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LABOUR MANAGEMENT RELATIONS

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I INTRODUCTION

IN THE YEAR under survey, we have Labour Code on Industrial Relations Bill, 2015 which is intended to consolidate and amend the law relating to registration of trade unions, conditions of employment, investigation and settlement of disputes, and matters related or incidental thereto. This Bill, if passed, will repeal the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946 and the Industrial Disputes Act, 1947 (ID Act). A look at the provisions of this Bill gives the impression that it is old wine in new bottle. This latest Code on Industrial Relations Bill, 2015 does not inspire confidence. A bare look at the definition of 'industry' in section 2 (m) shows that it is a mere repetition of the core tests for determining the contours of "industry" defined in section 2 (j) of the ID Act as laid down in *Bangalore Water Supply & Sewerage Board* v. *A. Rajappa,*[1] without even a streak of originality in it.

Surveyed here are the significant reported decisions of the Supreme Court in the area of Industrial relations law that the court decided in the year 2015. As usual, there are large number of cases reported on violation of retrenchment law and deviation from the ordinary prescribed procedure of 'last come first go' for effecting a valid retrenchment. This year has witnessed relief of reinstatement with either full or part back wages as ordinary relief which is reminiscent of the common relief granted by the court in pre-liberalization era. This has been primarily because of the social context adjudication pursued by Gowda J. of the court like his earlier brother judges of the court, P.B. Gajendragadkar, Krishna Iyer, Chinnappa Reddy, P.N. Bhagwati and D. A. Desai JJ. The earlier era judges of the court treated retrenchment compensation as social obligation of the employer which compensation had to be paid preceding the act of termination and failing which the act of the management was treated as nullity with all attendant consequences.

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1 (1978) 2 SCC 213 (hereinafter *Bangalore Water Supply*).

This year also witnessed a number of cases where the court came heavily against unfair labour practices adopted by the state and public sector employers in keeping workers engaged as daily wage workers for long years inspite of number of positions being available. The court did not hesitate in ordering absorption of such workers in permanent positions or ordering their absorption in regular vacancies, as the case might be. Some cases on the definition of 'workman' under the ID Act had also come up for interpretation of the court. Also the court has dealt with the situation where there had been violation of section 25 FFA or there had been sham transfers and spelt out the scope of the remedies available to the workmen in such cases.

In the area of disciplinary action, proportionality of the punishment commensurate with the gravity of the misconduct, was a very important area dealt with by the court which was completely overlooked by the court in the previous years. Another important development that one witnessed this year was that the court came down heavily against the wilful action on the part of the employer in delaying proceedings before the adjudicatory bodies which is a welcome development. The court, in an appropriate case, exercised powers under Order 41 Rule 33 Code of Civil Procedure, 1908 (CPC) to grant additional relief to the workman where it was satisfied that the employer had delayed adjudication to deny the right to livelihood to the worker and his family.

In the year under survey no case having direct bearing on Industrial Employment (Standing Orders) Act, 1946 reached the court. However, in the area of Trade Union Act, 1926, there was a case reported which dealt with the issue of cancellation of registration which is always a matter between the union before the Registrar of Trade Unions seeking registration or cancellation of registration and the Registrar as a functionary having power to grant or refuse registration which power is administrative in nature. This power is neither judicial nor quasi judicial but has to be exercised in accordance with the provisions of the Act and the rule of *audi aletram partem*.

II INDUSTRIAL DISPUTES ACT, 1947

Retrenchment

Introductory

In the cases surveyed this year, the general trend of the apex court has been not to interfere with the awards of the labour courts or the industrial tribunals granting the relief of reinstatement in the cases involving violation of mandatory provisions of retrenchment law. It has reaffirmed the legal position that the power of the high courts to interfere with the awards is limited and any interference has to be disapproved, unless supported by cogent reasons and the permissible grounds. Most of the judgments in the area of labour management relations have been authored by Gowda J. who has reminded that the ID Act being a beneficial legislation enacted with an object of settlement of industrial disputes has to be interpreted liberally in favour of the weaker sections of the society. Given the trend in the previous years where the apex court had preferred compensation in place of reinstatement as a new approach towards violations of the mandatory provisions of retrenchment law which it had described as pragmatic approach, it remains to be seen as to how the court, in the coming years, is going to react to the approach of the bench of the court presided over by Gowda J. which is reminiscent of the approach of the court of the pre-liberalization era.

Violation of retrenchment law

In *Raj Kumar Dixit* v. *Vijay Kumar Gauri Shankar*,[2] the services of the workman were terminated even when his juniors were still working in the establishment. Inspite of his request for reinstatement, the management refused to do so which action of the management became the subject matter of an industrial dispute. A reference of the dispute was made to the labour court, Kanpur. The case of the workman was that the action of the management was in violation of the mandatory provisions for effecting valid retrenchment under section 6-N of the Uttar Pradesh Industrial Disputes Act, 1947 (same as section 25 F of the ID Act, 1947). The labour court recorded its finding in favour of the workman upholding his submission and directed the management to reinstate him in the post he was holding and pay him 50% of the back wages from the date of retrenchment till the date of the award. The management challenged the correctness of the said award before the high court in a writ petition. The high court, though upheld the findings of the labour court, modified the award by granting Rs. 2 lakhs to the workman as compensation in lieu of reinstatement with 50% back wages as awarded by the labour court. The workman, feeling aggrieved, challenged the same in a special leave petition in the Supreme Court and prayed for restoration of the award of the labour court and for a further direction to pay him full back wages from the date of the award passed by the labour court.

The Supreme Court held that the high court had erred in its decision while holding that the labour court was not justified in passing an award of reinstatement of the workman with 50% back wages. It held that the high court had failed to appreciate that it could not, while exercising its supervisory jurisdiction, either act as the court of original jurisdiction or the appellate court. The court held that the powers of the high court, while exercising its supervisory jurisdiction, were limited. The modification of the award of the labour court done by the high court was without assigning any cogent and valid reasons. The order suffered from error in law as well as was contrary to the catena of decisions of the court.[3] On this ground itself the impugned judgment was liable to be set aside. The court ordered restoration of the award of the labour court and further directed the management to pay full back wages to the workman from the date of passing of the award by the labour court till the date of his reinstatement. It also sought compliance of its order within six weeks from the date of the receipt of the copy of the order.

In *Sudarshan Rajpoot* v. *Uttar Pradesh State Road Transport Corporation*,[4] the workman who was working as a driver in the respondent corporation met with an accident in the course of his employment consequent to which both his legs were

2 (2015) 9 SCC 345.

3 See *Punjab Land Development Corporation Ltd.* v. *Labour Court* (1990) 3 SCC 682; also see *Syed Yakoob* v. *K.S. Radhakrishnan*, AIR 1964 SC 477 and *Harjinder Singh* v. *Punjab State Warehousing Corpn.* (2010) 3 SCC 192.

4 (2015) 2 SCC 317.

broken. He underwent treatment in a hospital for a number of months after which he presented himself for duty with a fitness certificate. He was informed orally that his name was struck off from the rolls and was no more in the services of the corporation. No order of termination, at any time, was served upon him. His case was that he worked for more than 240 days continuously in a calendar year from the date of his appointment till the date of his termination and his name had been removed from the rolls of the corporation without following the mandatory provision of retrenchment law. He raised an industrial dispute relating to his non-employment which was referred to the labour court for adjudication. The labour court held the termination was bad in law and ordered his reinstatement without any break in service. The high court substituted the award of reinstatement with consolidated compensation equivalent to the retrenchment compensation calculating from the date of the workman's engagement till the date of his disengagement. The correctness of this judgment of the high court was impugned by the workman in the Supreme Court.

The Supreme Court referred to the order of termination in which the management had stated that the workman was appointed on contractual basis and he had caused the accident because of his negligent driving and his name was ordered to be struck off accordingly from the contract rolls with immediate effect. In the said termination order, the management had also ordered forfeiture of his security amount to meet the department loss. The court observed that the corporation had neither produced any documentary evidence nor had it shown before the labour court that he was appointed on contract basis. It found that he had deposited Rs. 2000/- as the security amount with the corporation which indicated that he was working as a driver on permanent basis. It held that he was deemed to be a permanent employee in view of the stand of the workman which remained uncontroverted before the labour court as well as the high court. The court further observed that his juniors were retained by the management when his service was terminated. The finding of the labour court that he continuously worked for more than 3 ½ years before his termination and that his termination was illegal for want of compliance with the mandatory provisions of the retrenchment law was unassailable. The allegation in the termination order that the order of termination was passed keeping in view his negligent driving of the bus resulting in the accident of the vehicle was neither proved in the enquiry conducted nor was any evidence led before the labour court to support the said allegation. The court held that the judgment of the high court was not only erroneous but suffered from error of law as it failed to appreciate that it had limited jurisdiction to interfere with the award of the labour court. Accordingly, the Supreme Court set aside the order of the high court and further held that the judgment in the *State of Karnataka* v. *Uma Devi* (3),[5] relied upon by the management, had no application to the present case.

The court directed the management to implement the award of the labour court and further directed it to pay 100% back wages from the date of the award of the

5 (2006) 4 SCC 1 (hereinafter referred to as *Uma Devi*).

labour court till the date of his reinstatement with all consequential benefits including continuity of service in an alternative job in the same pay scale as of the driver, keeping in view the grievous injuries sustained by him in his legs, in the course of his employment in the respondent corporation. The court held that the respondent corporation was obligated under section 47 of the Persons with Disabilities (Equal Opportunity and Protection of Right and Full Participation) Act, 1995 to provide alternate equal job to the workman in place of the post of driver.

In *Ajay Pal Singh* v. *Haryana Warehousing Corporation*,[6] the appellant admittedly had completed more than one year of continuous service at the time of his termination of service by the corporation which was in violation of the mandatory provision of the retrenchment law. In the industrial dispute raised by him regarding his non-employment, reference was made by the appropriate government to the labour court, which held that the termination was illegal and ordered his reinstatement with full back-wages. The single judge of the high court, before whom the award of the labour court was impugned, observed that his appointment was in violation of articles 14 and 16 of the Constitution. It held that he was not entitled to reinstatement but granted him Rs. 20,000/- as compensation in lieu of reinstatement as ordered by the labour court. This decision was upheld by the division bench of the high court.

The issue in the special leave petition before the Supreme Court filed by the workman was whether the validity of the initial appointment can be questioned where the subject matter of the reference before the labour court or industrial tribunal was whether the termination of service of the workman which amounted to 'retrenchment' was in violation of section 25 F of the Act? The court held that it is always open to the employer to issue an order of retrenchment on the ground that the initial appointment of the workman was not in conformity with articles 14 and 16 of the Constitution or in accordance with rules. The court observed that even for retrenchment on such a ground, the employer cannot resort to unfair labour practice or violate the mandatory provisions of retrenchment law. Further, when no such plea was taken by the employer in the order of retrenchment, it was not open to the employer of the public undertaking, to take the plea that the initial appointment of such a workman was made in violation of articles 14 and 16 or that the workman was a backdoor appointee. In the absence of reference made by the appropriate government for determination of the question whether the initial appointment so made was *de hors* the rules, the court observed that it could not be concluded that the service of the workman was terminated on such a ground. No such reason was given in the order of retrenchment nor was such a plea raised while reference was made by the appropriate government for adjudication between the employer and the workman. In these circumstances, it was not open to the high court to deny the benefit for which he was entitled to on the plea that his initial appointment was made in violation of articles 14 and 16. The Supreme Court

6 (2015) 6 SCC 321.

set aside the judgment of the high court and restored the award passed by the labour court and gave further directions for implementing the award within three months, if not already implemented.

This case also referred to the well settled legal principle underlying the provisions of the retrenchment law that for attracting section 25 G, it is not required that the workman should have worked for a period of 240 days during 12 calendar months preceding the termination of his service. It is sufficient for the workman to prove that the rule of 'last come first go' was violated without any tangible reason.

In *Gauri Shanker* v. *State of Rajasthan*,[7] the workman was working in the forest department of the respondent against a permanent and sanctioned post till his services came to be retrenched. He had rendered more than 240 days in every calendar year of his more than four years of service. Feeling aggrieved by the said order, the workman raised an industrial dispute questioning its correctness on the ground, *inter alia*, that it was in violation of sections 25 F, 25 G & 25 H of the ID Act which rendered his termination *void ab initio* and sought that the same be set aside. On reference to the labour court by the appropriate government the workman pleaded that his services were terminated because he did not agree to join the management sponsored trade union. It was also his case that though he was appointed against a permanent post, the department showed him only as a daily wager and was paid only daily wages.

