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LABOUR MANAGEMENT RELATIONS

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I INTRODUCTION

IN THE year 2010, some important piecemeal amendments were made in the Industrial Disputes Act, 1947 (the ID Act) by the Industrial Disputes (Amendment) Act, 2010 which came into force on August 19, 2010. The definition of 'appropriate government' in section 2(a) has been expanded which has the effect of diluting constitution bench judgement of the Supreme Court in *SAIL* v. *National Union Water Front Workers*[1] and, to a larger extent, rehabilitated the judgment in *Air India Statutory Corporation* v. *United Labour Union*.[2] Now, the central government has been made appropriate government, *inter alia*, in respect of any company in which not less than 51 per cent of the paid up share capital is held by the central government, or any corporation, not being a corporation referred to in the existing definition, established by or any under law made by Parliament or the central public sector undertaking, subsidiary companies set up by the principal undertakings and autonomous bodies, owned or controlled by the central government. Similarly, the state government has been made the appropriate government in relation to any other industrial dispute including the state public sector undertakings, subsidiary companies set up by the principal undertaking and autonomous bodies, owned and controlled by the state government. However, it has been provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate government shall be the central government or the state government, as the case may be, which has control over such establishment.

Further, in the definition of 'workman' in section 2(s), those employees who are mainly employed as supervisors and do not draw wages more than Rs.10, 000/- (the earlier wage limit being Rs. 1600/-) are included in the definition of 'workman'. Another significant amendment made in the Act is that section 2-A has been recast. Under the newly inserted sub-clause (2), any

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1 (2001) 7 SCC 1.

2 (1997) 9 SCC 377.

workman employed in an industry whose services had been terminated by way of dismissal or discharge or retrenchment can now directly approach the labour court or tribunal for adjudication of his dispute of non-employment after the expiry of 45 days from the date he had made the application to the conciliation officer provided the said application before the labour court or tribunal is made within three years of such termination. This amendment was much desired. It is intended to prevent harassment that a worker used face in seeking reference of his dispute of non-employment to labour court or tribunal by the appropriate government. This amendment is based on the recommendations of the Second National Commission on Labour, Government of India. The desirability of introducing such provision had also been emphasised by the Supreme Court in *Rajasthan SRTC* v. *Krishan Kant*.[3]

Other significant amendments include those incorporated in sections 7 and 7A of the ID Act to enable senior officers from the labour service and the legal service to be appointed as presiding officers of the labour court or the tribunal. Accordingly, deputy labour commissioners (central) or the joint commissioners having a degree in law and at least seven years experience in the labour department including three years of experience as labour conciliation officers and officers of Indian legal service in grade-III with three years experience in the grade are eligible for such appointments. These amendments have been made again to give effect to the recommendation of the Second National Commission on Labour. After section 9-B of the principal Act, the amendment Act substitutes chapter II-B in which section 9-C has been recast which now obliges every industrial establishment employing 20 or more workers to have one more grievance redressal committee for the resolution of disputes arising out of individual grievances with equal number of members from the employer and the workmen.

In the year under survey, the Supreme Court had no occasion to deal with diverse areas under the industrial relations law. All of the reported decisions are under the ID Act and even under the said Act only some of the areas have come up for judicial scrutiny. Most of the reported decisions are under retrenchment law. In *Harjinder Singh* v. *Punjab State Warehousing Corpn.*,[4] the Supreme Court has made it clear that the rights of the workers which have become part of the labour jurisprudence in the last thirty years cannot be allowed to be diluted merely on the plea of globalization or liberalization.

The powers of the appropriate government in prohibiting strikes/lockouts in the exercise of powers under section 10(3) of the ID Act has been elaborately discussed and correctly enunciated. The approach of the court in the matter of awarding punishments for misconducts in public employments like in the state transport corporations continues to be deterrent.

No significant decision has been reported either under the Industrial Employment (Standing Orders) Act, 1946 or the Trade Unions Act, 1926.

3 (1995) 5 SCC 75.
4 (2010) 3 SCC 192.

II INDUSTRIAL DISPUTES

Retrenchment

In *Harjinder Singh* v. *Punjab State Warehousing Corpn.*,[5] the Supreme Court has accepted that the plea of globalization or liberalization of the economy has been used by the employers, both public and private, before the higher courts as a ploy to defeat or dilute the rights that have accrued to the industrial and unorganized workers under the labour jurisprudence developed by the apex court in the last three decades. The court observed:[6]

> Of late, there has been a visible shift in the courts' approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalization are fast becoming the *raison d'etre* of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman/employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrongdoer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood.

The court observed that it needs to be emphasised that if a man is deprived of his livelihood, he is deprived of his fundamental and constitutional rights. For him, the goals of social and economic justice, equality of status and of opportunity enshrined in the Constitution remain illusory. Therefore, the judicial approach has to be compatible with the constitutional philosophy and vision of which the directive principles of state policy constitute an integral part. Justice to workmen should not, and cannot, be denied by entertaining spacious and untenable grounds put forward by the employer, whether public or private. The court emphasised that the ID Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble and the

5 *Ibid.*
6 *Id.* at 209-10.

provisions contained in the part IV of the Constitution in general, and articles 38, 39(a) to (e), 43 to 43A in particular, which mandate that the state should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of the material resources of the community should sub-serve the common good and also ensure that the workers get their dues.

Ganguly J, who agreed wtih Singhvi J, also emphasized that the judges of the last court in the largest democracy of the world have a basic duty to articulate the constitutional goals which have found such an eloquent utterance in the Preamble to the Constitution. This puts onerous duty on the judges and especially the judges of the highest court to ensure that the promises made in the Constitution are fulfilled. If they fail to discharge their duty in making these promises a reality, they fail to uphold and abide by the Constitution which is their oath of office. The promises made in the Constitution to the workers and other marginalized sections of the society have to be and should be equated with conscience of the court. Ganguly, J referred to the pertinent question raised by Vivian Bose, J. in *Bidi Supply Co.* v. *Union of India*[7] "After all, for whose benefit was the Constitution enacted?"[8] and reiterated the answer given by Bose, J himself that it was not only for the benefit of governments, states, lawyers, politicians, officials and those highly placed. It also exists for "the common man, for the poor and the humble, for those who have businesses at stake, for the 'butcher, the baker and the candlestick-maker".[9]

Both the judges were unanimous in stating that the Supreme Court has a duty to interpret statutes with social welfare benefits in such a way as to further the statutory goal and not to frustrate it. In doing so, the court should make every effort to protect the rights of the weaker sections of the society. Ganguly, J shared the anxiety of Singhvi J when he observed:[10]

> I am of the view that any attempt to dilute the constitutional imperatives in order to promote the so-called trends of "globalization", may result in precarious consequence. Reports of suicidal deaths of farmers in thousands from all over the country along with escalation of terrorism throw dangerous signal.

The factual matrix of this landmark case was that the appellant was employed with the respondent corporation initially on fixed tenure basis which was later on continued beyond the tenure period. In between, he was given higher position of work *munshi* from initial position of work charge *mali*, on

7 AIR 1956 SC 479 at 487.
8 *Id.* at 211.
9 *Ibid.*
10 *Supra* note 4 at 212.

a higher pay scale. His services were suddenly dispensed with. He alleged violation of sections 25-F and 25-G of the ID Act. The dispute was referred by the State of Punjab to the labour court which held that there was violation of the mandatory provisions of sections 25-F and 25-G and directed his reinstatement with 50 per cent of the back wages. The corporation challenged the award of the labour court before the High Court in a writ petition. The High Court agreed with the labour court that the action taken by the corporation was contrary to section 25-G of the Act but did not approve the award of reinstatement on the premise that the initial appointment of the appellant was not in consonance with the statutory regulations of the corporation and articles 14 and 16 of the Constitution. The single judge, accordingly, substituted the award of reinstatement with 50 per cent back wages by directing that the appellant should be paid a consolidated amount fixed by it by way of compensation.

The appellant assailed this judgment of the single judge before the Supreme Court. The court was of the opinion that the impugned order of the High Court was liable to be set aside only on the ground that while interfering with the award of the labour court, the single judge did not keep in view the parameters laid down by the Supreme Court[11] for exercise of jurisdiction by the High Court under articles 226 and/or 227 of the Constitution.

