. KOTTURAPPA AND ANOTHER
(2005) 3 SCC 409

[The respondents were appointed as badli conductor by the Karnataka State Road Transport Corporation. It was alleged that they committed misconduct on several occasions and minor punishment were imposed upon them after holding domestic enquiries. The corporation having not found their services to be satisfactory discontinued their services, and removed their names from the select list/wait list and forfeited their chance for further appointment. Aggrieved by this order the respondents raised an industrial dispute. The appropriate government referred the dispute to the labour court for adjudication. The labour court relying upon the decision of the Supreme Court in *Govindaraju* v. *Karnataka* (1986) 3 SCC 273 held that it was imperative on the part of corporation to afford an opportunity of hearing to the respondents. It accordingly held that the order of termination of respondents was bad in law because the principles of natural justice have not been followed. It accordingly directed reinstatement with full back wages. Against this order the corporation filed a writ petition before the Karnataka High Court. The high court dismissed the petition. Thereupon the corporation filed an appeal by special leave before the Supreme Court. Excerpts from the judgment of the court delivered by S.B.Sinha J. follow:]

The mode of appointment, ... postulates appointment in three tiers. The status of a temporary employee is higher than a Badli worker. The names of Badli workers

are not to be included in the select list but in the wait list. A select list of selected candidates prepared by the selection authority is required to be equal to the number of existing vacancies plus vacancies that may arise over a period of one year from the date of publication as may be assessed by the selection authority and only in exceptional cases, the validity thereof can be extended for a period not exceeding six months. The select list or the wait list, as the case may be, therefore, does not have an indefinite life. A bare perusal of the memo dated 13-5-1982 in terms whereof the respondent was appointed clearly states that he was appointed in the Corporation and did not have any right merely because his services were so utilized on day-to-day basis. The services of a Badli worker may be discontinued, if for any reason he is not found suitable for the job for which his services were utilized as Badli. A Badli worker is eligible for payment of wages only for the number of days his services are utilised.

It is not a case where the respondent has completed 240 days of service during the period of 2 months preceding such termination as contemplated under Section 25-F read with Section 25-B of the Industrial Disputes Act, 1947. The Badli workers, thus, did not acquire any legal right to continue in service. They were not even entitled to the protection under the Industrial Disputes Act nor were the mandatory requirements of Section 25-F of the Industrial Disputes Act required to be complied with before terminating his services, unless they complete 240 days' service within a period of twelve months preceding the date of termination.

The terms and conditions of employment of a Badli worker may have a statutory flavour but the same would not mean that it is not otherwise contractual. So long as a worker remains a Badli worker, he does not enjoy a status. His services are not protected by reason of any provisions of the statute. He does not hold a civil post. A dispute as regards purported wrongful termination of services can be raised only if such termination takes place in violation of the mandatory provisions of the statute governing the services. Services of a temporary employee or a Badli worker can be terminated upon compliance with the contractual or statutory requirements.

Natural justice: In *Govindaraju* the workman concerned had worked for more than 240 days and his retrenchment came within the purview of Section 2(oo)(bb) of the Industrial Disputes Act. Despite the fact that provisions contained in Section 25-F of the Industrial Disputes Act had not been complied with, this Court held that as in terms of sub-regulation (5) of Regulation 10 his name should have been removed from the select list, serious consequences entail as he forfeited his right to employment in future and, thus, the principles of natural justice were required to be complied with though no elaborate enquiry would be necessary, holding: (SCC pp. 276-77, para 7)

"Giving an opportunity of explanation would meet the bare minimal requirement of natural justice. Before the services of an employee are terminated, resulting in forfeiture of his right to be considered for employment, opportunity of explanation must be afforded to the employee concerned. The appellant was not afforded any

opportunity of explanation before the issue of the impugned order; consequently the order is rendered null and void being inconsistent with the principles of natural justice."

Govindaraju has been distinguished by this Court in *J. Shashidhara Prasad (Dr.)* v. *Governor of Karnataka* (1999) 1 SCC 422. The observation as regard the right of a person to remain in the select list was doubted in view of the subsequent decisions on the point. This Court categorically held that a person does not have a right to appointment only because his name had appeared in the select list. In a case of Badli worker, his name appears not in the select list but in the wait list. Even in a case where the order of termination is found to be bad in law, his name can only be considered to continue in the wait list and, thus, he could not have been automatically absorbed in the service.

In that case it was held that the provisions of Section 25-F were not complied with. As the statutory requirements of payment of compensation were conditions precedent for retrenchment of the workman, it was invalid and operative, and, thus, it was not necessary for this Court to determine the larger question....

In any event, in the instant cases, it has not been found that the respondent was entitled, before his services were terminated, to receive compensation in terms of the provisions of Section 25-F of the Industrial Disputes Act. It was not a case where the services of the respondent could have been terminated only in compliance with the provisions of Section 25-F and on the appellant's failure to do so he had derived a right to continue in service. Furthermore, in *Govindaraju* there was no case of proved misconduct made out against the workman unlike the present case. In this case, the appellant's contention that before imposing the punishments upon the respondent, opportunities of hearing had been granted to the workman concerned is not denied or disputed. Imposition of such punishment upon the workmen had not been questioned by them. They accepted the same and thus, the same attained finality. The history sheets of the respondents clearly show that opportunities after opportunities had been given to them to improve themselves but they did not avail the same. It was in that situation if the services of the respondents were found not satisfactory and they were discontinued in service, no fault can be found with the action of the appellant herein. There is another aspect of the matter, which cannot be lost sight of. The High Court of Karnataka had declared the last sentence of sub-regulation (5) of Regulation 10 as invalid. In view of such declaration, the respondent did not forfeit his right for being considered for appointment from the select list subject, of course, to fulfillment of other conditions, if any. The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the

subjective satisfaction. If the criteria required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments upon the respondents on each occasion and, thus, the respondents, therefore, could not have improved their stand even if a further opportunity was given. (See *Escorts Farms Ltd.* v. *Commr. Kumaon Division*, (2004) 4 SCC 281, *Bar Council of India* v. *High Court of Kerala*, (2004) 6 SCC 311, *A. Umarani* v. *Registrar, Coop. Societies and Divisional Manager*, (2004) 7 SCC 112, *Plantation Division* v. *Munnu Barrick*, (2005) 2 SCC 237).

Status of Badli workers

We have noticed hereinbefore the relevant provisions of the Regulations. The status of a Badli cannot be better than a probationer. If the services of the probationer can be terminated for not being able to complete the period of probation satisfactorily, there is no reason as to why the same standard cannot be held to be applicable in the case of Badli worker.

What would be the legal requirements for discharging a probationer on the ground of his unsatisfactory performance has recently been considered by us in *Municipal Committee. Sirsa* v. *Munshi Ram* (2005) 2 SCC 328 wherein it was held: (SCC p. 387, para 16)

16. From the above, it is clear assuming that there was some sort of misconduct, as noticed in the evidence of the witnesses of the management in the cross-examination, the same could not be used as evidence by the Labour Court or by the appellate court for coming to the conclusion that an order of termination which is otherwise simpliciter in nature is motivated by any consideration other than the decision of the management as to the satisfactory 'nature of the workman concerned.

It was further observed: (SCC p. 387, para 17)

"Assuming that there was an incident of misconduct or incompetency prior to his discharge from service, the same cannot ipso facto be termed as misconduct requiring an inquiry. It may be a ground for the employer's assessment of the workman's efficiency and efficacy to him in service, unless, of course, the workman is able to satisfy that the management for reasons other than efficiency wanted to remove him from services by exercising its power of discharge."

The appellant watched the conduct of the respondents for a year and only on completion of the period during which the select list remained valid terminated their services as having been found not satisfactory.

In *Registrar, High Court of Gujarat* v. *C.G. Sharma* (2005) 1 SCC 132 this Court observed: (SCC p. 146, para 43)

'The order of termination is termination simpliciter and not punitive in nature and, therefore, no opportunity needs to be given to the respondent herein. Since the overall performance of the respondent was found to be unsatisfactory by the High Court during the period of probation, it was decided by the High Court that

the services of the respondent during the period of probation of the respondent be terminated because of his unsuitability for the post. In this view of the matter, order of termination simpliciter cannot be said to be violative of Articles 14, 16 and 311 of the Constitution. The law on the point is crystallized that the probationer remains a probationer unless he has been confirmed on the basis of the work evaluation. Unless the relevant rules under which the respondent was appointed as a Civil Judge, there is no provision for automatic or deemed confirmation and/or deemed appointment on regular establishment or post, and in that view of the matter, the contentions of the respondent that the respondent's services were deemed to have been continued on the expiry of the probation period, are misconceived."

Conclusion: For the reasons aforementioned, the impugned judgments cannot be sustained which are set aside accordingly. The appeals are allowed.

Questions

1. Who is a badli worker?
2. Is the status of "badli" worker better than that of "probationer"?
3. Can the employer terminate the services of "badli" worker after having found his work to be unsatisfactory?

R.M. YELLATTI v. THE ASST. EXECUTIVE ENGINEER
JT 2005 (9) SC 340

[The management terminated the services of the appellant who was appointed as daily wage earner by the Assistant Executive Engineer, Irrigation Department from 26.11.1988 to 20.6.1994. He challenged the order of termination which he alleged was wrongly made without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947 as he had continuously worked for more than 240 days. The appropriate government referred the dispute to the labour court. The labour court held that the appellant who was appointed as daily wage-earner had worked with SD-1 at Athani continuously for more than 240 days prior to the date of termination. It also held that the then Assistant Executive Engineer had issued a certificate to the effect that the appellant had worked from 24.11.1988 to 20.6.1994. Accordingly the labour court directed the management to reinstate the appellant into service as a daily wager with 50% back wages from the date of the award till the date of reinstatement.

Aggrieved by the said award the management filed a writ petition, which was dismissed *in limine*. Aggrieved by the decision management filed a writ appeal. The division bench held that the certificate produced by the appellant (exhibit W1) nowhere stated that the appellant was in continuous service for 240 days; that there was no evidence on record to show that the certificate was in fact issued by

the Asstt. Executive Engineer and that the records produced by the department showed that exhibit W1 was a fabricated document. The division bench further observed that the appellant herein had failed to produce the letter of appointment, letter of termination or receipts indicating payment of monthly salary. The division bench therefore, set aside the order of the learned single judge. Against this order the daily wage earner filed an appeal before the Supreme Court. Excerpts from the judgment of the court delivered by Kapadia J. follow:]

Now coming to the question of burden of proof as to the completion of 240 days of continuous service in a year, the law is well settled.

[The Court then referred to the decisions given in *Manager, Reserve Bank of India, Bangalore* v. *S. Mani* [JT 2005 (3) SC 248] *Municipal Corporation, Faridabad* v. *Siri Niwas* [JT 2004 (7) SC 333], *Rajasthan State Ganganagar S. Mills Ltd.* v. *State of Rajasthan and Others*, [(2004) 8 SCC 161] *M.P. Electricity Board* v. *Hariram*, [JT 2004 (8) SC 98] and *Range Forest Officer* v. *S.T. Hadimani* [JT 2002 (2) SC 238].

Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls *per se* without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case.

Now applying the above decision to the facts of the present case, we find that the workman herein had stepped in the witness box. He had called upon the management to produce the nominal muster rolls for the period commencing from 22.11.1988 to 20.6.1988 to 20.6.1994. This period is the period borne out by the

certificate (exhibit W1) issued by the former Asstt. Executive Engineer. There is no explanation from the side of the management as to why for the remaining period the nominal muster rolls were not produced. The labour court has rightly held that there is nothing to disbelieve the certificate (exhibit W1). The High Court in its impugned judgment has not given reasons for discarding the said certificate. In the circumstances, we are of the view that the division bench of the High Court ought not to have interfered with the concurrent findings of fact recorded by the labour court and confirmed by the learned single judge vide order dated 7.6.2000 in writ petition no. 17636 of 2000. This is not, therefore, a case where the allegations of the workman are founded merely on a affidavit. He has produced cogent evidence in support of his case. The workman was working in SD-1, Athani and exhibit W1 was issued by the former Asstt. Executive Engineer, Hipparagi Dam Construction Division No. 1, Athani-591304. In the present case, the defence of the management was that although exhibit W1 refers to the period 22.11.1988 to 20.6.1994, the workman had not worked as a daily wager on all days during that period. If so, the management was duty bound to produce before the labour court the nominal muster rolls for the relevant period, particularly when it was summoned to do so. We are not placing this judgment on the shifting of the burden. We are not placing this case on drawing of adverse inference. In the present case, we are of the view that the workman had stepped in the witness box and his case that he has worked for 240 days in a given year was supported by the certificate (exhibit W1). In the circumstances, the division bench of the High Court had erred in interfering with the concurrent findings of fact.

Before concluding, we would like to make an observation with regard to cases concerning retrenchment/termination of services of daily waged earners, particularly those who are appointed to work in Government departments. Daily wage earners are not regular employees. They are not given letters of termination. They are not given any written document which they could produce as proof of receipt of wages. Their muster rolls are maintained in loose sheets. Even in cases, where registers are maintained by the Government departments, the officers/clerks making entries do not put their signatures. Even where signatures of clerks appear, the entries are not countersigned or certified by the appointing authorities. In such cases, we are of the view that the State Governments should take steps to maintain proper records of the services rendered by the daily wagers; that these records should be signed by the competent designated officers and that at the time of termination, the concerned designated officers should give certificates of the number of days for which the labourer/daily wager has worked. This system will obviate litigations and pecuniary liability for the Government.