After a threadbare discussion of the rival claims of the workman and the management, the labour court answered the reference in favour of the workman holding that his termination was contrary to the provisions of sections 25 F, 25 G and 25 H rendering the order of termination illegal and *void ab initio* in law. The labour court passed the award of reinstatement but denied back wages to him for the reason that he had not worked during the intervening period. Keeping in view the hardships and difficulties undergone by him during all these years, it awarded Rs. 2500/- in his favour and further directed that he shall be entitled to receive full salary from the date of the award till the date of the reinstatement.

The management challenged the award before the single judge of the High Court of Rajasthan in a writ petition. The high court upheld the findings of the labour court that the termination was bad in law but came to the conclusion that the workman could not be treated as permanent merely because the management had not produced the records. It held that he was to be treated as a daily wager and ordered compensation of Rs. 1, 50,000/- in favour of the workman in lieu of his reinstatement which order was affirmed by the division bench of the high court. Hence, the special leave petition by the workman challenging the orders of the high court.

The Supreme Court, on the basis of the rival submissions of the parties, observed that the following three questions needed its consideration:

7 (2015) 12 SCC 754.

i. Whether the labour court was justified in not awarding back wages and granting Rs. 2500/- as compensation in lieu of back wages, though it had awarded reinstatement in the absence of the gainful employment of the workman?
ii. Whether the high court in exercise of his supervisory jurisdiction under articles 226 and 227 of the Constitution was justified in interfering with the findings of facts recorded on the points of dispute by the labour court in the award passed by it?
iii. What should be the relief awarded in favour of the workman?

In reply to issue no. i, the court observed that the labour court had rightly drawn adverse inference against the management with regard to the non-production of muster rolls maintained by it in view of the settled legal position laid down in *Gopal Krishnaji Ketkar* v. *Mohd. Haji Latif*.[8] The court further observed that the labour court had rightly followed the rule of reinstatement of the workman in his normal post. However, it opined that the labour court was not correct in denying back wages without assigning valid and proper reasons, more so, when the employer had not proved either its stringent financial conditions for denying of back wages or that the workman had been gainfully employed during the period from the date of the order of termination till the award was passed. The court held that the high court had erroneously modified the award on recording the finding of fact for the first time that the workman was a casual employee intermittently working in the respondent department. The court held that keeping in view the legal principles laid down by the Supreme Court in *Harjinder Singh* v. *Punjab State Warehouse Corporation*,[9] the high court has limited powers of interference for which no case was made out in this case. It should not have interfered with the factual findings noted by the labour court that the workman was appointed against a permanent vacancy for which it had given cogent reasons. The court held that the high court erroneously awarded compensation in lieu of reinstatement. It was clearly of the opinion that the single judge and also the division bench of the high court under the supervisory jurisdiction should not have modified the award by awarding compensation in lieu of reinstatement. The court allowed the appeal of the workman and set aside the judgment of the single judge as well as the division bench and restored the award of the labour court insofar as the order of the reinstatement was concerned. The court further directed the respondent that in addition to reinstatement, the workman be paid 25% back wages from the date of the termination till the date of the award passed by the labour court and full salary from the date of the award passed by the labour court till the date of his reinstatement by calculating his wages/ salary on the basis of periodical revision of the same within six weeks from the date of the receipt of the copy of the judgment.

8 AIR 1968 SC 1413.
9 (2010) 3 SCC 192.

In *Tapash Kumar Paul* v. *Bharat Sanchar Co. Ltd.*,[10] the Central Government Industrial Tribunal (CGIT) held that the termination of the appellate workman was bad and ordered his reinstatement but declined to award back wages except a payment of Rs. 25000/- as compensation towards back wages. This award was passed by the CGIT holding that there was violation of the provisions of section 25 F of the ID Act by the management. The management had taken the plea that the workman had not completed the requisite number of days of service to attract application of section 25 F but had failed to produce records to substantiate its claim.

The management assailed the said award before a single judge of the high court who affirmed the award of the CGIT. The respondent preferred intra-court appeal before a division bench of the high court which set aside the award of reinstatement and instead passed an order directing payment of Rs. 20,000/- in lieu of reinstatement, which in any case had been awarded by the CGIT, as compensation towards back wages.

In the special leave petition preferred by the workman against this judgment, the Supreme Court restored the order of the CGIT on the ground that the division bench of the high court had given no cogent reason for taking the view that it did. The court held that it is no doubt true that a court may pass an order substituting an order of reinstatement by awarding compensation but the same has to be based on legal and justifiable grounds, *viz.,*: (i) where the industry is facing the prospect of closure or is closed; (ii) where the employee is superannuated or is going to retire shortly; (iii) where the workman has been incapacitated to discharge his duties and cannot be reinstated or offered an alternative job; and /or (iv) where he has lost confidence of the management to discharge duties. The court held that in the present case no legal and justifiable reason for ordering compensation in lieu of reinstatement has been given by the division bench. It found that it was a fit case to interfere and restored the order of the tribunal as upheld by the single judge of the high court.

Gowda J. in his forceful concurring order, relied on the earlier judgments of the court[11] to reiterate that normal relief in case of any illegal termination order attracting section 25 F is reinstatement which had been rightly ordered by the CGIT and upheld by the single judge but wrongfully interfered by the division bench. The judge reiterated that the scope of interference by the high court with the orders of the labour court or industrial tribunal is very limited.

In *Bhavnagar Municipal Corporation* v. *Jadeja Govubha Chhanubha*,[12] the services of a conductor in the appellate corporation were terminated after he had rendered more than one year of service in violation of mandatory provisions of the retrenchment law. The case of the management before the labour court was that he had not worked for more than 58 days. The workman in support of his claim had put

10 AIR 2015 SC 357.

11 *Deepali Gundus Surwase* v. *Kranti Junior Adhyapak Mahavidyalaya* (2013) 10 SCC 324; *Hindustan Tin Works Pvt. Ltd.* v. *Employees* (1979) 2 SCC 80 and *Surendra Kumar Verma* v. *Central Government Industrial Tribunal-cum- Labour Court* (1980) 4 SCC 443.

12 (2014) 16 SCC 130.

reliance upon a xerox copy of certificate allegedly issued by an officer of the appellate corporation certifying that the respondent had worked as a conductor for the period claimed by him. The labour court drew an adverse inference against the appellate corporation for its omission to produce relevant records in support of its claim. On that basis, it held the termination of the respondent from service was illegal and directed reinstatement with 60% back wages which award was assailed by the appellate corporation before a single judge of the high court. The high court upheld the findings of the labour court that the workman had worked for the period claimed by him and there was sufficient evidence and material to that effect on record. It upheld the order of reinstatement but set aside the award insofar as it had held that the workman was entitled to back wages of 60%. The high court held that the labour court had not given any cogent reasons while directing payment of such back wages nor had it examined whether the workman was gainfully employed during the intervening period. Dissatisfied with this order, the appellate corporation filed an intra-court appeal which was dismissed by the division bench of the high court. It was of the view that the finding recorded by the labour court did not suffer from any infirmity to call for any interference. Hence, the present special leave petition to appeal by the appellate corporation.

The main case of the corporation before the Supreme Court was that the claim of the workman that he had worked more than one year was not supported by any evidence or document. It was contended that the solitary piece of evidence which the workman had produced in support of his version was a xerox copy of certificate allegedly issued by an officer of the appellate corporation who was never summoned as a witness. It was further contended that apart from the said document and the self statement of the workman there was no other material to support the finding that the workman had indeed worked for 240 days before his termination. Further, the labour court had wrongly drawn an adverse inference against the appellate corporation, overlooking the settled legal position that the burden of proof lay on the workman to establish that he had rendered one year of continuous service to be entitled to question the termination of his employment in violation of retrenchment law. Thus, both the single judge as well as the division bench of the high court fell in error in upholding the award made by the labour court.

The Supreme Court observed that it is fairly well settled law that for an order of termination of service of a workman to be held illegal on account of violation of retrenchment law, it is essential for the workman to establish that he was in continuous service of the employer for 240 days within the meaning of section 25 B of the ID Act. The burden to prove that he was in actual and continuous service of the employer lay squarely on the workman.[13] So also, the question whether an adverse inference

13 *Range Forest Officer* v. *S.T. hadimani* (2002) 3 SCC 25: 2002 SCC (L&S) 367; *Municipal Corpn.,Faridabad* v. *Siri Niwas* (2004) 8 SCC 195; *M.P. Electricity Board* v. *Hariram* (2004) 8 SCC 246; *Rajasthan State Ganganagar S. Mills. Ltd*. v. *State of Rajasthan* (2004) 8 SCC 161; *Surendranagar District Panchayat* v. *Jethabhai Pitamberbhai* (2005) 8 SCC 450; and *R.M. Yellatti* v. *Executive Engineer* (2006) 1 SCC 106.

could be drawn against the employer in case it did not produce the best evidence available to, it has been the subject matter of various pronouncements of the court.[14] It held that only because some documents have not been produced by the management, an adverse inference cannot be drawn against it. The court opined that it is true that the xerox copy may not be evidence by itself, especially when the workman had stated that the original was with him but had chosen not to produce the same. Yet, the fact remains that the document was allowed to be marked and the signature of the officer issuing the certificate admitted by another officer who was examined by the appellate. Strict rules of evidence, it is fairly well settled, are not applicable to the proceedings before the labour court. That being so, the admission of the xerox copy of the certificate, without any objection from the appellate corporation, could not be faulted at this belated stage of the proceedings before the Supreme Court. The court observed thus:[15]

> When seen in the light of the assertion of the respondent, the certificate in question clearly supported the respondent's case that he was in the employment of the appellant Corporation for the period mentioned above and had completed 240 days of continuous service. That being so, non-payment of retrenchment compensation was sufficient to render the termination illegal.

The Supreme Court held that the labour court committed no mistake nor was there any room for the high court to interfere with the said findings especially when the said findings could not be described as perverse or without any evidence. The court held that the high court was also justified in directing deletion of the back wages from the award made by the labour court against which deletion, the respondent had not agitated either before the division bench of the high court by filing an appeal or before it.

The Supreme Court observed that the only question that remained to be examined in the facts and circumstances of the case was whether the reinstatement of the workman as a conductor was imperative at this late stage. This, the court stated, was so because the workman had claimed to have worked for a period of just 18 months, that is, nearly three decades ago and he may have attained the age of 50 or more. The transport department of the corporation in which he was working has since been wound up and has been out sourced. Besides, the Supreme Court has, in a series of decisions held that the legality of an order of termination on account of non-payment of retrenchment compensation need not necessarily result in reinstatement of the workman in service and compensation be awarded in lieu of reinstatement. The court was satisfied that the present case is one such case where reinstatement must give way to award of compensation. It was satisfied that after looking at the totality of the circumstances of the case, reinstatement of the workman in service did not appear to be an acceptable option. Keeping in view the length of service rendered by him, the wages he was

14 *Municipal Corpn., Faridabad* v. *Siri Niwas* (2004) 8 SCC 195; *M.P. Electricity Board* v. *Hariram* (2004) 8 SCC 246; *RBI* v. *S. Mani* (2005) 5 SCC 100.

15 *Supra* note 12 at 135.

receiving during that period, which according to the evidence was around Rs. 24.75 per day, should substantially meet the ends of justice. Keeping in view all the facts and circumstances, the court awarded a sum of Rs. 2, 50,000/- (Rupees two lakhs fifty thousand) which, according to it, would meet the ends of justice. The amount was directed to be paid within a period of two months from the date of the order failing which the said amount would start earning 12% interest p.a. from the date of the order.

Moulding of relief

The approach of the Supreme Court in *Fisheries Department, State of Uttar Pradesh* v. *Charan Singh*,[16] is novel and should discourage the states and their functionaries from resorting to frivolous litigations.

