19

LABOUR MANAGEMENT RELATIONS

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I INTRODUCTION

SURVEYED ARE the reported decisions of the Supreme Court in the area of industrial relations law in the year 2017. As in the past, collective disputes have hardly been coming before the court for adjudication. Litigation that reached the apex court mainly related to issues of violation of retrenchment law or disciplinary matters. Other than these, some issues relating to reference and regularization were also reported. However, no decision either on the Trade Unions Act, 1926 or on the Industrial Employment (Standing Orders) Act, 1946 has been reported.

II INDUSTRIAL DISPUTES ACT, 1947

Industry: meaning

a. Scope of 'Industry' to be reconsidered by a nine-judge bench

In *State of Uttar Pradesh* v. *Jai Bir Singh*,[1] there was a reference by a five-judge bench of the apex court for constitution of a larger bench to reconsider its earlier judgment in *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa*[2] and for placing the matter before the Chief Justice of India who directed the matter be placed before a bench of seven judges. The matter came up for consideration on January 2, 2017. After hearing the counsel for the parties at considerable length, the seven-judge bench of the court deemed it appropriate to direct that all the appeals be placed before a bench comprising of nine judges to be constituted by the Chief Justice of India to answer the question raised in the reference order dater 05.05.2005 passed by the five-judge bench of the Court in *Jai Bir Singh*.

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1 (2017) 3 SCC 311(in short, *Jai Bir Singh*).

2 (1978) 2 SCC 213 (in short, *Bangalore Water Supply*).

Workman

a. 'Apprentice' under the Apprenticeship Act, 1961 not 'workman'

For appreciating the issues that came for determination of the Supreme Court in *Ram Gopal Dwivedi* v. *Kanpur Electricity Supply Company Ltd.*,[3] it will be appropriate to recall the ratio laid down earlier by a division bench of three judges of the court in *U.P. State Electricity Board* v. *Shiv Mohan Singh*.[4]

The court in *Shiv Mohan Singh* had held that the Apprentices Act, 1961 is a self-contained code. To bring the case within the definition of the "apprentice" under section 2 (aa) of the Act, there should be a contract of apprenticeship between the employer and the apprentice and the apprentice must be undergoing training in pursuance of the said contract. Further, the definition of 'workman' in section 2 (r) of the said Act, excludes apprentice. On the other hand, the definition of 'workman' under the ID Act, 1947 includes 'apprentice.'

The court found that there was an apparent conflict between the definition of "apprentice" under section 2 (aa) and "worker" under section 2 (r) of the Apprentice Act, on the one hand and the definition of "workman" under section 2 (s) of the ID Act, on the other. To resolve this conflict the court held that the rule of harmonious construction could be applied to hold that "apprentice" undergoing training in pursuance of a pre-existing contract of apprenticeship would not be covered by the definition of "workman" under section 2(s) of the ID Act, and those apprentices engaged otherwise than under a pre-existing contract of apprenticeship alone would be covered by the ID Act, if they, otherwise, fulfill other conditions as laid down in the said definition of 'workman'. This the court ruled keeping in view the main purpose of the Apprentice Act, which is to build trained manpower for increasing the industrial base of the country for higher economic growth. This purpose will be defeated if the employers are burdened with the liability to meet the requirements of the labour laws in respect of those who are under a contract of "apprenticeship". They are granted training under a contract of apprenticeship for specified period of time which contract will eventuality come to an end on acquisition of the training from such employers. The court also held that even by applying the maxim "*generalia specialibus nonderogant*", the Apprentices Act, being later and special legislation must prevail over the ID Act, which is a general legislation.

In *Ram Gopal Dwivedi*, the court observed that this case also required to be viewed in the light of the law laid down in *Shiv Mohan Singh*. In this case, the labour court had ordered reinstatement with payment of 50% back wages in favour of the petitioner by holding that his termination of service by the respondent was illegal. It was admitted before the court that the appellant was appointed as a trade apprentice under the Apprentices Act. In terms of the agreement, he was to undergo training in the trade of boiler attendant for a period of three years which came to an end after the

3 (2017) 14 SCC 630 (in short, *Ram Gopal Dwivedi*).

4 (2004) 8 SCC 402 (in short, *Shiv Mohan Singh*).

expiry of that period. His services were, accordingly, terminated giving rise to an industrial dispute between the appellant and the respondent. On reference, the labour court was to decide about the validity of his termination of service and the relief, if any, he was entitled to.

His case was that there was violation of mandatory provisions of the retrenchment law under the ID Act. The labour court upheld his plea and ordered his reinstatement with 50% back wages which award was set aside by the high court relying on the judgment of *Shiv Mohan Singh*. The Supreme Court held that the high court was fully justified in setting aside the award of the labour court as the case at hand was squarely covered by the facts of *Shiv Mohan Singh* and the law laid down in the said case.

Reference and related issues

a. Discriminatory reference: Direction to refer cases of similarly situated workmen

The case of *Basant Singh* v. *State of Himachal Pradesh*,[5] is illustrative of how administrative power conferred under section 10 of the ID Act, can be used to discriminate and thus exercise it arbitrarily. Here, the appellants were alleging discrimination in the matter of reference of their disputes to the labour court for adjudication. It was their grievance that the case of similarly situated persons were referred to adjudication without any objections with regards to their delay in raising the industrial dispute.

The Supreme Court directed that if cases of similarly situated persons have been referred for adjudication before the labour court, the case of the appellant shall also be considered for reference ignoring the objections in the matter of delay. The court directed that this shall be done by the appropriate government within two months from the production of the copy of the judgment of the court.

b. *Delay in raising industrial dispute*

In *State of Madhya Pradesh* v. *Mohan Lal*,[6] the workman concerned was a daily rated worker. His services were terminated by the state government after he had put in few years of service. He raised an industrial dispute with the competent authority after a gap of 14 years which resulted in award by a labour court directing the state government to reinstate him in service without back wages. The said award was upheld by the high court.

