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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 2018. As in the previous years, this year as well the court was called upon to deal mainly with 'deemed industrial disputes' under the Industrial Disputes Act, 1947, *i.e.*, (hereinafter the ID, Act) issues relating to dismissal, discharge and retrenchment. Collective disputes that reached the apex court for adjudication continued to be minimal. The gigantic problem of soaring unemployment figures, the escalating cost of living and lack of will on the part of the government to introduce modern and quality skill development programmes have made workers scary and over-protective of their existing jobs and not so enthusiastic about raising collective disputes demanding better terms of employment lest they may lose even what they have. As usual, reported cases under the Industrial Employment (Standing Orders) Act, 1946 and the Trade Unions Act, 1926 are far and few.

II INDUSTRIAL DISPUTES ACT, 1947

Retrenchment

Deemed continuous service of one year under section 25B (2) explained

In *Mohd. Ali* v. *State of Himachal Pradesh,*[1] once again section 25B (2) of the ID Act came up for interpretation before the Supreme Court in the following factual matrix, the appellant was engaged as a casual labour on muster rolls basis in the years 1980, 1981, 1982 and in the years 1986 to 1989 by the respondent state. He completed 240 days of service in each of these years up to 1989 but not so in the years 1990 and 1991. In the year 2005, he made a representation to the state government claiming that the termination of his service in 1991 by the respondent amounted to 'retrenchment' which was bad for non-observance of section 25F of the Act and sought reference under section 10 of the Act.

The state government made the reference to the industrial tribunal which gave the award in 2009 in favour of the appellant and directed it to reinstate the appellant

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1 AIR 2018 SC 2194: (2018) 15 SCC 641.

in service with seniority and continuity while denying him back wages. Being aggrieved, the state government filed a writ petition before the single judge of the high court against the said award which allowed the said writ petition and set-aside the award of the industrial tribunal which order of the single judge was upheld by the division bench of the high court in the intra-court appeal.

Aggrieved by these judgments of the high court, the appellant preferred the present appeal by way of a special leave petition before the Supreme Court. The short question for consideration of the Supreme Court was the correctness or otherwise of the orders of the high court. The main case of the appellant was that his termination was in violation of the provisions of section 25F read with section 25B of the ID Act. The high court, it was submitted, had misinterpreted the said provisions. It was further argued that it was not necessary that the workman should have completed 240 days during the period of 12 months immediately preceding his disengagement. It was the case of the appellant workman that once the appellant had completed 240 days service in any of the calendar years of his employment, he became entitled for the benefit of the provisions of section 25F of the Act. On the other hand, it was the case of the state that the language of section 25B is clear that 240 days have to be counted in the immediate 12 calendar months preceding his retrenchment and since he had worked for much lesser days in the last 12 calendar months preceding his termination in 1991, section 25F was not attracted.

The court observed that the object of the ID Act was to protect the employees from arbitrary retrenchment. The theory of 240 days of continuous service is that workman is deemed to be in continuous service for a period one year if he has, during the period of 12 calendar months preceding the date of retrenchment, actually worked under the employer for not less than 240 days. The court referred to its judgment in *Surender Kumar Verma* v. *CGIT*[2] where it has dealt with the theory of 240 days as contemplated in section 25B of the Act. The court, in that case, has made it very clear that there is no stipulation that the workman should have been in employment or service under the employer for a whole period of 12 months. In fact, the thrust of the provision is that he need not be. Prior to Act 36 of 1964 the position seemed to have been that he needed to have been in employment for 12 months in which he should have put in 240 days of service. Section 25B read with then section 2 (eee) of the Act was so interpreted by the Supreme Court in *Sur Enamel and Stamping Work Ltd* v. *Workmen*.[3] But this position was drastically changed by Act 36 of 1964 inasmuch as it is not necessary now that the workman should have completed 240 days while having been employed for a period of the 12 months. This change in position has been clearly explained further by the Supreme Court in *Mohan Lal* v. *Management of Bharat Electronics Ltd.*[4] It is very specifically stated in the said judgment thus:[5]

2 (1980) 4 SCC 433.
3 AIR 1963 SC1914.
4 (1981) 3 SCC 225.
5 *Id*. at 236.

> In other words, in order to invoke the fiction enacted in clause 2(a) it is necessary to determine first the relevant date i.e. the date of termination of service which is complained of as retrenchment. After the date is ascertained, move backwards to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favour of the workman pursuant to the deeming fiction enacted in Clause 2(a) it will be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25F. On a pure grammatical construction, the contention that even for invoking clause (2) of Section 25-B the workman must be shown to be in continuous service for a period of one year would render clause (2) otiose and socially beneficial legislation would receive a set back by this impermissible assumption. The contention must first be negatived on a pure grammatical construction of clause (2). And in any event, even if there be any such thing in favour of the construction, it must be negatived on the ground that it would render clause (2) otiose. The language of clause (2) is so clear and unambiguous that no precedent is necessary to justify the interpretation that we have placed on it ….

In the present case, it is an admitted position that though the appellant worked as muster role employee till 1991 under different works/schemes *i.e.,* Rabi and Kharif and completed 240 days in a calendar year during the years 1980, 1981, 1982 and 1986 to 1989 but he worked only for 195 days in the year 1990 and 19.5 days in 1991 in the immediate preceding year of his termination which is below required 240 days of working in the period of 12 calendar months preceding the date of termination; therefore, he was not entitled to take benefit of provision 25F of the Act. In the circumstances, the court held that both the single judge as well as the division bench of the high court were justified in holding that the award of the industrial tribunal deserved to be set aside. Accordingly, it dismissed the appeal of the appellant workman.

Compensation and not reinstatement is the general rule: new judicial approach

In *Rashtrasant Tukdoji Maharaj Technical Education Sanstha, Nagpur* v. *Prashant Manikrao Kubitkar*,[6] the respondent workman had worked under the appellant for more than two years before his services were terminated. He approached the labour court after 13 years of termination of his service complaining violation of section 25F and 25G of the ID Act. The labour court upheld his claim and awarded his reinstatement with continuity of his service but without back wages. The high court, in the writ petition preferred by the management against the award, upheld the award of the labour court. Aggrieved by this decision, the appellant filed the present special leave petition before the Supreme Court which observed that the consistent judicial opinion has been that if the termination is found to be contrary to sections 25F and 25G of the ID Act, reinstatement in service is not the rule but only an exception. The ordinary

6 (2018) 12 SCC 294.

relief in such cases is grant of compensation to the aggrieved workman to meet the ends of justice.

Coming back to the facts of the present case, the court observed that the workman had worked for a period of two years or more and had approached the labour court after 13 years. After taking into account the totality of the facts and circumstances of the case, it was of the view that the award of the labour court as upheld by the high court deserved to be modified by granting compensation of Rs. 1 lakh in lieu of the award of reinstatement without back wages. It, accordingly, ordered the management to pay the compensation within a period of six weeks from the date of the judgment.

In *District Development Officer* v. *Satish Kantilal Amrelia,*[7] the workman concerned was engaged as daily rated peon-cum-driver whose services were terminated within two years of his engagement in violation of sections 25F and 25G of the Act. He fought litigation on two fronts simultaneously. In the first instance, he filed a civil suit challenging his termination order. During the pendency of the suit he also approached the state government and sought reference of the dispute relating to his non-employment to the labour court. The government made a reference to the labour court for deciding the legality and propriety of his termination order. The civil court set aside the order of termination and ordered his reinstatement with all consequential benefits, but this order was set aside by the appellate court in the appeal filed by the management.

On the industrial adjudication front, the labour court answered the reference in favour of the respondent workman. It set aside the order of termination, directed his reinstatement with payment of 40 % of back wages. The appellant challenged this award before the High Court of Gujarat in a writ petition. The single judge affirmed the award of the labour court; so, did the division bench in the intra-court appeal. Hence, the present special leave petition of the appellant.