The court observed that the single judge did not find any jurisdictional error in the award of the labour court. He also did not find that the award was vitiated by error of law apparent on the face of the record or that there was violation of rules of natural justice. He substituted the award of reinstatement with compensation by assuming that the appellant was initially appointed without complying with the equality clause enshrined in articles 14 and 16 of the Constitution and the relevant regulations. While doing so, the single judge had failed to notice that in reply filed by the corporation in the labour court, the appellant's claim for reinstatement and back wages was not at all resisted on the ground that his appointment was illegal or unconstitutional. No evidence was produced nor was any argument advanced in that regard. Therefore, the labour court did not get an opportunity to consider the issue whether reinstatement should be denied to the appellant by applying the new jurisprudence developed by the superior courts in recent years that the court should not pass an award which may result in perpetuation of illegality. That being the position, the single judge was not justified in entertaining the new plea raised on behalf of the corporation for the first time during the course of the arguments before it. The High Court had thus, without basis, overturned an otherwise well reasoned award passed by the labour court and deprived the appellant what may have been the only source of his sustenance and that of his family.

11 *Syed Yakoob* v. *K.S. Radhakrishnan*, AIR 1964 SC 477 and *Surya Dev Rai* v. *Ram Chander Rai* (2003) 6 SCC 675.

Another serious infirmity noticed by the Supreme Court in the order of the single judge was that he decided the writ petition by erroneously assuming that the appellant was a daily wage employee. This was *ex-facie* contrary to the averments contained in the statement of claim by the appellant that he was appointed as work charge *mali* and later as work *munshi* in a pay scale. It was not even the case of the corporation that the appellant was employed on a daily wage basis. Thus, the assumption underlying the order of the High Court that the appellant was a daily wager was also wholly unfounded. The court held that the single judge had committed a serious jurisdictional error by unjustifiably entertaining the plea that the appellant was appointed in violation of articles 14 and 16 of the Constitution and the regulations and had substituted the award of reinstatement with 50 per cent back wages with a lump-sum amount. The court set aside the judgment of the single judge of the High Court and restored the award of the labour court.

In *Ramesh Kumar* v. *State of Haryana*,[12] the workman was appointed as *mali* on casual basis in the public works department of the state. After putting more than two years of service as casual worker, his services were terminated abruptly. After coming to know that persons similarly appointed were either allowed to continue or regularized by the department, the workman sent a notice to the employer expressing his grievances. Ultimately, the matter culminated into a reference before the labour court. It was his case that having put in more than 240 days of service, his service could not be terminated without notice and payment of retrenchment compensation which were conditions precedent for effecting a valid retrenchment under section 25-F of the ID Act. The labour court upheld the plea of the workman that he had put in more than 240 days of service within the 12 calendar months preceding the date of his termination and in view of non-compliance of section 25-F, he was entitled to reinstatement. The labour court directed his reinstatement with continuity of service and 50 per cent back wages from the date of termination. Aggrieved by the said award, the State of Haryana impugned the same before the Punjab and Haryana High Court which set aside the award. The workman impugned the judgement of the High Court before the Supreme Court by way of special leave petition.

The principal point for consideration before the Supreme Court was whether the High Court was justified in setting aside the award of the labour court when the workman had established that he was in continuous service for a period of 240 days in the calendar year preceding termination, particularly, when similarly placed workmen were in fact regularised by the government. The Supreme Court observed that it was not in dispute that the workman was appointed as a *mali* and posted at the residence of the chief minister in the year 1991. The material placed by him before the labour court clearly showed

12 (2010) 2 SCC 543.

that he had worked for three years and there was no break during his service tenure. The management witness had categorically stated that the workman was appointed by the department on muster rolls as *mali* in December, 1991 and he worked upto 31.01.1993. He also had stated in his evidence that there was no break from December, 1991 to January, 1993 during which period the workman was engaged. Admittedly, the workman was not given any notice or pay in lieu of notice or retrenchment compensation at the time of his retrenchment. The court held that the labour court had correctly concluded that his termination was in contravention of provisions of section 25-F of the ID Act. The workman had also averred before the labour court that he was the sole bread earner of his large family and that identical awards were upheld by the High Court and the award in his favour alone was quashed by the High Court.

The court made it clear that it was conscious of the fact that an appointment on public post cannot be made in contravention of the recruitment rules and the constitutional scheme of appointment. However, in view of the material placed before the labour court and before it, the court was satisfied that the said principle would not apply in the case at hand since he had not prayed for regularization but only for reinstatement with continuity of service for which he was legally entitled. The court stated, it is well-settled law, that in the case of termination of a casual employee what is required to be seen is whether the workman had completed 240 days in the preceding 12 calendar months or not. If sufficient materials are shown that the workman had completed 240 days of service with the employer, then his services cannot be terminated without giving him a notice or wages in lieu of notice and compensation in terms of section 25-F of the ID Act. The court held that the decision of the High Court setting aside the award was erroneous both on facts and in law. It seems that the workman had been reinstated in between and he was continued in service. The counsel for the workman stated that he was willing to forgo the back wages as awarded by the labour court which statement of the workman was recorded by the Supreme Court. The court, accordingly, allowed the civil appeal to the extent mentioned above.

It is submitted that the concession granted by the counsel for the workman was not fair when the award of the labour court had already reduced the back wages to 50 per cent. Such concession is not proper and the Supreme Court ought not to have accepted this concession as it amounts to contracting out a legal right.

In *Reetu Marbles* v. *Prabhat Kant Shukla*,[13] the management contended before the Supreme Court that the High Court, by ordering reinstatement with back wages, had departed from the recently evolved principle by the court that the workman should not automatically be granted full back wages and

13 (2010) 2 SCC 70.

reinstatement on coming to the conclusion that the termination was contrary to the provisions of retrenchment law. On the contrary, the submission of the workman was that the labour court had, by denying back wages to him from the date of illegal termination, deviated from the normal rule of grant of back wages on reinstatement after having held the termination illegal which illegality had been rightly corrected by the High Court. The Supreme Court had to deal with the rival submissions made by the two sides in the following factual matrix: The employee, who was appointed as accountant for more than one year, was removed from service by the employer. He raised an industrial dispute against his non-employment alleging violation of mandatory provisions of retrenchment law. The dispute was eventually referred by the state government to the labour court. The labour court upheld the claim of the workman and ordered his reinstatement but awarded last drawn wages to be paid to the workman not from the date of illegal termination of service but from the date of the award. It saw no justification for awarding salary for the period for which he did not work. Further, it opined that he must have worked somewhere to earn his livelihood during the period of litigation. The workman thereafter impugned the award before the High Court in a writ petition insofar as he had been denied back wages from the date of his termination and sought modification of the award. The High Court held that the denial of back wages was illegal and modified the award holding that the workman was entitled to full back wages from the date of termination till the date of his reinstatement. Aggrieved by the aforesaid judgment, the management sought review of the order but the High Court dismissed the review petition. The management came in special leave to appeal to the Supreme Court against the two judgments and orders of the High Court.

The case of the management before the Supreme Court was that the entitlement to back wages was not automatic. Further, the workman, in this case, had failed to adduce evidence before the labour court to prove that he remained unemployed after his termination and how he had sustained himself for the last 15 years. The management further contended that there was no justification for the High Court to modify the award of the labour court which had been passed on proper appreciation of the whole matter. The specific issue before the Supreme Court was whether the High Court was justified in granting full back wages to the workman inspite of denial of said relief to him by the labour court. The court observed that it was now a well settled legal position that the payment of back wages has a discretionary element involved in it and the discretion has to be exercised keeping in view the facts and circumstances of each case. There cannot be a straight jacket formula evolved for exercise of this discretionary power. The court referred to its various recent decisions[14] where it has been held that the courts must take a pragmatic view

14 *U.P. State Brassware Corpn. Ltd.* v. *Uday Narain Pandey* (2006) 1 SCC 479; *Haryana State Electronics Development Corporation Ltd.* v. *Mamni* (2006) 9 SCC 434*; Huda* v. *Om Pal* (2007) 5 SCC 742 and *P.V.K. Distillery Ltd.* v. *Mahendra Ram* (2009) 5 SCC 705.

of the matter and the pragmatic view being that the industry may not be compelled to pay to the workman for the period during which he did not contribute to the productivity of the enterprise. The court held that the High Court had erred in law in not taking cognizance of this principle. In the present case, the workman having worked hardly for more than one year and in between 15 years period having intervened till the award of the reinstatement, the labour court had examined the entire matter. The workman had not placed on the record of the labour court any material or evidence to show that he was not gainfully employed during the long spell of 15 years when he was out of service of the appellant. The High Court had merely relied on *Hindustan Tin Works (P) Ltd.* v. *Employees*[15] to hold that the normal rule of full back wages had to be followed even without considering the facts of the case and the subsequent decisions of the court. The High Court could come to such a conclusion only after recording cogent reasons especially when the award of the labour court was being modified. It held that the High Court was unjustified in awarding full back wages. The court also held that the labour court was also unjustified in not awarding any back wages after having found the termination to be illegal. Keeping in view the factual matrix of the case, the Supreme Court adopted the middle path by modifying the order of the High Court and awarded 50 per cent of the back wages. The court directed that the same shall be paid to the workman within three months from the date of the judgment.