The Supreme Court directed that the worker be paid a compensation of Rs. 2 Lakhs in lieu of reinstatement keeping in view that he was a daily rated worker and had approached the authorities after a gap of 14 years after his termination. The Court directed that he should be paid the compensation within eight weeks from the date of the receipt of the orders. It accordingly modified the award passed by the labour court and as upheld by the high court.

5 (2017) 1 SCC 263.

6 (2016) 16 SCC 608.

Disciplinary action

a. *Powers of the Industrial adjudicator under section 11 A*

In *Uttar Pradesh State Road Transport Corporation* v. *Gopal Shukla*,[7] the case concerned a conductor of the state road transport corporation who was alleged to have carried 25 passengers without issuing ticket to them even when he had collected fare from those passengers. On the basis of the said complaint a departmental enquiry was held against him which found him guilty of the charges and he was dismissed from services of the corporation. He raised an industrial dispute regarding his dismissal. The labour court held that although it was proved that the passengers were travelling without tickets, it was not proved that he had indulged in corruption. On this basis, the labour court substituted the punishment of dismissal with stoppage of annual increments with cumulative effect taking aid of section 6 (2A) of the UP-ID Act (equivalent to section 11 A of the ID Act) invoking the doctrine of reformation and principle of mercy. The high court, in exercise of its supervisory jurisdiction, gave the stamp of approval to the award of the labour court treating it as just and defensible. The Supreme Court when approached by the corporation in special leave to appeal observed that it was compelled to wonder whether a legal forum should allow itself to imagine facts and conceive of perverted situations to brush aside the material brought on record and then for contrived reasons arrive at a conclusion that there was possibly no embezzlement or personal gain.

The Court observed that in the instant case, as accepted by the labour court, the workman was carrying 25 passengers without issuing tickets which had caused financial loss to the corporation. That apart, the workman had also violated the conduct rules. These two aspects, in the opinion of the apex court, were absolutely clear. Yet, the labour court, while recording these findings, was guided by the observations of the Supreme Court in *Scooter India Ltd.* v. *Labour Court*,[8] that justice must be tempered with mercy and the erring workman should be given an opportunity to reform himself and to prove to be a loyal and disciplined employee. The Court stated that the said observation could not be applied in the present case. The workman in the instant case held the post of trust and confidence and was expected to behave as a disciplined, loyal worker and maintain fiscal sanctity. He should not have done anything which would make him a person of questionable integrity.

The Court observed that it was compelled to state that the exercise of power by the labour court under section 6 (2A) of the Act, was absolutely arbitrary and was not exercised in a judicial manner. The Court was of the view that the delinquent has harbored the notion that when the cancerous growth has affected the system, he can further allow it to grow by covering it like an octopus, with his tentacles not just allowing any kind of surgical operation or treatment so that the lesion continues. The whole act, in the opinion of the court, was reprehensible and such a situation did not

7 (2015) 17 SCC 603.

8 (1989) Supp. (1) SCC 31.

even remotely commend lenience. It set aside the award of the labour court as well as the order passed by the high court and restored the order of dismissal imposed by the corporation.

In *State Bank of Patiala* v. *General Secretary, Staff Union*,[9] the workman was promoted from peon to the post of record keeper/ go-down keeper. He was to look after a godowns maintained by the bank wherein stock of borrowers pledged with the bank as security were kept. He was specifically instructed not to permit any one to remove the stock without the express permission of the bank manager concerned. Yet, without getting any such instruction, he permitted one of the borrowers, to take away the goods with an understanding that the borrower would replace the said goods after sometime. The borrower did replace the goods but with an inferior quality which adversely affected the value of security.

He was proceeded against departmentally for the aforesaid acts of gross misconduct. The enquiry officer held him guilty of the charge resulting in his dismissal. The workman raised an industrial dispute. The labour court, on reference, exercised its power under section 11 A of the ID Act and found the punishment harsh and substituted it with withholding of five increments with cumulative effects. It also directed his reinstatement with back wages.

This award was assailed by the management before the high court where the single judge as well as the division bench upheld the award of the labour court. Hence, the management preferred a special leave petition before the Supreme Court. It held that the order of dismissal was passed by the management after being satisfied with the findings of the enquiry officer that the workman had committed a serious misconduct of allowing a borrower to take out from the godown stock kept as security for the advance. This was contrary to the specific instruction of the authorities and amounted to gross negligence. It was absolutely against the interest of the employer and was not to be tolerated. The court observed that it was unfortunate that the labour court did not take the said facts seriously as the conduct of the employees made him a liability to the employer.

In the circumstances, the court was of the firm opinion that such an employee could not be continued in service and the order of dismissal was just and proper. It ruled that the labour court ought not to have interfered with such a just order by reducing the punishment in pursuance of its powers under section 11A of the ID Act. It set aside the judgments of the high court confirming the award and upheld the order of dismissal passed by the management.

In *HVPN Ltd.* v. *Bal Govind*,[10] the management terminated the service of the workman on account of his involvement in a criminal case. He was subsequently acquitted by the trial court giving him the benefit of doubt. He raised an industrial dispute relating to his termination culminating into a reference by the state government

9 (2016) 15 SCC 160.

10 (2017) 2 SCC 382.

to the labour court which decided in favour of the workman granting him reinstatement with 50% back wages. This award was upheld by the high court. In appeal, the Supreme Court found no justification for granting the relief of back wages since his acquittal was based on of the benefit of doubt. It upheld the award of reinstatement and granted all benefits including continuity of service. The workman had sought direction for his regularization in view of such a proposal being under consideration of the management. The Court, without issuing any such direction, left it to the workman to approach the management on the subject of regularization.

In *Management of State Bank of India* v. *Smita Sharad Deshmukh*,[11] the Supreme Court held that on facts the industrial tribunal had categorically given a finding, on appreciation of evidence on record, that the delinquent employee had knowledge that she had forged the document. It held that in face of this clear finding, there was no need for the management to establish that the employee, at the time of submission of passing certificate, knew the document was a forged one. The Court held that the high court had erred in interfering with the punishment of dismissal based only on the ground that the management had not led evidence to prove that the employee was aware of the fact that the document was a forged one. The Supreme Court held that the high court, while exercising its powers of superintendence, cannot re-appreciate the evidence led before the industrial tribunal. Its jurisdiction is limited to examining whether before the industrial tribunal there was evidence supporting the findings and the conclusion arrived at by it.