Accordingly, we find merit in this appeal. We set aside the impugned judgment of the division bench dated 3.9.2000 and we restore the award of the labour court dated 27.10.1999 in I.D. Reference No. 59/97. The name of the appellant will be restored as a daily wager in the nominal muster roll.

Accordingly, the appeal is allowed with no order as to costs.

Questions

1. Is a daily wage-earner a regular employee?
2. Is the Indian Evidence Act applicable in case of proceedings under section 10?
3. What steps should be taken by the government to obviate litigations and pecuniary liability for the government?

THE WORKMEN OF BHURKUNDA COLLIERY OF M/S CENTRAL COALFIELDS LTD. v. THE MANAGEMENT OF BHURKUNDA COLLIERY OF M/S CENTRAL COALFIELDS LTD.

Supreme Court, 2006 LLR 265

[A number of workmen were in the employment of Bhurkunda Colliery in various capacities before it was taken over by the Central Coalfields Ltd. ('CCL'). After it was taken over by the 'CCL', the concerned workmen were employed as *Mazdoors* in certain engineering projects and were known as civil engineering workers. The concerned workmen claimed that they should be put on regular basis as casual labour and in course of time they should be regularized. The management of 'CCL' also issued a direction that such workmen who have completed 240 days of attendance should be regularized. In view of this a large number of workers employed in Giddi-A Colliery of 'CCL' were regularized on the basis of certain directions of the Headquarter of 'CCL'. Even in case of Bhurkunda Colliery, 39 workers of the said type were also regularized. The labour union took up the matter of the concerned 125 civil engineering workers on the ground that the services of these workers should be regularized. The union raised a demand but instead of regularizing their services the management retrenched the concerned workmen. This gave rise to an industrial dispute. On persuasion of the union, the government referred the dispute to the tribunal for adjudication. In the meantime 21 workmen left the services and consequently the number was reduced from 125 to 104.

The Central Government Industrial Tribunal, Dhanbad held that the casual workmen of Bhurkunda Colliery also deserve the same benefit which was given to the workmen of Giddi-A Colliery and as such their services also deserve to be regularized. According to the tribunal, on scrutiny, out of 104 casual workmen, only 74 of them in Repairs and Maintenance (Civil) section of Bhurkunda Colliery of M/s 'CCL' could justify their claim. Accordingly, the management was directed to enlist those 74 workers as casual workmen and be provided with different jobs in Category-I and they may be regularized after they have fulfilled the condition of attendance in a year. The award of the tribunal was challenged by the management, labour union and Koyla Mazdoor Sabha (on behalf of 51 persons, who were not granted any relief in the award) in writ petitions before the high court. All the three writ petitions were heard together by the single judge. The single judge, did not

interfere with the award of the tribunal. On appeal the division bench of the Jharkhand High Court upheld the judgment of the single judge and consequently as directed by the tribunal, cases of 74 workmen were required to be considered for regularization of their services after they have fulfilled the condition of attendance in a year. Against this order an appeal was filed before the Supreme Court. Excerpts from the judgment of the court delivered by Dalveer Bhandari J. follow:]

We have heard the learned counsel appearing for the workmen and the management at length. We see no reason to interfere with the findings of fact arrived at by the Tribunal and affirmed by the learned Single Judge and the Division Bench of the High Court. The process of regularization which has already been initiated must be completed as expeditiously as possible or in any event, within two months from today.

In pursuance of the order of the High Court, the management has deposited some amount towards the wages with the High Court and the Registrar of the Jharkhand High Court has been disbursing Rs. 500 per month to some of the workmen. Learned counsel appearing for the management has also filed a list of workmen who were being paid wages @ Rs. 500 per month as per the order of the High Court out of the amount deposited in the High Court by the management. The Registrar of the High Court shall continue to pay Rs. 500 to these workmen till their respective claims are verified. We direct the Registrar of the High Court that their claims be verified as expeditiously as possible and in any event within a period of two months, we direct that the amount already paid to the workmen shall not be recovered and the Registrar of the High Court is directed to ensure that the remaining balance amount after verification of the claims be refunded to the management.

To avoid any further litigation, we direct the management to submit a report to this Court regarding regularization of the workmen within three months.

In the facts and circumstances it becomes imperative to issue direction regarding regularization. The main object of enacting Industrial and Labour laws is to ensure peace and harmony between the employers and the employees in the larger interest of the society.

. . .

In the matter of regularization, the main concern of the Court is to see that the rule of law is respected and to ensure that the executive acts give a fair deal to its employees consistent with the requirement of Articles 14 and 16 of the Constitution of India. The State being a model employer should not exploit the employees nor take advantage of helplessness and misery of either the unemployed person or the person concerned, as the case may be.

Where a temporary or ad hoc appointment is continued for long, the Court presumes that there is regular need for his services on a regular post and accordingly considers regularization.

It is also our bounded duty to give expression to the legislative intention for creating a healthy environment leading to proper understanding and cooperation and in true sense a partnership between the employers and the employees in cases of industrial disputes.

The report of the National Commission of Labour published by Ministry of Labour, Employment and Rehabilitation in 1969 has dealt with the aspect of Industrial peace and harmony.

[The court then quoted certain portions of that report.]

. . .

When we modulate our thinking process and attitude according to the underlying philosophy of Industrial and Labour jurisprudence and apply the laws meant for industrial peace and harmony, then the conclusion becomes irresistible that the employees who have been working since 1973-74 required to be regularized as expeditiously as possible.

Both employers and employees have their respective obligations. They must have the appreciation of each other's responsibilities, duties and obligations. The Trade Union and Labour Union should understand and appreciate the fact that Labour force are at the management's disposal. Essentially, Labour is the real basis that underlines the production of goods and services. Through the work the human personality and its sense of responsibility be able to unfold, management should appreciate this and always attribute its success to the trained and effective labour force. It must be understood by all concerns that both the employees and employers are vital for any industry and unless there is proper coordination, a smooth functioning of any industry would be difficult.

On the basis of the aforementioned observations, these appeals are disposed of. In the facts and circumstances of these cases, we direct the parties to bear their respective costs.

Question

When can a workman who has completed 240 days claim regularisation?

II. CLOSURE AND TRANSFER

Prior to Industrial Disputes (Amendment) Act, 1984 the word "closure" was not defined in any enforced legislative enactment. Section 2(cc) of the 1984 Amendment Act defines "closure" to mean :

"the permanent closing down of a place of employment or part thereof."

Section 250 lays down the procedure for closing down an undertaking, namely:

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at -least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner :

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period, of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall subject to the provisions of sub-section (5) be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section(2) or refer the matter to a Tribunal for adjudication : Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

Section 25 R provides penalty therefor :

(1) Any employer who closes down an undertaking, without complying with the provisions of sub-section (1) of section 25-0 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(2) Any employer, who contravenes an order refusing to grant permission to close down an undertaking under sub-section (2) of Section 25-0 or a direction given under Section 25-P, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both and where the contravention is a continuing one, with a further fine which may extend to two thousand rupees for every day during which the contravention continues after the conviction.

HATHISING MANUFACTURING CO. v. UNION OF INDIA
AIR 1960 SC 923

[The three petitioners *viz.*, the owner of the cotton textile mills, Ahmedabad, the owner of a coal mine and the owner of the spinning and weaving factory at Jamnagar had closed down their undertakings on 27 April, 1957, 10 February, 1957 and 25 April, 1957 respectively on account of losses incurred by them. They terminated the services of their workmen after giving them notice of closure. In 1967 section 25 FFF was inserted in the Industrial Disputes Act, 1947, and liability was imposed for payment of compensation by employers who closed their undertaking since November 27, 1956. These employers were accordingly required to pay compensation to their workmen affected by such closure under section 25FFF. The employers in three writ petitions challenged the validity of the section in the Supreme Court under article 32 mainly on three grounds: (i) that it imposed unreasonable restrictions

on the management's right to carry on trade, profession or business and thereby contravened article 19(1) (g), (ii) that it was discriminatory in as much as different employers belonging to the same group placed in similar circumstances were treated differently and thereby contravened article 14 of the Constitution; and (iii) that it penalised acts which when committed were not offences and thereby contravened article 20 of the Constitution. The Supreme Court rejected all these contentions. Excerpts from the judgment of Shah J. follow :]

Re. I: There is between the text of S. 25F and S. 25FFF(1) a significant difference in phraseology. Whereas by S. 25F the constitutional validity whereof does not fall to be determined in these petitions certain conditions precedent to retrenchment of workmen are prescribed. S. 25FFF (1) merely imposes liability to give notice and to pay compensation on closure of an undertaking which results in termination of employment of the workmen. Under S. 25F, no workman employed in an industrial undertaking can be retrenched by the employer until (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period has expired or the workman has been paid salary in lieu of such notice, (b) the workman has been paid retrenchment compensation equivalent to 15 days' average salary for every completed year of service and (c) notice in the prescribed manner is served on the appropriate Government. Section 25FFF (1) however enacts that the workman shall be entitled to notice and compensation in accordance with the provision of S. 25F if the undertaking is closed for any reason, as if the workman has been retrenched. By the plain intendment of S. 25FFF (1), the right to notice and compensation for termination of employment flows from closure, of the undertaking; the clause does not seek to make closure effective upon payment of compensation and upon service of notice or payment of wages in lieu of notice. An employer proposing to close his undertaking may serve notice of termination of employment and if he fails to do so, he becomes liable to pay wages for the period of notice. On closure of an undertaking the workmen are undoubtedly entitled to notice, and compensation in accordance with S. 25F as if they had been retrenched, *i.e.* the workmen are entitled beside compensation to a month's notice or wages in lieu of such notice, but by the use of the words "as if the workman had been retrenched" the legislature has not sought to place closure of an undertaking on the same footing as retrenchment under S. 25F. By S. 25F, a prohibition against retrenchment until the conditions prescribed by that section are fulfilled is imposed; by S. 25FFF (1), termination of employment on closure of the undertaking without payment of compensation and without either serving notice or paying wages in lieu of notice is, not prohibited. Payment of compensation and payment of wages for the period of notice are not therefore conditions precedent to closure.

By Art. 19(1) (g) of the Constitution freedom to carry on any trade or business is guaranteed to every citizen, but this freedom is not absolute. By cl. (6) of Article 19, operation of any existing law or any law which the State may make in so far as such law imposes in the interest of the general public reasonable restrictions on the

exercise of the right is not affected. In the interest of the general public, the law may impose restrictions on the freedom of the citizens to start carry on or close their undertakings. Whether an impugned provision imposing a fetter on the exercise of the fundamental right guaranteed by Article 19 (1) (g) amounts to a reasonable restriction imposed in the interest of the general public must be adjudged not in the background of any theoretical standards or predetermined patterns, but in the light of the nature and incidents of the right, the interest of the general public sought to be secured by imposing the restriction and the reasonableness of the quality and extent of the fetter upon the right.

By Act 40 of 1957, employers who close their undertakings after November 27, 1956, are made liable to pay compensation under S. 25FFF (1) at the prescribed rates, and this liability evidently arises even in respect of undertakings closed before the date of the enactment of the impugned section. A law, which creates a civil liability in respect of a transaction which has taken place before the date on which the Act was enacted does not per se impose an unreasonable restriction. . ..

Loss of service due to closure stands on the same footing as loss of service due to retrenchment, for in both cases, the employee is thrown out of employment suddenly and for no fault of his and the hardships which he has to face are, whether unemployment is the result of retrenchment or closure of business, the same. If the true basis of the impugned provision is the achievement of social justice, it is immaterial to consider the motives of the employer or to decide whether the closure is bona fide or otherwise.

Wages in lieu of notice are normally inadequate compensation for loss of employment in an industrial undertaking. Having regard to the prevailing conditions in the employment market, it would be difficult for the workman thrown out of employment to secure employment similar to the one terminated within one month, and therefore the Parliament has thought it proper to provide for payment of additional compensation besides wages in lieu of notice. The provision for payment of such compensation in addition to wages in lieu of notice cannot therefore be characterised as unreasonable....

Does the impugned provision impose an unreasonable restriction because it imposes liability to pay compensation which is not related to the capacity of the employer ?.... Where the business is continuing its capacity to meet the obligation to pay dearness allowance, gratuity and provident fund etc. may have to be taken into account; the reason being that if the capacity to pay is not taken into account, the business itself may come to an end and the very purpose of industrial adjudication in the matter of fixation of wages, payment of dearness allowance and the schemes of gratuity and provident fund which are intended for the amelioration of the conditions of labour may be frustrated. But where a business is closed, the capacity to pay is not a relevant consideration. Normally, if the business is capable of meeting the obligation to pay the wages of the workmen and to meet the other expenses necessary for its continuance, it would not be closed down. Capacity to

pay has therefore to be taken into account in case of a running business in assessing liability to fix wages or gratuity or dearness allowance. Once the undertaking is closed and liability to pay compensation under the impugned section is not made a condition precedent, the amount which the workmen may be able to recover must depend upon the assets of the employer which may be available to meet the obligation. The workmen would be entitled to recover compensation only if the employer is able to meet the obligation otherwise they would have to rank pro rata with the other ordinary creditors of the employer.