The facts in *Santuram Yadav* v. *Krishi Upaj Mandi Samiti*,[16] show how poverty, illiteracy and ignorance of the workers stands in their way while seeking enforcement of their legal rights. Despite voluminous material available with the workmen demonstrating that they had been continuously working with the respondent management to attract the retrenchment law, the workers, because of their ignorance, failed to place whole of the materials relating to their continuous service before the labour court. It was only at the stage of proceedings before the Supreme Court that they realized their handicap, may be on the basis of legal advice, and sought the permission of the court to place on record all the materials so that complete justice was done by the court in the matter. The case of the workmen before the Supreme Court was that they were selected on temporary positions of *nakeder* by a duly constituted selection committee in a proper pay scale. At the threat of removal after nearly five years of service, they approached the labour court for redressal. A joint petition was signed by them and the respondent, placing on record the terms and conditions of compromise which included the respondent agreeing to reinstate the workers, giving them benefit of seniority and other benefits to which they were entitled to from the date of their initial appointment. In the said petition, there was a joint prayer to the labour court that an award be

15 (1978) 1 SCC 154.
16 (2010) 3 SCC 189.

passed in terms of the agreed conditions in the aforesaid compromise between the parties. The labour court passed the award as prayed for with the direction to the management to reinstate the workers. Again, after five years when another attempt was made to remove them arbitrarily, the workmen approached the High Court which granted a *status quo* order in their favour and, subsequently, the higher authorities intervened and prevented their victimization. They were consequently again reinstated in service. The management, after their reinstatement, again terminated their services. This time, the management refused to reinstate them alleging their failure to have rendered more than 240 days of continuous service in a calendar year. It seems that the workmen did not place the previous records before the labour court as a result of which the labour court, surprisingly, treated them as daily wagers and dismissed their claim on the ground that they had failed to prove that they had rendered 240 days of service in one calendar year to attract section 25-F of the ID Act. The findings of the labour court were upheld by the High Court. Hence, the special leave petition to the Supreme Court by the workers against the concurrent findings of the labour court and the High Court.

It was fairly conceded before the Supreme Court by the counsel appearing for the workmen that because of their ignorance, they, despite having voluminous materials demonstrating their continuous working with the management, had not properly placed the said records before the labour court in support of their claim for reinstatement. It is pertinent to mention here that the workmen filed a separate application before the Supreme Court praying that the additional documents being filed by them be taken on record of the court and considered in order to render substantial justice to them. It was fairly conceded by them that even before the High Court, these additional documents were not placed for consideration.

The Supreme Court, considering the plight of the workmen, decided to peruse the records which supported their case of having been denied the rights under the ID Act. The court stated that it was conscious of the implications of the constitution bench decision in *State of Karnataka* v. *Uma Devi (3)*.[17] However, in the peculiar facts of the case, the court took notice of the stand taken by the management in the form of compromise arrived at with the workmen which was reproduced in the joint petition filed before the labour court on an earlier occasion in which it had agreed, *inter alia*, to reinstate them and provide seniority to the workmen from the date of the initial appointment which compromise had been recorded by the labour court and given in the form of an award with directions to the respondent to reinstate them. The court opined that these materials could not be ignored lightly; so also the materials of the earlier proceeding before the High Court. Considering the abundant materials which were unfortunately not placed before the labour court and in

17 (2006) 4 SCC 1.

order to give an opportunity to these workmen to place their case in proper perspective, the court decided to set aside the order of the labour court and the order of the High Court impugned before it. The court remitted the matter to the labour court concerned with a direction to consider the claim of the workmen afresh on the basis of the relevant documents placed before the Supreme Court as additional documents. The management was also permitted to place the relevant material, if any, in support of its defence. The court laid down the timeframe within which the relevant materials were required to be placed and, thereafter, the labour court concerned was directed to consider them and pass appropriate orders in accordance with law after affording an opportunity to both parties within a timeframe fixed by the court.

This case goes to show how important it is to provide access to quality legal aid to workers to ensure that they get justice. It will amount to travesty of justice if they are denied proper consideration only because of their inability to get proper legal advice and representation.

In *Anoop Sharma* v. *Executive Engineer, Public Health Division No.1, Panipat (Haryana)*,[18] the Supreme Court held that time and again the High Courts have been overreaching their powers of judicial review under article 226 of the Constitution inspite of the fact that in a number of judgments of the court, it had specifically indicated the limitations of the High Courts to issue writ of *certiorari* under article 226 of the Constitution.[19] The facts of the case were that the appellant was engaged/employed by the respondent as *mali-cum-chowkidar* in 1995. His services were discontinued in 1998. He raised an industrial dispute claiming that his termination amounted to retrenchment and the management having failed to comply with the mandatory provisions of section 25F(a) and (b), his termination was illegal and that he was entitled to reinstatement and back wages, *etc*. The case of the management was that he had refused to accept the compensation amount at the time of termination and, therefore, there was no non-compliance. They had sent a demand draft of Rs.5491/- at his residence which on record was sent after three months of his termination.

The court held that the division bench of the High Court in the instant case had without coming to the conclusion that the findings recorded by the labour court on the issue of non-compliance with section 25-F was vitiated by an error of law apparent on the face of the record, allowed the writ petition by assuming that the appellant's initial appointment was not legal and the respondent had complied with the condition of valid retrenchment. The court

18 (2010) 5 SCC 497.

19 *Syed Yakoob* v. *K.S. Radhakrishnan*, *supra* note 11; *Municipal Board, Saharanpur* v. *Imperial Tobacco of India Ltd.* (1999) 1 SCC 566; *Lakshmi Precision Screws Ltd.* v. *Ram Bahagat* (2002) 6 SCC 552; *Mohd. Shahnawaz Akhtar* v. *ADJ, Varanasi* (2010) 5 SCC 510; *Mukand Ltd.* v. *Staff and Officers' Assn.* (2004) 10 SCC 460; *Dharamraj* v. *Chhitan* (2006) 12 SCC 349 and *CIT* v. *Saurashtra Kutch Stock Exchange Ltd.* (2008) 14 SCC 171.

held that the approach adopted by the division bench of the High Court was contrary to the well recognized limitation on the power of the High Court under article 226 of the Constitution. In his statement, the workman had categorically stated that before discontinuance of his services the respondent employer had not given him notice of pay and retrenchment compensation. The only witness on the part of the management who had deposed before the labour court had said that the compensation amount was offered to the workman alongwith a letter but he had refused to accept the same which evidence was not corroborated by any other evidence led by the management. The respondent did not explain as to why the demand draft was sent to the appellant after more than three months of his alleged refusal to accept the compensation. The minimum that was expected of the management was to produce the letter with which the draft was sent to the appellant's residence which was not done. The contents of that letter would have shown whether the offer of compensation was made to the workman on the day of termination and he had refused to accept the same. However, no document was produced. Therefore, the findings reported by the labour court on the issue of non-compliance with section 25-F of the Act was based on correct appreciation of the pleadings and evidence of the parties and the High Court had committed a serious error by setting aside the award of reinstatement.

The court observed that it has been repeatedly held that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of section 25-F(a) and (b), respectively, has the effect of rendering the action of the employer a nullity and the employee is entitled to continue in employment as if his service was not terminated. Clause (b) of section 25-F casts a duty upon the employer to pay to the workman *at the time of retrenchment*, compensation equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of six months. If the workman is asked to collect his dues from cash office, same is not considered sufficient compliance with section 25-F. The workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of section 25-F(b). If the workman is retrenched by an oral order or communication or he is simply asked not to come for work or duty, the management is under duty to lead tangible and substantive evidence to prove compliance with the mandatory provisions of clauses (a) and (b) of section 25-F. The court observed that the consequence of terminating a workman's services/employment/engagement by way of retrenchment without complying with the mandate of section 25-F of the Act are sometimes termed as *ab initio* void, sometimes as illegal *per se*, sometimes as nullity and sometimes as *non est*. Leaving aside the legal semantics, the court, in the instant case, held that the findings recorded by the labour court on the issue of non-compliance of section 25-F was based on correct appreciation of pleadings and evidence led by the parties and the High Court had committed a serious error by setting aside the award of reinstatement ordered by the labour court.

The court opined that the judgment of the constitution bench of the Supreme Court in *State of Karnataka* v. *Umadevi (3)*[20] and other decisions in which the court considered the right of casual, daily wage, temporary and *ad hoc* employees to be regularized/continued in service or paid salary in the regular timescale, appeared to have unduly influenced the High Court's approach in dealing with the appellant's challenge to the award of the labour court. None of those judgements had any bearing on the interpretation of section 25-F of the Act and the employer's obligation to comply with the conditions enumerated in that section. The court observed that it was not the case of the state before the labour court or even before the High Court that the appellant was engaged/employed without following statutory rules or articles 14 and 16 of the Constitution and that was the basis for discontinuing his engagement. Therefore, the High Court was not justified in relying upon the alleged illegality of the engagement/ employment of the appellant for upsetting the award of reinstatement. The court, accordingly, set aside the impugned order of the division bench and restored the award of the labour court.