In *Eastern Coalfields Limited* v. *Misri Yadav*,[12] disciplinary proceeding was initiated against the respondent resulting in his dismissal from service. The industrial tribunal, on the reference of his dispute, held that the punishment of reduction of his two increments would be sufficient for the misconduct. It set aside the dismissal order and directed that the workman be reinstated and paid 50% of his back wages from the date of his dismissal till his reinstatement. The single judge of the high court which heard the writ petition against this award dismissed the same. The division bench, in the writ appeal, took the view that the direction for reinstatement was in order. However, it held that the tribunal had no jurisdiction to substitute the punishment of dismissal with the stoppage of two increments, and therefore the appellant management was at liberty to pass fresh orders on any punishment other than dismissal.

The Supreme Court in the special leave to appeal preferred by the management passed an interim order staying payment of back wages subject to the condition that the workman be reinstated within two weeks from the date of the order. When the matter came before it for further hearing, the court was informed that the workman had since been reinstated and he had crossed the age of superannuation. In view of this, it observed that what survived in the appeal before it was only the issue with regard to continuity of service and back wages. After hearing the counsel for the

11 (2017) 4 SCC 75.

12 (2017) 11 SCC 327.

parties, the court was of the view that the interest of justice will be served if the workman was granted continuity of service for all purposes except back wages between the date of dismissal and the date when the interim order of reinstatement was passed by the court. Further, the workman was granted 50% back wages from the date of the order of the tribunal to the date when the interim order was passed by the court. It, however, observed that in case the workman had been granted wages under section 17-B of ID Act, 1947 during that period. he would not be paid further back wages.

b. *Legal representation in departmental enquiry*: *When allowed*

In *Keshav H. Gholve* v. *Thermax Limited*,[13] the Supreme Court reiterated the legal position that unless the management engages a lawman in a departmental proceeding, the delinquent workman facing the enquiry is not entitled to engage a lawman. In this case, the high court had passed the order stating that the appellant workmen were free to engage any employee of their choice from the respondent company or a representative of trade union operating in the respondent company. Before the Supreme Court, the workmen in their special leave to appeal, expressed their fear that in view of the standing orders, they would not be in a position to engage an employee of their choice to represent them in the departmental enquiry and their choice would be restricted to an employee in the department concerned.

In view of this apprehension of the workmen, the Supreme Court made it clear that *dehors* any restrictions in the standing orders, the appellants be permitted to be represented by any employee of their choice in the respondent company or a representative of a trade union operating in the respondent company. With these observations the court disposed of the appeal of the workmen.

c. *Disciplinary Action against 'non-workman' and the 'workman' who opts to approach directly high court under articles 226/227: Scope of power*

Here, the purpose of dealing with the case of disciplinary proceedings against a 'non-workman' and, therefore, not covered by the ID Act and the workman covered by the Act, but opting to approach the high court directly under its writ jurisdiction where the employer is a 'state' under article 12 of the Constitution is to highlight the difference in power of the industrial adjudicator while dealing with disciplinary matter of dismissal or discharge in contrast to that of the high court in disciplinary matters. The power of industrial adjudicator is wider in scope when dealing with dismissal of a workman than that of the high court while dealing with dismissal of a non-workman or a workman who directly approaches the high court invoking its writ jurisdiction under articles 226 or 227 of the Constitution. This legal position is generally ignored by courts at all levels.

In *Chief Executive Officer, Krishna District Cooperative Central Bank Limited* v. *K. Hanumantha Rao*,[14] the employee concerned was engaged as a supervisor in the appellate bank. He was issued a charge sheet alleging dereliction of duty resulting in

13 (2017) 13 SCC 741.

14 (2017) 2 SCC 528.

heavy losses to the management due to his negligence. He was dismissed from the bank on the basis of the departmental enquiry held against him in accordance with the principles of natural justice. The appellate authority dismissed his appeal against the order of dismissal.

A single judge of the high court dismissed his writ petition impugning the dismissal order. A division bench of the high court which heard his writ appeal held that the enquiry was conducted in accordance with the principles of natural justice but at the same time observed that he alone was not responsible for negligence. It took the view that the management too was negligent in supervising the affairs. In view of this, the division bench of the high court reduced the punishment from dismissal to stoppage of two increments for a period of three years. In the special leave petition filed before the Supreme Court, the management assailed the judgment of the division bench of the high court insofar as it interfered with the punishment imposed by the management.

The Supreme Court observed that the division bench of the high court failed to appreciate that the dismissed employee was the supervisor and it was his specific duty, in that capacity, to check the accounts etc., and supervise the work of the subordinates. The duties of the supervisor are not identical and similar to that of the top management of the bank. Therefore, the high court was wrong in accusing the top administration of lack of proper supervision. The Court held that it is well settled law that the high court does not have the powers of the appellate authority over the managerial action. It is only when the punishment is found to be outrageously disproportionate to the nature of charge that the principle of proportionality comes into play. The Court further observed that it has to be borne in mind that this principle would be attracted, which is in tune with the doctrine of *Wednesbury*,[15] rule of reasonableness. It is only when, in the facts and circumstances of the case, penalty imposed is disproportionate to the nature of the charge that it shocks the conscience of the court and the court is forced to believe that it is totally unreasonable and arbitrary. The Court referred to the observations of Lord Diplock in *Council of Civil Service Unions* v. *Minister for the Civil Service*,[16] which were apposite:

> …. Judicial review has, I think, developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads, grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality". The second "irrationality" and the third "procedural impropriety". This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" ……

15 *Associated Provincial Picture Houses Ltd*. v. *Wednesbury Corpn*., (1948) 1 KB 223: (1947) 2 All ER 680 (CA).

16 (1985) 3 AC 374 (HL) at 410.