The Supreme Court, after considering the entire record of the case and keeping in view the admitted position that the respondent was a daily wager only for two years, and that 25 years had since passed by, held that the worker should be paid a lump sum amount of Rs 2, 50,000/- in lieu of reinstatement and 40 % of back wages as ordered by the labour court towards full and final settlement of the dispute in terms of the law laid down in *Bharat Sanchar Nigam Ltd.* v. *Bhurumal.*[8] The court ordered that this amount should be paid to him within three months from the date of receipt of the judgment failing which the amount will carry interest at the rate of 9% per annum.

Termination of service

Compensation in preference to reinstatement: new mantra

In *General Manager-Operations, Chennai Container Terminal Pvt. Ltd.* v. *K. Thiruthanikumaran,*[9] there were strained relationship between the respondent workman

7 (2018) 12 SCC 298.
8 (2014) 7 SCC 177.
9 (2017) 16 SCC 361.

and the appellant management. It led to the termination of service of the respondent who filed a civil suit against the management challenging his termination of service. He also raised an industrial dispute relating to his non-employment which became the subject matter of conciliation proceeding before the conciliation officer under the ID Act. The dispute finally travelled from the High Court of Madras to the Supreme Court.

The Supreme Court observed that in view of the fact that there was strained relationship between the parties and the workman was only 45 years old, it would be in the interest of both the parties to bury the hatchet. The court noted that the workman was in his own right entitled to an amount of Rs. 9.10 lakhs towards gratuity and provident fund. It thought it would be better to put an end to their relationship by paying him a compensation amount of 25 lakhs inclusive of gratuity and provident fund or any other claim of the respondent in full and final settlement. On payment of the said amount, the respondent would not be entitled to raise any further from the management.

The Supreme Court directed the registry to communicate to the civil court the judgment rendered by it and to strike off of the pending cases from the file. The court further ordered that the pending proceedings under the ID Act or any other forum shall stand terminated. It directed the parties not to indulge in any other litigation, either civil or criminal, in respect of the employer-employee relationship without the leave of the court.

The court also awarded Rs. 50,000/- in favour of the workman towards litigation cost. It directed to the management to credit Rs. 25,50,000 in the bank account of the workman within 10 days from the date of judgment and order.

Termination of the services of employees appointed on year to year basis: *relief moulded*

In *Asha Education Society* v. *Nandkishore Shrikrishna Wankhedkar*,[10] the question that came up for the consideration of the court was the correctness or otherwise of the order of the school tribunal awarding reinstatement of the teachers with back-wages when their appointment was on year to year basis only. This order of the tribunal was upheld by the high court.

The case of the management before the Supreme Court was that the appointment of these teachers was on year to year basis only as no recognition by the competent authority had been granted to the course taught by them. The court took note of the fact that the appointment of these teachers was not against the permanent vacancies. Even according to the state government, the vacancies arose on a year to year basis and the course was started on an experimental basis which was subsequently derecognized with the result that no appointments were made on permanent basis. Some of the teachers affected were accommodated in other schools and the services of some of them were terminated leading to their approaching the school tribunal for the relief of reinstatement and back wages.

10 (2017) 15 SCC 125.

The court observed that the claim of back-wages had to be appreciated in the background of the appointment order which was on year to year basis. It held that the maximum the teachers could pray for, in the circumstances of the case, was back-wages for the year before the completion of which their services were terminated. The court, accordingly, directed the appellant to pay the salary and other benefits as would have been available to the teachers for the remaining period of the academic year in which their services were terminated. It, accordingly, allowed the special leave petition with the above modification.

Alternation of service condition of employees without notice: Violative of section 9-A

In *Pradeep Phosphates* v. *State of Orissa,*[11] an important question of some significance about applicability or otherwise of section 9A of the Act came up for consideration before the Supreme Court. The question was whether the management of the public sector company could reduce the age of superannuation from 60 to 58 which it had earlier raised from 58 to 60 through an administrative decision in pursuance of a circular issued by the central government but without amending the certified standing orders of the organization and the service rules. The facts giving rise to this important question arose in the following facts and circumstances, the appellant company was incorporated as a joint venture between the Government of India and the Republic of Nauru with an objective to manufacture some chemicals. In the year 1993, the Republic of Nauru disinvested its entire equity stake to the Government of India and the appellant company became a wholly owned public sector undertaking of the Government of India having its registered office in Bhubaneswar, Orissa. Later the Government of India, in view of the deteriorating financial position of some public sector units, decided to temporarily enhance the age of retirement of all central public sector employees from 58 years to 60 years to cut down their losses. Pursuant to this order of the Central Government, the appellant company through a resolution of the board of directors implemented the same from the date of the government order. In spite of the enhancement of the retirement age, the financial position of the appellant company did not improve. As a result, the Government of India issued an office memorandum requiring all public sector undertakings, including the appellant company, to roll back the age of retirement of all employees of public sector undertaking from 60 years to 58 years.

In the meantime, the Government of India divested its 74 % shareholding in the appellant company in favour of another company keeping only 26 % of the shareholding in its favour. Consequently, the appellant company by office order withdrew the earlier office order and restored the age of retirement to 58 years in respect of all the employees in terms of the certified standing orders and the service rules of the appellant company.

Feeling aggrieved, the trade union of the workers raised a dispute with regard to the reduction in the age of superannuation and sought reference under section 12 read with section 10 of the ID Act to the industrial tribunal. The industrial tribunal

11 (2018) 6 SCC 195.

disposed of the reference and invalidated the action of appellant company due to contravention of section 9A of the Act which provides that prior notice by the employer to the employees was a *sine qua non* which the employer had intentionally omitted to give in the present case.

Being dissatisfied, the appellant company challenged the decision in the High Court of Orissa which dismissed the petition holding that there was no error apparent in the decision of the industrial tribunal. Thereafter, the appellant company preferred a review petition which was also dismissed by the high court. Consequently, it filed the present appeal by way of a special leave petition before the Supreme Court.

It was the case of the appellant company before the Supreme Court that the age of retirement laid down in the appointment letters, the service rules and the certified standing orders framed under the Industrial Employment (Standing Orders) Act, 1946 were binding upon all workmen and, therefore, a temporary concession, allowing persons to serve until the age of 60 years pursuant to the government circular issued as a temporary measure to combat the losses in central public sector undertakings could not amount to a change in the service conditions. These circulars issued by the Central Government would not, *ipso facto*, replace the age of superannuation as provided in the service rules or the certified standing orders and, therefore, no question of applicability of section 9A of the Act could arise. It was thus the case of the appellant that the order of the high court was liable to be set-aside. On the other hand, it was the case of the trade union that the action of the appellant company amounted to contravention of section 9A read with the Fourth Schedule of the Act which postulates the necessity of prior notice to the workers if the employer proposes to effect any change in the condition of service which admittedly was not done in the present case.

The Supreme Court, at the very outset, referred to the object of the ID Act which undoubtedly is to protect the interest of the workers who constitute the weaker section of the society since time immemorial. It is for this reason that the said legislation has been amended from time to time and one such amendment of significance was made in the Act in 1956 when Parliament inserted section 9A in the Act which makes it obligatory on the part of the employer to give advance notice to the employee if it intends to change certain service conditions. A plain reading of section 9A makes it clear that the employer is bound to give 21 days notice to the workmen if he intends to change any material terms of service enumerated in the Fourth Schedule of the Act. This provision is in consonance with the constitutional mandate which upholds rule of law and provides adherence to principle of natural justice including the principle of *audi alteram partam.* The court observed that in this case, the action of the management in reducing the age of superannuation from 60 to 58 years amounted to contravention of clause 8 of the Fourth Schedule which could not have been done without giving prior notice which is a statutory safeguard against arbitrary action of the management. Therefore, the action of the employer was bad in law and was liable to be set-aside. The court observed that it is a cardinal principle of interpretation of statute that every beneficial legislation should be construed liberally. The ID Act being a welfare legislation intended to protect the interest of the employees has to be

interpreted liberally so that maximum benefit could be given to the employees. Any other interpretation which undermines the intention of the legislature has to be eschewed.