The legislature has imposed restricted liability in cases where closure is due to circumstances beyond the control of the employer. By the proviso to sub-s. I of S. 25FFF, where the undertaking is closed down on account of circumstances beyond the control of the employer, the compensation to be paid to the workman is not to exceed his average pay for three months. If the principal provision is not unconstitutional as imposing an unreasonable restriction, it is not suggested that the proviso is on any independent ground unconstitutional... .

The effect of the impugned section along with the proviso is to classify the undertakings into two classes, *viz.*, (1) those which are closed down on account of unavoidable circumstances beyond the control of the employer and (2) the remaining. When the closure of an undertaking is due to circumstances beyond the control of the employer the maximum limit of compensation is average pay for three months, irrespective of the length of service of the workmen; in the residuary class, the liability is unrestricted. The explanation is in substance a definition clause which sets out what shall not be deemed to be closures on account of circumstances beyond the control of the employer. By this explanation, employers who had to close down their industrial undertakings merely because of financial difficulties including financial losses or accumulation of indisposed of stocks are excluded from the benefit of the proviso to S. 25FFF (1). The proviso restricts the liability of employers who are compelled to close down their undertakings on account of unavoidable circumstances beyond their control, but in the view of the Parliament, in that category are not to be included employers compelled to close down their undertakings merely because of financial difficulties or accumulation of indisposed of stocks. Closure of an undertaking attributable merely to financial difficulties or accumulation of indisposed of stocks, is by the explanation, excluded from the benefit of restricted liabilities; but coupled with other circumstances, financial difficulties or accumulation of indisposed of stocks may justify the view that the closure is due to unavoidable circumstances beyond the control of the employer, and attract the application of the proviso notwithstanding the explanation....

A state of financial difficulties or accumulation of indisposed of stocks may be temporary, it may be brought about by past mismanagement directly attributable to the employer or may even be deliberately brought about. The closure on account of financial difficulties or accumulation of indisposed of stocks is accordingly not necessarily the result of unavoidable circumstances beyond the control of the

employer. That, in certain events, a statute may impose restrictions which will be irksome and may be so regarded by certain citizens as unreasonable is not decisive of the question whether it imposes a reasonable restriction... .

By the explanation, certain persons may, because of persistent losses or accumulation of stocks find themselves unable to carry on the business, and may still not be entitled to the benefit of the proviso, but that will not be a ground for holding that the explanation is unreasonable. The tribunal called upon to decide whether the case of an employer is covered by the proviso will certainly be entitled to look into the causes which led to the financial losses or the accumulation of stocks and ascertain whether the closure was merely on account of financial losses or accumulation of stocks or was on account of circumstances beyond the control of the employer, and in assessing whether the circumstances were beyond the control of the employer, the fact that the employer has suffered financial losses or there is accumulation of stocks is not required by the legislature to be excluded from consideration....

Re. II:

Article 14 of the Constitution is not violated by making by law a distinction between employers who closed their undertakings on or before November 27, (28 ?) 1956, and those who close their undertakings after that date. The State is undoubtedly prohibited from denying to any person equality before the law or the equal protection of the laws, but by enacting a law which applies generally to all persons who come within its ambit as from the date on which it becomes operative, no discrimination is practiced. When Parliament enacts a law imposing a liability as -flowing from certain transactions prospectively, it evidently makes a distinction between those transactions which are covered by the Act and those which are not covered by the Act, because they were completed before the date on which the Act was enacted. This differentiation, however, does not amount to discrimination, which is liable to be struck down under Art. 14. The power of the legislature to impose civil liability in respect of transactions completed even before the date on which the Act is enacted does not appear to be restricted. If, as is conceded—and in our judgment rightly-by a statute imposing civil liability in respect of post enactment transactions, no discrimination is practiced, by a statute which imposes liability in respect of transactions which have -taken place after a date fixed by the statute, but before its enactment, it cannot be said that discrimination is practiced. Article 14 strikes at discrimination in the application of the laws between persons similarly circumstanced; it does not strike at a differentiation, which may result by the enactment of a law between transactions governed thereby and those which are not governed thereby. If the argument that discrimination results when by statute a civil liability is imposed upon transactions which were otherwise subject to such liability be accepted, every law which imposes civil liability will be liable to be struck down under Article 14 even if it comes into operation on the date on which it is passed, because immediately on its coming into operation, discrimination will arise

between transactions which will be covered by the law after its coming into force and transactions before the law came into force which will not naturally be hit by it. If a statute creating a civil liability which is strictly prospective is not hit by Article 14, a law which imposes liability on transactions which have taken place before the date on which it was enacted, cannot also be hit by Article 14. By bringing within its fold transactions before the date of its enactment, in truth, the date of the application of the Act is related back to a period anterior to the date on which the Act was enacted.

Re. III: The section only creates a right in the employees : it does not enjoin the employers to do anything before closure. Section 31(2) of the Act which imposes penal liability for contravention of the provisions of the Act can therefore have no application to failure to make payment of compensation and wages for the period of notice under S. 25FFF(1). The amending Act was, it is true, passed in June 1957, and liability to pay compensation arises in respect of all undertakings closed on or after November 28, 1956. But, if liability to pay compensation is not a condition precedent to closure, by failing to discharge the liability to pay compensation and wages in lieu of notice, the employer does not contravene S. 25FFF(1). A statute may prohibit or command an act and in either case, disobedience thereof will amount to contravention of the statute. If the statute fixes criminal liability for contravention of the prohibition or the command which is made applicable to transactions which have taken place before the date of its enactment the protection of Article 20(1) may be attracted. But S. 25FFF(1) imposes neither a prohibition nor a command. Under S. 25F, there is a distinct prohibition against an employer against retrenching employees without fulfilling certain conditions. Similar prohibitions are found in Ss. 22 and 23 of the Act. If this prohibition is infringed, evidently, criminal liability may arise. But there being no prohibition against closure of business without payment of compensation, S. 31(2) does not apply. By S. 33(c), liability to pay compensation may be enforced by coercive process, but that again does not amount to infringement of Article 20(1) of the Constitution. Undoubtedly, for failure to discharge liability to pay compensation, a person may be imprisoned, under the statute providing for recovery of the amount e.g., the Bombay Land Revenue Code, but failure to discharge a civil liability is not, unless the statute expressly so provides, an offence. The protection of Article 20(1) avails only against punishment for an act which is treated as an offence, which when done was not an offence.

In our view, the impugned S. 25FFF(1) including the proviso and the explanation thereto are not unconstitutional as infringing the freedom guaranteed by Article 19(l)(g) of the Constitution or as infringing Article 14 or 20 of the Constitution.... .

Questions

1. How much diference did the court give to the legislature in reviewing the constitutionality of section 25FFF in the *Hathisingh* case . What substantive

rules of law did the court lay down for determining the constitutionality of that section under article 19(l)(g) and article 14, respectively ? (Specify the precise language in parts of the opinion, respectively, that states the constitutional rules.)

2. What is the rationale for distinguishing between prospective and retroactive operation of a statute on which the court relied as an analogy in *Hathisingh*? Does the same rationale apply in distinguishing the two classes of cases involved in *Hathisingh* (namely, (i) those where the employer closed his business on or before November 27, 1956 and (ii) those where the industry was closed after November 27, 1956 but before the enactment of the statute in 1957).

3. How has the court in *Hathisingh* taken into account the present economic and social conditions of the country ? Has the court made a careful analysis of these conditions ? Is it sufficient to take into account only a very general sense of the social and economic conditions of the country ?

EXCEL WEAR v. UNION OF INDIA
Supreme Court, (1978) 2 LLJ 527

[These were four writ petitions which raised common questions of law. The judgment covered all the four. In the first petition the petitioner, Excel Wear, a partnership firm was involved, in the second, Acme Manufacturing Company Ltd. and in the last two petitions, shareholders of Apar (P) Ltd. were involved. In the first case about 400 workmen were employed. According to the petitioner various kinds of situations such as labour trouble of an unprecedented nature, non-availability of raw materials, running of the factory at a loss, paucity of an adequate number of competent and suitable persons in the family of the partners, and among others, insurmountable difficulty in the replacement of damaged or worn-out machineries occurred from the year 1974 to 1976. Finding it difficult, almost impossible, Excel Wear applied for previous approval of the state government, in accordance with section 25-0 (1). The government, however, refused to accord approval on the ground that the reasons given by the employer for the intended closure were "prejudicial to public interest". The petitioner challenged the validity of this order. In the second case, the petitioner decided to close down the establishment due to huge losses incurred by them on account of low productivity, serious labour unrest and indiscipline resulting in various incidents of assaults and the like. The company accordingly applied to the state government on May 2, 1977 under section 25-0 (1) for approval of the intended closure. The government refused on the ground that approval was prejudicial to public interest. In the last two petitions, the company was compelled to close down the factory. It, thereupon, served a notice on the state government under section 25-0 (1) on september 16, 1976. Again the government, refused permission on the ground that the stated reasons of intended closure were inadequate and insufficient

and were prejudicial to public interest. The companies, therefore, filed petitions before the Supreme Court.

Excerpts from the judgment of the court, delivered by Untwalia J. follow:]

While judging the question as to whether the restrictions imposed by Ss. 25 (0) and 25 (R) are reasonable or not within the meaning of Cl. (6) of Art. 19, we will have to keep in mind the principles enunciated in *Hathising's* case (1960) 3 SCR 528 at page 535 thus :

"Whether an impugned provision imposing a fetter on the exercise of the fundamental right guaranteed by Art. 19 (1) (g) amounts to a reasonable restriction imposed in the interest of the general public must be adjudged not in the background of any theoretical standards or predetermined patterns, but in the light of the nature and incidents of the right the interest of the general public sought to be secured by imposing the restriction and the reasonableness of the quality and extent of the fetter upon the right...."

Let us now analyse the provisions of S. 25 (0). Sub-section (1) requires 90 days notice to the appropriate Government for previous approval of the intended closure.... Under sub-section (2), if in the opinion of the appropriate Government, the reasons for the intended closure are not adequate and sufficient or if the closure is prejudicial to the public interest, permission to close down may be refused.... No reason is to be given in the order granting the permission or refusing it. The appropriate Government is not enjoined to pass the order in terms of sub-section (2) within 90 days of the period of notice. Sub-S. (3) is a special provision in respect of an undertaking where an employer had given a notice under S. 25 FFA (1) before the commencement of Act 32 of 1976. In that event he is required to apply within a certain period for permission to close down an undertaking. Under sub-s. (4) in a case covered by sub-s. (3) it is incumbent upon the Government to communicate the permission or the refusal within a period of two months, otherwise the permission applied for shall be deemed to have been granted. Sub-section (5) brings about the real object of the impugned provisions by stating that the closure of the undertaking shall be deemed to be illegal from the date of the closure if the undertaking has been closed down without applying for permission under sub-s. (1) or sub-s. (3) or where the permission for closure has been refused. In that event the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. It is to be noticed that sub-s. (5) does not say as to whether the closure will be illegal or legal in case a notice under sub-s. (1) has been given by the employer but in absence of any communication from the Government within a period of 90 days granting or refusing permission, the employer closes down the undertaking on the expiry of the said period. Sub-s. (6) postulates that there may be a sudden closure of an undertaking due to some exceptional circumstances as accident in the undertaking or death of the employer or the like. In such a situation the appropriate Government is empowered to direct that the provisions of sub-s. (1) or sub-s. (3) shall not apply in relation

to such undertaking for such period as may be specified in the order. Under sub-s. (7) where an undertaking is approved or permitted to be closed down, then the workman becomes entitled to notice and compensation as specified in S. 25 CN) as if the said workman had been retrenched under that section. In other words requirement of S. 25 ("N) is to be complied with on the grant of the permission to close.

Section 25 (R)... is silent on the question of entailing any penal consequences in case where an employer had applied for permission under sub-s. (1) of S. 25 (0) but the Government had failed to communicate its order to him within a period of 90 days and the undertaking is closed down on the expiry of the said period....

[The Court after rejecting the contention of the employer that right to close down business can be equated or placed at par as high as the right not to start and carry on a business at all and the contention of the unions that a right to close down a business is not an integral part of the right to carry on business but a right appurtenant to the ownership of the property and not a fundamental right at all, held :]

It is wrong to say that an employer has no right to close down a business once he starts it. If he has such a right, as obviously he has, it cannot but be a fundamental right embedded in the right to carry on any business guaranteed under Art. 19(1) (g) of the Constitution. In one sense the right does appertain to property. But such a faint overlapping of the right to property engrafted in Art. 19 (1) (f) or Art. 31 must not be allowed to cast any shade or eclipse on the simple nature of the right as noticed above. We now proceed to examine whether the restrictions imposed under the impugned law are reasonable within the meaning of Art. 19 (6). This is undoubtedly on the footing...that the right to close a business is an integral part of the fundamental right to carry on a business. But as no right is absolute in its scope, so is the nature of this right. It can certainly be restricted, regulated or controlled by law in the interest of the general public....