The Court found that there was no finding arrived at by the high court to the effect that the punishment awarded to the employee was shockingly disproportionate. Even otherwise, the employee did not perform his duties with due diligence as a supervisor which had led to serious frauds in a number of accounts by his subordinate staff. It was, therefore, for the disciplinary authority to decide or consider as to whether the employee was fit to continue. It observed that even if the Court comes to a conclusion that the order of penalty awarded by the employer is shockingly disproportionate the matter should be remanded to the disciplinary authority for imposition of a lesser punishment as it may deem appropriate which power, of course, it must exercise reasonably. The courts have to be cognizant of the legal position that they cannot usurp the function of the disciplinary authority.

In the instant case, the Court found that the punishment imposed was not shockingly disproportionate and, therefore, the question of remitting the case to the disciplinary authority did not arise.

It is submitted that the legal position enunciated in this case is the correct proposition of law as regards the powers of the high courts in disciplinary matters which are supervisory in nature. However, had such a case come before the labour court or the industrial tribunal, then the power that would be exercisable by either of them would be one of appellate authority with larger scope for interference both in the matter of appreciation of evidence with regard to proving of misconduct and also quantum of punishment. This distinction in the scope of power of interference has, on many occasions, been lost sight of even by the Supreme Court leading to misapplication of the law and thereby resulting in injustice. Of course, the cardinal principle is that even while exercising powers of the appellate authority and not merely supervisory authority, the labour court and the industrial tribunal are to be guided by reason and that interference in the matter of punishment may not be treated as a rule.

In *Correspondent, Anaikar Oriental (Arabic) Higher Secondary School* v. *A. Haroon*,[17] the petitioner was a PG assistant in Biology with a minority institution whose services were terminated for allegedly disobeying authorities, assaulting a fellow staff and neglecting his duties. He filed a writ petition challenging his termination. The single judge of the high court held that the order of termination was bad for non-compliance with the principles of natural justice which order was upheld by a division bench of the court in writ appeal. The management challenged the concurrent findings of the high court before the Supreme Court.

The court took note of a proposal made on behalf of the management for a lump sum monetary payment between Rs. 40-50 lakhs by way of golden handshake in place of reinstatement and back wages as ordered by the high court. After considering the facts and circumstances of the case, the court accepted the proposal of the management and directed it to pay a sum of Rs. 50 lakhs to the employee in terms of its offer made by it as compensation in place of reinstatement and back wages as ordered by the high

17 (2017) 2 SCC 510.

court. The court considered it fair and just keeping in view that the management had lost confidence in the employee.

d. *Scope of the powers of the authority under section 33 (2)(b) in disciplinary matters*

In *Management of Tamil Nadu State Transport Corporation (Coimbatore) Limited* v. *M. Chandrasekaran*,[18] the workman concerned was a driver engaged by the appellant who caused a serious accident resulting in the death of around five people. He was proceeded against departmentally on the charge of driving the bus in a rash and negligent manner. The enquiry officer found him guilty and he was dismissed from service. The appellant corporation submitted an application before the conciliation officer for approval of the action taken under section 33 (2)(b) of the ID Act, in the industrial dispute pending before him. The conciliation officer, after analyzing the material placed before him in the said proceedings, noted that the department had examined only two witnesses who were cross examined as well. He observed that though the enquiry was held in accordance with the principles of natural justice but the evidence adduced was of low standard not sufficient to substantiate the charges framed against him. He, therefore, refused to accord approval for the dismissal of the workman. This was assailed by the management in the high court.

The single judge held that the view taken by the conciliation officer was well founded and did not warrant any interference. Accordingly, he dismissed the writ petition. The division bench in the writ appeal affirmed the view taken by the single judge. The moot question before the Supreme Court in special leave petition was regarding the powers and jurisdiction of the conciliation officer while considering an application for approval of the order of punishment under section 33 (2) (b) of the ID Act. The court observed that it is a well settled legal position that the jurisdiction under section 33(2)(b) of the Act, is a limited one and cannot be equated with that under section 10 of the ID Act. While exercising jurisdiction under section 33(2)(b) the adjudicating or the conciliatory authorities are required to see as to whether a *prima facie* case has been made out as regards the validity or otherwise, of the domestic enquiry held against the delinquent. The power exercised under the said provision of granting the permission or approval of discharge or dismissal would be liable to be challenged in an appropriate proceeding before the industrial tribunal or labour court in terms of the provisions of the ID Act.

The Supreme Court observed that a *prima facie* case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. The power is essentially a power of superintendence. It has only to consider whether the view taken is a possible one on the evidence on record. It has, however, not to substitute its own judgment for the judgment in question. The Court observed that the sole reason which weighed with the conciliation officer in the present case was that no independent witness was produced as not even a single passenger of the bus was examined by the department. This approach was untenable in view of the earlier decision of the court in *State of*

18 (2016) 16 SCC 16.

Haryana v. *Rattan Singh*,[19] that mere non-examination of the passenger does not render the finding of guilt and punishment imposed by the disciplinary authority invalid.

The Court held that this was a case covered by the principles laid down in *Cholan Roadways Ltd.* v. *G. Thirugnanasambandam*,[20] on both counts, namely, on the principle of *res ipsa loquitur* keeping in view the gravity of the accident caused by the workman while plying the bus and, secondly, the powers of the authorities under section 33 (2) (b) are limited and cannot be used to re-appreciate the evidence. Right from the conciliation officer to the high court there has been complete non-appreciation of the legal position. The court would have set aside the impugned orders and remanded the matter to the conciliation officer but refrained from doing so as the matter was pending for long time and therefore warranted an immediate decision. The Court, accordingly, decided to grant approval of the order of punishment passed by the corporation against the workman, giving him liberty to take recourse to appropriate remedy as may be available to him in law to question the said order of dismissal.