In *Senior Superintendent Telegraph (Traffic) Bhopal* v. *Santosh Kumar Seal*,[21] the short question before the Supreme Court for consideration was whether the relief of reinstatement and back wages granted to the workman was justified. This case shows how the government departments conduct their litigations casually and after failing to raise important questions at the trial stage, how they seek to raise such issues without success in the higher courts. This case also shows how the government departments take stands which lack *bona fides* and do not win the confidence of the court. In this case, the appellant engaged respondents as daily rated workers after a requisition was made to the district employment exchange and names were sponsored by the employment exchange on the basis of the said requisition. These casual workers were continued for nearly two years when their services were discontinued at central telegraph office, Bhopal. They were asked to report at different places in Bhopal itself and they reported for duty but they were denied employment on the pretext that there were no vacancies. Aggrieved by this refusal and for non-compliance of the retrenchment law even when they had completed 240 days of service in each year, they approached the central administrative tribunal and the High Court for redressal of their grievances but no relief was granted to them as the controversy related to an industrial dispute. The workmen consequently raised an industrial dispute which was referred by the appropriate government for adjudication to the central government industrial tribunal (CGIT). The tribunal directed the appellant to reinstate the workers and pay them back wages from the date of termination till the date of reinstatement within the timeframe fixed by it. The

20 (2006) 4 SCC 1.
21 (2010) 6 SCC 773.

appellant challenged the said award before the High Court in a writ petition which was dismissed.

Before the Supreme Court, the appellant submitted that the central telegraph office, Bhopal, where the workmen were engaged, was an establishment of the post and telegraph department, Government of India and was not an 'industry' under the ID Act which submission was not made either before the tribunal or before the High Court by it. The court did not deem it proper to permit the appellant to raise this plea for the first time in the appeal before it. The second plea which again seemed to be an afterthought was that the workmen failed to report for duty in the office of the assistant engineer (cables) CTX, Bhopal where they were asked to report on their transfer from central telegraph office, Bhopal and, therefore, they should be treated to have abandoned their service. This argument had been rejected by the tribunal on the appreciation of evidence and the High Court had found no justification to interfere with the said findings of the tribunal. The Supreme Court also found no justification to interfere with the said findings. Lastly, it was submitted that even if the action of the respondents amounted to illegal termination for want of compliance with section 25-F in the facts and circumstances of the case, the relief of reinstatement and back wages was not justified and at best only monetary compensation to the workman could have been awarded.

The Supreme Court held that in the last few years it has consistently been held by the apex court that the relief by way of reinstatement with back wages was not automatic even if termination of the workman was found to be illegal or in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.[22] In view of the said legal position and that the workmen were engaged as daily wagers about 25 years back and that they had worked hardly for two or three years, the court ordered that the relief of reinstatement and back wages to them could not be said to be justified and instead it awarded compensation of Rs.40,000/- to each of the workman which, according to it, would meet the ends of justice and ordered that the said amount be paid within six weeks from the date of the judgment failing which the said amount would carry 9 per cent interest *per annum*.

In *Faridan* v. *State of U.P.,*[23] the labour court, Gorakhpur had ordered reinstatement of the workman with full back wages on the basis of which the workman was reinstated. On challenge, the Allahabad High Court set aside the

22 *U.P. State Brassware Corpn. Ltd.* v. *Uday Narain Pandey* (2006) 1 SCC 479; *Uttaranchal Forest Development Corpn.* v. *M.C. Joshi* (2007) 9 SCC 353; *State of M.P.* v. *Lalit Kumar Verma* (2007) 1 SCC 575; *M.P. Admn.* v. *Tribhuban* (2007) 9 SCC 748; *Sita Ram* v. *Moti Lal Nehru Farmers Training Institute* (2008) 5 SCC 75; *Jaipur Development Authority* v. *Ramsahai* (2006) 11 SCC 684; *GDA* v. *Ashok Kumar* (2007) 4 SCC 261; *Mahboob Deepak* v. *Nagar Panchayat, Gajraula* (2008) 1 SCC 575; and *Jagbir Singh* v. *Haryana State Agriculture Mktg. Board* (2009) 15 SCC 327.

23 (2010) 1 SCC 497.

said award but directed that instead of reinstatement of the appellant with full back wages, the respondent State of UP shall pay Rs. 50, 000/- to the workman within three months in addition to any amount, which may be paid by it under the impugned award. This order of the single judge was challenged by the workman in the Supreme Court limited to the question whether the compensation awarded by the High Court in lieu of the service to the extent of Rs.50,000/- be increased to Rs.2.00 lakhs. After hearing the parties and considering the entire material on record including the order of the High Court as well as the award of reinstatement passed by the labour court, Gorakhpur, the apex court modified the order of the High Court by enhancing the compensation from Rs.50,000/- to Rs.2.00 lakhs.

A comparison of the two judgments discussed above shows that it is likely that in the latter judgment the Supreme Court has taken into account the present day situation whereas in the former case, it has taken no such factors into account while awarding the compensation of Rs.40,000/- only. Thus, even in respect of granting relief by way of compensation, the judicial approach has been inconsistent.

In *Govt. of Gujarat (Fisheries Terminal Department)* v. *Bhikubhai Meghajibhai Chavda*,[24] the state government set up fisheries terminal department to provide, *inter alia*, landing facilities for catching fish in a clean and hygienic condition. For that purpose, services of daily wage workers were utilized as and when needed. While this practice was going on, the state government directed all the departments of the state government to discontinue the practice of engaging the services of daily wage workers and, in lieu of it, hire workers on contractual basis. The claim of the workman before the labour court was that he was employed by the appellant as a watchman, paid daily wage and his presence was also marked in a muster roll but his services were terminated without complying with the provisions of section 25-F of the Act. The stand of the appellant before the labour court was that the workman had not completed 240 days of service in the preceding year and, therefore, section 25-F of the Act was not attracted in his case. The labour court, on consideration of oral and documentary evidence, concluded that the appellant was an 'industry' and there was no evidence led to show that it was a seasonal industry and the work was performed intermittently. It also held that as the management had failed to produce any documentary evidence to show that the worman had not completed 240 days of service in the preceding year, the termination was illegal for non-compliance with section 25-F of the Act. It also directed the appellant to reinstate the workman with 20 per cent back wages for the period when the workman was kept out of service. This award of the labour court was upheld by the High Court.

Before the Supreme Court, the appellant contended that it was a seasonal industry and that the workman was employed purely on temporary basis and, therefore, the onus was on the workman to prove that he had put in 240 days

24 (2010) 1 SCC 47.

of service in the preceding year. Further, as the workman had approached the labour court after eight years of his termination, the dispute be treated as time barred. On the other hand, the workman contended that he had immediately approached the conciliation officer after his services were terminated and after the conciliation officer submitted his failure report, he approached the appropriate government seeking reference of the dispute for adjudication and there was no delay on his part. Further, he had in his evidence before the labour court categorically stated that he had worked for 240 days in the preceding year and this evidence was not rebutted by the employer either by producing oral or documentary evidence. He further submitted that the appellant had failed to prove before the labour court that it was a seasonal industry and, therefore, the appellant was not justified to contend that the labour court had committed any error on record and the findings of the labour court could not be said to be perverse findings or based on no evidence. The High Court was, therefore, justified in declining to interfere with the findings of fact by the labour court.

The Supreme Court observed that the question that required to be decided was whether the labour court and the High Court were justified in allowing the claim of the workman. The court observed that it was not the case of the appellant before the labour court and also before the High Court that it was not an industry as defined in section 2(j) of the Act but it was its specific stand before both the forums, labour court and also before the High Court, that it was a seasonal industry and employed workmen like the respondent only during the fishing season and were relieved at the end of the season. It is now a well settled legal position[25] that where a workman was employed in a seasonal work or temporary period, the workman cannot be said to be retrenched in view of section 2(oo)(bb) of the Act. It stated that in the normal course it is the decision of the appropriate government which is final in determining whether the said industry is seasonal in nature or not. The labour court and the High Court had observed that nothing was placed on record nor was any decision on the part of the appropriate government placed on record with regard to declaring fisheries as a seasonal industry. Therefore, the court held that it had no alternative but to concur with the findings of the labour court that the appellant could not be classified as a seasonal industry.