The reasonableness of the impugned restrictions must be examined both from procedural and substantive aspects of the law.... It is no doubt true that Chapter VB deals with certain comparatively bigger undertakings and of a few types only. But with all this difference it has not made the law reasonable. It may be a reasonable classification for saving the law from violation of Art. 14 but certainly it does not make the restriction reasonable within the meaning of Art. 19 (6).... The properties are the undertaking and the business assets invested therein. The owner cannot be asked to part with them or destroy them by not permitting him to close down the undertaking. In a given case for his mismanagement of the understanding resulting in bad relationship with the labour or incurring recurring losses the undertaking may be taken over by the State. That will be affecting the property right with which we are not concerned in this case. It will also be consistent with the object of making India a Socialist State. But not to permit the employer to close down is essentially an interference with his fundamental right to carry on the business....

[The Court rejected the contention that the fundamental right has been conferred only on the citizens of India and not upon the corporate bodies like a company and held that the partners in the name of the firm and a company along with its shareholders can challenge the validity of the law. The Court further held that S. 25-0 does not obviously fit in with the directive principle contained in cl. (a) of Art. 39 which concerns itself with the policy towards securing "that the citizens men and women equally, have the right to an adequate means of livelihood". The Court observed:].... The impugned law obviously does not fit in with this directive principle. Art. 41 deals with right to work, to education and to public assistance in certain cases. The impugned law is not concerned with this policy. The directive principle which might be brought nearest to the impugned law is to be found in the following words of Art. 43— "The state shall endeavor to secure, by suitable legislation.. .to all workers... work...." Art. 358 says that a law made in contravention of Art. 19 during the operation of Proclamation of Emergency is not to be treated incompetently made by the State.

But as soon as the Proclamation ceases to operate the law so made ceases to have effect to the extent of the incompetence. In other words, the Article clearly postulates that the law which was incompetently made and bad for violation of Art. 19 will not be taken to be so during the period of Emergency. But as soon as the Emergency is lifted the law becomes bad because it was bad when it was enacted, although it could not be taken to be so during the period of Emergency. The amended Art. 31-C says that if the law gave effect to the policy of the State towards securing any of the principles laid in Part-VI it shall not be deemed to be void on the ground of violation of Art. 19. The law, which was enacted in March, 1976 could, by no stretch of imagination, be said to be a law giving effect to the policy of the State towards securing any of the principles laid down in Part IV within the meaning of the amended Art. 31-C which came into force in January, 1977. The Legislature could not have thought of enacting a law within the meaning of amended Art. 31 C at a point of time when the Article stood unamended.... The purport, content and the principles underlying the two Articles are so very different that it is difficult to tag the effect of the two together and make it a continuous effect like a relay-race in a game. In our view the law was bad for violation of Art. 19 (1) (g) when it was enacted, but it was not to be taken to be so during the period of Emergency; its invalidity sprouted out with full vigor on the lifting of the Emergency. The amended Art. 31 C did not save it....

[Petitions allowed.]

GURMAIL SINGH v. STATE OF PUNJAB
(1991) 1 SCC 189

[The appellants were in service as tubewell operators in the Irrigation Branch of the Public Works Department of the Punjab State. The state took a decision to transfer

all the tubewells in this branch to the Punjab State Tubewell Corporation, a company wholly owned and managed by the State of Punjab. Consequently a notification was issued on November 30, 1982 to the effect that "the posts sanctioned for the Tubewell Circle, Irrigation Branch, Punjab, are no longer needed in the public interest". Accordingly an order was issued to abolish all the permanent posts with effect from March 1, 1983 and declaring that all temporary posts be discontinued with effect from the same date. Earlier on August 31, 1982, the petitioners were served with notices in terms of section 25-F of the Industrial Disputes Act terminating their services with effect from November 30, 1982. These notices were, however, set aside by the high court as not being in consonance with clause (c) of section 25F. Another fresh notice issued by the government terminating the services of the petitioners with effect from March 1, 1983 were also set aside by the high court on the ground that they did not conform to the provisions of clause (b) of section 25F. Thereupon the state government served another fresh notices on the petitioners terminating their services in terms of section 25F with effect from August 31, 1983. The appellants again filed a petition in the high court challenging the decision of the state government transferring the tubewells to the corporation and terminating their services. It was contended that : (a) the impugned notices did not fulfill the requirements of clauses (b) and (c) of section 25F; (b) the notification by which the tubewells were transferred was *mala fide*, in as much as the only object of the transfer being to frustrate certain claims of the petitioners which had been judicially recognized; and (c) in case the action of the state is upheld, the respondent corporation should be held to be under an obligation to employ the petitioners with continuity of service on the same terms and conditions which they were enjoying prior to their retrenchment from the service of the state. As regards (a) the high court held that the state had dispatched individual bank drafts in respect of each of the employees before the date of expiry of the notice period and that the dispatch of these drafts to the divisional offices constituted a good and valid tender of the compensation amount to the appellants. It was, therefore sufficient compliance of the provisions of clause (b) of section 25F. As regards compliance of the provisions of clause (c) of section 25F, the high court held that the requisite notice in the prescribed form 'P' was sent to the Secretary to Government, Labour Department and the Employment Exchange concerned by personal delivery duly acknowledged in the peon book of the department. The court added that the requirements of clause (c) of section 25F were only directory and not mandatory. As regards contention (b) the high court held that there was no basis for the allegation of the petitioners that the impugned notification had been issued *mala fide* solely with a view to deprive the appellants of the benefits they had obtained from the courts. The high court pointed out that the appellants had subsequently been given all the benefits, which they had derived as a result of the writ petitions. That apart, it was also found that the corporation had made an order of re-employment to all the appellants effective from the date of expiry of the notice of their retrenchment by the state government. The court added that all this showed, that the sole object of

the issuance of the notification was to get rid of the tubewells which were the cause of a constant and ever-increasing loss to the State exchequer and not any mala fide or extraneous reasons.

On contention (c), the high court observed that "so far as the alternative relief of re-employment with continuity of service and pensionary benefits in terms of the Punjab Civil Service Rules is concerned, the petitioners cannot be granted the same in view of the provisions of section 25FF of the Industrial Disputes Act as introduced on September 4, 1956. Aggrieved by this decision the appellant filed an appeal before the Supreme Court. Excerpts from the judgment of the court delivered by Ranganathan J. follow:]

We entirely agree with the reasoning of the High Court on contentions (a) and (b) earlier set out. We are also of the opinion that no ulterior motives on the part of the government have been established. We agree with the High Court that when individual drafts for the amounts of compensation due to the various tubewell operators were forwarded to the divisional/sub-divisional offices, sufficiently in time there was sufficient compliance with the provisions of clause (b) of section 25-F.

The contention based on clause (c) of section 25-F is equally baseless. It has been verified that notices were sent to the Labour Department as well as to the employment exchange through the open book. There is no reason to doubt the entries in these books. The suggestion is that they should have been sent by the registered post. As rightly pointed out by the High Court, such a requirement can be treated only as directory and not mandatory and it would be erroneous to hold that, unless sent by registered post, the notices cannot be treated as complying with the statute. We, therefore, reject this contention as well.

... The industrial law, however, safeguarded his interests by inserting Section 25-FF and giving him a right to compensation against his former employer on the basis of a notional retrenchment except in cases where the successor, under the contract of transfer itself, adequately safeguarded them by assuring them of continuity of service and of employment terms and conditions. In the result, he can get compensation or continuity but not both. The present case before us raises an allied but sometimes more important issue, as to whether there cannot be situations in which the Court or industrial adjudicator, should, in the interests of justice, fair play and industrial peace, hold the employee entitled to continuity with the successor without being compelled to be satisfied with compensation from the predecessor. The Supreme Court (in *Hariprasad Shivashanker Shukla* v. *A.D. Divelkar*, 1957 SCR 121: AIR 1957 SC 120: (1957) 1 LLJ 243) itself has visualized such a case and made it clear that if a transfer is fictitious or benami, Section 25-FF has no application at all. Of course, in such a case, "there has been no change of ownership or management and despite an apparent transfer, the transferor employer continues to be the real employer and there has to be continuity of service under the same terms and conditions of service as before and there can be no question of compensation".

A second type of cases which comes to mind is one in which there is in form, and perhaps also in law, a succession but the management continues to be in the hands of the same set of persons organized differently such as in *Bombay Garage Ltd.* v. *Industrial Tribunal,* (1953) 1 LLJ 14 (Bom.) and *Artisan Press Ltd.* v. *LAT,* (1954) 2 LLJ 424 (Mad.). In such cases, the transferee and transferor are virtually the same and the overriding principle should be that no one should be able to frustrate the intent and purpose of the law by drawing a corporate veil across the eye of the court (see, Palmer, Company Law, 23rd edn., pages 200-201 paras 8 and 10 and the decision in *Kanpur* v. *Shields* (1976) 1 WLR R 131, cited therein). These exceptions to the above rules, we think, would still be operative. But it is not necessary here to decide whether this principle will help us to identify the corporation with the State Government in the present case for the present purposes, particularly as there is a catena of cases which do not approve of such identification (see *Accountant and Secretarial Services P. Ltd.* v. *Union of India,* (1988) 4 SCC 324 and the cases cited therein). Leaving this out of account then, we may turn to a third category of cases which we think would also fall as an exception to the principle behind Section 25-FF. This is where, as here, the transferor and/or transferee is a State or a State instrumentality, which is required to act fairly and not arbitrarily (see the recent pronouncement in *Mahabir Auto* v. *Indian Oil Corporation,* (1990) 3 SCC 752 and the court has a say as to whether the terms and conditions on which it proposes to handover or takeover an industrial undertaking embody the requisite of "fairness in action" and could be upheld. We think that, certainly, in such circumstances it will be open to this Court to review the arrangement between the State Government and the Corporation and issue appropriate directions. Indeed such directions could be issued even if the elements of the transfer in the present case fall short of a complete succession to the business or undertaking of the State by the Corporation, as the principle sought to be applied is a constitutional principle flowing from the contours of Article 14 of the Constitution which the State and Corporation are obliged to adhere to. We are making this observation because it was attempted to be argued on behalf of the State and the Corporation that only certain assets of the State 'industry', *viz.* the tubewells, were taken over by the latter and nothing more. We do not quite agree with this contention but, in view of the approach we purpose to adopt, this aspect is not very material and need not be further discussed.

Looking at the facts of this case in the above perspective, it appears to us that the State Government has acted arbitrarily towards the appellants. It is true that the State Government was incurring losses and decided to transfer the tubewells to the Corporation. This decision would have been the most unexceptionable, prudent and perhaps the only decision that the government could have taken, if it had decided to completely cut itself off thereafter from any responsibility or liability arising out of the operation of the tubewells. But that the government did not do. As pointed out earlier, the State Government, although transferring the tubewells, undertook to recoup any losses that the Corporation might incur as a result of the transfer. The result, therefore, was that, despite the transfer of tubewells

to the Corporation the government continues to bear the losses arising from this activity. But, while doing so, it, has abridged the rights of the appellants by purporting to transfer only the tubewells and retrenched the appellants from service as a consequence. A grievance has been made that, while several other members of staff belonging to the Irrigation Department such as engineers, clerks, etc. have been sent on deputation to the Corporation, the State has only chosen to retrench the services of as many as 498 tubewell operators. This differential treatment may not amount to discrimination as contended by the appellants because those others belonged to categories of government staff-which could come back to government service in the, event of the Corporation finding their services unnecessary at a future date, for one reason or another as they were persons with general qualifications who could be fitted into the other work of the Irrigation Branch. The tubewell operators, however, could not have been sent on deputation because there was no possibility at all of their being fitted into the Irrigation Branch later, in case the Corporation could find no use for them because, once the tubewells had been transferred for good to the Corporation, the government could find no openings for them in the service. While, therefore, we do not agree with the appellant that the State Government discriminate against the appellants as compared with the other members of the staff by sending them on deputation but not the appellants, we think that this treatment meted out to the other staff; shows that the government did not hesitate to burden the Corporation with the liability of their salary etc. while serving on deputation which would only augment the losses, if any, that the Corporation would incur by operating the tubewells. But when it came to the case of the appellants, the government has considered it fit to retrench their services, simultaneously making some arrangement or issuing some directions enabling the Corporation to absorb them as if they were fresh recruits. The assurance that they would be paid according to their original scales of pay and at their original levels of pay came as a later development only because of the pending litigation. It was very fair on the part of the State Government to decide that as the tubewells would be operated by the Corporation, it would be prudent to run them with the help of the appellants rather than recruit new staff therefor and that the government should bear the burden of any losses which the Corporation might incur as a result of running the tubewells. But having gone thus far, we are unable to see why the government stopped short of giving the appellants the benefit of their past services with the government when thus absorbed by the Corporation. Such a step would have preserved to the appellant their rightful dues and retirement benefits. The conduct of the government in depriving the appellants of substantial benefits which have accrued to them as a result of their long service with the government, although the, tubewells continue to be run at its cost by a Corporation wholly owned by it, is something which is grossly unfair and inequitable. This type of attitude designed to achieve nothing more than to deprive the employees of some benefits which they had earned, can be understood in the case of a private employer but comes ill from a State

Government and smacks of arbitrariness. Acting as a model employer, which the State ought to be, and having regard to the long length of service of most of the appellants, the State, in our opinion, should have agreed to bear the burden of giving the appellants credit for their past service with the government. That would not have affected the Corporation or its, employees in any way-except to a limited extent indicated below-and, at the same time, it would have done justice to the appellant. We think, therefore, that this is something which the State ought to be directed to do.