Retrenchment

a. *Termination on abandonment of service*

In *Saryug Singh (Dead) Through Legal Representatives* v. *National Seeds Corporation*,[21] the services of the workman were terminated after the publication of advertisement in the newspaper requiring the workman to report for duty failing which his services would be liable to be terminated by the management. The workman did not report back for duty with the result that the management terminated his services. He challenged his termination resulting in an award ordering his reinstatement and payment of back wages which award was upheld by the single judge of the high court. He died during the pendency of the proceedings before the division bench of the high court in the intra-court appeal. The division bench of the high court modified the award as upheld by the single judge holding that the deceased employee would be entitled to the total compensation worked out in terms of money and limited it to Rs. 50,000. This order of the high court was challenged before the Supreme Court by his legal representatives.

The Supreme Court held that it could be seen from the record that it was not a case of termination as such but a case of voluntary relinquishment of service. It agreed with the division bench of the high court that the deceased employee was not entitled to back wages for the entire period. Having regard to the fact that the employee was no more and that his legal heirs were before the court, it directed that they be paid a further sum of Rs. one lakh in full and final settlement of the entire claims of the deceased employee. It further directed that the said amount shall be paid to the wife

19 (1977) 2 SCC 491.

20 (2005) 3 SCC 241.

21 (2017) 13 SCC 269.

of the deceased employee within a period of six weeks. If the amount was not paid within the said period, it would carry interest of 12% pa from the date of death of the deceased employee and the officers responsible for the delay would be personally liable for it.

It is important to point out here that termination on accountant of abandonment of service has been held by a constitution bench of the court in *Punjab Land and Reclamation Corp*. v. *Presiding Officer, Labour Court*,[22] as retrenchment and to that extent the court in this case is wrong when it held that the present case was not a case of 'retrenchment'. If it was a case of retrenchment, non-compliance with section 25 F rendered it illegal. Since the workman died during the pendency of the proceeding his heirs could be entitled to compensation only. But could compensation of one lakh at the end of the day be termed as just and fair?

b. *Other cases of retrenchment*

In State *of Madhya Pradesh* v. *Vinod Kumar Tiwari*,[23] the service of the workman who was engaged on daily wage basis for two years was terminated. He complained that the termination of his service was in violation of the mandatory provision of section 25-F of the ID Act. This resulted in a reference to the labour court which ordered his reinstatement and the said award was upheld by the high court. Hence the present appeal to the Supreme Court.

The Supreme Court observed that it has been held time and again that reinstatement is not an automatic relief upon a finding that retrenchment is in violation of section 25-F. The Court further observed that in the present case neither the labour court nor the high court had given any special reason why the workman was ordered to be reinstated. It was of the opinion that in the case of a workman who had worked only for two years as a daily wager, reinstatement was not the appropriate relief. It accordingly awarded compensation of Rs. 1 lakh in favour of the workman in lieu of reinstatement which it directed to be paid to him within a period of six weeks from the date of receipt of copy of the orders.

In *Meghashyam Sadashivrao Vadhave* v. *State of Maharashtra*,[24] the Supreme Court directed the state government to pay an amount of Rs. 3 lakhs only by way of a demand draft in the name of the workman within two weeks from the date of order in full and final settlement of the entire claims of the workman. The Court made it very clear that no further extension of time will be given for compliance with the order of the court.

In *Vashrambhai Dhanabhai Vega*d v. *State of Gujrat*,[25] the workman had put in more than 20 years of service when his services were terminated by the management. He raised an industrial dispute against the order of his termination. The labour court allowed his claim and granted the relief of reinstatement with 20% back wages. The

22 (1990) 3 SCC 682.
23 (2016) 16 SCC 610.
24 (2017) 11 SCC 175.
25 (2017) 2 SCC 508.

High Court substituted the relief granted to him by the labour court by awarding a lump sum payment of Rs. 50,000/- in lieu of reinstatement with 20% back wages. The workman challenged the decision of the high court in the Supreme Court. It held that the compensation granted by the high court was inadequate and it awarded Rs. five lakhs in his favour which, according to the court, would meet the ends of justice.

In *Universal Glass* v. *Harpal Singh*[26] also the dispute related to termination of the services of a workman. There was as usual prolonged litigation between the management and the worker culminating into a special leave petition in the Supreme Court by the management. In the meantime, the appellant company had been closed down.

The Supreme Court suggested a peaceful settlement of the matter and favoured a one-time payment of Rs. seven lakhs to the workman by the management keeping in view that the workman had succeeded before the labour court as well as the high court. It seems that the management had arrived at a settlement of Rs. four lakhs with other workers in view of its decision to close the business. The Court, keeping in view all these factors, held that the interest of justice would be met if a sum of Rs. seven lakhs were paid to the workman within two months from the date of the order in full and final settlement of all his claims.

In *Delhi Transport Corporation* v. *Gian Chand*,[27] the management was aggrieved by the judgment of the Delhi high court which had directed it to reinstate the respondent workman and pay him 60% back wages.

The Supreme Court without giving any reasons observed that it found no justification in awarding back wages in the facts of this case. The Court ordered reinstatement of the workman with continuity of service and all other consequential benefits except back wages. It took notice of the fact that the workman was denied the option for pension in view of the fact that at the relevant time of giving the option he was not in service. The Court directed that he be given a fresh opportunity to exercise option in favour of grant of pension before the date of his superannuation.

In *Raju Chand* v. *Zonal Director Nehru Yuva Kendra Sangathan, Chandigarh*,[28] the management had terminated the services of the worker who was a driver on daily wage basis. He raised an industrial dispute which culminated into an award by the labour court ordering his reinstatement with back wages which was upheld by the single judge of the high court. However, the division bench took note of the fact that the management had lost confidence in him and accordingly, substituted the award of reinstatement and back wages with a one-time monetary compensation of Rs 3.5 lakhs.

Aggrieved by this decision, the workman preferred a special leave to appeal in the Supreme Court. The court, keeping in view the fact that the workman had put in long years of service, held that the compensation granted by the high court was inadequate. It, accordingly, enhanced the compensation to rupees 7.5 lakhs in full and

26 (2016) 14 SCC 428.

27 (2016) 16 SCC 538.

28 (2016) 14 SCC 534.

final settlement which it ordered to be paid within a period of three months from the date of the order.