It was a case where the state, in violation of mandatory retrenchment law, terminated the services of a temporary tubewell operator. He raised an industrial dispute which became the subject matter of reference to the industrial tribunal which held the action illegal and ordered his reinstatement on any post equivalent to the post of tubewell operator but it did not award back wages. The state offered him the position of fisherman which was not equivalent to the post of tubewell operator and he refused to join. The management did not pay him salary from the period of award and thereafter applied the rule of 'no work no pay.' Surprisingly, the management approached the high court seeking direction that it was not obliged to pay salary to the workman for the period in question on the principle of 'no work no pay.' The high court held that the state government had kept the workman out of the job for many years and therefore it was liable to pay the entire amount to him from the date of the award. Aggrieved by the said judgment, the state filed a special leave petition with a prayer to set aside the order of the high court.

The Supreme Court found that the state had violated not only the law of retrenchment but also caused immense suffering to the workman and his family members for more than four decades as the source of their livelihood had been arbitrarily taken away. The right to liberty and livelihood guaranteed under articles 19 and 21 of the Constitution had been denied to the workman as held in *Olga Tellis* v. *Bombay Municipal Corporation*.[17] The Supreme Court exercising its powers under order 41 rule 33 CPC, awarded back wages to the workman even though he had not filed a separate writ petition questioning the portion of the award of the industrial tribunal wherein no back wages were awarded to him for the relevant period *i.e.,* for the period from termination of his services till the date of the award. According to the court, the said order was necessary in the interest of justice, keeping in view the fact that the period of termination was in the year 1975 and the matter had been unnecessarily litigated by the employer by contesting the matter before the industrial

16 (2015) 8 SCC 150.
17 (1985) 3 SCC 545.

tribunal as well as the high court and the Supreme Court for more than 40 years. Further, even after the award of reinstatement was passed by the industrial tribunal directing the employer to give him the post equivalent to the post of tubewell operator, the same had been denied to him. He was offered a post which was not equivalent to the post of tubewell operator. Keeping in view the conduct of the management, the court held that, by attributing the fault on the workman for not reporting for duty in the post offered to him, was unjustified on the part of the employer.

The Supreme Court held that the principle of 'no work no pay' had no application to the facts situation in the present case as the termination itself was erroneous in law in the first place and the subsequent denial of equivalent post was also equally wrong. This judgment is an important development in the labour jurisprudence as it is expected to make the states and their functionaries think twice before indulging in frivolous and avoidable litigation.

Waiver of right to back wages

In *State of Uttar Pardesh* v. *Shashi Joshi*,[18] the workman was a daily wager whose services were terminated by the state government without following mandatory provisions of retrenchment law. The labour court upheld his claim that his services were terminated in violation of the mandatory law of retrenchment and awarded reinstatement with back wages which award was upheld by the high court. In the Supreme Court there was a submission made by the counsel of the workman that inspite of the award of the labour court the workman had not been reinstated and in the circumstances he wanted to be reinstated as daily wager and was ready to waive his right to back wages. The management accepted his plea and the Supreme Court directed the management to reinstate him as daily wager without paying back wages with the condition that if he was not reinstated within one month, the state shall pay him wages as daily wager immediately after completion of one month from the date of this judgment.

One gets the feeling that the workman, in this case, out of disgust and frustration resulting from protracted litigation, gave up and waived his right to back wages, if the management accepted his request for reinstatement. It is submitted that the court should not have accepted his plea of waiver of his right and should have instead awarded him adequate compensation after deciding the matter on merits. The relief of reinstatement is hardly any relief for a daily wage worker as his services could be discontinued at any time, thereafter, forcing him to litigate again with no real benefits. It would have been better if the Supreme Court had heard the matter on merits and awarded good compensation to deter the state from resorting to violation of the mandatory provisions of the ID Act. Acceptance of waiver of his right to back wages by the court does not seem to be the correct course of imparting justice.

18 (2015) 3 SCC 175.

Regularisation in the event of unfair labour practice of the employer

Introductory

The ID Act prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary for a long period without giving them the status of permanent employees. There have been many cases where the workmen have established that the managements, more particularly of the public sector undertakings and government departments, have continued engaging temporary, ad-hoc, daily wagers, *badlis* for long years even when there were regular vacancies available and successfully sought regularization of their services. It has now been consistently held by the Supreme Court that the decision in *Uma Devi* cannot stand in the way of industrial adjudication in granting regularization where the dispute raised relates to regularization on account of unfair labour practice on the part of the employer in continuing workers on casual or daily wage or temporary or *badli* basis for long years.

Situations discussed

There have been several such cases that came up for consideration and decision of the apex court on regularisation because of the unfair labour practices of the employers. They are discussed below:

In *Tamil Nadu Terminated Full Time Temporary LIC Employees Association* v. *Life Insurance Corporation of India*,[19] the Supreme Court has, in a way, dealt with the necessary consequences that follow where a choice of forum is made by the workmen between the available forums for seeking redressal. This decision raises various important issues which can be subject matter of a great debate.

Here, some of the workers engaged on *badli* or temporary basis with the respondent corporation invoked writ jurisdiction of the High Court of Madras individually and through unions seeking relief of regularisation of their services. Other workers working in *badli* or temporary capacity, through their unions during the pendency of the said writ petition, sought reference of their dispute with the corporation by the central government under the ID Act seeking regularization which became subject matter of adjudication before the Central Government Industrial Tribunal (CGIT). In both the sets of cases the issue pertained to regularization of class-III and class-IV employees engaged after May 20, 1985 in the capacity of *badlis* or temporary workers with the respondent corporation. The full bench of the Madras High Court dismissed the writ petition of the petitioners which decision was challenged before the Supreme Court in various petitions under the title *E.Prabavathy* v. *LIC*.[20] In the said special leave petitions, the Supreme Court directed the corporation to frame a scheme of regularization for such employees who were granted *ad-hoc* appointment for 85 days for intervals from time to time and place the same before it. The Supreme Court found the scheme reasonable and gave its approval to it. The corporation was directed by the court to proceed to regularise the employees eligible in their service in accordance with the said scheme.

19 (2015) 9 SCC 62.

20 SLP (C) No. 10393 of 1992, Order dated Oct. 23, 1992 (SC).

A similar petition, *LIC* v. *G. Sudhakar,*[21] was filed before the High Court of Andhra Pradesh by various similarly placed workmen who were also engaged as *badlis* or temporary by the corporation. The high court, after hearing the parties, gave directions to the corporation to frame a scheme on par with *E. Prabavathy* scheme for regularization of such workmen. The corporation challenged the said order before the Supreme Court. It disposed of the petition by observing that the scheme as in *E. Prabavathy* case be made applicable in this case as well.

As noted above, during the pendency of the writ petition before the High Court of Madras, an industrial dispute was raised by the similarly placed workers employed as temporary or *badlis* after May 20, 1985 demanding their absorption and regularisation of service as permanent employees. When the demand was not accepted by the corporation, the industrial dispute that arose between the workmen concerned through their unions and the corporation was referred to CGIT by the central government. The CGIT conducted an inquiry to answer the industrial dispute between the parties. The CGIT, on the basis of the pleadings, evidence on record and also on the basis of an earlier award of the National Industrial Tribunal (in short, NIT) dated April 17, 1986 passed by R.D. Tulpule, J. which was clarified in the award dated August 26, 1988 passed by S.M. Jamdar J holding that the workmen who were working as *badli* or temporary, were entitled to be regularized against existing and anticipated vacancies with the Life Insurance Corporation (LIC).

It will be pertinent to refer to the aforementioned awards of NIT and the resultant proceeding arising therefrom to appreciate the approach of the CGIT in this case. The material directions in the NIT award dated April 17, 1986 are referred to by the Supreme Court at para 9 of the judgment thus:[22]

> In the award dated 17.04.1986, it was held that only those workmen who had worked in the Corporation during the period 1.1.1982 to 20.05.1985, the date of the reference, were to be considered as eligible for absorption. The award held that the workmen claiming absorption in Class III posts should have worked for 85 days in a period of two calendar years and the workmen claiming absorption in class IV post should have worked for 70 days in a period of three calendar years. It was further held by NIT] that the calculation of the number of days of work should be up to the date of reference. The Corporation was further directed to appoint a Screening Committee to consider suitability and desirability of such eligible workmen for their absorption in the posts of the Corporation. It was also directed by NIT to the Corporation that the workmen considered to be suitable and desirable for the absorption should be absorbed against vacancies which existed in the Corporation as on 31.03.1985 and those which may arise

21 Civil Appeal No. 2104 of 2000, Order dated Nov. 23, 2001 (SC).

22 *Supra* note 19 at 72.

subsequently. The Corporation was also directed not to recruit outsiders in a particular division till such lists of workmen were exhausted.

Aggrieved by the said award dated April 17,1986, the corporation impugned the same before the High Court of Bombay in a writ petition. The high court dismissed the petition but gave a certificate to the corporation to seek clarification of the said award under section 36A of the Act. Thereafter, in compliance with the award dated April 17, 1986, the corporation interpreted the award with respect to the absorption of the workmen as recruitment and issued various circulars which were disputed by the workers' union leading to a reference under section 36A to NIT presided over by S.M. Jamdar J. A clarificatory award dated August 26, 1988 was passed by S.M. Jamdar, J. of the NIT giving its own interpretation of the earlier award. It held that the words 'absorption' of the workmen in the earlier award did not mean 'recruitment.'

Aggrieved by the said NIT award dated August 26,1988 the corporation filed a special leave petition against it. During the pendency of the said special leave petition, a compromise was entered into between the corporation and eight out of nine unions in the above special leave petition. The relevant terms and conditions of the compromise read thus:[23]

> The management agrees to consider the temporary/ part-time/ badli workmen employed by the petitioner for 85 days in any two years in a Class III post and for 70 days in any three years in a Class IV post in any of its establishments during the period 1.1.1982 to 20.05.1985, for regular employment on the basis and in the manner stated herein below. ... the selection of the candidate shall be made on the basis of the following qualifications, age, test, interview and also having regard to the number of days worked by the candidates. A panel of selected candidates shall be made and the selected candidates shall be appointed in regular employment from the panel in the order of merit propectivity (sic prospectively) from the dates to be notified and when vacancies in sanctioned posts for regular employment are filled from time to time.

Pursuant to the above compromise, the Supreme Court passed the following order on March 1, 1989:[24]

> Special leave is granted. It appears that out of nine unions eight unions said to be representing about 99% of the workers have entered into a compromise with the management. *In the circumstances pending the final disposal of the appeal, we permit the management and the members of the said eight unions to implement the terms of compromise by way of interim measure without however, any prejudice to the rights*

23 *Id*. at 82.

24 *Ibid.*

> *and contentions of the members of the other union, who have not entered into such compromise with the management*. (emphasis supplied)

Coming back to the CGIT award dated June 18, 2001 which granted relief to the workmen employed as *badli* or temporary workers beyond May 20, 1985 on the same basis as the earlier awards of NIT referred to above, the corporation, feeling aggrieved by it, filed a writ petition before the High Court of Delhi placing strong reliance upon the order of the Supreme Court dated March 1, 1989 against the NIT award wherein the Supreme Court had accepted the terms and conditions of the compromise arrived at between eight out of the nine unions with the corporation and also the scheme approved by the Supreme Court in *E. Prabavathy* scheme framed by the LIC in respect of workmen who had approached the various high courts through writ petitions. The single judge of the High Court of Delhi, on the basis of the said submissions of the corporation, set aside the award of the CGIT dated June 18, 2001. Aggrieved by the judgment and order passed by the single judge of the court, the workmen concerned challenged the same before a division bench of the court. The division bench dismissed the appeal of the appellant workmen by issuing certain directions in para 20 (a) of the said impugned judgment affirming the judgment and order of the single judge of High Court of Delhi. Hence, the present special leave petition against the judgment of the division bench of the high court in the LPA and other batch matters which were disposed of by the division bench of the high court *vide* a common judgment and order dated March 21, 2007.

It was the case of the workmen before the Supreme Court in the special leave petition that at both levels the High Court of Delhi had failed to appreciate that the order of the Supreme Court dated March 1, 1989 in the earlier petition against the award of NIT dated March 20, 1988 had not set aside the NIT awards in spite of the compromise arrived at between the parties therein and the said awards were operative and had not been terminated under section 19 (6) of the ID Act. It was further contended that the CGIT was within its powers to adjudicate and adopt the principles laid down in the earlier awards of the NIT for granting the relief in the matter before it. It was also argued that the powers of the CGIT were wide enough in terms of the judgment of the Supreme Court in *Bharat Bank Limited* v. *Employees of Bharat Bank* [25] which has referred with approval the judgment of the Federal Court in *Western India Automobile Association* v. *Industrial Tribunal* [26] where it was clearly held that the industrial adjudicator under the ID Act can rewrite the contract of employment or grant relief which no other court can grant.