The court stated that the grievance of the appellant company that the increase in age was a temporary measure, intended to combat the losses, could not amount to withdrawal of customary concession or privilege or change in usage was not correct. The term 'privilege', according to the dictionary meaning, is "special right advantage-available only to particular person or group." In the present case, it was an admitted position that the board of directors took the decision of enhancing the age of retirement and that too it was made effective retrospectively. Though, this decision was implemented without the amendment in the standing orders and the service rules yet it impliedly got the force of a service condition since it directly related to the service condition of the employees. The court observed:[12]

> Age of superannuation is an integral part of the service condition of the employee. Also, enhancement of superannuation age would impliedly amount to a privilege since it was provided particularly for the Central Public Sector Employees.

The court was clear that if it allowed the plea of the appellant company then it would defeat the object of the legislature as it could never have intended that employees would be condemned without giving them the right of hearing. The court further observed thus:[13]

> Naturally, every employee is under the expectation that before reducing his superannuation age, he would be given a proper chance to be heard. Right to work is a vital right of every employee and in our view, it shall not be taken away without giving reasonable opportunity of being heard otherwise it would be an act of violation of the constitutional mandate.
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> … Moreover, the contention of the appellant company that the object of enhancement of superannuation age was just to save the industries from huge losses, therefore, it does not violate any statutory right of the employees, cannot be sustained in the eye of law and also it does not give the licence to the appellant company to act in contravention of law since it is a canon of law that everyone is expected to act as per the mandate of law.

In sum, the court took the view that the very moment the order of enhancement of superannuation age of employees came into force, though temporary in nature, it amounted to a privilege since it was a special right granted to them. Hence, any unilateral withdrawal of such privilege amounted to contravention of section 9A of the Act and such act of the employer was bad in the eyes of law. The court held that the high court was right in upholding the award of industrial tribunal and it had no hesitation in dismissing the appeal of the appellant.

12 *Id.* at 200.

13 *Id.* at 200-201.

Disciplinary action

Termination by way of disciplinary action: excluded from definition of '*retrenchment.*'

In *Kurukshetra University* v. *Prithvi Singh*,[14] the respondent-workman was working as security guard in the appellant-university as daily rated employee. While on duty, he was alleged to have misbehaved with a lady research scholar working in the university. The university administration took serious note of the incident and proceeded departmentally against him. The inquiry officer appointed to hold the domestic enquiry against the workman found him guilty of the misconduct. The university discontinued his services. This led the state government to make a reference to the labour court for deciding the legality and correctness of the termination order passed by the university. Before the labour court, the university adopted two pronged approach: first, the respondent was working as a daily wager for a period of 89 days and, therefore, was not entitled to any benefit available under the ID Act; and second, though it was not required to hold departmental enquiry in respect of the daily rated employee yet it had held one in which he was found guilty, his services were dispensed with based on the findings of the enquiry officer against him.

The labour court answered the reference in favour of the respondent workman holding that he had worked for more than 240 days in one calendar year and that the inquiry held by the university against him was not legal and proper. With these findings, the labour court held that it amounted to illegal retrenchment and set aside the termination order passed by the university. The labour court granted liberty to the university to hold a regular departmental inquiry for the charges levelled against the respondent workman, if it so desired.

The university challenged the award before the high court which dismissed the same and upheld the award passed by the labour court. The university challenged the award of the labour court as upheld by the high court in the Supreme Court by way of a special leave to appeal.

The Supreme Court observed that neither the presiding officer of the labour court nor the high court had applied their judicial mind while deciding the issues arising in this case. Both had completely ignored the settled legal principles which were applicable in the case at hand. It observed that both these forums had proceeded to decide the case contrary to the well settled principles laid down by the court.

The matter was no more *res integra*.[15] It is settled legal position that when a domestic inquiry has been held by the management and it relies on the same, it is open to it to request the labour court to try the validity of domestic inquiry as a preliminary issue and also ask for an opportunity to adduce evidence before it, if the findings on the preliminary issue are against the management. In that case, opportunity has to be given to the employee to cross-examine the witnesses and to lead evidence

14 (2018) 4 SCC 483.

15 *Indian Iron and Steel Company Ltd.* v. *Workman* AIR 1958 SC 130; *Shankar Chaturvedi* v. *Britannia Biscuit Company Ltd.* (1979) 3 SCC 371; *Delhi Cloth and General Mills Co* v. *Ludh Budh Singh* (1972) 1 SCC 595; *Karnataka SRTC* v. *Lakshmidevamma* (2001) 5 SCC 433.

contra. This way the management gets an opportunity to sustain its order by adducing independent evidence before the labour court. In that situation, the whole issue is open before the labour court. If the misconduct is proved to the satisfaction of the labour court, the action of the management will be sustained and if not, it will be set-aside.

The court observed that in the light of the aforesaid principle of law it was clearly of the view that the labour court failed to decide the validity of the domestic inquiry as a preliminary issue and provide an opportunity to the management to sustain its action, apart from satisfying itself about the quantum of the punishment as it has power to differ with the punishment and award a lesser punishment under section 11A of the Act. The court was constrained to observe that first, the labour court committed an error in not framing a preliminary issue for deciding the legality of domestic inquiry and, second, having found fault in the domestic inquiry committed another error when it did not allow the appellant to lead independent evidence to prove the misconduct/charge on merits and straightaway proceeded to hold that it was a case of illegal retrenchment and hence the termination of the workman was bad in law.

The court observed that by no stretch of imagination could the labour court treat the termination of the respondent as retrenchment much less an illegal retrenchment. The labour court had failed to notice the definition of 'retrenchment' in section 2 (oo) of the Act which specifically excludes termination of service by way of punishment from the definition of 'retrenchment.' The high court too, while deciding the writ petition of the appellant, had not taken note of any of the legal issues discussed above and had curiously dismissed the writ petition.

In the light of the above discussion, the court stated that it was left with no choice but to remand the case to the labour court for deciding the reference afresh in the light of legal principles referred to in the judgment. The court gave the labour court three months time to decide the whole matter afresh.

Principles of natural justice: One who alleges must prove

In *APSRTC* v. *G.Murali,*[16] the respondent was working as a conductor in the appellant corporation. In a surprise check conducted by the inspecting staff, it was found that certain passengers had not been issued tickets even though fare was collected by him from them. After recording the statement of the said passengers, disciplinary proceedings were initiated against him. The enquiry officer found all the charges levelled against him stood proved. Consequently, the disciplinary authority ordered his removal from service. The matter was referred to the industrial tribunal-cum-labour court for adjudication of the disciplinary action so taken. The management relied upon the statement of the passengers without having produced them before the enquiry officer which resulted in denial of his right to cross examine them. The workman in his evidence, when confronted with the statement of the passengers to the inspecting team about the allegation of having taken money from them without

16 (2018) 12 SCC 4.

issuing ticket, denied such allegation. The industrial court held that the charge could not be said to have been proved against him. He was held guilty of some subsidiary charges which the tribunal upheld. Therefore, the industrial court reduced the penalty from removal from service to stoppage of three increments.

The corporation challenged this award by filing a writ petition before the single judge of the high court which dismissed the same. The intra-court appeal of the corporation met with the same fate at the hands of the division bench of the high court.

The Supreme Court, in the special leave petition of the corporation, held that the industrial court had, on good grounds exonerated the workman of the main charges, and therefore, no interference was called. The court held that the principles of natural justice required that the passengers should have been produced to prove the charge of having collected the fare from them without issuing tickets to them. This would have given an opportunity to the workman to cross-examine them to determine the veracity of their statement to the inspecting team. The court did not find any illegality either in the order of the industrial tribunal or the high court.

Termination on account of misconduct of theft on basis of findings in a departmental enquiry notwithstanding acquittal ordered by criminal court

In *Management of Bharat Heavy Electrical Limited* v. *M. Mani*,[17] some important questions about disciplinary action, observance of rules of natural justice and scope of the powers of the labour courts came up for consideration of the Supreme Court in the backdrop of the following facts and circumstances, the appellant had two employees working as drivers at one of its plants. One day both these employees were on duty in the night shift in the plant. They were supposed to be present all the time during the night shift in the plant for being available to perform transport duty in the plant, as and when required. It was, however, noticed by the official concerned on duty that both were not found present in their seats. Instead, they were found driving another vehicle in another shop floor from where they were removing one heavy machine unauthorizedly. This heavy machine they managed to take in an ambulance outside the factory premises.