Similarly, in another case,[29] the same bench of the court ordered compensation of Rs. three lakhs to the workman who was a daily rated worker and whose services had been terminated illegally by the management with the further direction that if it engages in future any fresh daily wager, the workman in this case shall be given preference. The Court also ordered that the compensation determined by it shall be paid within six weeks from the date of the order.

In State *of Uttar Pradesh* v. *Om Pal Singh*,[30] the labour court held that the termination of the services of the workman by the state government was illegal and the intermittent breaks given to him amounted to unfair labour practice. In its award, it ordered his reinstatement with back wages. This award of the labour court was upheld by the High Court.

The Supreme Court in special leave to appeal issued notice but stayed the payment of back wages. It was the case of the state before the Supreme Court that the respondent workman was engaged for a specific period on a specific project. The project having been completed, his services could not be continued and in that sense, it was not a case of termination.

The Court, on perusal of the award of the labour court and other relevant material, came to the conclusion that the case of the management that the engagement of the workman was only for a particular period, was not correct and acceptable. It did not find any ground to interfere with the award passed by the industrial tribunal and endorsed by the high court. However, it did not find it proper, in the facts of the case, to sustain the award of back wages. It, accordingly, modified the award only to the extent that the workman shall not be entitled back wages for the period he was not actually in service and for all other purposes his services shall be treated as continuous. The Court, however, did not give any reasons why the award insofar as payment of back wages was concerned, was not sustainable.

From the lineup of judgments delivered in the year under survey many of which have been authored by Kurian Joseph J. for the Court, the relief of compensation in lieu of reinstatement with or without back wages or part thereof has been the rule. But the reasons for doing so and how the compensation amounts have been arrived at and the factors that have been taken into account are hardly discernable.

c. *Termination of services of a non-workman*

In *Maharashtra Shikshan Sanstha* v. *Dilip Ganpatrao Lanjewar*,[31] the respondent was appointed as a teacher for 10 months and thereafter for two months he was out of

29 *Bharat Sanchar Nigram Limited* v. *Pawan Kumar Shukla,* (2016) 14 SCC 665. Similarly, in *B. Gope* v. *Aldor Welding Limited,* (2016) 14 SCC 702 the Court ordered payment of Rs. Two lakhs to the workman in full and final settlement of the dispute which was the subject matter of appeal before it. In this case, the labour court had held that the appellant was a workman, his termination was illegal and had ordered his reinstatement with 25% back wages.

30 (2016) 16 SCC 584.

31 (2017) 14 SCC 298.

job, may be because the intervening period was summer vacation for the school. He was again appointed as a teacher for 10 months though seemingly against a permanent vacancy and his services were discontinued thereafter. He challenged his termination as illegal before the school tribunal, as he was not covered by the definition of "workman" under the ID Act. The tribunal held the discontinuance as illegal and ordered his reinstatement with all consequential benefits which order was upheld by the high court. Hence this appeal in the Supreme Court.

The apex court noticed that it was an appointment against a permanent vacancy. But keeping in mind that he has been out of service since 1992 and would have superannuated in 2019, it ordered his reinstatement with all service benefits including continuity of service except salary for the period for which he had not worked in the school.

It is submitted that the employee concerned should have been entitled to back wages from the date of the order of the school tribunal which was subsequently upheld both in the writ petition before a single judge as well as in the intra-court appeal in the High Court.

Regularization

In *General Secretary, Coal Washeries Workers Union, Dhanbad* v. *Employers in Relation to the Management of Dugda Coal Washery of M/S BCCL*,[32] the case of the workmen was that they were employees of the principal employer and not of the contractor which arrangement, according to them, was sham. The industrial tribunal directed the management to reinstate and regularize all the 35 workmen with payment of 30% back wages which award was affirmed by the single judge of the high court. The division bench did not doubt the correctness of the findings of the industrial tribunal or the single judge of the high court. It, however, accepted the plea of the management that after more than 20 years from stoppage of work of the concerned workmen, an order of reinstatement would be inequitable and must be eschewed. It awarded Rs.50,000 to each of the workman concerned in full and final settlement of all their claims and substituted the order passed by the tribunal to that extent. The division bench further ordered that the compensation awarded by it would be in addition to whatever amount had been paid to them under section 17-B of the ID Act.

The Supreme Court in the special leave petition of the union decided to confine it to determining the quantum of compensation by way of lump sum amount that needed to be paid to the workmen in lieu of reinstatement. It held that the division bench of the high court was right in observing that in the facts of the present case, an order of reinstatement needed to be eschewed, being inequitable. The Court, at the same time, observed that the workmen, however, needed to be compensated adequately in lieu of reinstatement. The Court held that the interest of justice would be met by enhancing the amount of compensation in lieu of reinstatement/ absorption and regularization by paying a compensation of Rs. 1,50,000 to each workman. The Court

32 (2016) 16 SCC 148.

also took notice of the fact that these workmen had already been paid last drawn wages under section 17-B of the ID Act, without any work being assigned to them. The wages paid to them during this period were minimum wages. It directed the respondent management to deposit the amount payable in terms of this order with before the industrial tribunal within three months from the date of the orders and in the event of failure it would be liable to pay interest thereon at the rate of 10% from the date of the order till the amount is deposited or paid to the workmen concerned.

The decision of the Supreme Court in *Rashtriya Colliery Mazdoor Sangh, Dhanbad* v. *Employers in Relation to Management of Kenduadih Colliery of Bharat Coking Coal Limited*,[33] also dealt with the issue of regularization. Here also the demand of the workers engaged as *tyndals* through a contractor, whom they described as a sham or a camouflage, was to secure regularization in the services of the principal employer on the plea that they were performing job of permanent and perennial nature. The job description of *tyndals* required these workers to be engaged in moving engineering stores, drums of oils and grease and for setting and dismantling of structure as well as installation and withdrawal of machine.