In view of the above submissions of the workers, the Supreme Court considered that the following important questions needed to be examined and answered:

i. Whether the setting aside of the award passed by the CGIT dated 18.06.2001 by the single judge by placing reliance upon the compromise reached between

25 AIR 1950 SC 188.

26 AIR 1949 FC 111.

the parties in SLP No. 14906 of 1988, which was filed against the award of Tulpule J which award was clarified and affirmed by S.M. Jamdar J is justified, legal and valid?;

ii. Whether the judgment and order of the single judge being affirmed by the division bench of the high court in its judgment is legal and valid? and

iii. What award/ order are the appellants entitled to in law?

The Supreme Court dealt with issues no. i and ii together. The court held that the single judge as well as the division bench of the High Court of Delhi had erred in not appreciating that neither the award of the NIT dated April 17,1986 nor the clarificatory award of the NIT dated May 20,1988 had been substituted by the terms and conditions of the compromise recorded by the Supreme Court in its order dated March 1,1989 where the court had specifically stated that the same was, "without prejudice to the rights and contentions of the other unions who have not entered into such compromise with the management." The said award was not set aside but was acted upon after the compromise was arrived at between the parties to the compromise. It was not the case of the corporation in the proceedings either before the high court or before the Supreme Court or even before the CGIT that the workmen concerned had accepted the terms and conditions of the compromise arrived at earlier before the Supreme Court. Even if the earlier compromise was arrived at relating to disputes for the period only upto May 20,1985, there was no impediment in the way of the workers or their unions from seeking regularisation of the workers engaged subsequent to the said period by raising an industrial dispute seeking absorption of workers engaged on *badli* or temporary basis by the corporation after May 20,1985 and in seeking reference of the said dispute to the CGIT. The court held that those workers who had approached the government and chosen to get redressal under the ID Act and succeeded in getting their dispute referred to the CGIT were entitled to the relief granted by the CGIT because of its wide powers to grant relief of absorption. It held that the CGIT was within its powers to rely upon the earlier awards of the NIT granting similar reliefs which awards were operative. The action of the corporation in appointing these concerned workmen who were eligible under the recruitment rules in vogue only on temporary and *badli* positions even when there were regular posts available amounted to unfair labour practice under section 2 (ra) read with sections 25 T and U and serial no. 10 in the schedule V of the ID Act. The court observed that the CGIT was within its powers to order their regularization against permanent positions. The court held that the High Court of Delhi had limited jurisdiction to interfere with the award of CGIT in terms of the judgment of the Supreme Court in *Harjinder Singh* v. *Punjab State Warehousing Corporation.*[27] Both the single judge as well as the division bench of the high court had exceeded their jurisdiction in interfering and setting aside the award of the CGIT. Those who chose to seek the relief by invoking the writ jurisdictions

27 (2010) 3 SCC 192.

28 (1992) 4 SCC 118.

of the high courts alone were governed by the scheme of regularization framed in *E. Prabavathy* case which was approved by the Supreme Court based upon the earlier decision of the court in *State of Haryana* v. *Piara Singh*.[28]

The court held that the award passed by the CGIT was legal and valid and restored the same. It directed the corporation to absorb the workmen concerned in the permanent posts and if they had attained the age of superannuation to pay all consequential benefits including the monetary benefits taking into consideration the pay scale and the revised pay scale implemented from time to time by the corporation.

In *Durgapur Casual Workers Union* v. *Food Corporation of India*,[29] the respondent corporation (FCI) had set up a rice mill for the running of which it had engaged successive contractors. The mill was closed and as a result of which the contract system was terminated. Thereafter, the contract workers through whom the work in the mill was got executed were directly employed by the FCI as casual employees on daily wage basis in one of its food storage depots for performing the job of sweeping godown and wagon floors, etc. These casual workers raised an industrial dispute demanding regularisation of their services. On reference, the industrial tribunal in its award answered the reference in favour of the workers holding that the continued casualisation of services of workmen amounted to unfair labour practice as defined in item 10 in part I of the V schedule of the ID Act and that social justice principle demanded their absorption. It, accordingly, directed the management to absorb 49 casual workers. This award was upheld by a single judge of the High Court of Calcutta when assailed by the FCI. The division bench of the high court in the intra-court appeal set aside the award of the labour court as upheld by the single judge. Hence, the present special petition preferred by the casual workers union before the Supreme Court.

The Supreme Court held that the reliance placed by the division bench of the high court on the judgment of the constitution bench of the Supreme Court in *Uma Devi* was not appropriate in view of the settled legal position that the said judgment has no application if any unfair labour practice is committed by any industrial establishment, whether government or private undertaking. If a reference is made by the appropriate government, the labour court/ tribunal will decide the question of unfair labour practice, if in issue. *Uma Devi* cannot be said to have overridden powers of the labour court in passing appropriate order once unfair labour practice on the part of the employer was established. The court held that in the instant case, the workman concerned were working as contract labour under the contractors in the rice mill of the FCI which contract was terminated by it on the closure of the mill. The FCI had realized that these workers were working on jobs which were perennial in nature and engaged them in their depot. The very engagement of these people against jobs of perennial nature as casual was an unfair labour practice and therefore it was within the power of the industrial tribunal to order their regularisation. The court held that

29 (2015) 5 SCC 786.

the management had failed to prove that their initial of appointments were not in accordance with law. The court also applied the provisions of section 25 H holding that these people were entitled to be given preference if the positions in the depot fell vacant or remained unfilled. The court held that the division bench of the high court should not have interfered with the award after having accepted that there was unfair labour practice on the part of the management.

It is submitted that in the event of bona fide closure of the mill, the provisions of sections 25F, 25G and 25H of the ID Act were inapplicable. Yet the court invoked section 25G in this case which was not correct. However, independent of section 25G, the rule of last come first go could be applied on the principles of fair play and justice even in the case of reemployment after closure.

In *Umrala Gram Panchayat* v. *Secretary, Municipal Employees Union*,[30] some of the workmen who had served the appellant panchayat for many years varying from 5 years to 18 years in the post of *safai kamdars* were, however, considered daily wage workers and were, therefore, not being paid pay and allowances *etc.*, as were paid to the permanent *safai kamdars* working there. In 1987, the workmen raised an industrial dispute claiming that they who had been continuously working for long years were entitled to be made permanent under the appellant panchayat. Conciliation proceedings having failed, the matter was referred to the labour court big appropriate government for adjudication. The labour court by its award held that the workmen were entitled to permanency in the position of *safai kamdars* in the appellant panchayat. It also directed the panchayat that they be paid regular wages and other allowances as well for which they were legally entitled. Aggrieved by the said award, the appellant panchayat impugned the award before the single judge of the high court who dismissed the writ petition holding that the award of the labour court was just, proper, well reasoned and convincing. The intra-court appeal was also dismissed by the high court, hence the present special leave petition.

The Supreme Court held that on perusal of the records it had no hesitation to come to the conclusion that the high court had rightly dismissed the case of the appellant and upheld the award of the labour court. It was an admitted fact that the work which was being done by these workmen was same and similar to that of the permanent workmen of the appellant panchayat including the number of hours of work. The court held that though they were rendering work similar in nature, the discrepancy in the payment of wages between the permanent and non-permanent workers was alarming and the same had to be construed to be unfair labour practice as defined under section 2 (ra) read with entry 10 of the V schedule to the ID Act which is prohibited under section 25T and was a statutory offence on the part of the appellant under the ID Act. Further, the labour court had rightly given a finding that there was no restriction on the recruitment of the workmen in the panchayat set up. On the contrary, there was evidence to show that the district panchayat had increased the workforce on the

30 (2015) 12 SCC 775.

proposal of the appellant panchayat and, therefore, sufficient number of positions were available. Further there was nothing to suggest that the financial position of the panchayat was sound to meet the extra cost that would have to be incurred by paying legal entitlements to the workers. There was violation of 'equal pay for equal work' by the appellant panchayat which had treated these workers unfairly. The high court had rightly referred to the judicial decision in *Maharastra SRTC* v. *Casteribe Rajya Parivahan Karmchari Sanghatana*[31] in support of its view that the writ petition of the appellant deserved to be dismissed. The court referred to the judgment in *Durgapur Casual Workers Union* v. *Food Corporation of India*[32] to state that the decision of the court in *State of Karnataka* v. *Uma Devi*[33] has no application in the cases involving unfair labour practice which legal position has also been affirmed in *Ajay Pal Singh* v. *Haryana Warehousing Corporation*.[34]

Yet another case relating to regularization on the alleged ground of unfair labour practice arose in Oil and *Natural Gas Corporation Limited* v. *Petroleum Coal Labour Union* ,[35] in which different methods of engaging security guards were resorted to by this public sector undertaking. To appreciate the issues involved in this case, it will be pertinent to refer to some of the material facts which are as under:

i) The appellant corporation, namely, ONGC (in short), initially employed security guards and supervisors through contractors to provide security requirement for the projects undertaken by it. The notification dated 8.12.1976 issued by the Government of India under section 10 (a) of the Contract Labour (Regulation and Abolition) Act, 1970 abolished contract labour for watch and ward, dusting and cleaning jobs in the corporation. Thereafter, the workmen concerned were employed as per the settlement arrived at between the trade unions and the management of the corporation under section 18 (1) of the ID Act under which it was agreed to form a cooperative society for the welfare of such erstwhile contract workmen. Their services were utilised by the corporation through the cooperative society to meet its requirements, thus dispensing the intermediary contractors.

ii) Subsequently, subject to the sanction by the central government, the corporation took a policy decision to entrust security work to Central Industrial Security Force (CISF) to protect their installations and a resolution to this effect was send to the President of India for creation of posts for security coverage of the corporation. The corporation sent a letter to the cooperative society to withdraw the services of the security personnel after the charge of the corporation unit

31 (2009) 8 SCC 556.
32 *Supra* note 29.
33 (2006) 4 SCC 1.
34 (2015) 6 SCC 321.
35 (2015) 6 SCC 494.

was handed over to the CISF personnel. Since the induction of the CISF personnel into the security force of the corporation was still awaiting sanction from the central government, the corporation issued memorandum of appointment directly to each one of the workman concerned appointing them in the post of watch and ward security on fixed term basis and also on the conditions that the certified standing orders for contingent employees of ONGC will not apply to them.

iii) Their service in the position of watch and ward security was continued from time to time for some years. Thereafter an industrial dispute was raised by these workers for their regularization in terms of the certified standing orders. The industrial tribunal to which the issue of regularisation was referred for adjudication directed the corporation to regularize the services of the workmen concerned on the basis of the legal principles laid down in *Air India Statutory Corporation* v. *United Labour Union*[36] and further held that since all of them had completed 480 days of work as required under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status of Workman) Act, 1991 they were entitled to permanent status.

iv) The management challenged this award on various grounds and one of them being that in view of the decision of the court in *State of Karnataka* v. *Uma Devi*,[37] the award of the industrial tribunal was unsustainable in law. The single judge as well as the division bench of the high court upheld the award of the industrial tribunal. The division bench held that the appointment of the workmen could be termed as irregular but not illegal and the award ordering regularization could not be faulted. Hence, the special leave petition filed by the ONGC before the Supreme Court against the award of the labour tribunal as upheld by the high court.

The issue before the apex court was whether there was unfair labour practice on the part of the management of the ONGC in not regularising these temporary workers engaged by it for providing security to the plant. The court noticed that ONGC certified standing orders classified the contingent employees of the commission as (a) temporary; and (b) casual. The clause 2 (ii) of the standing orders provided that a workman who has been on the rolls of the commission and has put in not less than 180 days of attendance in any period of 12 consecutive months shall be a temporary workman; and further a temporary workman who has put in not less than 240 days of attendance in any period of 12 consecutive months and who possesses the minimum qualifications prescribed by the commission may be considered for conversion as a regular employee. The court held that all the workers in question except one were fulfilling the essential

36 (1997) 9 SCC 377.