Dealing with the contention of the appellant that the respondent had not worked for 240 days during the preceding 12 calendar months on daily wages, the court referred to its earlier judgment in *R.M. Yellatti* v. *Asstt. Executive Engineer*[26] and observed that the evidence produced by the appellant was not consistent. The appellant claimed that the respondent did not work for 240 days whereas the respondent workman, who was hired on a daily wage basis, deposed to the contrary. The court observed that it was realistically accepted

25 *Morinda Coop. Sugar Mills Ltd.* v. *Ram Kishan* (1995) 5 SCC 653.
26 (2006) 1 SCC 106.

by the court in *R.M. Yellatti* that a workman could have difficulty in having access to all the official documents, muster rolls, *etc.* in connection with his service. Therefore, if the workman has deposed clearly that he had put in 240 days of service, the burden of proof shifted to the appellant employer to prove otherwise. The court then referred to the contradictory stand of the management. The management had contended that the service of the appellant was terminated in 1988 but the documentary evidence produced by the management was contrary to this fact as it showed that the workman was working during February, 1989 also. The High Court had observed that the muster roll for 1986-87 was not completely produced. The appellant had inexplicably failed to produce the complete records and muster rolls from 1985 to 1991, in spite of the directions issued by the labour court to produce the same. In fact, there has been practically no challenge to the deposition of the workman during cross-examination. The court referred to the pertinent observations made in *Municipal Corpn., Faridabad* v. *Siri Niwas*[27] which supported the inference that the labour court had drawn:[28]

> A court of law even in a case where provisions of the Indian 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.

Once a direction had been given by the labour court and the management had failed to produce record, it was legitimate for the labour court to draw an inference against the management. The labour court had not only held that section 25-F had been violated but had also come to the conclusion, based on pleadings and evidence on record, that the services of some of the employees junior to the workman were continued after the respondent was discharged from his duties which was clearly in violation of section 25-G of the ID Act. Therefore, it held that on facts, the findings of the labour court could not be termed as perverse. The court also held that there had been no delay in pursuing the grievances. The workman had pursued his case before the conciliation officer and also thereafter when the conciliation officer submitted his failure report. It was on his persuasion that the matter was referred to the labour court for final adjudication. The apex court, therefore, found no ground for interfering with the award of the labour court.

The court referred to section 25-A which provided that application of sections 25-C to 25-E were not applicable to industries which were seasonal in character. It is submitted that the said provisions had no relevance to the case at hand as the case of the workman related to violation of section 25-F.

27 (2004) 8 SCC 195.
28 *Id.* at 198.

The contention of the appellant relying on section 25-A was misconceived and so was the reference of the court to said provisions.

Power of the appropriate government to prohibit strikes/lockouts under section 10(3)

In *Empire Industries Ltd.* v. *State of Maharashtra*,[29] an important question relating to the power of the appropriate government under section 10(3) of the Act to prohibit lock-out declared by the undertaking of the company came up for consideration of the Supreme Court. The appellant, a public limited company incorporated under the Companies Act, had a division Garlick Engineering at Ambernath, Thane which was engaged in the manufacture and sale of EOT cranes. The undertaking maintained its own profit and loss account separately. The employer and the workmen of the undertaking were bound and governed by the settlement arrived at between the two sides and on its expiry the workers' union submitted a charter of demands to the appellant demanding wage revision, *etc*. At that time, the undertaking was in difficult financial condition. The appellant responded to the workers charter of demands stating that it would be impossible to agree to any increase in wages and further it was imperative for it to impose a ceiling on the dearness allowance. This was followed by a notice under section 9-A of the Act under which the appellant proposed to put a ceiling on the dearness allowance. The workmen rejected the proposal and refused to accept any ceiling on dearness allowance.

The dispute was taken up for conciliation under the Act. The conciliation officer submitted his failure report because the management did not attend the hearing on many dates and also did not place on record any documents to show the worsening of the financial position of the undertaking. The state government made the reference of the dispute relating to dearness allowance to the labour court for adjudication. The appropriate government in exercise of its powers conferred by sub-section (3) of section 10 of the ID Act issued a notification prohibiting continuance of the lockout in its factory, Garlick Engineering at Ambernath, Thane. The undertaking continued to be closed during the litigation period and, thereafter, also remained closed.

The appellant filed a writ petition before the High Court challenging the order of the appropriate government prohibiting continuance of lockout ordered by the company which was dismissed by the single judge and also by the division bench of the High Court in writ appeal. The fate of the appeal before the Supreme Court depended upon the validity of the order under section 10(3) of the Act issued by the appropriate government. The appellant contended before the Supreme Court that it was constrained to issue lockout notice after having failed in its endeavour to impress upon the office bearers of the workers union that the management was not in a position to concede

29 (2010) 4 SCC 272.

any further demand. It had instead required the union to agree to a ceiling of dearness allowance. Further, it had advised the union of workers to agree to a reduction of surplus labour and also to give up unlawful agitational activities. But when no wise counsel prevailed upon the workers and they resorted to agitations, illegal and unlawful activities, from time to time, declaration of lockout became necessary. The appellant further submitted that closure of the factory was in connection with three demands, namely (i) the workmen should abjure agitation activities and desist from intimidation and acts of violence, (ii) the workmen should accept a ceiling on dearness allowance; and (iii) the workmen should agree to reduction of the workforce and retrenchment of a number of workers. The case of the management was that out of the three demands, the government had referred only one concerning the ceiling of dearness allowance for adjudication to the industrial tribunal and yet it issued the notice prohibiting the lockout of the factory. The management contended that since all the demands of the management were not referred for adjudication, it was not open to the government to prohibit continuance of the lockout. The appellant also submitted that the government could derive the legal authority to prohibit a strike or a lockout in terms of section 10(3) only after it had referred for adjudication all the disputes relating to the strike or lockout, as the case may be. It was not open to the government to refer selectively only a few out of several demands and yet prohibit the lockout or the strike in connection with these demands and, thus, close all doors for the party concerned for realization of the demands that were left out of reference. In this connection, the appellant referred to *Delhi Administration* v. *Workmen of Edward Keventers*[30] which related to strike by the workmen. For the present case, the appellant required the court to substitute the word 'lockout' for 'strike' as 'strike' and 'lockout' were the two sides of the same coin. On the basis of the said judgement, the management contended that the notification issued by the state government was bad in law as the order prohibiting strike or lockout could be passed only after the entire dispute/ demands raised by a party were referred for adjudication.

The court agreed with the appellant on the basic principle which was an unexceptionable proposition that in a case where the strike or lockout is in connection with a number of disputes, the appropriate government would derive the authority and the power to prohibit the lockout or strike, as the case may be, only if all the disputes are referred for adjudication under section 10(1) of the Act. But the court felt it necessary to examine as to how far this proposition applied to the present case. It was brought to the notice of the court by the workers' union that in regard to the alleged agitational activities of the workmen, the appellant had already filed a complaint under section 26 read with items 5 and 6 of the schedule III of the Maharashtra Recognition of

30 (1978) 1 SCC 634.

Trade Unions and Prevention of Unfair Labour Practices Act, 1971 which was registered as an unfair labour practice complaint in the industrial court of Thane, Maharashtra. Further, on the date of the filing of the said complaint, the appellant had also obtained an *ex parte* order of injunction against the workmen. The complaint was eventually dismissed because the appellant stopped taking any step in the proceedings. The workers pleaded that once recourse has been taken to the provisions of the Maharashtra Act, any proceedings under the ID Act was barred under section 59 of the former Act and, therefore, there was no question of any reference of this particular demand of the management under section 10(1) of the Act. The management/appellant did not pursue its submission on this issue any further. But it pursued further before the Supreme Court its grievance concerning reduction of the workforce by way of retrenchment at workplace and the state government's illegal omission to refer it for adjudication. The workers' union, on the other hand, contended that section 9-A notice given by the management was only about putting a ceiling on dearness allowance paid to the daily rated and monthly rated workers and there was no mention of any proposal of retrenchment of workers. Further, had the management participated in the conciliation proceedings that took place in pursuance of section 9-A notice, it was perfectly open to the management to raise any additional demand concerning retrenchment of workers and, hence, it did not utilize the opportunity to raise such demands because of its decision to stay away from the conciliation proceedings. Further, the lock out notice did not raise the demand but only contained an advice to the workers to agree to the proposal of reduction of surplus labour which could not be treated as an 'industrial dispute.' Moreover, the dispute relating to retrenchment can be referred only after an employee was retrenched alleging violation of the statutory provisions governing retrenchment and there can be no reference of the retrenchment issue preceding retrenchment in view of the detailed self-contained law relating to retrenchment contained in chapters VA and VB of the ID Act. Further, the workmen contended that in the matter of retrenchment, the initiative always remained in the hands of the employer and there was no need to make any reference of the demand of retrenchment made by the employer.