This incident was reported to the management by those who witnessed the incident. Both of them were proceeded against and a departmental inquiry was ordered in which they participated. The inquiry officer found both of them guilty of the charges. Accepting the inquiry report, the management dismissed them from service. Their appeals to the appellate authority were also dismissed.

In the meantime, FIRs were filed against them which resulted in their prosecution under section 379 IPC, but the trial court acquitted the employees from the charge. They raised an industrial dispute against their dismissal which was referred to the labour court by the appropriate government. The labour court framed three issues:

(i) Whether the inquiry conducted by the inquiry officer was legal and proper;

17 (2018)1 SCC 285.

(ii) Whether the finding of the inquiry officer holding that the charge was proved against the workers/respondents was correct;

(iii) Whether the respondents were entitled to claim relief of reinstatement with back wages.

The labour court answered the reference in favour of the employees holding that although they were given reasonable opportunity during the departmental inquiry and it was held properly, the management ought to have stayed the departmental inquiry till the disposal of the criminal case filed against them. Further, the order in the disciplinary proceedings ought to have been passed only after the conclusion of the criminal proceedings. Since that was not done, the inquiry conducted was contrary to the principles of natural justice; and, for this reason their removal from service was not justified. In pith and substance, the labour court held:

(i) The departmental inquiry was properly held;

(ii) the employer instead of holding the departmental inquiry ought to have stayed it awaiting the outcome of the criminal case;

(iii) since the criminal case against the respondents resulted in their acquittal, the departmental inquiry stood vitiated as violative of the principles of natural justice;

(iv) since the employer did not lead any evidence in support of the charge, the charge remained unproved;

(v) the dismissal orders were bad in law in the light of the above grounds, and, therefore, the respondents were directed to be reinstated with full back wages by the appellant.

The management challenged this award before the high court. A single judge of the high court held that when the labour court observed that the departmental inquiry was legal and proper, the only question to be decided by it was whether the punishment imposed on the two employees was just, legal and proper, or it required any interference in its quantum and if so, to what extent. Accordingly, the high court set aside the award of the labour court and remanded the matter to the labour court for deciding it afresh.

Feeling aggrieved, the respondents filed intra-court appeals in the high court before the division bench which allowed the appeals and set aside the order of the single judge. It directed reinstatement of the respondents by restoring the order of the labour court to this extent, but declined to award them any back wages except continuity of service and other attendant benefits. It is this order which was impugned by the management before the Supreme Court.

The court at the outset decided to examine the legality and correctness of the award of the labour court. It was of the opinion that the labour court having held that the departmental inquiry conducted by the appellant was legal and proper, committed an error in holding that it got vitiated by the order of the criminal court acquitting the respondents from the charge of theft. It observed that there was no occasion for the labour court to deal with this issue once the departmental inquiry was held legal and

proper. The court further held that the labour court had committed yet another error in holding that since the appellant failed to lead any evidence to prove the charge in labour court, the dismissal orders were liable to be set aside. It held that this view was not legally sustainable. The only question that survived for the consideration of the labour court was whether the punishment of dismissal was legal and proper or it required any interference by it which was permissible under section 11A of the Act. Since this was not done the order of the labour court became unsustainable in law.

The Supreme Court also emphasised that the labour court had failed to appreciate that departmental proceedings and criminal proceedings are two separate proceedings in law. One is initiated by the department or employer under labour law or service rules against the delinquent employees for committing misconduct while the other is initiated by the state in a criminal case. The labour court had failed to appreciate that the dismissal order of the respondents was not based on the criminal court's judgment but on the basis of the domestic inquiry which the employer had every right to conduct, independent of the criminal case.

The court further observed that it has consistently been held by it that where the inquiry has been held independent of criminal proceedings, acquittal by the criminal court is of no avail. It is settled law that even if a person is acquitted by the criminal court, domestic inquiry can still be held since the standard of proof required in a domestic inquiry and that in a criminal case is altogether different. In the latter case, the standard of proof required is proof beyond reasonable doubt while in the former, it is preponderance of probability.

Considering the above settled legal position, the court held that the labour court was not right in holding that the departmental inquiry should have been stayed by the appellant awaiting the decision of the criminal court. The findings of the labour court that acquittal order rendered the order of dismissal bad in law was not legally sustainable. The single judge had committed an error in remanding the case to the labour court without specifying what the labour court had to decide after remand and why the writ court could not decide such issues in the writ petition itself. There was a serious error in the judgment of the single judge when it remanded the whole case afresh for its decision on merits.

Coming to the legality of the decision of the division bench, the court found absolutely no justification to have allowed the appeals of the respondents restoring the order of the labour court setting aside the dismissal order. The court held that this was a clear case where the departmental inquiry was legal and proper and this was also so evident on perusal of the entire record of the case. The departmental inquiry having been found legal and proper by the labour court and keeping in view the nature of the charge, the order of dismissal from service was appropriate punishment and was commensurate with the charge.

The Supreme Court observed that the offence of theft committed by an employee while on duty was a serious charge, and once this charge was proved in the inquiry, the employer was justified in removing him from service. The findings in the inquiry having been arrived at independent of the criminal case, there was no justification in

stating that merely because the accused has been acquitted by the criminal court, the order of dismissal should be set aside.

The findings in the departmental inquiry that the workmen were guilty was based on preponderance of probability and such a finding could be recorded by the inquiry officer notwithstanding the order of the criminal court acquitting the accused because the prosecution had failed to prove the guilt of the two accused beyond reasonable doubt.

In view of the above, the court set aside the impugned judgment of the division bench and held that the dismissal orders of the respondents were legal and proper.

Workman accused of murder reinstated by employer without back wages on being acquitted by appellate court: order of management upheld

In *P. Karupaiah* v. *General Manager, Thiruvallur Transport Corporation Ltd.*,[18] a question of some significance that came up for consideration of the court was justification or otherwise of the decision of the employer of non-payment of back-wages on reinstatement of an employee who was accused of murder of which he was convicted by the trial court but was acquitted by the appellate court. This question arose in the following facts and circumstances: The appellant was dismissed from service on the allegation that he was facing prosecution in a murder case. The trial court convicted him of the offence of murder but on appeal the high court acquitted him. After the acquittal, he was reinstated based on his representation, but the management declined to pay him any back-wages for the intervening period. Feeling aggrieved, the appellant filed a writ petition in the high court praying for relief of grant of back-wages. The single judge of the high court declined to grant any such relief and the division bench in the intra-court appeal upheld the order of the single judge leading to the filing of the special leave petition in the Supreme Court by the workman.

The Supreme Court observed that the award of back-wages has taken some shift inasmuch as grant of back-wages is not a rule or a matter of right when the order of dismissal or removal is set aside by the court. The order of reinstatement should itself in express terms direct payment of back-wages and other benefits. The employee is required to prove with the aid of evidence that from the date of his dismissal till the date of rejoining, he was not gainfully employed anywhere with equal right to the employer to show otherwise that the employee concerned was gainfully employed during the relevant period and hence not entitled to claim any relief of back-wages.

The court observed that the judicial or quasi-judicial forum should, after considering the rival claims, exercise its powers judiciously whether to award back-wages, either in full or part or even decline, as the case may be, while passing an order of reinstatement. In appropriate cases the courts have applied the principle of 'no work no pay' while declining to award back-wages and confining the relief only to the extent of reinstatement along with some consequential reliefs by way of grant

18 (2018) 12 SCC 663.

of notional benefits in exercise of its discretionary powers depending upon the facts and circumstances of each case.

Coming back to the present case, the court was of the opinion, on perusal of the record, that there was no evidence brought by the appellant to claim back-wages either in full or in part. It did not find any good ground to interfere in the discretion exercised by the two courts below and accordingly upheld the orders impugned in the special leave petition.

The court observed that the appellant should feel satisfied that he was able to secure reinstatement in service despite his being involved in a murder case.