37 (2006) 4 SCC 1.

qualifications and had put in a number of years as temporary employees against sanctioned posts and non-regularization of these employees amounted to unfair labour practice and consequently the award of the industrial tribunal holding them entitled to regularisation was proper and in accordance with law. The high court was right in holding that the appointment of these workers could at best be declared as irregular and in no situation could these be termed as illegal. It held that it is now a well settled legal position that the labour court or industrial tribunal have wide powers to adjudicate on a matter which involves unfair labour practice of the management and is within their rights to grant the relief of regularization, if one has been committed by the management.[38] There was a clear case of unfair labour practice in the instant case in not regularizing the temporary workman engaged against sanctioned posts. The court held that the ONGC policy decision to induct CISF for the purpose of providing security to its project under section 30 A of the ONGC Act, 1959 had the effect of affecting the service conditions of the employees. Therefore, it was necessary for the corporation to modify the certified standing orders by following the procedure provided under section 10 of the Industrial Employment (Standing Orders) Act 1946, which is a special enactment and has overriding effect over the provision under the ONGC Act, 1959 and the recruitment rules.[39]

The court held that it was of the considered opinion that the procedure of appointment adopted by the corporation with respect to the workmen concerned initially through contractors, subsequently through cooperative society and then providing them fixed term appointments and thereafter continuing them in the services in the corporation without following the prescribed procedure was no doubt irregular but not illegal. The court held that their appointment in their posts and continuing them in their service as temporary was unfair labour practice and the tribunal was justified in ordering their regularization. The corporation did not act reasonably and fairly and its action was unfair labour practice and attracted entry item 10 of schedule V read with sections 2 (ra) and 25 T & U of the ID Act.

The court directed the corporation to comply with the terms and conditions of the award passed by the tribunal and regularise the services of the workmen concerned in their posts and compute the back wages, monetary benefits and other consequential benefits including terminal benefits payable to them on the basis of the periodical revision of pay scales applicable from the date of their appointment. The workers be regularised in their service after completion of 240 days in service in a calendar year

38 *Hari Narayan Prasad* v. *Food Corpn. of India* (2014) 7 SCC 190; *U.P. Power Corpn. Ltd* v. *Bijli Mazdoor Sangh* (2007) 5 SCC 755 and *Maharashtra SRTC* v. *Casteribe Rajya Parivahan Karamchari Sanghatana* (2009) 8 SCC 556.

39 The court relied upon the judgment of the Supreme Court in *LIC* v. *D.J. Bahadur* (1981) 1 SCC 315 to hold that the ONGC Act, 1959, was a general Act and the Industrial Employment (Standing Orders) Act, 1946 was a special Act and in the event of conflict it is the latter Act which prevailed.

in the corporation under clause 2 (ii) of the certified standing orders, within eight weeks from the receipt of the copy of the judgment, failing which the back wages shall be paid to the workmen concerned with an interest @ 9% per annum. The corporation was further directed to submit the compliance report for perusal of the court after the expiry of the said eight weeks.

Relief to legal representatives of the deceased employee

In *State of Uttar Pradesh* v. *Parmanand Shukla (Dead) through Legal Representatives*,[40] various writ petitions were filed in the High Court of Allahabad by daily wage muster roll employees of the irrigation department alleging that they continued to work from 1982 till 1990 regularly when their services were disengaged and sought appropriate relief against the state. The high court stayed their disengagement and directed the state to dispose of their representation keeping in view the principle of last come first go. The state again discontinued their services in the year 2001 which again gave rise to the filing of various writ petitions by the terminated employees. One of the writ petitions was filed by one Parmanand Shukla. This petition was allowed by the single judge in part and it set aside the order of termination and directed the state to draw the list of petitioners as well as the other alike them on the basis of their initial engagement in the state service and then offer them wage employment or regular employment. However, the state, instead of giving benefit of the order of the high court to the workers, perused the matter and filed an intra-court appeal which was dismissed by the high court. The state filed a special leave petition against the order of the single as well as the division bench of the high court. During the pendency of the petition before the Supreme Court, the said petitioner Parmanand Shukla died and his legal representatitves who were brought on record as his legal representatives as respondent nos. 1 to 9 to contest the appeal.

The court observed that consequent to the death of the original respondent, the benefit of reinstatement order passed by the high court in his favour was no longer available to him and hence the matter could be amicably settled by directing the appellant state to settle the whole claim to the limited extent of payment of 50% of whatever benefits for which the respondent would have been found entitled, details of which was sought by the court from the legal representatives of the deceased employee. The response of the appellant was also sought by the court who had left the matter to be decided by it having regard to the totality of the circumstances. The court, keeping in view the details of monthly payments coupled with other material factors, directed the appellant to pay to the wife of the deceased workman a sum of Rs. 10 lakhs within three months by account payee demand draft.

Workman

In *Employees State Insurance Corporation's Medical Officers Association* v. *Employees State Insurance Corporation*,[41] the question before the court was whether

40 (2014) 16 SCC 138.

41 (2014) 16 SCC 182.

a medical doctor discharging functions of medical officer *i.e*., treating patients in ESIC Dispensaries/ Hospitals is 'workman' within the meaning of section 2(s) of the ID Act. The Supreme Court held that medical professional treating patients and diagnosing diseases cannot be held to be a 'workman' within the meaning of section 2 (s). The court observed thus:[42]

> Doctors' profession is a noble profession and is mainly dedicated to serve the society, which demands professionalism and accountability. The distinction between an occupation and a profession is of paramount importance. An occupation is a principal activity related to a job, work or calling that earns regular wages for a person and a profession, on the other hand, requires extensive training, study and mastery of the subject, whether it is teaching students, providing legal advice or treating patients or diagnosing diseases. Persons performing such functions cannot be seen as workmen within the meaning of Section 2(s) of the ID Act. We are of the view that the principle laid down by this Court in *A. Sundarambal* case and in *Muir Mills* case squarely applies to such professionals.

It is submitted that this decision does not appear to be correct appreciation of the definition of 'workman' under the ID Act. It is important to recall that the word 'technical' was introduced in the definition of 'workman' by the amendment Act 36 of 1956. Before the said amendment, the question whether a medical practitioner was a workman under the ID Act in section 2 (s) was answered in the negative by the court in *Dimakuchi Tea Estate* v. *Management of Dimakuchi Tea Estate.*[43] In *Dimakuchi Tea Estate*, the court held that a medical officer would not fall in the then definition of the 'workman' which was limited to 'skilled or unskilled manual or clerical'. The word 'technical' which was added by the 1956 amendment was intended to cover the cases of liberal professionals as discussed in the judgment of the Supreme Court in *Bangalore Water Supply.*[44] In this case the court raised the issue as to whether it would be right to hold that a teacher is not a 'workman' as held in *University of Delhi* v. *Ramnath*[45] but did not decide the matter since it was not an issue before the court and left it to be decided in future disputes. The decision of the Supreme Court in *A. Sundarambal* v. *Government of Goa, Daman & Diu*[46] related to the definition of workman before the 1982 Amendment Act to the ID Act. The 1982 Amendment Act separated 'skilled or unskilled manual' as 'skilled' or 'unskilled' or 'manual' but

42 *Id.* at 186.

43 AIR 1958 SC 353 (hereinafter *Dimakuchi Tea Estate*).

44 *Supra* note1.

45 AIR 1963 SC 1873. (hereinafter University of Delhi).

46 AIR 1988 SC 1700 (hereinafter *A. Sundarambal)*.

which amendment had not come into force when the industrial dispute as to whether teacher is or is not a 'workman' under the ID Act arose in *A. Sundarambal*. After 1982, a teacher could either be a 'skilled' or 'technical' workman depending upon which discipline that he was teaching. Therefore, the reliance in the present case on the judgment of *A. Sundarambal* was not proper appreciation of law and inappropriate. Further, the judgment of the Supreme Court in *Muir Mills Unit of NTC (U.P.) Ltd.* v. *Swayam Prakash Srivastava,*[47] where the question whether legal assistant was a 'workman' under the ID Act was decided against the workman on the same reasoning as in the above cases which reasoning is contrary to the decision in *Bangalore Water Supply* case which held that solicitors firm is an 'industry' under the Act. It is submitted that legal assistant should be held to be performing 'technical 'work.

It is submitted that if a doctor is treating the patient and also advising diagnosing of diseases, he should be held as a workman performing 'technical' work provided his primary job is neither supervisory nor managerial.

In *Chauharya Tripathy* v. *Life Insurance Corporation*,[48] the question was as to whether a development officer working in LIC is a 'workman' under the schematic of the ID Act and if not, the labour court would have had no jurisdiction to deal with the *lis* in question. The court held that in the light of the judgment of the constitution bench of the Supreme Court in *H.R. Adyamthya* v. *Sandoz (India) Limited*,[49] it is no more *res integra* that a sales representative in a pharmaceutical company whose main job is to procure work for the company is not a workman. The primary job of the sales representative in LIC is analogous and on the same footings. Therefore, a development officer in LIC is also not a workman under section 2 (s) of the Act.

Closure and transfer of business

Violation of section FFA

The object of serving notice of closure under section 25 FFA of the ID Act on the state government is to see that it can find out whether or not it is feasible for a company to close down a department or a unit of the company and whether the termination of the services of the workmen was warranted and what necessary steps should be taken to mitigate the hardships being caused to the workmen and their family members. The said provision is the statutory protection given to the workmen concerned which prevents the management from terminating the services of the workmen arbitrarily, unreasonably and in an unfair manner. The importance of the notice under section 25 FFA came up before the Supreme Court in *Mackinnon Mackenzie and Company Limited* v. *Mackinnon Employees Union.*[50] The relevant facts were as under:

47 (2007) 1 SCC 491.
48 (2015) 7 SCC 263.
49 (1994) 5 SCC 737.
50 (2015) 4 SCC 544.

i. The appellant company was engaged in shipping business from its premises in Mumbai and the activities of the company were divided into ship agency, shipping management, ship owning and operation, travel and tourism, clearing and forwarding, oversees recruitment and property owning and development. It had nearly 150 workers who were members of the respondent union, a registered union under the Trade Unions Act, 1926.

ii. The company served a notice of termination together with the statement of reasons therefore which was served upon approximately 98 workers by the appellant company effective after a few days. In the statement of reasons it was stated that accumulation of losses had forced the company to decide so and the action was intended to rationalise its activities.

iii. The respondent union filed the complaint before the industrial court complaining that the management had deviated from the seniority list of some of the workers while ordering termination and it alleged unfair labour practice on the part of the company in not complying with some of the statutory provisions under the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice 1971 (in short Maharashtra Act) in proposing termination of the services of the workmen concerned. The legality and validity of the notice of termination served upon the workmen concerned by the appellant company was also assailed before the industrial court.

iv. The industrial court held that the appellant company committed unfair labour practice by not displaying the seniority list of workmen on the notice board prior to the issuance of the termination notice. Further, the appellant company had committed unfair labour practice by violating the principle of 'last come first go' envisaged in section 25 G of the ID Act. It issued an interim order directing the appellant company to cease and desist from resorting to the said unfair labour practice and continue the employment of the workmen in the company whose services were terminated owing to intended rationalisation and pay them full salary every month. After adjudicating the merits of the case finally, the industrial court directed the appellant management to pay arrears of all such wages to the retrenchment workers from the date of the termination till the date of the award and further directed it to pay them future salary regularly from the date they were actually allowed to work as per the award of industrial court. It set aside the orders of termination.

v. The correctness of the said award passed by the industrial court was challenged by the appellant company in a writ petition before the Bombay High Court seeking quashing of the said award. The single judge of the high court dismissed the writ petition affirming the award of the industrial court. In the LPA, the appellant management challenged the award as upheld by the single judge before the division bench of the high court. The division bench held that the action of the management was a clear case of breach of section 25 G of the ID Act read with rule 81 of the Bombay Rules under the ID Act and amounted to unfair labour practice which was illegal. It also reaffirmed the findings of the industrial court. Hence, the present special leave petition seeking setting aside of the impugned judgment of the high court and also the award of the industrial court.