We would, however, like to clarify that the sole purpose and object of our above direction is that the appellants should be entitled to ...*sic* (count) their past service with the government for the purpose of computation of their salary, length of service and retirement benefits with the Corporation. This, however, should not result in the appellants' claiming any seniority over the staff, which the Corporation has otherwise engaged right from its commencement in 1970. To permit such a claim would result in injustice to those employees whose seniority is based on their terms and conditions of service with the Corporation, which had been entered into long time before the present transfer proposal came to be implemented....

.... The only solution to this difficulty which we can see is for the Corporation not to retrench the services of any of the appellants as far as possible whether due to the closure of some of the tubewells or otherwise. We are informed that a circular was issued by the Corporation on July 13, 1987 and August 19, 1987, directing, *inter alia*, that no fresh appointments of tubewell operators will be made in the Corporation against vacancies caused due to retrenchment, resignation or death of an existing incumbent. Such a direction became necessary because many of the tubewells of the Corporation had been installed in the fifties and they had outlived their optimum lives and it became necessary to cut down on the staff. The continued adoption of this policy for some more time will help the appellants tide over the crisis engaged above. We have already pointed out that most of the appellants, who have now joined the Corporation, have rendered long years of service with the government and will be retiring from service in the next few years. The Corporation can perhaps manage to continue them in service without retrenching any of them on the ground that some of the tubewells have to be closed down or that some of these operators for some other reason have become surplus for its needs. If this could be done, it will be most equitable as it will achieve the following ends:

(1) it will enable the present appellants to continue in service till they retire in normal course;

(2) it will protect the interests of the erstwhile operators of the Corporation who have been serving in the Corporation from the beginning;

(3) it will not cause any financial prejudice to the Corporation because of the assurance already given that any losses incurred by running the tubewells would be borne by the government itself; and

(4) it will ensure that the government acts fairly and equitably fulfilling the legitimate expectations of its employees.

For the reasons discussed above, we declare that the appellants will be entitled to add their service in the government to their length of service in the Corporation for purposes of computation of their salary, length of service and retirement benefits. The Corporation is also directed to ensure, as far as possible, that none of the appellants are retrenched as surplus on account of any closure of tubewells or other like reason until they retire or leave the service of the Corporation voluntarily for any reason.

To sum up, even before the insertion of Section 25-FF in the Act, the employees of a predecessor had no right to claim re-employment by the successor in business save in exceptional circumstances. Even where available, that claim was not a matter of absolute right but one of discretion, to be judicially exercised, having regard to all the circumstances. An industrial tribunal, while investigating such claim, had to carefully consider all the aspects of the matter. It had to examine whether the refusal to give re-employment was capricious and industrially unjustified on the part of successor in business or whether he could show cause for such refusal on reasonable and bona fide grounds such as want of work, inability of the applicant to carry out the available work efficiently, late receipt of the application for re-employment in view of prior commitments or any other commitments or any other cause which in the opinion of the tribunal made it unreasonable to force the successor-in-interest to give re-employment to all or any of the employees of the old concern. This discretion given to industrial courts is no longer generally available because of the insertion of Section 25-FF. But in a case where one or both of the parties is a State instrumentality, having obligations under the Constitution, the court has a right of judicial review over all aspects of transfer of the undertaking. It is open to a court, in such a situation, to give appropriate directions to ensure that no injustice results from the changeover. In the present case, the parties to the transfer are a State on the one hand and a fully owned State Corporation on the other. That is why we have examined that terms and conditions of the transfer and given appropriate directions to meet the needs of the situation. We, therefore, direct the State Government and the Corporation-which is but a wholly owned State instrumentality bound to act at the behest of the State-to carry out our directions above, the Corporation being at liberty to amend its rules and regulations, if necessary, to give effect to the same.

We have been given to understand that none of the appellants has taken the compensation amounts tendered by the State and that the monies are now in deposit with the Corporation. We have already pointed out that the appellants can claim either compensation or continuity of service but not both. We should, therefore, like to make it clear that in case any of the appellants have been paid any compensation, that amount will have to be refunded by them before this order can be given effect to them.

The appeals stand disposed of accordingly.

Questions

1. Do you agree that the dispatch of draft in respect of individual employee from head office to the nearest divisional or sub-divisional office regarding compensation would be sufficient compliance of clause (b) of section 25F?
2. Is compliance of clause (c) of section 25F mandatory or directory?
3. Why did the high court set aside the order of state government for non-compliance of clause (c) of section 25F, when it held it to be directory?
4. Is service of notice through peon book instead of sending the same by registered post sufficient compliance of section 25-F?

S.G. CHEMICALS & DYES TRADING EMPLOYEE 'S UNION v. S.G. CHEMICALS & DYES TRADING LTD.

Supreme Court, 1986 Lab IC 863

[In the instant case, the Company was operating in Bombay through three divisions namely, the Pharmaceuticals Division at Worli, the Laboratory and Dyes Division at Trombay and the marketing and Sales Division at Express Building, Churchgate. The Registered Office of the Company was also situated in the same place as the Marketing Division, namely, in Express Building. The company closed down the division at Church gate. At the relevant time the number of employees in the Worli division was 110, in the Churchgate Division was 90 and in the Trombay Division was 60, aggregating in all to 260. All the purchases of raw materials required for the Trombay factory were made by the Churchgate Division. The Churchgate Division also looked after the marketing and sales of the goods manufactured and processed at the Trombay Factory. The statistical work of the company, namely, productwise sales statistics, industrywise sales statistics, partywise sales statistics, monthly sales performance statistics, sales forecast statistics, collection statistics, sales outstanding statistics and other statistical work. The orders for processing of dyes and instructions in respect thereof were issued from the Churchgate Division to the Trombay factory. The work of making payment of salaries, overtime, conveyance allowances, medical expenses, leave travel allowance, statutory deductions such as for provident fund, income-tax, professional tax, etc., in respect of the workmen working at the Trombay factory was also done in the Churchgate Division and an employee from the Churchgate Division used to go to the Trombay factory on the last day of each month for actually making payment of the salaries etc. The work of purchasing statutory items, printing forms, etc., for the Trombay factory and the Worli Division was also done by the Churchgate Division and the maintenance of the Express Building at Churchgate and of the factory at Trombay was done by

personnel in the Churchgate Division. The services of the workmen working in the Trombay factory were transferable and workmen were in fact transferred from the Trombay factory to the Churchgate Division.

On July 16, 1984 the S.G.Chemicals & Dyes Trading Ltd. (respondent) sent a notice to the Secretary, Government of Maharashtra, Industries and Labour Department, Bombay, under section 25FFA (i) of the Industrial Disputes Act, 1947 to close down "the undertaking/establishment/office of Chemicals & Dyes Division, located at Express Building, ... Bombay . . ., with effect from 17th September 1974". In the said notice the number of workmen on the roll was stated to be ninety, the name of "the Undertaking and the establishment proposed to be closed" was given as "Chemicals & Dyes Division Office of SG Chemicals & Dyes Trading Limited".

It accordingly closed down the said Division at Churchgate with effect from September 17, 1987. The company, however, retained only 6 out of 90 employees to attend the work consequent upon such closure. In the meantime on July 16, 1984 raised a demand not to terminate the services of employees. However the company closed down the said division. Thereafter on October 8, 1984, the union filed a complaint before the industrial court, Maharashtra, Bombay, under section 28 of the Maharashtra Act read with Item 9 of Schedule IV thereto. The union contended that the closure of the Churchgate Division was contrary to the provisions of section 25O of the Industrial Disputes Act and, therefore, the employees continued to be in the service of the company notwithstanding the said notice of closure and were entitled to full wages and all allowances as provided in the settlement dated February 1, 1979, entered into between the company and the union, which were not paid to them and, therefore, the company had committed an unfair labour practice under Item 9 of Schedule IV to the Maharashtra Act. It was also contended by the union that the aggregate number of workmen employed in the three Divisions of the company exceeded one hundred and, therefore under S.25O of the Industrial Disputes Act, the company was bound to apply to the appropriate government for prior permission for such closure at least ninety days before the date on which such closure was to become effective. According to the union, as such prior permission was not applied for and such closure, therefore, amounted to an unfair labour practice. The industrials court rejected the contention of the union that section 25O is applicable. It held that at no time had the number of workmen at the Trombay factory been one hundred or more. It further held that the Churchgate Division could not be held to be "an undertaking of an industrial establishment" within the meaning of Chapter VB of the Industrial Disputes Act. The industrial court also held that the head office of the company located at Churchgate was governed by the Bombay Shops and Establishments Act, 1948 while the establishment at Trombay was a factory as defined in the Factories Act, 1948, and, therefore, these were two separate legal entities governed by the provisions of two independent and separate Acts. The court added that even assuming section 25O was attracted the violation of that section would not constitute an act of unfair labour practices under Item No.

9 of Schedule IV to the Maharashtra Act. Aggrieved by the order of the industrial court the appellant union filed an appeal by special leave before the Supreme Court. Excerpts from of the judgment of the court relating to application of 25O of the Industrial Disputes Act, 1947 delivered by Madon J. follow:]

Section 25-O—applies to the closure of "an undertaking of an industrial establishment and not to the closure of "an industrial establishment". S.25L, however, defines only the expression "industrial establishment" and not the expression "an undertaking of an industrial establishment". It also does not define the term "undertaking". S.25L does not require that "an undertaking of an industrial establishment should also be located in the same premises as the "industrial establishment." The term "undertaking" though it occurs in several sections of the Industrial Disputes Act, as for instance, Ss, 25FF, 25FFA and 25FFF, is not defined anywhere in the Act. Even the new Cl.(ka) which was inserted in S.2 by the Amendment Act, 1982, defines the expression "industrial establishment or undertaking" and not the term "undertaking" simpliciter. It would appear from the opening words of Cl.(ka), namely, "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on," that the term "undertaking" in that definition applies to an industrial undertaking. It would thus appear that the words "undertaking" wherever it occurs in the Industrial Disputes Act, unless a specific meaning is given to that term by that particular provision, is to be understood in its ordinary meaning and sense. The term "undertaking" occurring in S.25FFF fell for interpretation by this Court in *Management of Hindustan Steel Ltd.* v. *The Workmen*, (1973) 3 SCR 303: (AIR 1973 SC 878 (882). In that case, this Court held (at page 310):

"The word undertaking as used in S.25FFF seems to us to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer as was suggested on behalf of the respondent. Even closure or stoppage of a part of the business or activities of the employer would seem in law to be covered by this sub-section. The question has indeed to be decided on the facts of each case."

The above passage was cited with approval and reiterated in *Workmen of the Straw Board Mfg. Co. Ltd.* v. *M/s Straw Board Mfg. Co. Ltd.*, (1974) 3 SCR 703, 719: (AIR 1974 SC 1132 at p.1142).

It is thus clear that the word "undertaking" in the expression "an undertaking of an industrial establishment" in S.25-O means an undertaking in its ordinary meaning and sense as defined by this Court in the case of *Hindustan Steel Limited.* If an undertaking in its ordinary meaning and sense is a part of an industrial establishment so that both taken together constitute one establishment, S.25-O would apply to the closure of the undertaking provided the condition laid down in 5.25 K is fulfilled. The tests to determine what constitutes one establishment were

laid down by this Court in *Associated Cement Company's* case (AIR 1960 SC 56). The relevant passage is as follows:

"What then is 'one establishment' in the ordinary industrial or business sense? The question of unity of oneness presents difficulties when the industrial establishment consists of parts, units, departments, branches etc. If it is strictly unitary in the sense of having one location and one unit only, there is little difficulty in saying that it is one establishment. Where, however, the industrial undertaking has parts, branches, departments, units etc. with different locations, near or distant, the question arises what constitutes 'one establishment'. Several tests were referred to geographical proximity, unity of ownership, management and control, unity of employment and conditions of service, functional integrality, general unity of purpose etc... It is, perhaps, impossible to lay down any one test as an absolute invariable test for all cases. The real purpose of these tests is to find out true relation between the parts, branches, units etc. If in their true relation they constitute one integrated whole, we say that the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute, which gives the right of unemployment compensation and also prescribes disqualification thereof. Thus, in one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test; and in still another case, the important test may be the unity of employment. Indeed, in a large number of cases several tests may fall for consideration at the same time.

These tests have been accepted and applied by this Court in different cases, for instance, in *South India Millowners' Association* v. *Coimbatore District Textile Workers' Union*, AIR 1962 SC 1221, *Western India Match Co. Ltd.* v. *Their Workmen*, (1964) 3 SCR 560: (1963) 2 L LJ 459: and *Workmen of the Straw Board Manufacturing Co. Ltd.* v. *M/s Straw Board Manufacturing Co. Ltd.* (AIR 1974 SC 1132). In *Western India Match Company's* case the Court held on the facts that there was functional integrality and inter-dependence or community of financial control and management of the sales office and the factory in the appellant company and that the two must be considered part of one and the same unit of industrial production. In the *Straw Board Manufacturing Company's* case, AIR 1974 SC 1132 the Court held.

"The most important aspect in this particular case relating to closure, in our opinion, is whether one unit has such componential relation that closing of one must lead to closing of the other or the one cannot reasonably exist without the other. Functional integrality will assume an added significance in a case of closure of a branch or unit."