Liability under section 17-B is absolute

In *Rajeshwar Mahto* v *Alok Kumar Gupta, General Manager, Birla Corporation Limited*,[19] the Supreme Court was dealing with a contempt petition arising out of two orders passed by it in a civil appeal. This contempt application was filed by the employee in the said appeal.

The applicant was an employee of one limited company which was controlled by the Birla group. The contemnor was the general manager of the corporation. The applicant was appointed sometime in 1974 and his services were terminated in 1985 when he was drawing salary of Rs 1185/-. He raised an industrial dispute questioning the legality and correctness of his termination order. The industrial tribunal decided the reference in favour of the corporation holding that the applicant was not a workman for the purpose of ID Act and hence the reference was not maintainable. The applicant, feeling aggrieved, filed a writ petition before the High Court at Calcutta. The single judge of the court allowed the writ petition and while setting aside the award of the industrial tribunal held that the applicant was a workman and the reference was valid.

The corporation preferred an intra-court appeal before the division bench of the high court which dismissed the appeal and upheld the judgment of the single judge. Feeling aggrieved, the corporation preferred the special leave to appeal before the Supreme Court against the orders of the high court.

The Supreme Court allowed the corporation's appeal and set aside the orders of both the division bench and the single judge. As a consequence, the award passed by the industrial tribunal holding that the applicant was not a 'workman' was upheld. The Supreme Court, by an interim order, had earlier directed the corporation to pay to the applicant full wages last drawn by him, inclusive of maintenance allowance admissible to him under the rules on the applicant furnishing an affidavit to the effect that he was not gainfully employed elsewhere. This amount was directed to be paid to him with effect from the date of the filing of the special leave petition by the corporation till the final disposal under section 17B of the ID Act. The corporation was directed to pay the arrears within four weeks and monthly emoluments by 7th of each of the succeeding months.

It is in the background of these facts, the applicant employee filed the contempt petition alleging therein that the interim order passed by the court during the pendency

19 (2018) 4 SCC 341.

of the appeal had not yet been compiled with by the corporation, even when the liability under section17B was a statutory right. It was alleged that since the corporation had offered much lesser amount than what was actually payable to the applicant pursuant to the interim order of the court, he had not accepted the sum offered to him.

The corporation in its reply stated that it had offered him his entitlements but he had declined the same stating that it was much lesser than his actual entitlement. The court posed only one surviving question to itself as to whether the applicant employee was entitled to claim any monetary benefits pursuant to the order passed by it granting him interim benefits under section17B and if so, how much?

The court referred to its earlier judgment e felt aggrieved of his termination and raised an Industrial dispute relating in *Dena Bank* v. *Kiritikumar T Patel* [20] which was approved by a three judge bench in a subsequent matter in *Dena Bank* v. *Ghanshyam*[21] where the court has laid down the law and the true object behind section 17B of the Act. It observed that one could not dispute the legal proposition emerging from the aforesaid judgments that notwithstanding allowing of the appeal by the corporation by the court, insofar as the interim relief is concerned, it remains legal and valid, being independent in nature, the same has to be given effect to in favour of the employee, if not found complied with by the employer corporation. In other words, even if the employer eventually succeeds in his appeal against his employee, in which such orders were passed during the pendency of the employers appeal, the employer continues to remain under legal obligation to comply with such order passed by the court under section 17B of the Act in favour of the employee. An order passed under section 17B does not merge with the final order passed in the appeal and being an independent order, it remains alive for enforcement.

The court observed that it is not disputed that the corporation had not complied with the interim order passed by the court. Taking into account the nature of the controversy, the long pendency of the case, the offer made by the corporation towards full and final settlement of arrears, leave encashment, gratuity, bonus, interest, etc. the court arrived at a sum of Rs 7, 50,000/- to be paid the corporation by a demand draft within a week from the date of vacating the quarter of the corporation occupied by the applicant. With these directions the court disposed of the contempt petition and further directed *rule nisi*, if issued, shall stand discharged against the alleged contemnor.

Labour court/ Industrial tribunal may not become *functus officio* in certain circumstances after 30 days from the date of publication of award

In *Haryana Suraj Malting Ltd*. v. *Phool Chand*,[22] the question that arose for consideration of a three judge bench of the Supreme Court on a reference from the two judge bench of the court in view of the conflict between two earlier decisions of the court[23] was, whether the industrial tribunal/ labour court becomes *functus officio*

20 (1999) 2 SCC 106.

21 (2001) 5 SCC 169.

22 AIR 2018 SC 2670.

23 *Sangam Tape Co*. v. *Hans Raj* (2005) 9 SCC 331 and *Radhakrishna Mani Tripathi* v. *L. H. Patel* (2009) 2 SCC 81.

after the award has become enforceable, and is thus, prevented from considering an application for setting aside an *ex-parte* award?

Keeping in view that the object of the ID Act is to promote industrial harmony by preventing and resolving industrial conflicts through conciliation and adjudication, the three-judge bench held that merely because an award has become enforceable, does not necessarily mean that it has become binding. The court observed that for an award to become binding, it should be passed in compliance with the principles of natural justice and observed thus:[24]

> An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being a nullity. An award which is nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/ Tribunal when it was set ex-parte, the Labour Court/ Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/ Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex pate award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace, certain powers to do justice have to be conceded to Labour Court/ Tribunal, whether we call it ancillary, incidental or inherent.

The court, at the same time, ensured that the interpretation that it adopted was not misused by the employers. It, therefore, made it clear that when an application is made at the instance of the management, the labour court/ tribunal must balance the equities.

In the present batch of appeals, the court remitted the cases to the labour court for consideration as to whether there was sufficient cause for non-appearance of the management. Since the litigation had been pending for a long time, it directed the appellants to pay an amount of Rs. one lakh in each case to the workmen by way of provisional payment. However, the court made it clear that the payment was subject to the final outcome of the awards and would be adjusted appropriately.

The court, by discarding the technical interpretation of the scheme of the Act and instead preferring a pragmatic approach to it, has given effect to the true spirit of the ID Act which is in consonance with the constitutional value of social justice. It is hoped that this purposive interpretation will be welcomed by all concerned.

Settlement: legality, binding nature and applicability

In *Bhupendra Kumar Chimanbhai Kachiya Patel* v. *Divisional Controller, GSRTC Junagarh,*[25] the case of the appellants-workmen was that they were entitled

24 *Supra* note 22 at 2681.

25 AIR 2018 SC 1293.

to claim benefit on their completing 180 days of service from the date of their initial joining of the service as daily rated 'Badli Kamdars,'and not from the date of their absorption in the cadre of conductor with the respondent corporation. However, according to the respondent corporation, the appellants were rightly granted benefit on the expiry of 180 days from the date they were absorbed in the permanent cadre as conductors.

To examine the correctness or otherwise of the above stated stand of the workers it will be pertinent to give the factual matrix of the case which is as under:

On December 21, 1989 the corporation and the union of the workers had entered into a settlement to resolve several issues in relation to the service conditions of the employees working in the corporation. Clause 20 of the settlement dated December 21, 1989 read as follows:[26]

> In reference to the representation made to delete the provision of the section 29 of the settlement dated23/11/ 1984 and implement the provision of section 43 of the settlement dated 22/10/1964 it is determined that after preparing the Division wise list of the selected employees they will be given temporary/daily wager appointment against the permanent posts in the division/unit, and if such appointed temporary/daily wager has worked continuously for 180 days including the weekly holiday/paid holiday and authorized leave then they will be taken on time scale….
>
> As per permission of S.T.T. 1981, if the recruitment of the staff has been done as a temporary or Badli Kamdar then after completion of their 180 days of service on the permitted vacancies they would be taken on time scale serially.
>
> Such workers will be granted all benefits as per the Rules along with the notional increment with effect from 1.8.87 and there would not be any recoveries made from them nor there will be any arrears paid….

As can be seen from the language of clause 20 of the said settlement, it dealt with the placement and absorption of 'Badli Kamdar' in the permanent cadre of conductor and grant of time scale to such worker. It provided a procedure as to how, when and in what manner, the services of a 'Badli Kamdar' was to be regularised and absorbed in a particular time scale.