The industrial tribunal to whom the reference was made directed the management to prepare a panel of the workmen concerned in accordance with seniority and to absorb or regularize them either in the work of *tyndal* or in any suitable category so that the list is exhausted within a period of one year without payment of back wages. The management challenged this award before the High Court. The single judge modified the award and directed that as and when the management intended to employ regular workmen, it shall grant preference to the workmen covered by the award if they were otherwise suitable by relaxing the requirement of age and academic qualifications. This order of the high court attained finality.

In a subsequent dispute, the union of workers demanded regularization of workmen engaged in one of the collieries of the management and the industrial dispute of such class of workmen was referred to the industrial tribunal. It passed an award directing their regularization which was confirmed by the single judge of the high court. However, in a letters patent appeal of the management, the award was modified by directing that as and when the management intended to appoint regular workmen, it would grant preference to the workmen concerned. In the special leave to appeal, the Supreme Court set aside the order of the division bench of the High Court. It restored the award of the industrial tribunal ordering regularization of the concerned workmen without back wages.

The petitioner union of workers, relying upon the aforesaid order of the Supreme Court, sought regularization of the workmen engaged as *tyndals* who had earlier raised the industrial dispute relating to their regularization. They had got the award of the industrial tribunal which was modified by the single judge of the high court referred to above which had since attained finality. The Supreme Court held that the earlier award as modified by the high court related to *tyndals* workers who were different set

33 (2017) 1 SCC 264.

of workers than those covered by its order and could not get the benefit of its said order. However, keeping in view the fact that more than 27 years had elapsed since the order of the high court directing their absorption depending upon vacancies and no appointments had been made of any such workers, the apex court directed that each of the workers covered by the earlier award of the industrial tribunal, as modified by the high court, be paid by the management a sum of Rs. 4 lakhs each per workman which amount it was required to deposit with the industrial tribunal to be disbursed subject to due verification of the identity of the workers by the industrial tribunal.

Personal contracts not specifically enforceable: ID Act an exception

In *Maharashtra State Cooperation Housing Finance Corporation Limited* v. *Prabhakar Sitaram Bhadange*,[34] the Supreme Court observed that it was an admitted position in law that if the employee of a co-operative society is covered by the definition of "workman" in section 2(s) of the ID Act, and the claim is for relief of reinstatement, the co-operative court under the Maharashtra Cooperative Society Act, 1960, will not have jurisdiction to entertain such a claim, in as much as, relief of reinstatement cannot be granted by the co-operative court. Such a relief can only be granted by the labour court or the industrial tribunal constituted under the ID Act, having regard to the fact that special and complete machinery for this purpose is provided under the provisions of the ID Act and the jurisdiction of the civil court stands ousted.

The Court also clarified that contract of personal services is not enforceable under the common law and also section 14 read with section 41(e) of the Specific Relief Act, 1963 specifically bars the enforcement of such a contract. The principle of law which is well established states that the civil court does not have the jurisdiction to grant relief of reinstatement as giving of such relief amounts to enforcing the contract of personal services. However, this rule is subject to the following three exceptions where the contract of personal service can be enforced:

(a) In the case of a public servant who has been dismissed or removed from services in contravention of article 311 of the Constitution of India;

(b) In the case of a statutory body, it's employee could be reinstated when the management has acted in breach of the mandatory obligations imposed by the statute; and

(c) In the case of an employee who can be reinstated in an industrial adjudication by the labour court or an industrial tribunal.

In the first two categories, the remedy would be by way of writ petition under article 226 of the Constitution or the Administrative Tribunal Act, 1985; the third category, i.e., in the case of (c), it would be under the ID Act. An employee who does not fall in any of the aforesaid exceptions cannot claim reinstatement. His only remedy is to file a suit in the civil court seeking declaration that termination was wrongful and claim damages for such wrongful termination of services. Even when the

34 (2017) 5 SCC 623.

employees falling under any of the aforesaid categories raise dispute *qua* their termination, the civil court is not empowered to grant reinstatement.

Coming to the facts of the present case, the court observed that admittedly the appellant corporation was not 'state' within the meaning of article 12 of the Constitution. The respondent who had joined as inspector, was promoted as branch manager and was subsequently dismissed from the service for misconduct. He was not a government or public servant as he was not under the employment of any government. He was also not a 'workman' under the ID Act as he was working as a manager with the corporation. The court held that section 91 of the Maharashtra Cooperative Society Act, 1960 did not provide jurisdiction to the cooperative tribunal in the matters touching employer-employee relationship and, therefore, the jurisdiction in such matters vested with the civil court which could not grant the relief of reinstatement.

III MISCELLANEOUS

Unfair Labour Practice

In *Engineering Workers Association* v. *Radium Creation Limited,*[35] a complaint under the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (in short, 1971 Act) was filed by the appellant associational alleging that the management had committed unfair labour practice by declaring illegal lockout for a long period of time. The industrial court under the 1971 Act decided to hear the complaint on merits on the legality or otherwise of the lockout but disallowed the interim relief sought by the association that the management should not be allowed to give effect to the notice declaring lockout. The industrial court also disallowed the plea of the workmen that, pending final decision on the complaint, the workers named in the notice be allowed to resume their normal duties and be paid wages in view of the undertaking given by the association that the members shall maintain peace. The decision of the industrial court in the interim application was unsuccessfully challenged before the single judge as well as the division bench of the high court. Hence the special leave petition against the order of the industrial court has upheld by the High Court.

Before the Supreme Court, it was argued by the association that workmen should be allowed to resume work and be paid wages in view of the undertaking given by it that they would maintain peace and tranquility at the workplace.

The Supreme Court reiterated the legal position that entitlement of wages to workers during the lockout period depends upon whether the lockout is legal and justified. The Court at the time of issuing notice directed the management to calculate and deposit wages of the workers for the period of lockout in the industrial court which order was complied with by the management. The Court did not stay the

35 (2016) 15 SCC 640.

proceedings before the industrial court and directed it to proceed with the adjudication of the main complaint before it expeditiously.