The Supreme Court held that the industrial court, being the original court for appreciation of facts and the evidence on record, had rightly applied its mind to the pleadings and evidence of record and recorded its finding on the rival issues referred to it by assigning valid and cogent reasons after adverting to the statutory provisions of the ID Act and the law laid down by the courts. It observed that the notice served by the company was in fact a notice of closure of some of the units of the company and the same had been issued in violation of the mandatory provisions under section 25 FFA of the ID Act as it had not served at least 60 days notice on the state government before the alleged closure of the department/ unit of the appellant company stating its reasons for the same. The court did not agree with the contention of the appellant corporation that section 25 FFA is not mandatory. It held that merely because under section 30 A of the ID Act violation of section 25 FFA is made punishable, did not mean that the action of the respondent in ordering closure without notice having civil consequences was not liable to be declared bad in the eyes of law and the action was not *void ab initio*. The court referred to the statement of objects and reasons to the Bill which introduced section 25 FFA by the Amending Act 32 of 1972 to the ID Act which was added in the statute with a definite object to be achieved. The object of section 25 FFA requiring the employer to give 60 days notice to the government to close down his undertaking or part thereof is to prevent sudden closure and to give an opportunity to the government to consider whether it should take any measure in respect of such intended closure in accordance with provisions of the Act such as making a reference.[51]

In the present case, the appellant company had not displayed category wise seniority list of workmen as required by law. The 'last come first go rule', which is a rule of fair play, was completely violated and no reasons for departing from the said rule were given by the appellant company. The court had no hesitation in dismissing the appeal of the appellant company. It observed that since the workmen concerned had been litigating the matter for the last 23 years, it would be appropriate for it to give direction to the appellant company to comply with the terms and conditions of the award passed by the industrial court by computing the back wages on the basis of the revision of pay scales of the workmen and other consequential monetary benefits including terminal benefits and pay the same to the workmen within eight weeks from the date of the receipt of the copy of the judgment, failing which the back wages shall be paid with interest @ 9% per annum. The appellant company was also directed to submit the compliance report for perusal of the court.

Sham transfer of business

In *Ariane Orgachem Private Limited* v. *Wyeth Employees Union*,[52] a very important question that arose for consideration of the Supreme Court was whether

51 *Walford Transport Ltd.* v. *State of West Bengal*, 1979 Lab 1C 70, 72 (Cal) (DB), per Mookerjee J; *Management of Town Bidi Factory, Cuttack* v. *Presiding Officer, Labour Court* (1990) II LLJ 55 at 58 (Ori) (DB), per A K Padhi J.

52 (2015) 7 SCC 561.

the high court was right in quashing the order of the deputy labour commissioner who had refused to make an order of reference to the industrial tribunal for adjudication of the industrial dispute raised by the workmen that they were forced to opt for Voluntary Retirement Scheme (VRS) by the appellant who had entered into an alleged sham contract with their erstwhile employer, the respondent no. 3, whereby the appellant had got transfer of assets and not transfer of business from their erstwhile employer. To appreciate the issue it will be appropriate to refer to some material facts of the case which are as under:

i. The appellant company acquired the erstwhile manufacturing facility of the respondent no. 3. Soon thereafter, the respondent no. 3 issued letters to its workmen at its erstwhile factory informing them about the sale of transfer of ownership and management of the said factory to the appellant company in accordance with the provisions of section 25 FF of the Act. They were further informed that their services would not be interrupted for the purposes of their terminal benefits. The respondent no. 1, which was the recognized union under the MRTU and PULP Act, 1971, filed a complaint before the industrial court challenging the sale and transfer of employment of employees but no interim relief was granted by the industrial court; hence, all the workmen came on the rolls of the appellant company and started drawing wages from it.

ii. After a few months, the appellant claimed that it had framed VRS for the workmen, offering them amounts, tax free with all dues such as gratuity, ex-gratia, provident fund, leave encashment, etc. Eventually, all the workmen, sooner or later, collected VRS payments and they were relieved from their services by the appellant company. The appellants claimed that the respondent union through its general secretary unconditionally withdrew the complaints filed earlier before the industrial court.

iii. After several months of accepting VRS, the respondent union raised the demand seeking their reinstatement in the company of respondent no. 3 on the ground that the transfer was a sham and that it was a case of transfer of assets and not transfer of business and VRS was under force, fraud and coercion. In response to the said demand, the appellant company replied that all the workmen had taken the VRS benefits and that they were not workmen in either the appellant company or the respondent no. 3 anymore, therefore, no industrial dispute could be raised by or on their behalf by the respondent union. Thereafter, the respondent union wrote to the assistant labour commissioner seeking his intervention in respect of their demand with the respondent no. 3.

iv. The conciliation officer sent the failure report to the assistant labour commissioner. Thereafter, the office of the deputy labour commissioner which took cognizance of the failure report, declined to make an order of reference stating that there was no industrial dispute in existence between the parties. The workers union questioned the legal basis and correctness of the said order of the deputy labour commissioner before the High Court of Bombay.

v. The high court held that the acceptance of benefits by the workmen concerned from the appellant, the transferee company, may not establish the fact that no

> force or compulsion was exercised by the appellant. The workmen having raised contentious and disputed questions of fact which could not have been decided by the state government in exercise of its administrative power, the high court quashed the order of the deputy labour commissioner and issued a writ of mandamus, directing the labour commissioner to make an order of reference to the industrial tribunal with regard to the demand of industrial dispute raised by the union on behalf of the workmen concerned for its adjudication. Hence, the special leave petition before the Supreme Court by the appellant against the order of the high court.

The Supreme Court held that the high court was justified in quashing the order of refusal to make an order of reference regarding the industrial dispute raised by the first respondent union on behalf of workmen concerned to the industrial tribunal for its adjudication. The allegations that the transfer of undertaking of respondent no. 3 in favour of the appellant union was not a genuine transfer under section 25 FF of the ID Act but a sham one, required adjudication by the industrial tribunal in order to find out the correctness of the said plea and also the plea of the workmen concerned that they had not accepted the terminal benefits and other monetary claims voluntarily. The court held that the said complicated question of fact and law could not have been decided by the alleged delegatee of the state government in exercise of its administrative power. It also found that on the basis of the material placed before it, the state had delegated powers of making a reference only to the labour commissioner and additional labour commissioner and not to the deputy labour commissioner who had wrongly assumed the powers of the alleged delegatee of the state on which ground itself his order was liable to be quashed.

The court further found that under the so-called VRS scheme of the appellant there was a discretionary power with the management in the matter of payment of VRS compensation which could vary from Rs. 50,000/- to 7,11,000/-, which if proved, would be considered as arbitrary and there would be grave miscarriage of justice to the workmen concerned. This aspect of the matter had been completely ignored by the deputy labour commissioner who had erroneously refused to make an order of reference to the industrial tribunal for its adjudication of the existing industrial dispute.

The court took also cognizance of the serious allegations made against the appellant company by workmen regarding the alleged coercion, undue influence and force used on them for obtaining their signatures on blank papers, which needed to be examined very carefully by the industrial tribunal, after recording evidence from both the parties. The court also observed that the absence of the documentary evidence produced by the appellant company to show that VRS was framed by it and converting the signatures of the workmen concerned obtained on the blank papers as their consent *prima facie* amounted to forced termination of the services of the workmen which is a disputed question of fact and required adjudication by the competent industrial tribunal.

Therefore, the demand regarding the alleged termination of workmen concerned was required to be referred to the industrial tribunal by the state government. The

non- consideration of these aspects of the matter in the impugned order of the deputy labour commissioner highlighted that he had considered only the factual aspects pleaded by the appellant company unilaterally and had not considered or referred to the facts pleaded on behalf of the workmen by the respondent union. This clearly showed non-application of mind on the part of the deputy commissioner of labour, apart from the fact that he had no competency to exercise powers under the provision of section 10 (1) d) of the Act either to make a reference or to refuse to make a reference of the dispute to the industrial tribunal. The court also held that the reference of the high court to the earlier judgment of the court in *Ram Avtar Sharma* v. *State of Haryana*,[53] was appropriate. In this case, the court had made the legal position clear that the appropriate government or its delegatee exercise only administrative powers and cannot adjudicate on disputed question of fact or law which can only be adjudicated by judicial or quasi judicial bodies like labour court or industrial court. The court held that the contentions of the respondent union that the deputy labour commissioner was not a delegatee of the state government, being a question of law, could be raised at any time and at any stage of proceedings and, therefore, there was no bar from raising the said plea before it for the first time. It rejected the argument of the appellant company that the workmen were barred from challenging the validity of the VRS scheme on force, fraud or coercion after having accepted the compensation and terminal benefits. It referred to the decision in *National Insurance Company Limited* v. *Boghara Polyfab (P) Ltd.*,[54] to reaffirm that the principle of estoppel is a principle of equity which deals with the effect of contract and not with its cause. The court held that a void or voidable contract can be adjudicated by the industrial tribunal even when they may have accepted compensation of retiral benefits under the scheme which they were forced to accept.

The court held that the high court had rightly felt that the disputed question of fact pleaded by the parties warranted adjudication of the dispute effectively by the industrial tribunal. It found no reason to set aside the order of writ of *mandamus* issued by the high court to the state government for making reference of the industrial dispute to the tribunal. The court directed that the reference be made within six weeks from the date of the receipt of the judgment by the appropriate government. It further directed the industrial tribunal to decide the case within six months from the date of receipt of such order of reference after affording an opportunity to both the parties and to pass appropriate award without being influenced by the observations of the court in the judgment.

The court dismissed the appeal of the appellant company with direction to the appellant to pay Rs. 1, 00,000/- in each appeal towards the cost of the proceedings for the reason that they had caused delay in referring the dispute to the industrial tribunal for its adjudication. The same was to be deposited by the appellant before the industrial

53 (1985) 3 SCC 189.

54 (2009) 1 SCC 269.

tribunal immediately for proportionately paying the same to the workmen concerned through the respondent union.

Interrelationship between Working Journalists Act, 1955 and the ID Act

In *Bennett Coleman and Company Limited* v. *State of Bihar*,[55] the appellant company approached the Supreme Court by way of special leave petition against the order of the Patna High Court rejecting the prayer of the company to quash the criminal complaint under section 25 U read with section 29 and under serial no. 13 of the V schedule to the ID Act. The Patna High Court had held that the complaint was maintainable. The question before the Supreme Court for consideration was whether the appellant company was liable to be prosecuted under the above quoted provisions of the ID Act for not implementing the Manisana Wage Board constituted by the Central Government under the Working Journalists Act in respect of certain working journalists? For appreciating the legality of the complaint, it is necessary to give the relevant facts and circumstances which are as under:

i. The allegation against the appellant company in the complaint made by the union of journalists was that it had not properly implemented the recommendations of the Manisana Wage Board constituted by the central government under the Working Journalists Act in respect of a section of the journalists who had been discriminated in a hostile manner in the matter of implementation of the said recommendations. The case of the union was that this act of the appellant company amounted to unfair labour practice on the part of the employer under the ID Act insofar as the said Act has been made applicable to working journalists in terms of section 3 of the Working Journalists Act. Under section 3 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Misc. Provisions Act, 1955 (in short the Working Journalists Act), the provisions of the ID Act, apply to, in relation to working journalists as they apply to workmen within the meaning of that Act.
ii. The case of the employees union was that under section 2 (ra) read with section 25 (T) & (U) read with schedule V, serial No. 13 of the ID Act, failure to implement an award, settlement or agreement is an unfair labour practice punishable under the said Act and is also an offence punishable under section 29 of the said Act.

The Supreme Court held that for attracting these provisions under the ID Act, there has to be a breach of an award of a labour court or industrial tribunal constituted under the said Act. According to the court, in legal parlance, the Wage Board recommendations made under section 10 of the Working Journalists Act is not an 'award' under section 2 (b) of the ID Act. Under the scheme of the Working Journalists

55 (2015) 11 SCC 204.

Act, once the recommendations under section 10 of the said Act are received, it is for the central government to issue appropriate orders so as to enforce the same in terms of section 12 of the said Act. If the said order is not complied with, the employees may take recourse to section 17 of the said Working Journalists Act. Further, there is also a penalty provided under section 18 of this Act to deal with such a situation.

Section 29 of the ID Act provides for penalty for breach of settlement entered into or an award made under the ID Act but the recommendations of the wage board are neither an award nor a settlement in terms of the provisions of the ID Act. Its enforceability, being a recommendation, depends on the order passed by the central government. The central government in this case had passed the order issuing the necessary notification. If the same was not complied with, the remedies were available under section 17 for recovery or under section 18 for penalty under the Working Journalists Act and not under the provisions of the ID Act.