This dispute related to a number of such employees, being same and similar in nature, were taken up together. For the sake of convenience, the Supreme Court took facts of one of the appeals and made it the base for laying down the true interpretation of clause 20 of the settlement which would be equally applicable to all other appeals.

In this particular appeal, the appellant joined service of the corporation on June 4,1999 as 'Badli Kamdar' as a daily wager. In terms of clause 20 of the settlement referred to above, the corporation considered the case of the appellant when the vacancy

26 *Id.*, para 27.

occurred in the permanent cadre on the post of conductor and accordingly, he was absorbed as permanent employee in the services of the corporation on August 27, 2008 as conductor. He was given the time scale with effect from August 27, 2008 with consequential benefits.

Like the appellant in the present appeal, there were hundreds of 'Badli Kamdars' who were working in the corporation who were also considered with a view to find out as to whether they fulfilled the conditions set out in clause 20 for making them permanent in the set-up of the corporation as and when vacancy arose in the cadre of the conductor. Those who were found eligible and fulfilled the conditions were absorbed in the services as permanent employees on the post of conductor and were given the time scale on the expiry of completion of 180 days in the cadre. They were accordingly made permanent in terms of the procedure prescribed in clause 20 of the settlement. They also had similar grievance like the appellant in the appeal taken as the main case here.

As stated above, the dispute was essentially as to from which date the benefit of making them permanent and the benefit of time scale should be granted to such 'Badali Kamdards.'

The issue was accordingly referred to the industrial tribunal at the instance of the appellant. Several such references were made to the industrial tribunal at the instance of similarly situated employees. The industrial tribunal answered the reference in favour of the employee and held the appellant was entitled to claim the permanent absorption in his service in the time scale as conductor with effect from the completion of his 180 days of service period and the permanent status and time scale relating back to the date of his initial joining, *i.e.,* June 4, 1999. The corporation was accordingly asked to pay all consequential benefits from such date. In substance, the industrial tribunal rejected the stand taken by the corporation.

The corporation felt aggrieved and challenged this award in the high court. The single judge of the high court accepted the stand taken by the corporation and upheld its action in granting the benefit to the employee-appellant from August 27, 2008 as provided in clause 20 of the settlement. This order of the single judge was upheld by the division bench of the high court in the intra-court appeal filed by the workman-appellant. Hence the present petition by way of special leave petition.

The Supreme Court observed that the corporation had followed the procedure provided in clause 20 while granting the employees their permanent cadre and time scale of conductor. The court recalled the material facts of the case as under:[27]

> It is also clear from the undisputed facts that firstly, the appellant (employee concerned) was appointed as 'Badali Kamdars' in the setup of Corporation on 04.06. 1999; Secondly, clear vacancy arose in and around 27.08.2008; Thirdly, as per the seniority list of the 'Badali Kamdars,' the appellant was accordingly absorbed in the permanent cadre at the time scale with effect from 27.08.2008 on completion of

27 *Id*. at 1297.

> 180 days of his service in the cadre and, as a consequence thereof, was given all the benefits of the said Post from the said date, and lastly, since then the appellant and other employees alike him are continuing on their respective posts.

Clause 20 of the settlement was the only clause recognising the employee's right for consideration of his case on individual basis and to grant him the benefit subject to his fulfilling conditions specified therein which, in the appellant's case, were found satisfied and accordingly, he was granted the benefit along with each such employees.

The court held that in the light of the above facts, there was no basis for the appellants (employees) to claim the aforesaid benefit from the date of their initial appointment as 'Badali Kamdar.' Indeed, there was neither any factual nor any legal foundation to claim such benefit nor were the employees able to show any rule or regulation framed by the corporation recognizing such right in their favour to enable them to claim such benefit from the date of their initial appointment. The appellants never challenged the legality or binding nature of the settlement or its applicability. The said settlement was binding on both parties in terms of section 18 of the ID Act.

Applicability of Chapter V-B of the ID Act

May involve determination of mixed questions of fact and law

In *National Kamgar Union* v. *Kran Rader Pvt. Ltd.*,[28] the appellant, a trade union registered under the Trade Unions Act, 1926 had several members working in factories in Pune. The respondent owned a factory in Pune engaged in the manufacture of several components for supply to railways. The employees of the respondent were always members of the appellant union. In 1990, the respondent suffered huge losses in running the said manufacturing unit in Pune and, therefore, decided to close the said unit permanently. With this end in view, the respondent served a notice of closure to the state government under section 25FFFA of the ID Act expressing its intention to close the operation on the expiry of 60 days from the date of notice.

The appellant union, feeling aggrieved by the closure notice of the respondent, filed a complaint of unfair labour practice against the respondent under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (the Maharashtra Act) in the industrial court. The main grievance was that since the respondent had employed more than 100 workers on an average day in the last preceding 12 calendar months in its manufacturing unit, the provisions of Chapter VB of the ID Act were applicable. The respondent having failed to seek prior permission of the state government, the closure was illegal with all necessary consequences. Hence, according to the union, it was a fit case for a declaration by the industrial court that the intended closure was illegal with all attendant consequences.

The respondent denied the allegation of the union asserting that at no point of time had it employed 100 workers which was a condition precedent for attracting

28 (2008) 1 SCC 784.

Chapter VB of the Act. It prayed that the complaint thus deserved to be dismissed and the notice of closure held legal, proper and in accordance with law.

The industrial court, after appreciating the evidence that was led before it and the submissions made by the parties, held that the respondent had employed 115 workmen at all relevant time in the unit, therefore, the provisions of Chapter VB of the Act were attracted and were required to be complied with. Resultantly, the industrial court held that the closure in question was bad in law entitling the members of the union to claim all consequential benefits arising there from as if there was no closure of the unit.

The respondent filed a writ petition before the High Court of Bombay assailing this decision. A single judge of the high court allowed the petition holding that the strength of the workmen working at the relevant time in the respondent's unit was 99 and not 115 as held by the industrial court and, therefore, the respondent was not required to ensure compliance with Chapter VB of the Act while declaring the closure. The appellant union preferred the present appeal by way of special leave petition in the Supreme Court.

The apex court observed that what was the total strength of the 'workmen' employed in the unit was essentially a question of fact and this question could be answered only on appreciation of evidence adduced by the parties. Once the court records findings on such questions, be that concurrence or reversal, the finding is usually binding on the apex court while hearing an appeal under article 136 of the Constitution. It does not go into the question of fact unless the findings of the court below are found to be against any provision of law or evidence or wholly perverse to the extent that no average judicial mind could ever record such a finding.

Regarding the question whether the employee is a 'workman', it is settled law that it must be inferred from the facts found. If the question involved is one of drawing a legal inference as to the status of a party from facts found, it does not remain a pure question of fact. The court held that if the inference drawn by the tribunal regarding the question whether the employee is a workman involves application of certain legal tests, it necessarily becomes a mixed question of fact and law. Further, even if the question raised is a mixed one of fact and law, a superior court would not readily interfere with the conclusion of the tribunal unless it is satisfied that the said conclusion is manifestly or obviously erroneous.

In the present case, the court with the view to examine the questions from both angles referred to above, decided to go through the entire evidence on record and also called upon the parties to file additional evidence before it. On perusal and appreciation of the records, the court observed that it was not inclined to interfere with the findings recorded by the high court. It held that the total strength of the workers at the relevant time in the respondent unit was 99 and the status of 16 disputed employees could not be conclusively proved that they were "workman" for the reasons given as under:

i. The high court gave reasons as to why the findings of the industrial court holding the strength of workers as 115 was not factually and legally sustainable.

ii. The reason is so assigned were neither arbitrary nor against the record nor perverse to warrant interference by the court

iii. Such being a question of fact or mixed question of law and fact was binding on it.