What now falls to be ascertained is whether the undertaking of the Company, namely, the Churchgate Division, formed part of the industrial establishment of the Company, namely, the Trombay factory, so as to constitute the Trombay factory

and the Churchgate Division one establishment. If they did and the total strength of the workmen employed in the Churchgate Division and at the Trombay factory was one hundred or more, then section 25-O would apply. If they do not then the section which would apply would be section 25FFFA. This question of fact to be ascertained from the evidence led before the Industrial Court. At the relevant time the number of employees in the Worli Division was 110, in the Churchgate Division was 90 and in the Trombay Division was 60, aggregating in all to 260. The Worli Division does not fall for consideration in this Appeal because the evidence in the case is confined to the Trombay factory and the Churchgate Division and does to refer to the Worli Division except in passing. The evidence clearly establishes that the functions of the Churchgate Division and the Trombay factory were neither separate nor independent but were so integrally connected as to constitute the Churchgate Division and the Trombay factory into one establishment. Until 1965 the Company had its various departments, such as pharmaceutical sales, dyes and chemical sales, laboratory (which is now in the Trombay factory), accounts, purchases, personnel and administration and other departments housed in Express Building, Churchgate, while its factory was situated at Tardeo. In 1965 the factory as also the laboratory were shifted to Trombay and in 1971 the Pharmaceutical Sales Division was shifted to Worli. Even after the Company began carrying out its operation at three separate places, namely, at Worli, Churchgate and Trombay, all the purchases of raw materials required for the Trombay factory were made by the Churchgate Division. The Churchgate Division also looked after the marketing and sales of the goods manufactured and processed at the Trombay factory. The statistical work of the Company, namely, product wise, sales statistics, industrywise sales statistics, party wise sales statistics, monthly sales performance statistics, sales forecast statistics, collection forecast statistics, sales outstanding statistics and other statistical work, was also done in the Churchgate Division. The orders for processing of dyes and instructions in respect thereof were issued from the Churchgate Division to the Trombay Factory. The work of making payment of salaries, overtime, conveyance allowances, medical expenses, leave, travel allowance, statutory deductions such as for provident fund, income tax, professional tax etc., in respect of the workmen working at the Trombay factory was also done in the Churchgate Division and an employee from the Churchgate Division used to go to the Trombay factory on the last day of each month for actually making payment of the salaries etc. The work of purchasing statutory items, printing forms, etc., for the Trombay factory and the Worli Division was also done by the Churchgate Division and the maintenance of the Express Building at Churchgate and of the factory at Worli Division was done by personnel in the Churchgate Division. The Churchgate Division also purchases uniforms, raincoats and umbrellas for the workmen working in the Trombay factory in addition to the workmen working in the Express Building. The services of the workmen working in the Trombay factory were transferable and workmen were in fact transferred from the Trombay factory to the Churchgate Division.

...It is thus clear from the evidence on the record that the Trombay factory could never have functioned independently without the Churchgate Division being there. A factory cannot produce or process goods unless raw materials required for that purpose are purchased. Equally, there cannot be a factory manufacturing or processing goods unless the goods so manufactured or processed are marketed and sold. The one without the other is a practical impossibility. Similarly, no factory can run unless salaries and other employment benefits are paid to the workmen nor can a factory function without the necessary accounting and statistical data being prepared. These are integral parts of the manufacturing activities of a factory. All these factors existed in the present case and there can be no doubt that the Trombay factory and the Churchgate Division constituted one establishment. The fact that, accounting to the Company, a major part of the work of the Churchgate Division was that of marketing and selling the products of the Ranoli factory belonging to Ambalal Sarabhai Enterprises Limited is irrelevant. The Trombay factory could not have conveniently existed and functioned without the Churchgate Division and the evidence shows a complete functional integrality between the Trombay factory and the Churchgate Division of the Company. The total number of workmen employed at the relevant time in the Trombay factory and the Churchgate Division was one hundred and fifty and, therefore, if the Company wanted to close down its Churchgate Division, the section of the Industrial Disputes Act which applies was section 25O and not section 25 FFA.

The next contention raised on behalf of the Company was that the Trombay factory was registered under the Factories Act while the Churchgate Division was registered as a commercial establishment under the Bombay Shops and Establishments Act and, therefore, they could not be treated as one. According to the Industrial Court, this fact of registration under two different Acts constituted the Trombay factory and the Churchgate Division into two separate legal entities. It is as difficult to follow this contention of the Company, as it is to understand the conclusion reached by the Industrial Court. Merely because registration is required to be obtained under a particular statute, it does not make the business or undertaking or industry so registered a separate legal entity except where a registration of incorporation is obtained under the Companies Act. The Factories Act and Bombay Shops and Establishments Act are regulatory statues and the registration under both these Acts is compulsory for providing certain benefits to the workmen employed by the factory or the establishment, as the case may be.

In the result, this appeal must succeed and is allowed and the order dated July 26, 1985, passed by the Industrial Court, Maharashtra, Bombay, dismissing the Complaint (ULP) No.1273 of 1984 filed by the Appellant Union against the Respondents is set aside and the said complaint is allowed and it is declared that the closure of the Churchgate Division of S.G.Chemicals and Dyes Trading Limited was illegal and the workmen whose services were terminated on account of such illegal closure continued and are continuing in the employment of the Company on

and from September 18, 1984, and are entitled to receive from the Company their full salary and all other benefits under the settlement dated February 1, 1979, entered into between the Company and the Appellant Union, from September 18, 1984, until today and thereafter regularly until their services are lawfully terminated according to law. If any workmen whose services were purposed to be terminated by the closing down of the Churchgate Division of the Company has received retrenchment compensation from the Company, the amount of back wages will be set off against such retrenchment compensation and if after such setting off any balance of retrenchment compensation still remains, it will be adjusted by deducting twenty per cent from the periodic salary payable to such workmen.

The Respondent Company will pay to the Appellant Union the costs of this Appeal. Appeal allowed.

OSWAL AGRO FURANE LTD. v. WORKERS UNION
(2005) 3 SCC 224

[The appellant set up industrial undertaking as a 100% export-oriented unit for paddy processing, furfural and rice bran extraction. However it was alleged that due to lack of demand in the international market of its product, rice bran oil was sold by it in the local market below the minimum price without obtaining registration-cum-allocation certificate therefor. Thereupon a writ petition was filed before the Delhi High Court for the aforesaid purported statutory violation. The court allowed the petition. Thereafter an appeal was filed before the Supreme Court. The court in its judgment rendered in *Agricultural and Processed Food Products* v. *Oswal Agro Furane* held that the appellant is liable to pay a sum of rupees fifty crores under different heads to the state allegedly, on the ground that such a huge liability had been incurred. Accordingly, a notice was issued to the state government in terms of section 25O of the Act. Notices were also issued to the workmen whereupon a settlement was arrived at in terms of section 12(3) of the Act between the management and workmen ignoring the provisions of section 25N and 25O. The appellant, therefore, did not seek the permission of the appropriate government for effecting the closure of the unit. The respondents questioned the validity of the said settlement by filing a writ petition before the high court. The high court allowed the petition and held that (i) as the management had not applied for prior permission to close down the industrial undertaking as is mandatorily required under section 25O of the Act, the purposed notice dated 29.5.1996 was illegal. (ii) The closure of the industrial undertaking of the appellant being illegal, the workmen were entitled to all the benefits in terms of sub-section (6) of section 25O of the Act. Although the settlement dated 14.6.1996 took place as a result of the proposed closing down of the industry, a valid closure itself being a foundation of such settlement was illegal and void, and, therefore, cannot be sustained in law. (iii) Closure of the industrial undertaking resulting in retrenchment as contained in section 25N of the Act envisages of two

conditions precedent, namely, (1) three months' notice/notice pay in lieu thereof; and (2) prior permission of the appropriate government and both being mandatory in nature; the retrenchment of the workmen was illegal as prior permission therefore had not been sought from the state. (iv) The provisions of sections 25J, 25N and 25F should be read conjointly with section 25N of the Act. (v) Although section 18 of the Act makes a settlement binding on all workmen but such settlement cannot be entered into the contravention of the provisions of chapters VA and VB of the Act. Thereupon the appellant management filed an appeal by special leave before the Supreme Court. Excerpts from the judgment of of the court delivered by S.B. Sinha J. follow:]

(i) Whether in a case of closure of an industrial undertaking, prior permission of the appropriate Government is imperative and (ii) whether a settlement arrived at by and between the employer and the workmen would prevail over the statutory requirements as contained in section 25N and section 25O of the Industrial Disputes Act, 1947...

A bare perusal of the provisions contained in sections 25N and 25O of the Act leaves no manner of doubt that the employer who intends to close down the undertaking and/or effect retrenchment of workmen working in such industrial establishment, is bound to apply for prior permission at least ninety days before the date on which the intended closure is to take place. They constitute conditions precedent for effecting a valid closure, whereas the provisions of Section 25-N of the Act provide for conditions precedent to retrenchment; Section 25-0 speaks of procedure for closing down an undertaking. Obtaining a prior permission from the appropriate Government, thus, must be held to be imperative in character.

A settlement within the meaning of Section 2(p) read with sub-section (3) of Section 18 of the Act undoubtedly binds the workmen but the question which would arise is, would it mean that thereby the provisions contained in Sections 25-N and 25-0 are not required to be complied with? The answer to the said question must be rendered in the negative. A settlement can be arrived at between the employer and workmen in case of an industrial dispute. An industrial dispute may arise as regards the validity of a retrenchment or a closure or otherwise. Such a settlement, however, as regards retrenchment or closure can be arrived at provided such retrenchment or closure has been effected in accordance with law. Requirements of issuance of a notice in terms of Sections 25-N and 25-0, as the case may be, and/or a decision thereupon by the appropriate Government are clearly suggestive of the fact that thereby a public policy has been laid down. The State Government before granting or refusing such permission is not only required to comply with the principles of natural justice by giving an opportunity of hearing both to the employer and the workmen but also is required to assign reasons in support thereof and is also required to pass an order having regard to the several factors laid down therein. One of the factors besides others which is required to be taken into consideration by the appropriate Government before grant or refusal of such permission is the

interest of the workmen. The aforementioned provisions being imperative in character would prevail over the right of the parties to arrive at a settlement. Such a settlement must conform to the statutory conditions laying down a public policy. A contract, which may otherwise be valid, however, must satisfy the tests of public policy not only in terms of the aforementioned provisions but also in terms of Section 23 of the Indian Contract Act.

It is trite that having regard to the maxim "*ex turpi causa non oritur actio*", an agreement which opposes public policy as laid down in terms of Sections 25-N and 25-O of the Act would be void and of no effect. Parliament has acknowledged the governing factors of such public policy. Furthermore, the imperative character of the statutory requirements would also be borne out from the fact that in terms of sub-section (7) of Section 25-N and sub-section (6) of Section 25-O, a legal fiction has been created. The effect of such a legal fiction is now well known. (See *East End Dwellings Co. Ltd.* v. *Finsbury Borough Council,* (1951) 2 All ER 587, *Om Hemrajani* v. *State of U.P.* (2005) 1 SCC 617 and *Maruti Udyog Ltd.* v. *Ram Lal* 2005 (1) SCALE 585).

The consequences flowing from such mandatory requirements as contained in Sections 25-N and 25-O must, therefore, be given full effect. The decision of this Court in *Virudhachalam* relied upon by Mr. Puri does not advance the case of the appellant herein. In that case, this Court was concerned with a settlement arrived at in terms of Section 25-C of the Act. The validity of such a settlement was upheld in view of the first proviso to Section 25-C of the Act. Having regard to the provisions contained in the first proviso appended to Section 25-C of the Act, this Court observed that Section 25-J thereof would not come in the way of giving effect to such settlement. However, if the provisions contained in Sections 25-N and 25-O does not contain any such provision in terms whereof the employer and employees can arrive at a settlement.

In *Engg. Kamgar* v. *Electro Steels Casting Ltd.*, (2004) 6 SCC 36 the question which fell for consideration of this Court was as to whether in relation to an industry which was governed by the State Act, the provisions of Section 25-O would be attracted; This Court held that having regard to the provisions contained in Article 254 of the Constitution, the provisions of the State Act shall prevail over the parliamentary Act as the former received the assent of the President of India stating: (SCC p. 54, para 40)

"40. The contention of Mr. Banerji to the effect that Section 25-J of the Central Act has been incorporated by reference in Section 25-S cannot be accepted. Section 25-S does not introduce a non-obstante clause as regards Chapter V-A. Furthermore, Section 25-J is not a part of Chapter V-B. By reason of Section 25-S, the provisions of Chapter V-A were made applicable only in relation to certain establishments referred to in Chapter V-B. Parliament has deliberately used the words 'so far as may be' which would also indicate that provisions of Chapter V-A were to apply to the industrial establishments mentioned in Chapter V-B. The non-obstante clause

contained in Section 25-J does not apply to the entire Chapter V-B. Applicability of" Chapter V-A in relation to the industrial establishment covered by Chapter V-B in terms of section *vis-à-vis* Section 25S is permissible but the contention cannot be taken any further so as to make Section 25O of the Central Act prevail over the State Act by taking recourse to the non obstante clause. Non obstante clause contained in Section 25-J is, thus, required to be kept confined to Chapter V-A only and in that view of the matter we have no hesitation in holding that Chapter V-B does not have an overriding effect over the State Act."