During the pendency of the petition, it was brought to the notice of the court that the employees union had already taken recourse to the remedy under section 17(2) of the Working Journalists Act which enables the newspaper employees to make an application to the state government on the question of the amount due from the employer in terms of the notification issued by the central government under section 12 of the said Act. Section 17(2) thereof provides that on a complaint received from the employees, the state government may refer the question to any labour court constituted by it under the ID Act. The decision of the labour court shall be forwarded by it to the state government which made the reference and any amount found due by the labour court may be recovered in the manner provided under section 17(1) of the Working Journalists Act. The court stated that if the labour court passes an appropriate order or / award and in case the same is not implemented then alone there arises the question of prosecution under section 25-U read with serial no.13 of the V schedule of the ID Act.

The court held that in view of the legal position discussed above, the high court ought to have quashed the criminal complaint against the appellant company. The court set aside the order of the high court and, accordingly, ordered quashing of the complaint against the appellant company.

Disciplinary Action

Introductory

Even at the cost of repetition, it needs to be emphasised that the powers that are excised by the industrial adjudicator under section 11A of the ID Act in disciplinary matters of dismissal and discharge are plenary and very wide being appellate powers as compared to the powers of the high court under articles 226 and 227 of the Constitution which are only supervisory in nature. Even among the constitutional courts, many a time this distinction is not appreciated. Often cases reaching the high courts or the Supreme Court from industrial adjudicators are dealt with the same approach that is followed in cases reaching the apex court from central administrative tribunal or high courts in service matters. The distinction needs to be properly appreciated in the better interests of proper adjudication of disciplinary matters under the ID Act.

Principle of proportionality applied

Although, this year there have been very few cases of dismissal and discharge of industrial workers dealt with by the Supreme Court in the area of disciplinary jurisdiction, the court has applied the principle of proportionality for ensuring that the punishment awarded was commensurate with the act of misconduct and not excessive.

In *Collector Singh* v. *L. M. L. Limited Kanpur*,[56] the question before the Supreme Court was whether the punishment of dismissal from service of the appellant was disproportionate to the act of misconduct proved against him and whether the concurrent findings of the court below needed to be interfered? The brief facts of the case were as under:

i) The appellant was working as a semi skilled worker with the respondent company. After serving for a number of years he was served with a charge sheet alleging that he threw joot/ cotton ball hitting the face of the foreman in the said company and on objecting to the same, he was alleged to have further abused his superior with filthy language and also threatened with dire consequences outside the premises of the factory.

ii) In response to the charge sheet he submitted an apology letter that he had thrown piece of the jute which fell by mistake on the foreman and sought pardon for the same. Departmental enquiry was conducted and he was given adequate opportunity to cross examine the witnesses and putting forth his defence.

iii) The enquiry officer submitted his report finding that he was guilty of the misconduct. On the basis of the said enquiry report he was dismissed from the services of the company by the management. He raised an industrial dispute relating to his dismissal which became the subject matter of reference before the Labour Court, Kanpur.

iv) The labour court relied on the letter of apology tendered by the workman and upheld that termination of service was justified. Aggrieved by the said award he filed a writ petition before the high court impugning the award of the labour court which was dismissed by the high court. Hence the present special leave petition against the award as upheld by the high court.

The Supreme Court issued notice limited to the question of quantum of punishment. The main thrust of the submission of the workman was that his acts of misconduct, even if assumed to be true, were of minor nature and the punishment was harsh and disproportionate and prayed for reinstatement with consequential benefits. The court was of the view that the courts below did not properly appreciate the tenor of the apology letter. They seemed to have proceeded on the premise that he had admitted the allegations in the charge sheet and the incident reported therein. The courts below held the charges proved against the workman, not only of throwing jute/

56 (2015) 2 SCC 410.

cotton base ball on his superior officer but also the alleged misbehaviour of using filthy language and as such the punishment of dismissal by the management was justified. The court observed that by perusal of the contents of the said apology letter it could be discerned that the workman had made admission with respect to throwing the jute/cotton base ball by mistake and further stated that such a mistake would not be repeated in future and that he be pardoned for the same. The letter nowhere stated that the appellant was involved in the incident of hurling abuses and using filthy language against his superior officer. Thus, the abusive language was not established by the apology letter. Therefore, the mere act of throwing jute/cotton base ball weighing 5-10 grams may not itself lead to imposing the punishment of dismissal from service. The court found it difficult to fathom placing of such excessive reliance on the apology letter by the enquiry officer appointed for the departmental enquiry as well as courts below for justifying the punishment of dismissal from service. The court stated that jurisdiction under article 136 of the Constitution is extraordinary and only in exceptional circumstances and not as a matter of course will it interfere with the concurrent finding of facts recorded by the courts below. It is only when the appreciation of evidence is found to be wholly unsatisfactory or the conclusion drawn from the same is pervasive in nature will the court interfere with the concurrent findings for doing complete justice in the case. The court held that in the facts and circumstance of the case, it was satisfied that it was a fit case to exercise jurisdiction under article 136 to interfere in the conclusion of the labour court upholding the punishment of dismissal as affirmed by the high court. Considering the quantum of punishment that is appropriate in the present case, the court stated that it is well settled that the court or tribunal will not normally interfere with the discretion of disciplinary authority in imposing the penalty and substitute its own conclusion or penalty. However, if the penalty imposed is disproportionate with the misconduct committed and proved, then the court can appropriately mould the relief either by directing the disciplinary/ appropriate authority to reconsider the penalty imposed or to shorten the litigation, it may in exceptional cases even impose appropriate punishment with cogent reasons in support thereof. The court referred to various decisions of the court to substantiate its stand that in cases where the punishment is disproportionate the Supreme Court can mould the relief and reduce the punishment in exceptional circumstances to do complete justice in the matter. The cases referred to by the court only deal with the powers of the Supreme Court under article 136, but did not deal with the powers of the labour court or industrial tribunal under section 11A.[57] The only case which the court considered where the case reached the Supreme Court through industrial adjudication route was *Mahendra and Mahendra Ltd*. v. *N. B. Narawade*,[58] strongly

57 *Dev Singh* v. *Punjab Tourism Development Corpn. Ltd.* (2003) 8 SCC 9; *Om Kumar* v. *Union of India* (2001) 2 SCC 386; *Union of India* v. *G. Ganayutham* (1997) 7 SCC 463; *Sardar Singh* v. *Union of India* (1991) 3 SCC 213; *Jai Bhagwan* v. *Commr. Of Police* (2013) 11 SCC 187; *Ram Kishan* v. *Union of India* (1995) 6 SCC 157.

58 (2005) 3 SCC 134.

relied upon by the high court, where it was held that the penalty of dismissal on the alleged use of filthy language is not disproportionate to the charge as it disturbs the discipline in the factory. The court distinguished the present case from *Mahendra and Mahendra* and held that the decision in the said case was not applicable here. Here there was no proof or admission of using filthy language and the only charge admitted was throwing jute/cotton balls by mistake. The court held that considering the totality of the circumstances, the punishment of dismissal from service was harsh and disproportionate and the same was set aside. The court observed that in the ordinary course, after setting aside the punishment, it should have remitted the matter to the disciplinary authority for passing fresh order of punishment which it decided to avoid as more than two decades had passed since the termination order was passed by the management and the workman must have been gainfully reemployed and had almost reached the age of superannuation. Considering the length of the service in the establishment and his deprivation of the job over the years and his gainful employment elsewhere, the court decided to grant him a lump sum amount of compensation of Rs. 5 lakhs which would meet the ends of justice in lieu of reinstatement, back wages, gratuity etc. The respondent management was directed to pay the said amount of compensation within a period of six months from the date of receipt of the copy of the order failing which the said amount will carry an annual interest of 9 %.

In *Uttar Pradesh State Road Transport Corporation* v. *Zahid Hussain*,[59] the management had proceeded departmentally against the workman for having absented from duty for more than a month. Further, thereafter under the influence of intoxication he refused to attend to a stranded vehicle of the corporation and also demanded money from the driver of the stranded vehicle for doing the needful. The inquiry officer held him guilty which became the basis for his dismissal from the services of the corporation by the management. The labour court, on reference of the dispute questioning the punishment order, held that the termination order was not legal for the charges were not proved to its satisfaction. It directed his reinstatement with continuity of service and full back wages which award was upheld by the high court. Aggrieved the corporation through a special leave petition approached the Supreme Court.

The Supreme Court substituted the award of the labour court ordering reinstatement of the workman with full back wages with reinstatement with only 25% of the back wages which, it thought, would meet the ends of justice, keeping in view his long years of service in the corporation.

In *Defence Research Education Society* v. *Neeta Tuteja*,[60] the respondent was working as a clerk in the school run by the appellant. She was alleged to be consistently irregular in performance of her duty. Further, she was also alleged to be involved in some other misconducts. She was served with the show cause notice asking her to explain why her services should not be terminated on the basis of the said alleged

59 (2014) 16 SCC 388.
60 (2014) 16 SCC 424.

misconducts. She replied to the show cause notice and it was alleged by the management that she admitted some of the charges. Thereafter, her services were terminated which became the subject matter of adjudication before the labour court. Her case before the labour court was that her services could not have been terminated without holding a departmental inquiry. The labour court upheld her stand and ordered her reinstatement with full back wages and other consequential benefits. The award of the labour court was impugned in a writ petition before the high court by the management of the school which was dismissed by the high court. Hence, the special leave petition by the management of the school.

The Supreme Court held that since the respondent/ workman had not performed her duties for a considerably long period of time, she should not have been awarded back wages. The court, accordingly, directed the counsel for the management to seek instructions from the management of the school as to whether they were prepared to reinstate the respondent workman without back wages but with continuity of service. After taking instructions from the management, the counsel for the appellant expressed readiness and willingness on behalf of the management to reinstate her in service without back wages. In view of this stand of the management and also the facts of the case, the court directed the appellant to reinstate the respondent in service without back wages but with continuity of service within one week from the date of the order. The court directed that if the respondent workman was not reinstated within one week, she would be entitled to get her salary after one week from the date of the order. The court directed that if there was no available vacancy, it would be open to the appellant school to create a supernumerary post so as to give appointment to the respondent. The court also made it clear that in view of the above development in the matter, the appellant shall not hold another inquiry in relation to her past behaviour and misconducts. The management was directed to give her notional increments if she was entitled to the same as per her service conditions. The court, accordingly, allowed the appeal to the above extent by modifying the impugned award of the labour court as upheld by the high court.

In *Ahmedabad Municipal Corporation* v. *Rajubhai Somabhai Bharwad*,[61] the respondent was appointed as a 'Mukadam' with the gram panchayat. His services were terminated by an oral order of dismissal. He raised a dispute relating to his dismissal from service which became the subject matter of reference before the labour court. The management did not file its written statement before the labour court but a compromise was entered into between the workman and the sarpanch stating, *inter-alia*, that the workman was working as a clerk in the gram panchayat and he would be reinstated in the service on the post of clerk with continuity of service and would be entitled to get all future benefits. It was also stated in the settlement that all amounts payable to him towards the post of clerk would be paid in three instalments. The said

61 (2015) 7 SCC 663.

settlement was filed before the labour court which was given by it in the form of an award.

The gram panchayat challenged the legality of the award before the single bench of the high court on the ground that the sarpanch was not the competent authority to enter into settlement on behalf of it and sought a declaration that the award was null and void. The ground of challenge was that in the absence of any resolution by the gram panchayat, the settlement and the consequent award were unsustainable in law and liable to be set aside by the high court in exercise of its writ jurisdiction. The single judge of the high court held that the sarpanch was the chief officer in the office of the gram panchayat and, therefore, was employer within the meaning of section 2 (g) (ii) of the ID Act and was competent to sign the settlement which was valid and legally enforceable. The high court held that the labour court had committed no illegality in passing an award in terms of the settlement and accordingly dismissed the writ petition. The gram panchayat and the corporation preferred an intra-court appeal against the award as upheld by the single judge which was dismissed by the division bench of the high court on the ground that the appeal was not maintainable.