In these circumstances, the court observed that it would be slow to appreciate the entire evidence afresh on this question in the special leave petition. Despite it, the court went through the entire evidence with a view to find out as to whether the high court had committed any jurisdictional error in reaching to its conclusion. The court was emphatic that no such error had been committed by the high court for the following reasons:

i. There was no dispute regarding the status of 79 employees who were falling within the definition of 'workman.'

ii. The dispute of status regarding 36 employees as to whether they were workmen or supervisors, the industrial court held that their status was that of workmen, accordingly it held that there were 115 workmen attracting application of section V B of the ID Act. The high court, however, while reversing the aforesaid finding of the industrial court concluded that out of 36 employees, only 20 employees at the relevant time could be regarded as workmen raising the total strength of workmen at 99.

iii. The high court had rightly held that the union had not adduced any cogent evidence. The industrial court had not elaborately discussed the issue of the status of 16 employees for which it should have examined the status of each of them independently, which was not done, and therefore the findings of the industrial court were rightly overturned by the high court

The Supreme Court found no substance in the submission of the union that the high court could not while exercising the supervisory jurisdiction re-appreciate the evidence and then reverse the findings of the industrial court under article 227 of the constitution. The court held that the high court was within its powers to interfere wherever the subordinate court or tribunal has failed to take into consideration material evidence or recorded finding without there being any evidence. The case at hand was one such and the high court had rightly overturned the findings of the industrial court. It, therefore, held that it was not proper for it to disturb the findings of the high court which were more plausible and reasonable than the findings of the industrial court.

It was brought to the notice of the court that many of the workers had settled their claims because of the proposed closure and their claims were settled between Rs. one lakh to two lakh and only few of the workmen had refused to accept the compensation etc. The court, accordingly, directed payment of Rs 2,50,000 to those workers who had not settled their claims as full and final settlement of their claims. The court directed that the amount be deposited in the industrial court and be paid to them after proper verification.

Section 33 (2) (b) and section 33A: Scope

The question that came for consideration before the Supreme Court in *Managing Director, NEKRTC Karnataka* v. *Shvasharanappa*[29] was what consequence follows in law if there is a non-compliance with section 33 (2) (b) of the ID Act. This question arose in the following facts and circumstances:

The workman was subjected to domestic inquiry by the appellant on the charge of obtaining employment by furnishing fabricated qualification documents and by making false declaration. The findings of the domestic inquiry were against the workman. Before the labour court, validity of the proceedings of the domestic inquiry were raised and at the request of the management, it was permitted to lead evidence to prove the charge on merit which was granted. The labour court held that the charges being grave the punishment of dismissal was not disproportionate to the proved charges.

The respondent workman moved the high court. A single judge of the high court took the view that since another proceeding under the Act was pending, prior approval under section 33 (2) (b) was required to be taken by the management. Such prior approval was, however, neither sought for nor granted. The high court, in the circumstances, held that the dismissal of the workman was *void ab initio.* The said order of the single judge was affirmed by the division bench of the high court in the intra-court appeal.

Aggrieved, the employer filed a special leave petition in the apex court. The question before the court was whether the high court was correct in taking the view that it did. The court referred to its earlier judgment in *Management of Karur Vysya Bank Ltd.* v. *S. Balakrishnan*[30] wherein the court, while dealing with the situation of absence of any approval under section 33 (2) (b) of the Act read with section 33A, took the view that contravention of the provision of Section 33 (2) (b) would not be conclusive of the matter. The industrial adjudicator would be required to answer the further question as to whether the dismissal or such other punishment, as may have been imposed upon the workman, was justified in law. Therefore, the high court should not have interfered with the punishment merely on the ground that the requirements under section 33 (2) (b) had not been complied with or there was want of prior approval. The mere violation of 33 (2) (b) could not have authorised the high court to interfere with the punishment imposed without adjudicating on the validity of the dismissal. The violation would not render the action of the employer bad but can be the subject matter of challenge in an application under section 33A and would require adjudication. Failure to comply with section 33 (2) could also attract punishment under section 31 of the Act.[31]

The court took the view that in the present case such an adjudication had already been made by the labour court and, therefore, the issue of the dismissal of the workman must be understood to have been decided. In such a situation, the court held that the

29 (2017) 16 SCC 540.

30 (2016) 12 SCC 221.

31 For critical appreciation of legal position on the issues concerning sections 33 (2) (b) and 33A see Bushan Tilak Kaul "Labour Management Relations" LII *ASIL* (2016) 733 at 750 to 754.

high court ought not have interfered with the punishment imposed without considering the findings of the labour court on the correctness of the charges brought against the workman. The said aspect of the order of the high court had not been assailed by the workman and, as such, the aforesaid part of the order must be understood to have been accepted by the workman.

The Supreme Court said that the remaining part of the order of the high court, *i.e.,* interfering with the punishment imposed, would clearly be contrary to the view expressed by it in the *Management* of *Karur Vysya Bank Ltd.* The court, therefore, held that the high court was not at all justified in passing the order of reinstatement of the workman with partial back wages (25%). The court restored the award of the labour court and consequently allowed the appeal.

Harmonization of right to livelihood with right to good environment

The Supreme Court in *Chairman and Managing Director, Enrone Port Trust* v. *V. Manoharn*,[32] emphasised the need for proper harmonization of the right of the public to good environment and the right of the labour to earn her livelihood. These both aspects merit serious consideration in litigation involving environmental issues. It is important to have a first-hand account of the circumstances which warrant such an approach, thus in order to carry out the activity of loading, uploading, spillages and cleaning the coal ore from the iron ore handling plant set up in the port trust, the stakeholders always need class IV workers. This work requires to be carried on a regular basis. It seems that instead of employing regular workmen, the management of the port trust employed many workmen on daily wage basis for carrying on such work.

These workers demanded regularisation of their services in the port trust. Since their demands were not acceded to, a large number of them filed a writ petition in the High Court of Madras seeking relief of regularisation. This was opposed by the port trust on the ground that they were engaged through contractor and no master-servant relationship existed between it and the petitioners. During the pendency of the writ petition, these petitioner workers formed an association and got it registered under the Society Registration Act, 1860. It seems that the high court referred the matter for arbitration and the arbitrator passed an award which was published by the Government of India in the government gazette. The award, *inter alia*, directed that the parties should enter into a Memorandum of Understanding (MoU) for settlement of the disputes. Accordingly, a MoU was entered into between the association and the Chennai Port Trust. Clause 31 of the MoU provided that in the event of any dispute arising between the parties it shall be referred to the arbitral tribunal.

In the meantime, a PIL came to be filed in the High Court of Madras by some public spirited persons against the Chennai Port Trust and the Pollution Control Board, complaining that due to heavy and reckless handling of coal and iron ore and heavy movement of dust cargo in the Chennai Port Trust handing plant every day, the activity was emitting huge quantity of dusts and several chemical particles in the air resulting

32 (2018) 3 SCC 612.

in environmental pollution. This was detrimental to human health and affected the right to clean environment of the people. It was, therefore, prayed that these activities needed to be regulated in the larger public interest, including considering shifting of activities to some other port.

The high court allowed the writ petition and gave certain directions to the Chennai Port Trust and the Ennore Post Trust for ensuring their compliance. These included distribution of cargo between the two ports and, at the same time, ensuring that there was no retrenchment of workers due to the redistribution of activities. It led to the shifting of the offending activities largely from Chennai Port Trust to Ennore Port Trust, in terms of the direction of the high court. As a result of this, the Chennai Port Trust resolved to terminate the MoU arrived at with the association. The association was informed of the same.

In the meantime, 90 other persons claimed to be workers of the Chennai Port Trust and sought regularisation of their services in the said Port Trust in a writ petition before the high court. They asserted that they were working there for the last two decades. The single judge dismissed the writ petition stating that there was no master-servant relationship between them. In the intra-court appeal of the workers, the division bench of the court allowed the writ appeal and gave certain directions to the port trust who preferred the special leave petition in the Supreme Court.

The Supreme Court adverted to clause 31 of the MoU referred to above and observed that the high court should not have entertained the writ petition under article 226 of the Constitution. Instead, it should have directed the parties to take recourse to the remedy provided under clause 31 of MoU by referring the case to the arbitral tribunal for its decision according to law. The court referred to the following aspects involving determination of questions of fact and law by arbitral tribunal:

(i) Whether these persons were in the employment of the port trust and whether they are entitled to claim regularisation of their services in the port trust and if so, from which date.