Indisputably, in this case, the industrial undertaking belonging to the appellant herein attracts the provisions of Chapter V-B of the Act and consequently the provisions referred to in Section 2(s) including Section 25-J shall apply in relation thereto.

The decision of this Court in *Engg. Kamgar Union*, (2004) 6 SCC 36 thus, must be understood to have been rendered in the fact situation obtaining therein.

For the reasons aforementioned, we do not find any merit in this appeal, which is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

Question

Can the employer ignore the provisions of sections 25N and 25O by entering into a settlement with workmen under section 2 (p) read with section 18(3) of the Industrial Disputes Act, 1947? If not state the effect of such a settlement?

VAZIR GLASS WORKS LTD. v. MAHARASHTRA
GENERAL KAMGAR UNION
AIR 1996 SC 1282

[The appellant-company made an application under section 25O of the Industrial Disputes Act, 1947 to the state government seeking permission to close the unit of Andheri, Bombay, alleging that the said unit became a heavily losing business venture for reasons beyond the control of the company. The state government rejected the application. Aggrieved by this order the company filed an application for review of the said order under section 25O(5) of the Act. However, the state government after keeping the review-application pending for more than one year instead of reviewing the order of rejection, referred the case of closure to the industrial tribunal for adjudication under section 25O(5) read with section 10(1) of the Act. Such order was made after giving notice and opportunity of being heard to the respondent-union. Against this order the respondent-union filed a writ petition in the Bombay High Court challenging the legality of the order of reference made by the state government. A single judge of the Bombay High Court rejected the said petition. Thereupon, the respondent-union filed an appeal before the division bench

of the Bombay High Court assailing the judgment of the single judge. The division bench of the court allowed the appeal and set aside the judgment of single judge. The court held that (i) in terms of section 25O(4) the order passed on the application for closure remains operative for one year from the date of such order and after expiry of such period, the power of review of the order automatically comes to an end, (ii) it is wrong to hold that until the review application filed by the company is not finally disposed of, the order passed under section 25O(2) by the state government does not become final, (iii) government is not empowered to pass an order under section 25O(5) at any time during the pendency of review application even if one year had elapsed from the date of order passed under section 25O(2), (iv) the order of reference to the industrial tribunal after expiry of one year from the date of order rejecting the application for permission to close was invalid. Against this order the appellant-company filed an appeal before the Supreme Court. Excerpts from the judgment of the court delivered by G.N. Ray J. follow:]

After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that it is quite evident from the Scheme of various sub-section of section 25-O of the Act that whenever an application for closure of an industrial unit is made by an employer, the State Government before whom such application is made, is required to dispose of such application within sixty days from the date of making the application and communicate its decision within the said period of sixty days so that an employer does not suffer any hardship on account or failure on the part of the State Government to dispose of such application for permission for closure expeditiously. In order to impel the State Government to dispose of such application expeditiously not exceeding sixty days, provision has been made that if the decision of the State Government on the application for permission to close an industrial unit is not communicated within the said period of sixty days, it will be deemed that such permission has been granted. Since the decision on the application for permission for closure is to be taken by the executive authority namely the State Government and since no provision for statutory review before other authority has been made, the Legislature has incorporated the provision of review by the State Government of its decision on the application for closure either on its own motion or on the basis of the application to be made by the aggrieved party..

As the decision made by the State Government on the question of closure of an industrial unit cannot but bring about serious consequence affecting productivity, employment opportunities etc., the decision taken on the application for closure, has been made operative for one year only, so that after such period, if an employer still desires that the industrial unit should be closed, it may make a fresh application for permission to close the said unit. It is quite obvious that in such application not only the factors which were indicated in the previous application in justification of closure of the industrial unit but other factors emerging with the passage of time may be placed before the State Government for taking decision on the application

for permission to close. In order to evade any unmerited hardship meted out to an aggrieved party on account of improper or incorrect decision made by the State Government on the application for permission to close, even during the period of one year when the decision of the State Government remains operative the review application may be made by the party aggrieved. Even apart from such application, the State Government may also initiate *suo moto* proceeding to review its decision. If the State Government passes any order on such review application, such order will supersede the initial order made on the application for permission to close.

Since the decision made on an application for permission for closure is to remain operative only for a year in our view, it will be only proper to hold that an order by way of review either on the aggrieved party's application or on own motion of the State Government, must be made within the said period of one year. Otherwise, the right to make fresh application for permission to close after expiry of one year from the date of rejection of permission for closure will lose its relevance. It also appears to us that anomalous situation may arise if the application for review, when presented within the said time frame of one year is allowed to be decided even after the expiry of the said time frame of one year when, the order passed by the State Government has already ceased to be operative. As an illustration, it may be indicated that a party aggrieved makes an application for review of the order of the State Government within a year during which the order is operative, but for some reason such application is not disposed of within one year. After expiry of one year, the aggrieved party makes a fresh application for permission to close and on such application an order is made by the State Government or the party obtains a deemed order. This order on a fresh application subject to any review of the same will remain in force for one year. If the State Government is permitted to pass order on the review application made against the first order when the right to make fresh application and to obtain an order has already accrued, any order on review to be enforceable must conform to the order passed or deemed to have been passed on subsequent application for permission to close. Any other order is not conceivable because an order by way of review supersedes the order reviewed but not the subsequent order on a fresh application made and such subsequent order being operative for the next one year cannot be by passed by any order of review of the earlier order.

Although it has not been expressly indicated within what period a review application validity made is to be disposed of, but the provision that order on an application for closure would remain in force for one year and in the absence of any *embargo* to make-fresh application for such permission after expiry of one year even if a review application remains pending, makes it abundantly clear that in the scheme of Section 25-O, the review application is to be made before expiry of the said time frame of one year and such application is to be disposed of within such time frame otherwise such review application will become in fructuous. The argument that a party should not be made to suffer simply on account of failure on the part of a statutory authority to dispose of review application within a time frame and

thereby rendering infructuous, is not tenable because after expiry of the said time frame of one year, the party aggrieved has a right to make a fresh application by incorporating all the material factors *germane* for consideration of its application for permission to close including the factors indicated in review application. Neither the general principle of retaining jurisdiction to dispose of review application validly made nor the principle that an authority if clothed with the power of review will not become *functus officio* after expiry of the time frame of one year but it will retain its authority to dispose of the pending review application will arise in the context of the scheme of Section 25-O.

It also appears to us that the reference to the industrial tribunal for adjudication of the application for permission to close an industrial unit is made under Section 25-O(5) of the Act and such reference is not under Section 10 (1) of the Act. Hence, although it was mentioned in the order of the State Government that the reference to Industrial Tribunal for adjudication of the application for permission for closure was made under Section 25 -O(5) read with Section 10(1) of the Act, such reference has in law been made under Section 25-O(5) of the Act without the aid of Section 10 (1) of the Act.

In the aforesaid facts, the impugned decision to the effect that the State Government would cease to have jurisdiction to review its order on the application for closure of an industrial unit after expiry of one year from the date of rejection of the application for permission to close, is correct.

It, however, appears to us that after expiry of one year from the date of rejection of the application for permission for closure, the appellant-company was entitled to make a fresh application. Such application has not been made because a review application validly made within the time frame has not been disposed of by the State Government and the appellant-Company had been labouring under an impression that the State Government could pass a valid order on the pending review application and State Government had in fact passed an order of reference for adjudication to the industrial tribunal. The appellant-Company had occasion to feel assured about the validity of the order of reference in view of dismissal of the Writ Petition by the Single Bench of the High Court since moved by the respondent-Union for challenging the validity of the order of reference.

It also appears that on such reference before the Industrial Tribunal, both the parties appeared and had made submissions and the hearing was concluded before the Industrial Tribunal. In the aforesaid circumstances, this Court during the pendency of special leave petition challenging the order of the Division Bench of the High Court allowing the writ petition and quashing the order of reference, directed the Industrial Tribunal to make the award and send the same in a sealed cover to the Court and such award has been sent in a sealed cover to this Court.

In the special facts and circumstances of the case, it will be only appropriate to treat the application for review which was pending after the expiry of the said time

frame of one year as a fresh application for permission for closure deemed to have been made on March 9, 1994 and to treat the order of reference to Industrial Tribunal by the State Government as an order of reference on such fresh application so that the entire exercise made before the Tribunal by both the parties and the award made by the Tribunal are not rendered abortive. It may be indicated that the time limit provided in Section 25-O(5) will not apply on the peculiar facts of this case as during the pendency of the writ appeal before the High Court, the proceedings were stayed and pending the proceedings before this Court, the court had permitted the proceedings to go on but the award was not to be published and to be kept in sealed cover. Such course of action, in the facts of the case, will be only proper and consistent with the justice to be made in this case, we order accordingly. Let the award be published within one month from the date of receipt of the award on being transmitted to the concerned Industrial Tribunal. It is further directed that date of receipt of the award by the Industrial Tribunal on transmission from this Court will be deemed to be the date of the award. It is clarified that once the award is published, it will be open to the aggrieved party to challenge the same in accordance with law. The appeal is disposed of accordingly without any order as to cost.

CENTRAL BANK OF INDIA v. S. SATYAM
AIR 1996 SC 2526

[Excerpts from the judgment of the regarding the application of Section 25-H of the Industrial Disputes Act, 1947 Supreme Court delivered by J.S. Verma J. follow:]

... [T]he real question for decision is: whether the provision for re-employment of retrenched workmen made in section 25-H should be confined only to the category of retrenched workmen covered by section 25-F by restricting the meaning of 'retrenchment' in section 2(oo) for this purpose? Chapter V-A containing Sections 25-A to 25-J was inserted by Act No. 43 of 1953 with effect from 24-10-1953. This Chapter relates to 'Lay-off and Retrenchment'. Section 25-F prescribes the conditions-precedent to retrenchment of workmen. It applies only to the retrenchment of a workman employed in any industry who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year. Section 25-B defines continuous service for the purposes of this chapter and it says, *inter alia*, that a workman shall be deemed to be in continuous service under an employer for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days. In other words, the expression continuous service for not less than one year in section 25-F has to be so construed by virtue of Section 25-B. The benefit of applicability of Section 25-F can therefore, be claimed by a workman only if he has been in continuous service for not less than one year as defined in Section 25-B. Any other retrenched workman who does not satisfy this

requirement of continuous service for not less than one year cannot avail the benefit of Section 25-F which prescribes the conditions precedent to retrenchment of workman of this category. Section 25-G prescribes the procedure for retrenchment of ordinarily applies the principle of last come first go.

Section 25-H then provides for re-employment of retrenched workmen. It says that when the, employer proposes to take into his employ any persons he shall, in such manner as may be prescribed give an opportunity to the retrenched workmen who are citizen of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons. Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1957 prescribe the mode of re-employment. Rule 77 requires maintenance of seniority list of all workmen in a particular category from which retrenchment is contemplated arranged according to seniority of their service in that category and publication of that list. Rule 78 prescribes the mode of re-employment of retrenched workmen. The requirement in Rule 78 is of notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for re-employment. Shri Pai contends that Rules 77 and 78 are unworkable unless the application of Section 25-H is confined to the category of retrenched workmen to whom Section 25-F applies. We are unable to accept this contention.

Rule 77 requires the employer to maintain a seniority list of workmen in that particular category from which retrenchment is contemplated arranged according to the seniority of their service. The category of workmen to whom Section 25-F applies is distinct from those to whom it is inapplicable. There is no practical difficulty in maintenance of seniority list of workmen with reference to the particular category to which they belong. Rule 77, therefore, does not present any difficulty. Rule 78 speaks of retrenched workmen eligible to be considered for filling the vacancies and here also the distinction based on the category of workmen can be maintained because those falling in the category of Section 25-F are entitled to be placed higher than those who do not fall in that category. It is no doubt true that persons who have been retrenched after a longer period of service which places them higher in the seniority list are entitled to be considered for re-employment earlier than those placed lower because of a lesser period of service. In this manner a workman falling in the lower category because of not being covered by Section 25-F can claim consideration for re-employment only if an eligible workman above him in the seniority list is not available. Application of section 25-H to the other retrenched workmen not covered by Section 25-F does not, in any manner, prejudice those covered by Section 25-F because the question of consideration of any retrenched workman not covered by Section 25-F would arise only, if and when, no retrenched workman covered by Section 25-F is available for re-employment. There is, thus, no reason to curtail the ordinary meaning of 'retrenched workmen' in Section 25-H because of Rules 77 and 78 even assuming the rules framed under the Act could have that effect.

The plain language of section 25-H speaks only of re-employment of 'retrenched workmen'. The ordinary meaning of the expression 'retrenched workmen' must relate to the wide meaning of retrenchment' given in Section 2(oo). Section 25-F also uses the word 'retrenchment' but qualifies it by use of the further words 'workman ... who has been in continuous service for not less than one year.' Thus, section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words 'workman ... who has been in continuous service for not less than one year'. It is clear that section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of' retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchment while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the, principle of 'last come first go' which is not confined only to workmen who have been in continuous service for not less than one year, of ordered by Section 25-F.

The next provision is Section 25-H which is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25-F. It does not require curtailment of the ordinary meaning of the word 'retrenchment' used therein. The provision for re-employment of retrenched workmen merely gives preference to a retrenched workman in the matter re-employment over other persons. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning, which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman.