The gram panchayat and the corporation preferred the special leave to appeal petition before the Supreme Court against the order passed by the division bench and another petition questioning the justifiability of the order passed by the labour court that has been affirmed by the single judge. The Supreme Court did not deal with the issue whether the intra-court appeal was maintainable or not. It dealt only with the correctness of the award passed by the labour court and the soundness of the judgment and order passed by the single judge concurring with the same. The court considered the question as to whether the sarpanch, while representing the gram panchayat, could have entered into a settlement on its behalf with the workman without a proper resolution by it under the Gujarat Panchayat Act, 1993. The court, after referring to the scheme of the Act, the relevant provisions and the rules framed thereunder, held that the labour court should not have, by a single line order, accepted the settlement without making any effort to even find out whether the *sarpanch* was authorised with any kind of resolution to enter into compromise/ settlement by the village panchayat. It should have borne in mind that it is not the *sarpanch* who was the employer and this was the minimum scrutiny that was expected on the part of the labour court. It should have performed its sacred duty to scrutinize whether a valid settlement had been entered into or not. It had to be satisfied that the settlement was lawful. In view of the fact that there was no examination whatsoever of the competence of the *sarpanch* to enter into a settlement on behalf of the panchayat, the court allowed the appeals, set aside the order passed by the single judge as well the award passed by the labour court and remitted the case to it for fresh adjudication. In this manner, the workman was again made to go before the labour court for adjudication of his dispute for no fault of his but the fact remains that the labour court did not care to go into the root of the legality or otherwise of the settlement. If the settlement was not valid the resultant award was also not valid.

The decision of the court in *Nicholas Piramal India Limited* v. *Harisingh*,[62] again deals with the question of proportionality of the punishment to the misconduct. This question arose in the following facts and circumstances:

i. The respondent workman was issued two charge sheets alleging insubordination and intentionally slowing down the work under process and resorting to go-slow work tactics which became the subject matter of departmental inquiry and consequently his dismissal on the report of the inquiry officer holding that the charges stood proved against the workman. He raised an industrial dispute against his dismissal which was referred to the labour court under the M.P. Industrial Relations Act, 1960. The labour court found the inquiry held against him in accordance with the principle of natural justice and did not interfere with the punishment order. On his appeal to the industrial court, the matter was remanded to the labour court on the ground that the evidence produced by the management in the domestic inquiry did not show that he had intentionally given less production. The labour court again stood by its stand and upheld the order of dismissal and on appeal the industrial tribunal again remanded the matter for proper appreciation of evidence. The labour court, to which the matter was remanded second time, re-appreciated the evidence and held that the charges against the workman stood only partially proved and set aside the order of dismissal and directed the appellant company to reinstate the workman in the service with 50% back wages. The labour court, however, denied him remaining 50% of back wages, treating the same as penalty imposed upon him in place of the order of dismissal passed against him by the disciplinary authority. The award was upheld by the industrial court in the appeal. This award was challenged by the appellant company by filing a writ petition before the high court on various grounds.
ii. The high court, after considering the facts and circumstances and also the powers of the labour court under section 107 of the MPIR Act (same as under Section 11 A of the ID Act) and the relevant standing orders, held that the labour court had original jurisdiction and power to interfere with the quantum of punishment imposed upon the workman by the disciplinary authority. Further, the fact that there was no past misconduct on the part of the workman which was a relevant consideration under clause 12 (3) (b) (vi) of the certified standing orders under the MP Industrial Employment (Standing Orders) Rules, 1963 (in short, CSO) applicable to the case, there was no scope for interference with the order of the labour court. Hence the special leave petition by the appellant company before the Supreme Court.

The Supreme Court held that the order of dismissal of the workman from service was disproportionate and severe to the gravity of the misconduct of wilful disobedience of lawful or reasonable order under clause 12(1)(d) of the CSO and which misconduct

62 (2015) 8 SCC 272.

by him had been only partially proved against the workman. Having regard to the nature of the judicial power conferred upon the high court, it had rightly accepted the award passed by the labour court which had wide powers to differ on the quantum of punishment. Further, while affirming the award the high court had recorded valid and cogent reasons. Therefore, the same could neither be termed as erroneous nor was there any error in law apparent on the record calling for interference by it.

Since the matter was pending before various courts for the last 14 years, the Supreme Court directed the appellate company to reinstate the workman within four weeks from the receipt of the judgment and compute 50% back wages payable to the workmen from the date of dismissal till the passing of the award, as per the periodical revision of the same and pay full salary from the date of the passing of the award till the date of reinstatement.

Management's delaying tactics deprecated and penalized

In *India Yamaha Motor Private Limited* v. *Dharam Singh*,[63] the Supreme Court deprecated the attitude of the management in doing everything to delay the adjudication of the industrial dispute referred by the Uttar Pradesh Government to the industrial tribunal, Meerut for adjudication of a collective dispute of workers who were earlier represented by a trade union which was derecognized by the appellate management. The workmen were seeking regularisation of their employment, wages and allied benefits being paid to the permanent workers and the dispute related to 1989. Because of the derecognition of the union, 113 of the respondent workmen in a meeting attended by 71 of them authorised five amongst them *vide* a resolution to represent their collective dispute before the industrial tribunal, Meerut in the pending reference. The management pleaded before the industrial tribunal that it could not proceed further in the adjudication of the dispute as these five workmen could not act as the representatives of the workmen in terms of the relevant provisions and the rules framed thereunder on the subject of representation of the workers, namely, section 6- I of the Uttar Pradesh Industrial Dispute Act, 1947 read with rule 40 of the Uttar Pradesh Industrial Disputes Rules which objection was upheld by the industrial tribunal but the High Court of Allahabad set aside the said order of the industrial tribunal and directed it to decide this old matter of 1989 on priority and expeditious basis.

Feeling aggrieved by the order of the high court, the appellant approached the Supreme Court. It may be pertinent to state here that on an earlier occasion also the management had entered into litigation on the issue of transfer of reference from a labour court to the industrial tribunal, Meerut due to the issue of jurisdiction relating to subject matter falling within the jurisdiction of the industrial tribunal which finally was settled in favour of transfer of reference to the industrial tribunal, Meerut.

The Supreme Court held that section 6-I of the Uttar Pradesh Industrial Disputes Act,1947 (same as section 36 of the ID Act) and rule 40 framed thereunder would be applicable in a situation where the workers chose to get their case represented by

63 (2015) 2 SCC 108.

other than themselves. It was of the considered opinion that a choice of an individual to represent himself in a dispute in a labour court or tribunal is a vested inherent right. It is only a privilege of being represented through someone else that needs the sanction of law. The court observed:[64]

> Section 6-I, as also, Rule 40 de-alienate the extent to which the above privilege can extent. In case, workmen before an Industrial Tribunal choose to be represented through the authority concerned, that choice must be in conformity with Section 6-I, as also, Rule 40 aforementioned.

The court held that it is well recognized in law, that in cases where more persons are involved collectively on the same side, it is open to them to choose one or more amongst themselves, to represent all of them and such a provision is also incorporated under Order 1 Rule 8 of the Civil Procedure Code, 1908. The court was satisfied that it was open to the respondent workman to choose one or more amongst themselves, to represent all of them before the industrial tribunal and there was no infirmity in the impugned order passed by the high court. The court observed thus:[65]

> While disposing of the present controversy, it is necessary for us to clarify that the instant conclusion has been drawn by categorically arriving at the conclusion that Section 6-I of the U.P. Industrial Disputes Act and Rule 40 of the U.P. Industrial Disputes Rules, would be applicable, only in a situation where the workmen choose to be represented through a third party before the industrial tribunal. The above provisions would be inapplicable, when the workmen choose to present their own case by themselves. In the instant situation, none of the above provisions would be invoked.

The court was satisfied that although the management was out to delay the adjudication of the dispute and had abused the judicial process and thereby, tired out the workmen in the legitimate pursuit of their alleged rights. It was clear that this was not the purpose for which the adjudicatory processes were set up. The purpose of the Act is for expeditious relief to the employed in industries and this legislation and similar other legislation for welfare of the workers have been termed as beneficial legislation. The court was of the view that some compensation should be awarded to the respondent workers for having remained involved in this assiduously long process of litigation and, accordingly, the appellant management was ordered to pay as cost Rs. 1 Lakh to each of the remaining contesting workers. It also directed the industrial tribunal, Meerut to make all efforts to dispose the controversy within nine months from the date the parties appear before it.

64 *Id.* at 117.
65 *Id.* at 119.

III TRADE UNIONS ACT, 1926

Cancellation of the registration of trade union: Locus

In *R.G. D'Souze* v. *Poona Employees Union*,[66] the appellant claimed to be an active member in labour movement and an interested party to invoke proceedings under section 10 of the Trade Unions Act seeking withdrawal or cancellation by the registrar of the registration of the respondent trade union which had been registered in the year 1986. The ground for seeking cancellation was that the trade union had obtained registration by mistake and fraud. The appellant was the president of the said trade union who had been expelled from the trade union because of internal clashes.

The registrar of the trade unions cancelled the registration of the trade union on the application of the appellant. Being aggrieved by the said order, the trade union filed an appeal under section 11 of the Act before the industrial court, Pune. After hearing both the parties, the industrial court, Pune, passed a reasoned order setting aside the order of the registrar which order was upheld by the high court when challenged in a writ petition before it. The high court held that the appellant had no locus to apply for cancellation of the certificate of registration of the trade union and the view taken by the industrial court was legal and valid.

In the special leave to appeal filed by the appellant against the judgment and order of the high court, the Supreme Court observed that under section 10 of the Trade Unions Act, the registration of a trade union may be withdrawn or cancelled by the registrar of trade unions either on application of a trade union or the registrar *suo motu*. Besides the locus of these two entities, there is no mention in the said provision about cancellation of registration of the trade union on application by any other person. The said provision permits the authority to cancel the registration of the trade union if it is obtained by fraud or mistake, but does not permit the registrar to cancel the certificate of registration if the same is granted by mistake due to incorrect assessment or non-application of mind or mechanical act on the part of the registrar. The court observed that even if it is assumed that the registrar has such a power, then it must be preceded by an enquiry, followed by a show cause notice, disclosing grounds for initiating action so that the same can be answered by the notice union effectively. This proper course was not followed in the present case which was also observed by the high court and that was one of the reasons for upholding the decision of the industrial court.

Further, even if the registrar, either by mistake or due to incorrect assessment or non-application of mind, may have issued a certificate of registration to the trade union but the said official act of the registrar of trade unions cannot be nullified by him under section 10 of the Act but can only be rectified by the appellate authority under section 11 of the Act or by the writ court. The court held that the necessity of specifying or disclosing the nature of the industry or industries in which the trade

66 (2015) 2 SCC 526.

union intended to operate and function came only when section 2 of the Amendment Act, 2001 effective from January 9, 2002, was inserted in the Trade Unions Act, whereas in the instant case, the trade union was registered in 1986. The requirement of the workmen engaged in the establishment or industry with which it was connected to be members of the trade union also came only after section 4 was amended and the proviso was incorporated which came into effect w.e.f. January 9, 2002 which is much after the registration of the trade union.

It was thus very clear that the trade union had neither suppressed nor supplied any information by fraud or mistake in order to obtain the certificate of registration. The court held that the high court had rightly affirmed the decision of the industrial court and had rightly set aside the order of cancellation of certificate of registration of the trade union holding that it was not legal or valid. The court found no valid or cogent reasons to interfere with the same in exercise of its appellate jurisdiction.

IV CONCLUSION

The approach of the court in the year under survey has been protective of the rights of the workers to a great extent. It has ignited the hope that even in the post liberalisation era, the rights of the workers can be improved if the judiciary adopts social context adjudication and is sensitive towards the constitutional goals of social and economic justice and there is proper appreciation of the philosophy underlying the labour legislation. Labour contributes directly to the health and wealth of the nation and failure to meet their aspirations amounts to denial of social and economic justice to them. The need of the day is a well conceived legal framework for regulating employer employee relationship; a legal regime to foster cooperation between the employers and the workers for better production and over all industrial harmony. There is much to be desired from all the three organs of the state, especially in the area of industrial relations. It is submitted that the latest labour code, *viz.,* the Industrial Relations Bill, 2015, does not inspire confidence and lacks novel solutions to the perennial problems in the area of industrial relations.