The court held that the subject matter of the retrenchment was fully covered by the statute and it was not open for the employer to make a demand in that connection and get the ensuing dispute referred for adjudication under section 10(1) of the Act. There was a detailed regulatory mechanism provided in the Act and the rules on the subject of 'retrenchment.' The court observed that it was not open to the management to raise a demand for retrenchment of workmen without following the provisions of section 25-F or section 25-N of the Act. Such a demand would tantamount to substituting a completely different mechanism in place of one provided for in the Act to determine the validity and justification of the employer's request for retrenchment of workers.

The court observed that under section 25-N, the authority to grant or refuse permission for retrenchment vested in the appropriate government which

in this case was the state government or the authority specified by it. Under section 10(1) too, it was the state government that would make a reference of the industrial dispute but the two provisions were not comparable. The nature of power of the state government and its functions under the two provisions were completely different. In making the reference (or declining to make the reference) under section 10(1) of the Act, the state government acts in an administrative capacity whereas under section 25-N(3), while deciding the application for grant or refusal to retrenchment, its power and authority were evidently 'quasi-judicial' in nature. Further, though section 25-N (6) makes provision to refer the matter to tribunal for adjudication, that provision is completely different from section 10(1) of the Act. Section 10(1) cannot be used to circumvent or bypass the statutory scheme provided under section 25-N of the Act. This is, however, not to say that there cannot be any dispute on the subject of retrenchment that can be referred to the tribunal for adjudication. A dispute may always be raised by or on behalf of the retrenched workmen questioning the validity of their retrenchment. Similarly, the employer too can raise dispute in case it is denied permission for retrenchment by the government. It is another matter that the chances of the disputes being referred for adjudication are quite remote.[31] But the point to note is that the occasion to raise the demand/dispute comes after going through the statutory provisions of section 25-N of the Act. The court held that this view taken by it was fully supported by a constitution bench decision in *Meenakshi Mills Ltd.*[32] The court also drew the attention of a recent decision in *Oswal Agro Furane Ltd.* v. *Workers Union*,[33] where the court even went to the extent of holding that there cannot be any settlement between the parties superseding the provisions of sections 25-N and 25-O of the Act.

The court came to the conclusion that on the material date, there was no dispute raised by the appellant in regard to retrenchment of any workers in the factory, Garlick Engineering. Secondly, and more importantly, any retrenchment of worker(s) could only be effected by following the provisions laid down under the Act and the rules. Consequently, it was not open to the management to make a demand/proposal for retrenchment of workmen in disregard of the provisions of the Act and require the government to refer the demand/dispute under section 10(1) to the tribunal for adjudication. The only demand raised by the management regarding imposition of ceiling on dearness allowance was already referred to the industrial tribunal. Hence, the appropriate government was fully competent and empowered to issue the impugned order prohibiting closure of the factory and there was no illegality or infirmity in the order prohibiting continuance of the lockout by the state government. Accordingly, the court found no merit in the appeal of the appellant and dismissed the same.

31 See *Workmen* v. *Meenakshi Mills Ltd.* (1992) 3 SCC 336 at 381-83.
32 *Ibid.*
33 (2005) 3 SCC 224.

Definition of appropriate government

In *Tata Memorial Hospital Workers Union* v. *Tata Memorial Centre*,[34] the question for consideration was whether in relation to an industrial dispute concerning the Tata Memorial Centre, a society registered under the Societies Regulations Act, 1860 and also a public trust under the Bombay Public Trust Act, 1950, the reference made by the state government was valid. The answer to this question was dependant on the question as to whether the state government was the 'appropriate government' under the ID Act in the case of the centre. The Bombay High Court held that the respondent establishment which admittedly was an industry under the ID Act, the central government and not the state government was the 'appropriate government'. It was this finding of the Bombay High Court that was assailed by the workers union before the Supreme Court. The Supreme Court held that it was the state government which was the 'appropriate government' under the ID Act and, therefore, the reference was competent. The court dealt with the whole subject in the light of the provisions of the ID Act and the relevant judgment of the Supreme Court in *Heavy Engineering Company Mazdoor Union* v. *State of Bihar*[35] and the subsequent decisions culminating in the decision of a constitution bench in *SAIL* v. *National Union Water Front Workers*.[36]

The court referred to the definitions of 'appropriate government' and 'employer' in section 2(a) and (g) of the Act and the scheme underlying the Act. Under the ID Act, the central government is the 'appropriate government' in relation to the industrial disputes concerning the industrial establishments specified in section 2(a)(i) and for those industries which are 'carried on by or under the authority of the Central Government'. Excluding these two categories of industries, in relation to any other industrial dispute, it was the state government which was the 'appropriate government' under section 2(a)(ii). The appellant institute did not fall in the categories of specified industries and, therefore, it became necessary for the court to examine the phrase 'any industry carried on by or under the authority of the Central Government' to decide as to whether the appellant centre could fall within this expression. The court observed that this expression had come up for consideration of the court way back in *Heavy Engineering Mazdoor Union* which had been followed by the constitution bench in *SAIL* with a little diversion.

In *Heavy Engineering*, the question was whether the state government was the 'appropriate government' to refer an industrial dispute between it and its union of workers even when the company was wholly owned by the central government and all its shares were registered in the name of the President of India and officers of the central government. In this case, the court held that the words 'under the authority of' meant pursuant to the authority such as

34 (2010) 8 SCC 480.
35 (1969) 1 SCC 765.
36 (2001) 7 SCC 1.

where an agent or servant acts under or pursuant to the authority of his principal or master which obviously could not be said of a company incorporated under the Companies Act whose constitution, powers and functions are provided for and 'regulated by its Memorandum of Association and the Articles of Association'. It noted that an incorporated company has a separate existence and the law recognized it as a juristic person, separate and distinct from its members. The court emphasized that the presumption that the corporation was the agent of the government may be drawn where it was performing, in substance, governmental and not commercial functions. The court in *Heavy Engineering* then looked into the definition of the 'employer' in section 2(g) of the ID Act which provides that an 'employer' in relation to an industry carried on by or under the authority of any department of the central government or state government, the authority prescribed in this behalf, or where no such authority is prescribed, the head of the department. It found no such authority was prescribed in regard to the business carried on by the Heavy Engineering Company. The court observed that the definition of the 'employer' under the ID Act on the contrary suggested that an industry carried on by or under the authority of the government meant either the industry carried on directly by a department of the government such as the posts and telegraphs or railways or one carried on by such department through the instrumentalities of an agent. All these facts led the court to hold that the Heavy Engineering Company could not be said to be an industry carried on under the authority of the central government.

A bench of three judges later on examined the efficacy of the judgments starting from *Hindustan Engineering* in *Air India Statutory Corporation* v. *United Labour Union*.[37] After examining the principles emerging from some of the leading judgments on article 12 of the Constitution such as those in *Ramana Daya Ram Shetty* v. *International Airport Authority of India*[38] and *Ajay Hasia* v. *Khalid Mujib Sehravardi* (constitution bench judgment),[39] the court held that corporations and companies controlled and held by the state government will be those as are 'state' within the meaning of article 12 of the Constitution. A priori, in relation to corporations and companies held and controlled by the central government, the 'appropriate government' will be the central government. The question concerning interpretation of the concept of 'appropriate government' in section 2(i)(a) of the Contract Labour Regulation and Abolition Act, 1970 and in section 2(a) of the ID Act was subsequently referred to a constitution bench in *SAIL*.

In *SAIL*, the constitution bench held that merely because the government companies, corporations and societies are instrumentalities or agencies of the government, they do not become agents of the centre or the state governments

37 (1997) 9 SCC 377.
38 (1979) 3 SCC 489.
39 (1981) 1 SCC 722.

for all purposes. The court held that the test to determine whether a government company or any other industry carried on by the establishment is under the authority of the central government, the criterion is whether an undertaking/instrumentality is carrying on an industry under the authority of the central government and not whether the undertaking is an instrumentality or agency of the government for the purposes of article 12 of the Constitution. The constitution bench disagreed with a distinction made between the government activity and commercial function of government companies in *Heavy Engineering*. Barring this disagreement, the constitution bench observed that it was evident that the court in *Heavy Engineering* correctly went to the question whether the state or the central governments was the appropriate government had to be decided on the basis of agent and principal theory. The court in *SAIL* held that merely because the government companies/ corporations and societies were discharging public functions and duties did not by itself make them agents of the central or state governments. The industry or undertaking has to be carried on under the authority of the state government or the central government. The authority may be conferred either by a statute or by virtue of a relationship of principal and agent, or delegation of power. When the authority was conferred by statute, there was not much difficulty. However, when it was not so, it has to be decided on the facts and circumstances of each case.