Chapter V-A providing for retrenchment is not enacted only for the benefit of the workmen whom Section 25-F applies but for all cases of retrenchment and, therefore, there is no reason to restrict application of Section 25-H herein only to one category of retrenched workmen. We are, therefore, unable to accept the contention of Shri Pai that the restricted meaning should be given to the word 'retrenchment' in Section 25-H. This contention is, therefore, rejected.

The other submission of Shri Pai however, merits acceptance. All the retrenched workmen involved in the present case were employed for short periods between 1974 to 1976. It was only in 1982 that a writ petition was filed by them to claim this benefit. The ...sic other persons employed in the industry during the intervening period of several years have not been impleaded. Third party interests have arisen during the interregnum. These third parties are also workmen employed in the industry during the intervening period of several years. Grant of relief to the writ petitioners (respondents herein) may result in displacement of those other workmen

who have not been impleaded in these proceedings, if the respondents have any claim for re-employment. The laches leading to the long delay after which the writ petition was filed in 1982 is sufficient to disentitle them to the grant of any relief in the writ petition. Moreover, there is not even a suggestion made or any material produced to show that on the construction we have made of Section 25-H, the respondents would be entitled to get any relief in the highly belated writ petition after the lapse of several years by way of preference over any person employed during the intervening period. In our opinion, this alone was sufficient for the High Court to decline any relief to them. It was urged by learned counsel for the respondents that only a limited relief has been granted to the respondents, which need not be disturbed. In our opinion, the lapse of a long period of several years prior to the filing of the writ petition is sufficient to decline any relief to the respondents.

We allow the civil appeal for the reason given by us and set aside the High Court judgments resulting in dismissal of the writ petition filed in the High Court by the respondents. Appeal allowed.

Question

Could delay in seeking relief disentitle a workman from receipt of any grant or relief? If so, how much delay would be sufficient to deny any relief?

REGIONAL MANAGER, STATE BANK OF INDIA v.
RAKESH KUMAR TIWARI
Supreme Court, (2006) 1 LLJ 748

[Rakesh Kumar Tiwari (respondent), was employed on daily wages by the State Bank of India. After he worked in that capacity for 87 days, the management terminated his services. The respondent raised a demand before the labour court for recovery of wages for 8 days holidays under section 33C (2) which was paid by the bank as full and final payment. After one year the respondent raised an industrial dispute claiming that his services had wrongfully been terminated. The central government referred the dispute to the industrial tribunal for adjudication. The labour court held that (i) there was a violation of sections 25G and 25H (ii) respondent was not a casual but a temporary workman under Bipartite Settlement (iii) the termination of service of respondent was illegal and inoperative and that he was entitled to be reinstated with full back wages. Against this order the bank filed a writ petition before the high court. The high court upholding the view of the labour court held that the termination of Rakesh Kumar Tiwari amounted to unfair-labour practice and was against section 25H. The appellant challenged the decision of the high court by way of a special leave petition under article 136 of the Constitution. While issuing notice on November 17, 2003, the Supreme Court stayed the operation

of the high court's order. In the meantime and during the pendency of the proceedings before the high court the appellant paid to the respondent a sum of approximately Rs. 3.80 lakhs under section 17B of the Act. Excerpts from the judgment of the court delivered by Ruma Pal J. follow:]

Mr. V.A. Bobde, learned counsel appearing on behalf of the appellant, has contended that there was no unfair labour practice indulged in by the appellant as defined in Section 2(ra) read with the V Schedule Item 10 of the Act. It was also contended that the case for violation under Section 25-G had never been pleaded by the respondent in his statement of claim nor was any such alleged violation referred to the Industrial Tribunal for adjudication. It was submitted that Section 25-G did not in any event apply as the procedure for retrenchment as defined in Section 2(oo) of the Act did not apply to persons on a daily-wage. Reliance has been placed on the decision of *Regional Manager, State Bank of India* v. *Raja Ram*, 2004 (8) SCC 164 : (2003) 1 LLJ 12 and *Himanshu Kumar Vidyarthi and Ors.* v. *State of Bihar and Ors.*, All 1997 SC 3657: 1997 (4) SCC 391: (1998) 2 LLJ 15. It was contended that Section 25-H which requires an employer to give re-employment to a retrenched workman in preference over other persons did not for that reason apply. In any event it had been issued by the appellant calling upon retrenched employees to offer themselves for re-employment but the respondent did not apply.

[T]he respondent had raised no allegation of violation of Section 25-G in his statement of claim before the Industrial Tribunal. His only case was that Section 25-H of the Act had been violated. Section 25-H unlike Section 25-G deals with a situation where the retrenchment is assumed to have been validly made. In the circumstances, if the employer wishes to re-employ any employee, he must offer to employ retrenched workmen first and give them preference over others. The two Sections viz. 25-G and 25-H therefore operate in different fields and deal with two contradictory fact situations. The Tribunal ignored the fact that there was no pleading by the respondent in support of an alleged violation of Section 25-G. Indeed the order of reference by the Central Government did not also refer to Section 25-G but only to Section 25-H. In the circumstances it was not open to the Tribunal to "go off on a tangent" and conclude that the termination of service of the respondent was invalid because of any violation of Section 25-G by the appellant.

Besides the Tribunal ... appeal did not consider the plea of the appellant that there was no vacancy against which the respondent had been appointed and that it was merely an *ad hoc* arrangement. In taking into consideration the names of the two employees who were appointed temporarily after the termination of services of the respondent, the Tribunal did not also consider in what capacity these persons had been appointed namely whether they were actually appointed as messenger in place of the respondent.

The respondent's case .... of violation of Paragraph 497 of the Shastri Award was also wholly misconceived. That paragraph deals with the rights of apprentices

and has no application to temporary employees like the respondent. Assuming that there was a violation of the Shastri Award by the appellant in both cases either in not issuing appointment letters or not maintaining a seniority list, service book in respect of temporary employees etc., this would not mean that therefore the respondents had been properly appointed and their services wrongly terminated. Admittedly no procedure whether in law or under any award or settlement was followed in appointing either of the respondents in both appeals. No condition of services were agreed to and no letter of appointment was given. The nature of the respondents' employment was entirely *ad hoc*. They had been appointed without considering any rule. It would be ironical if the person who have benefited by the flouting of the rules of appointment can rely upon those rules when their services are dispensed with.

The Tribunal also failed to deal with the issue raised by the appellant in the first appeal that no grievance had been made nor any demand raised by the respondent either in his application under Section 33-C(2) or otherwise that his services had been illegally terminated. It may be that the principles of *res judicata* may not disqualify the respondent from contending that his termination was invalid, nevertheless non-raising of the issue earlier was a factor which the Tribunal should have taken into consideration in weighing the evidence. Significantly the High Court upheld the decision of the Tribunal as if the Tribunal had proceeded under Section 25-H. As we have said Section 25-H proceeds on the assumption that the retrenchment has been validly made. Therefore, the High Court's view that the termination was invalid under Section 25-H cannot in any event be sustained.

Section 25-H says:

"25-H. *Re-employment of retrenched workmen.* Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."

A statutory obligation is thus cast on the employer to give an opportunity to the retrenched workman to offer himself for re-employment.

In fact, pursuant to settlements entered into between the appellant and the employees' union several advertisements had been issued by the appellant offering re-employment to retrenched workers. It may be that these facts were not raised by the appellant either before the Tribunal or the High Court, but as was said in *Regional Manager, SBI* v. *Raja Ram* (2005) 2 LLJ 12 at p. 15:

"10. ..... However the respondent's counsel is incorrect in his submission that the benefit of the scheme could not have been availed of by the respondent because no offer was made to the respondent by the appellant. The settlements were advertised and it was for the respondent to have taken advantage of the scheme.

Although the settlements are, strictly speaking, not relevant to the question of the correctness of award, nevertheless their terms are necessary to be considered for the purpose of deciding whether, assuming everything in favour of the respondent and against the appellant, the respondent should be reinstated as a casual employee since the scheme had been propounded by the employer with workmen with a view to granting benefit to persons whose services had been terminated as casual employees..."

Neither of the respondents in the appeals had offered themselves for re-employment.

The conclusion of the Tribunal ... that the circulars endorsed an unfair labour practice being followed by the appellant or that the appellant had indulged in unfair labour practice was also incorrect. Unfair labour practice has been defined in Clause (ra) of Section 2 of the Act as meaning any of the practices specified in the Fifth Schedule. The Fifth Schedule to the Act contains several items of unfair labour practices on the part of the employer on the one hand and on the part of workmen on the other. The relevant item is Item 10 which reads as follows:

"To employ workmen as '*badlis*', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."

We have already dealt with this issue in *Raja Ram*'s case (*supra*), where we had said (2005) 1 LLJ 12 at pp. 14 and 15:

"9. ..... before an action can be termed as an unfair labour practice it would be necessary for the Labour Court to come to a conclusion that the *badlis*, casuals and temporary workmen had been continued for years as *badlis*, casuals or temporary workmen, with the object of depriving them of the status and privileges of permanent workmen. To this has been added the judicial gloss that artificial breaks in the service of such workmen would not allow the employer to avoid a charge of unfair labour practice. However, it is the continuity of service of workmen over a period of years which is frowned upon. Besides, it needs to be emphasized that for the practice to amount to unfair labour practice it must be found that the workman had been retained on a casual or temporary basis with the object of depriving the workman of the status and privileges of a permanent workman. There is no such finding in this case. Therefore, Item 10 in List I of the Fifth Schedule to the Act cannot be said to apply at all to the respondent's case and the Labour Court erred in coming to the conclusion that the respondent was in the circumstances, likely to acquire the status of a permanent employee....."

We see no reason to take a contrary view particularly when the facts in *Raja Ram's* case (*supra*) are materially indistinguishable from those in the appeals now before us.

In directing reinstatement, neither the High Court nor the Tribunal had considered that the order might affect the interest of those others who were employed

after the respondent. As was said in *Central Bank of India* v. *S. Satyam* (*supra*) (1996) 2 LLJ 820 at p. 827:

"12. ..... The other persons employed in the industry during the intervening period of several years have not been impleaded. Third party interests have arisen during the interregnum. These third parties are also workmen employed in the industry during the intervening period of several years. Grant of relief to the writ petitioner (respondents herein) may result in displacement of those other workmen who have not been impleaded in these proceedings, if the respondents have any claim for re-employment....."

...

In the circumstances, the award of the Tribunal and the decision of the High Court holding that the respondent's services were wrongfully terminated were both incorrect. They are accordingly set aside. There is as such no question of payment of any back wages. Additionally the only other reason given by the High Court for directing reinstatement of the respondent in the second appeal was based on an equitable consideration of the respondent having allegedly been reinstated. The factual basis for this conclusion was erroneous. The appeals are accordingly allowed. However the appellant has paid sums to the respondents in both the cases which sums shall not be recoverable from the respondents by reason of the allowing of these appeals. There will be no order as to costs.

Question

Why did the Supreme Court reverse the decision of the high court that termination was invalid under section 25H?

NOTE

Consider the following recommendations of the (Second) National Commission on Labour:

1. Prior permission is not necessary in respect of lay off and retrenchment in an establishment of any employment size. Workers will, however, be entitled to two month's notice or notice pay *in lieu* of notice, in case of retrenchment. We also feel that the rate of retrenchment compensation should be higher in a running organisation than in an organisation which is being closed. Again, we are of the view that the scale of compensation may vary for sick units and profit making units even in cases of retrenchment. It would however, recommend that in the case of establishments employing 300 or more workers where lay off exceeds a period of one month, such establishments should be required to obtain post facto approval

of the appropriate government. We recommend that the provisions of Chapter VB pertaining to permission for closure should be made applicable to all establishments to protect the interests of workers in establishments which are not covered at present by this provision if they are employing 300 or more workers. Necessary changes in chapter VA in regard to retrenchment and closure will have to be made accordingly. Every employer will have to ensure, before a worker is retrenchment or the establishment is closed, irrespective of the employment size of the establishment, that all dues to the workers, be it arrears of wages earned, compensation amount to be paid for retrenchment or closure as indicated in the next paragraph, or any other amount due to the worker, are first settled as a precondition to retrenchment or closure. These provisions will not bar industrial disputes being raised against a lay off or retrenchment or closure. Having regard to the national debate on this issue and the principle outlined above, the Commission would like to recommend the compensation per completed year of service at the rate of 30 days on account of closure in case of sick industry which has continuously run into losses for the last 3 financial years or has filed an application for bankruptcy or winding up, and other non-profit making bodies like charitable institutions etc. and at the rate of 45 days for retrenchment by such sick industry or body where retrenchment is done with a view to becoming viable. It would also recommend higher retrenchment compensation at the rate of 60 days wages for every completed year of service for profit making organisations. For establishments employing less than 100 workers half of the compensation motioned above in terms of number of days wages may be prescribed. However, these establishments will also be required to give similar notice as prescribed for bigger establishments before retrenching the workers or closing down.

2. Chapter VA of the law may be amended to provide for sixty days notice for both retrenchment and closure or pay in lieu thereof. The provision for permission to close down an establishment employing 300 or more workmen should be made a part of Chapter VA, and Chapter VB should be repealed. In case of closure of such establishment which is employing 300 or more workers, the employer will make an application for permission to the appropriate Government 90 days before the intended closure and also serve a copy of the same on the recognised trade union.

[From Govt. of India, *Report of the National Commission on Labour* (2002) p. 447.]