After hearing the parties on the issue of interim relief, the Supreme Court directed, pending final decision by the industrial court as to whether the lock out was legal and justified, on which would depend the entitlement of full wages to the workers, the industrial court to disburse 50% of the wages (earlier directed by it to be deposited by the management before it) amongst the employees who had suffered due to non-payment of wages during the period of lockout. This direction was subject to the workers giving an undertaking before the industrial court that they will refund the amount if the industrial court finally came to the conclusion that the lockout was legal and justified. The Court kept in view the great hardship faced by the workers on account of long period of lockout while passing the above interim order. However, the Court held that the order of payment of 50% of wages will not apply to those workers who had left the employment or had been proceeded against departmentally. Further, the Court left it for the decision of the industrial court to decide whether the workers who had been proceeded against by the management departmentally should be entitled to any payment from the deposited amount, as an interim measure.

Payment of interest for delayed payment of gratuity and pension

In *State of Uttar Pradesh* v. *Dhirendra Pal Singh*,[36] the Supreme Court reiterated the basic principle laid down in *State of Kerala* v. *M. Padmanabhan Nair*,[37] that pension and gratuity are no longer any bounty to be distributed by the government to its employees on the retirement but are valuable rights in their hands, and any culpable delay in disbursement thereof must be visited with the penalty of payment of interest.

The Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Act, 1996: Implementation issues

National Campaign Committee for Central Legislation on Construction Labour v. *Union of India*,[38] shows the complete apathy and indifference of the state governments and union territories in the matter of taking steps under the Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Act, 1996 in regard to constitution of state advisory committees, expert committees, etc. The apathy of the state governments did not stop here. They even failed to frame the rules under the Act. Many state governments had failed to collect cess under the Act and wherever it was collected the same was not used for the purposes of extending benefits to the beneficiaries under the Act. In these circumstances, the Supreme Court, in its order dated 12.12.2014, was constrained to summon secretaries of the labour department of various states to ensure that appropriate steps were taken

36 (2017) 1 SCC 49.
37 (1985) 1 SCC 429.
38 (2015)17 SCC 160.

to ensure that the advisory committees were constituted, expert committees were put in place and the cess collected was appropriately used for the intended beneficiaries.

The Court passed various other directions which were required to be implemented by the states without further delay. The Court, in its order dated 16.10.2015, directed the state governments to ensure maximum coverage of the building and other construction worker; ensure distribution of benefits and implementation of various schemes that were in existence for the benefit of such workers; lay greater emphasis on educational and provide educational facilities to the children of the building and other construction workers, to provide health benefits and insurance to such workers and to activate the state advisory boards which, as per the affidavits, had not even met in the last several years. The court was assured by the Secretary, Labour, Government of India that necessary steps would be taken in this regard with due promptitude and diligence. The court expected that the state governments and the union territories would assist the central government in the implementation of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and the Buildings and Other Workers Welfare Cess Act, 1996.

Cruelty against migrant workers

In *Radha Shyam Jena* v. *Union of India*,[39] the Supreme Court took *suo motu* cognizance of a news item appearing in the Hindu, a national daily, reporting a gruesome incident involving the chopping of the palm of two migrant workers in the state of Odisha. Notice was issued to the State of Odisha and also to the chief secretary of State of Andhra Pradesh, where the migrant workers from the State of Odisha were being taken. Investigation under SC and ST (Prevention of Atrocities) Act, 1989 led to the apprehension of seven accused persons. It seems the state government provided monetary relief to the victims for their treatment and also compensation to them under the aforesaid Act.

There was an application filed in the Supreme Court by one of the labour unions for intervention who described the poverty-stricken condition of these labour from various districts of Odisha. These poor people were being exploited by the contractors who would take them not only to the State of Andhra Pradesh but also to other states. They were being made to work in the brick kilns, the State were not paid adequately and their conditions of work were inhuman. The said application for being allowed as interveners highlighted the plight of such voiceless workers who are very large in number but are not in a position to approach the courts for seeking redressal within their own state or the state where they are being taken being for labour. The Supreme Court sought response of the State of Odisha on the following issues:

1. What long term/ short term steps were being taken by the state government to prevent recurrence of such incidents.
2. How many complaints had been filed against violators under the statutory provisions, including the Inter-State Migrant Workmen Act, 1979.

39 (2015) 17 SCC 217.

3. Whether any survey had been conducted as to the ground realities prevailing in the districts of Odisha, and, if not, to conduct one to know it by an officer of the rank of revenue divisional commissioner.
4. Whether inspectors appointed under section 20 of the aforesaid Act conducted any inspections and reported any violations and what are the number of such reports and the action taken thereon.
5. What steps were being taken to prevent such steps in future.

The court directed the state legal aid authorities to conduct a preliminary survey of the brick kilns and to submit a report after conducting such investigation.

After going through the reports submitted, the Court was of the opinion that the Odisha high court and the high court of judicature at Hyderabad for the states of Telangana and Andhra Pradesh were the appropriate courts to deal with the issues that were being dealt with by the court. It accordingly transferred the proceedings to the two high courts after ensuring that the compensation payable to the victims was paid to them and the provision was made for taking care of their treatment.

IV CONCLUSION

The Supreme Court has considered it appropriate that the definition of the term 'industry' as interpreted in *Bangalore Water Supply* be reconsidered by a nine-judge bench of the Court. The said bench needs to be constituted without further delay so that the appeals which have been gathering dust in the registry of the Court are heard on priority basis. This will clear the uncertainty around such a vital concept in labour jurisprudence. An early authoritative pronouncement is all the more warranted given the fact that the central government does not seem to be interested either in bringing in force the amended definition of 'industry' or in enacting new Industrial Relations Law.

A survey of the decisions shows that the apex court has been awarding compensation in lieu of reinstatement on ad-hoc basis without lying down or following any rational principles governing its determination. The compensation ordered by the different benches of the Court sshows no uniformity. Even within the same bench, there has been no consistency while deciding compensation issues. Therefore, it needs to be reiterated that, there is an urgent need for the Court to lay down some rational criterion in the realm of compensation jurisprudence to guide the adjudicatory authorities while determining compensation in proven cases of illegal termination.