The Tata Memorial Hospital, set up by Sir Dorab Ji Tata Trust, was being maintained out of the funds of the trust itself and the grants made over by the central government as well as by the state government. The Indian Cancer Research Centre was set up by the joint collaboration of Sir Dorab Ji Tata Trust and the central government by an agreement in 1953. The initial grant for the centre was given by the central government and it was meeting the expenses of the centre though it was set up on the land belonging to the trust. In 1957, Sir Dorab Ji Tata Trust decided to dedicate to the nation the property on which Tata Memorial Centre stood. An agreement was entered in the same year between the trustees and the central government when the control and management of the hospital was transferred to the latter. In the year 1966, the central government and the Dorab Ji Trust entered into an agreement by virtue of which the Tata Memorial Hospital and the Indian Cancer Research Centre were amalgamated and the Tata Memorial Centre was created and the administration and the management of the centre was vested in the governing council of the said society. The Tata Memorial Centre was registered as a society under the Societies Registration Act, as well as the Public Trust Act, 1950. In the light of these facts, the Supreme Court held that under section 5 of the Societies Act which provides that once a trust is established and the society is registered for the administration of the trust, the society shall be fully autonomous and that the lack of actual transfer of property of the trust shall not prevent the governing body in its administration. The deeming provision creates a fiction vesting in favour of the governing body and not in favour of the society or the trust. This is also for the reason that a society is not a body corporate. Hence, the property dedicated to the Tata Memorial

Centre will be deemed to be vested in its governing council and not the central government or the trustees. Although the central government did not transfer the property to the society, the property was dedicated to the society. The governing council of the society managed the day-to-day affairs, property funds, employment of its staff and their conditions of service. The central government never claimed any title of the property adverse to the Tata Memorial Centre society. On the question of test of control and management of the hospital and the centre, the court opined that they were functioning independently under the first respondent society, *i.e.* the Tata Memorial Centre. They cannot be said to be under the control of the central government. In the circumstances, the court held that the state government shall have to be held as the appropriate government for the Tata Memorial Centre for the purpose of ID Act and, consequently, MRTU Act.

Disciplinary action

Misconduct : In *Ashok Kumar Sharma* v. *Oberoi Flight Services*,[40] a very interesting question about the practicability of the misconduct came for consideration of the Supreme Court. The workman was employed by Oberoi Flight Services as a loader in 1980. On a particular day in 1986, it was alleged that while returning from duty, the workman was found carrying 30 KLM soup spoons in his shoe illegally. The workman was said to have admitted his guilt in writing on two occasions. The management, acting on the said admission of guilt by the workman, dismissed him from service. He made representations to the superior officers and also sent a legal notice to the management complaining against his victimization and sought reinstatement. When nothing favourable happened in his case, he raised an industrial dispute which was referred for adjudication to the labour court. Before the labour court, he contended that being a union leader, the management hatched a conspiracy against him for his removal and obtained confession letters under threat and coercion. He also contended that the order of dismissal was passed by the management without holding an inquiry and in breach of natural justice. The management, on the other hand, narrated the circumstances in which the workman had stolen soup spoons by carrying them in his shoe. The parties led evidence in support of their respective stands. The labour court held that the order of dismissal passed by the management was contrary to law but, at the same time, it held that the dismissal of the workman from the service of the management was not unjustified. The labour court, however, awarded full back wages from the date of his dismissal to the date of award. This award was impugned by the workman before a single judge of the High Court who held that the award did not call for any interference. He preferred letters patent appeal against the judgment of the single judge in the writ petition against the

40 (2010) 1 SCC 142.

award. The division bench held that it was difficult to believe the contention of the management that 30 KLM soup spoons would be put in a shoe and the workman walked with the said spoons in his shoe from the work area to the security check area. It also noticed that the management having not conducted any inquiry, the dismissal of the workman amounted to condemning him unheard. However, the division bench did not deem it proper to order reinstatement of the workman and instead directed the management to pay him Rs.60,000/- in full and final settlement of the claim. It was this part of the award which was challenged by the workman before the Supreme Court

The Supreme Court held that an award of compensation in lieu of reinstatement and back wages had been held in a number of cases to be adequate and in the interest of justice keeping in view the shift in the policy of granting reliefs in labour matters. In the light of the said position, the view of the High Court that monetary compensation in lieu of reinstatement of the workman would be proper could not be said to be unjustified. However, the court held that the compensation of Rs.60,000/- awarded by the division bench of the High Court was grossly inadequate. The court stated that while fixing compensation, all relevant facts and circumstances including the nature of the employment and the status of the employee, whether confirmed employee or not should have been taken into account by the High Court. In its view, compensation of Rs.2.00 lakhs would meet the ends of justice and ordered the management to pay him the said sum after deducting the amount already paid to him within six months from the date of the judgment failing which the same will carry 9 per cent interest *per annum* on the unpaid amount.

Scope for interference with punishments: In *UP State Road Transport Corporation* v. *Suresh Chand Sharma*,[41] the employee, while working as a conductor was found on two occasions carrying a number of passengers without issuing tickets after collecting the fare from them. He was charge sheeted in respect of these misconducts and, on the basis of the report of the inquiry officer, he was dismissed from the service by the corporation. Feeling aggrieved, he preferred a departmental appeal which was rejected by the appellate authority. He raised an industrial dispute challenging his dismissal which was referred by the appropriate government to the labour court for adjudication. Before the labour court, after completion of the pleadings, both parties filed documentary evidence, also led oral evidence and advanced submissions in support of their respective stands. The labour court held that the departmental inquiry had been held in accordance with the principles of natural justice and both the charges were found duly proved and, therefore, the workman was not entitled to any relief whatsoever. Feeling aggrieved, the employee challenged the award of the labour court before the Allahabad High Court in a writ petition. The High Court allowed the writ petition partly and directed the reinstatement of the employee without back wages.

41 (2010) 6 SCC 555.

It was contended on behalf of the corporation before the Supreme Court that the High Court had not recorded any reason while setting aside the award of the labour court. No fault could be found with the award of the labour court and it was not necessary for the checking authority to record the evidence of the passengers who were found travelling without ticket nor it was necessary to check the cash in the hand of the employee. It further contended that the High Court misdirected itself while setting aside the well reasoned award of the labour court without giving any reason whatsoever. On the contrary, it was contended by the workman that the High Court was justified in accepting the submission of the workman that the material witnesses were not examined. The Supreme Court observed that the labour court had considered the matter at length and came to the conclusion that the inquiry had been conducted strictly in accordance with law and the principles of natural justice. The employee was given full opportunity to defend himself and had cross-examined the witnesses examined by the corporation. The inquiry officer had rightly appreciated the evidence and found the charges proved in respect of both the incidents. The disciplinary authority had taken the right decision by accepting the inquiry report and the punishment order was passed after serving second show cause notice to the employee. The High Court had dealt with the matter in a most cryptic manner and decided the writ petition only on the ground that the passengers found without tickets had not been examined and the cash with the employee was not checked. No other reason for arriving at a different conclusion had been given whatsoever. The court referred to its earlier decision in *State of Haryana* v. *Rattan Singh*[42] to emphasize that in a domestic inquiry complicated principles and procedures laid down in the Code of Civil Procedure, 1908 and the Evidence Act, 1872 did not apply. Further, the court also referred to its earlier decisions[43] to bring home the point repeatedly reiterated by the court that the scope of the judicial review under articles 226 and 227 of the Constitution was limited and in no case can the High Court differ from the conclusion arrived at by the labour court without giving cogent reasons. In the instant case, the court held that not only the reasons given by the High Court could not be sustained in the eyes of law but the same also suffered from the vice of not being cogent reasons while reversing the findings of fact recorded by a domestic tribunal. The court, accordingly, set aside the judgment and order of the High Court. It also did not agree with the submission of the workman that punishment of dismissal was excessive for the misconduct of embezzlement of a petty amount of Rs.43/-. It held that it was not the amount embezzled by an employee which was material but the *mens rea* to misappropriate the public money which was important warranting punishment of dismissal.

42 (1977) 2 SCC 491.

43 *State of Maharashtra* v. *Vithal Rao Pritirao Chawan* (1981) 4 SCC129; *State of U.P.* v. *Battan* (2001) 10 SCC 607; *Raj Kishore Jha* v. *State of Bihar* (2003) 11 SCC 519; and *State of Orissa* v. *Dhaniram Luthar* (2004) 5 SCC 568.

Jurisdictional issue

In *Rajasthan SRTC* v. *Deen Dayal Sharma*,[44] the jurisdiction of the civil court to order reinstatement of the respondent and grant of financial benefits of service to him were questioned before the Supreme Court. The respondent was appointed as a conductor by the state road transport corporation. After some months of his appointment, while he was on duty, a surprise inspection was done by the inspecting staff and six passengers were found travelling in the bus without tickets. He was thereafter dismissed from service. He preferred a departmental appeal and also a review petition against the order of dismissal but both of them were rejected. He filed a civil suit against the state corporation praying that the order of dismissal be declared unlawful, illegal, void and ineffective being contrary to the standing orders. He further prayed that as no departmental inquiry was held, he be held entitled to all benefits as if he continued in service. No written statement was filed by the corporation but an oral submission was made before the civil court that the dispute being an industrial dispute, it could only be resolved by the industrial tribunal. The trial judge after recording the evidence of the corporation heard the parties and overruled the objections raised by the corporation about the jurisdiction of the civil court. He declared the order of dismissal illegal and ordered reinstatement of the respondent and other financial benefits to him. This judgment of the trial court was impugned before the district judge who dismissed the said appeal on technical ground of delay. The second appeal preferred before the High Court was also dismissed holding that concurrent findings of fact by the courts below warranted no interference.

On further appeal, the Supreme Court referred to its earlier decisions in *Premier Automobiles Ltd.* v. *Kamlakar Shantaram Wadke*,[45] *Rajasthan SRTC* v. *Krishan Kant*,[46] *Rajasthan SRTC* v. *Zakir Hussain*[47] and the decision of a three judge bench in *Rajasthan SRTC* v. *Khandarmal*[48] on the subject of jurisdiction of civil courts in the matter of termination of service. The court noticed that in *Rajasthan SRTC* v. *Bal Mukund Bairwa(1)*,[49] a two judge bench had noticed some conflict in the judgments in *Krishan Kant* and in *Khandarmal* and, accordingly, referred the matter to a larger bench. A three judge bench in *Rajasthan SRTC* v. *Bal Mukund Bairwa (2)*[50] revisited the issue with regard to the jurisdiction of civil courts to entertain suits questioning the orders of termination and held:[51]

44 (2010) 6 SCC 697
45 (1976) 1 SCC 496.
46 (1995) 5 SCC 75.
47 (2005) 7 SCC 447.
48 (2006) 1 SCC 59.
49 (2007) 14 SCC 41.
50 (2009) 4 SCC 299.
51 *Id.* at 318-19.

36. If an employee intends to enforce his constitutional rights or a right under a statutory regulation, the civil court will have the necessary jurisdiction to try a suit. If, however, he claims his right and corresponding obligations only in terms of the provisions of the Industrial Disputes Act or the sister laws so-called, the civil court will have none. In this view of the matter, in our considered opinion, it would not be correct to contend that only because the employee concerned is also a workman within the meaning of the provisions of the 1947 Act or the conditions of his service are otherwise governed by the Standing Orders certified under the 1946 Act, ipso facto the civil court will have no jurisdiction. This aspect of the matter has recently been considered by this court in *Rajasthan SRTC* v. *Mohar Singh*.[52]

37. If the infringement of the Standing Orders or other provisions of the Industrial Disputes Act are alleged, the civil court's jurisdiction may be held to be barred but if the suit is based on the violation of principles of common law or constitutional provisions or on other grounds, the civil court's jurisdiction may not be held to be barred. If no right is claimed under a special statute in terms whereof the jurisdiction of the civil court is barred, the civil court will have jurisdiction.

38. Where the relationship between the parties as employer and employee is contractual, the right to enforce the contract of service depending on personal volition of an employer is prohibited in terms of Section 14(1)(b) of the Specific Relief Act, 1963. It has, however, four exceptions, namely, (1) when an employee enjoys a status i.e. his conditions of service are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India or a statute and would otherwise be governed by Article 311(2) of the Constitution of India; (2) where the conditions of service are governed by statute or statutory regulation and in the event mandatory provisions thereof have been breached; (3) when the service of the employee is otherwise protected by a statute; and (4) where a right is claimed under the Industrial Disputes Act or sister laws, termination of service having been effected in breach of the provisions thereof.

39. The appellant corporation is bound to comply with the mandatory provisions of the statute or the regulations framed under it. A subordinate legislation when validity framed becomes a part of the Act. It is also bound to follow the principles of natural justice. In the event it is found that the action on the part of the state is

52 (2008) 5 SCC 542.

> violative of the constitutional provisions or the mandatory requirements of a statute or statutory rules, the civil court would have the jurisdiction to direct reinstatement with full back wages.

In the light of the above principles laid down by the court, the workman submitted that the controversy with regard to jurisdiction of civil courts in entertaining a suit wherein the order of termination is challenged on the ground of violation of principles of natural justice is quite settled in the aforesaid principles and, therefore, the civil court had jurisdiction to try the suit. The court stated that in order to deal with the submission of the workman it was necessary to look into the plaint of the workman. On perusal of the plaint, the court noticed that the case as set up in the plaint was that in the absence of a departmental inquiry as contemplated in the standing orders, the order of dismissal was bad in law. The workman also pleaded that he had been dismissed from service without affording any opportunity of defence, hearing and there was breach of principles of natural justice. The court was, however, of the view that the main plea had to be understood in the backdrop of his pleadings that the dismissal order had been passed contrary to the standing orders without holding any departmental inquiry. The court held that the legal position that standing orders have no statutory force and were not in the nature of delegated/subordinated legislation was clearly stated in *Krishan Kant*. Further, in *Bal Mukund Baira (2)*, the position has been explained that if the infringement of the standing orders was alleged, the civil court's jurisdiction may be held to be barred but if the suit was based on violations of principles of common law or constitutional provisions or on other grounds, the civil court's jurisdiction may not be held to be barred. The court was of the opinion that the nature of right sought to be enforced was decisive in determining whether the jurisdiction of the civil court was excluded or not. In the case at hand, the respondent, who had hardly served for three months, had asserted his right that the departmental inquiry as contemplated under the standing orders ought to have been held before issuing the order of dismissal and in the absence of such inquiry the order of dismissal was liable to be quashed. The court held that such right, if available, could have been enforced by the workman only by raising an industrial dispute and not in the civil suit. In the circumstances, the court held that civil court had no jurisdiction to entertain and try the suit filed by the workman. In the result, it set aside the orders of the courts below.

It is submitted that the court took a very technical view in the matter. After all, the certified standing orders provide, *inter alia*, basic procedure for initiating disciplinary action to ensure that the principles of natural justice in establishing a misconduct against the delinquent employee are followed and he is not condemned unheard. Having complained of the violations of the certified standing orders in not holding departmental enquiry, the employee, in the instant case, was, in fact, complaining of violations of the principles of natural justice. The suit of the workman ought not to have been treated as barred on this technicality in the pleadings.

III CONCLUSION

A well structured and objects-oriented industrial relations law is long overdue if industrial harmony for better economic development wedded to the concept of social justice is to be ensured and industrial conflicts are to be eschewed. The valuable time of the parties to the industrial conflict and of the industrial adjudication machinery should not be wasted on avoidable litigation but needs to be utilized for better purposes. Need of the hour is to take measures, through legislative action, to strengthen internal leadership amongst workers, provide for a proper framework for determining sole bargaining agent, define rights and duties of sole bargaining agent, encourage collective bargaining as the primary mechanism for conflict resolution in place of existing compulsory adjudication, adopt measures to ensure that managerial prerogatives are not abused to victimize workers or their collective organizations, provide effective civil remedies against unfair labour practices on the pattern of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and ensure that job security provisions are not allowed to be diluted but at the same time discipline in the industry is not a casualty. These objects cannot be achieved by bringing piecemeal amendments to the ID Act as has been done recently by amending some provisions of the Act by the Industrial Disputes (Amendment) Act, 2010. Though the amendments are in themselves salutary but a wholesome change in the legal framework of industrial law is called for.

The approach of the Supreme Court in *Harjinder Singh*[53] demonstrates that there is a need to make corrections in the judicial policy towards labour disputes. The rights of the labour cannot be allowed to be diluted on the plea of globalization or liberalization of economy. What is due to the worker must be given to him as without his cooperation and collaboration, Indian economy cannot grow. Economic development has to lead to the prosperity of all the players and not only of the capital.

In a number of decisions reported in the year under survey, the court has frowned upon the approach of various High Courts in interfering with the awards of labour court or tribunals even when no interference was called for and no cogent reasons were given by the High Courts to interfere with the awards assailed before them. The court has deplored this practice and cautioned the High Courts to exercise powers of judicial review only sparingly and that too after giving cogent reasons.

It is submitted that in the judgments surveyed on retrenchment law, the court has not adopted consistent policy in the matter of determining as to what should be the basis for awarding compensation to workers in lieu of reinstatement and back wages. There is thus need for a re-look at the factors that should weigh with industrial adjudicators in awarding compensation which should be fair and just.

53 *Supra* note 4.