(ii) If such question is disputed by the establishment, then the arbitral tribunal must decide the factum of such alleged relationship based on the evidence led before it.

(iii) The claim of regularisation must be decided in each case based on evidence led by the parties.

(iv) In every case, each one would be required to prove his case *qua* the establishment independently by producing evidence and it is only then that such a person could be entitled to get relief.

The court believed that several aspects referred to above needed to be answered before considering grant of appropriate relief, if any. These questions, when seen in the background of facts stated above, were interlinked with each other and related to the main activity which had been carried on in the Chennai Port Trust and shifted to the Ennore Port Trust, largely. The dispute raised in the present petition related to the employment and regularisation of the class IV employees in the setup of the Chennai

Port Trust. The court referred to the MoU executed earlier which was intended to contain the entire machinery to safeguard the rights and obligation of the parties which, due to several intervening factors, did not seem to have worked smoothly. The court hoped that now the dispute that existed would be taken up by the arbitral tribunal for which the parties could approach the high court or they could appoint one by mutual consent. It hoped that the dispute would be sorted out by the arbitral tribunal and the parties would be at liberty to raise all the issues of facts and law and support their case by adducing oral and documentary evidence. The court allowed the appeal, set aside the impugned orders of the division bench as also the single judge.

Issue of regularization

In *Chennai Port Trust* v. *Chennai Port Trust Industrial Employees Canteen Workers Welfare Association*,[33] the material facts which are necessary for appreciation of the important legal issues involved were as, here the appellant Chennai Port Trust has been rendering yeoman service to the shipment industry. It has large technical and administrative set up to run its multifarious activities on the port. It employed large number of workers / employees who worked round the clock in shifts to run and maintain the activities of the port trust. It provides canteen facilities to its workers which it has been running since 1964. The workers working in the canteen formed an association and approached the High Court of Madras by way of a writ petition seeking direction to the port trust to treat them as regular workers of the Chennai Port Trust and provide them pay, allowances and other monetary benefits at par with other regular staffs of the trust. The association asserted that its members were working in the canteen for decades regularly catering and fulfilling the needs of the employees of the port trust and were entitled to be regularised as permanent employees.

The port trust opposed the demand by raising the traditional argument that there was no master and servant relationship between the members of the association and the Chennai Port Trust. Further, this matter raised many issues of fact and law and, therefore, it is the industrial tribunal which should be the appropriate forum that should have been approached by the association and could not have invoked the writ jurisdiction of the high court which was not the proper forum.

The single judge of the high court allowed the writ petition and granted the relief prayed for by the petitioner association. The division bench of the high court in the intra-court appeal upheld the judgment of the single judge relying on the judgment of the Supreme Court in *India Petro-Chemical Corporation Ltd* v. *Shramik Sena.*[34] The appellant preferred the present special leave petition against these concurrent decisions of the high court.

The Supreme Court held that the approach and reasoning of the two courts below on the basis of principle of law laid down in *Indian Petro-Chemical* was just, proper and legal. The court found that there were no distinguishable facts in this case qua *Indian Petrochemical* case. The following facts, *inter alia*, clearly established

33 (2018) 6 SCC 202.

34 (1999) 6 SCC 439.

that the Chennai Port Trust had the administrative control of the canteen and due care and supervision over the employees of the canteen:

(i) The canteen was run by the society whose rules were made and were subject to the approval of the chairman of the trust which clearly showed the administration of canteen was with the port trust.

(ii) It was only the workers belonging to the port trust who were eligible to become the member of the society and no others.

(iii) It was only the nominee of the port trust who could act as chairman of the cooperative society.

(iv) The port trust administration had the right to audit the accounts of the canteen.

(v) Electricity and water were supplied by the port trust free of charges to the canteen.

(vi) The canteen premises were also held by the society rent free.

(vii) The port trust provided cost of the staff provided by the canteen, maintenance of the building, reimbursement of 100% of the fuel cost and all the benefits to the canteen employees.

(viii) The financial matters were controlled by the financial advisor and chief accounts officer of the port trust.

In view of the above, the court found no merit in the appeal and upheld the concurrent findings and orders of the single and division bench of the high court.

Fixation of pay scales: a technical and complex matter which should be left to expert body

To appreciate the issues that came up for consideration of the Supreme Court in *DTC Security Staff Union* v. *DTC*,[35] it will be appropriate to give the background in which the issues arose, there existed parity in pay-scales of the security cadre in the respondent corporation with that in the Delhi police till 1962.Thereafter, though parity existed with the Delhi police for the rank of deputy security officer and security officer in the corporation, the same was denied for the post of assistant security officer, security havildar and security guard in the corporation. The stand of the appellant union was that there was no justifiable reason for this discrimination and was contrary to the constitutional ethos of equal pay for equal work and the avowed policy of the state and its instrumentalities to provide living wage to the workers. The appellant union sought a reference under the ID Act with regard to revision of pay scale of assistant security officer and below in the respondent corporation.

It was the case of the corporation before the industrial tribunal that the pay scales of assistant security officer and below him were fixed in accordance with the 3rd pay commission recommendations. Further, a pay commission had been constituted to prepare a wage structure for all employees of the corporation, and which was to submit its report shortly and, therefore, it should not proceed with the reference on merits.

35 (2018) 16 SCC 619.

The tribunal held that the job of the commission was an arduous and time-consuming process. On that basis, it proceeded to assume jurisdiction with regard to grant of appropriate pay-scale. The tribunal by its award held that the assistant security officer, security havildar and security guard in the services of the corporation were entitled to pay scale on par with their counterparts in the Delhi police force.

The corporation challenged the award unsuccessfully before the single judge of the High Court of Delhi. However, the division bench set aside the award in the intra-court appeal. The union assailed this judgment before the Supreme Court which observed that it hardly needed to be emphasised that grant of pay scales is a highly technical and complex matter. It requires consideration of a host of factors, such as the qualifications for the post, the method of recruitment, the nature of duties, etc.

The court held that the tribunal ought to have refrained from going into the exercise of fixation of pay scales when it was brought to its attention that a commission constituted for the purpose was examining the wage structure for all the employees of the corporation. Further, the court also took notice of the fact that the Government of Delhi, which would have had to bear the financial burden, had not concurred with the board of the corporation to abide by the award. It also observed that the pay-scales of the employees of the corporation, including the security cadre, had been revised from time to time in accordance with the recommendations of 4th, 5th, 6th and 7th pay commissions and no objection was filed or raised by the appellant union before any of them.

In its considered view if the award of the tribunal was allowed to be implemented it could lead to serious complications with regard to issues of pay-scales *vis-à-vis* recommendations of the pay commission and would generate further heartburns and related problems to other employees of the corporation. The court also found vast differences in the nature of the general duties performed by the personnel of the police force in contradistinction to that of the security personnel discharging limited security duties in the confines of the corporation. In view of the above reasons, the court found no ground to interfere with the order of the division bench of the high court.

III MISCELLANEOUS

The plight of workers in tea estates, some of whom were in unorganized sector, and the apathy of the highest judiciary in not passing timely directions to the authorities for their compliance is evident from the facts in *International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations* v. *Union of India.*[36]

This was a writ petition filed by the petitioner association in 2006 under article 32 of the Constitution to espouse the cause of tea workers some of whom were in unorganised sector in tea estates of various tea companies in three states. The petitioner was seeking directions to the Union of India and the state governments to ensure that the monetary entitlements of the workers, some of whom worked for about 20 years, were paid to them by the tea companies, some of these companies had abandoned or

36 (2018) 8 SCC 201.

closed their tea estates causing deprivations of their right to life. This petition was effectively taken up for consideration and proper directions only in 2018 after almost after 12 years of the filing of the petition which shows complete apathy in the whole judicial process. It was brought to the notice of the court that during the pendency of the writ petition some workers had resorted to suicide because of the utter poverty and deprivations faced by them and their families. Some of these workmen had initiated proceedings before authorities to seek their entitlements and in some cases the government had stepped in for recovery of dues. When nothing was happening, the petitioner association approached the apex court for enforcing their rights essential for their right to life. But the inordinate delay in giving them effective hearing surely amounted to denial of access to justice.

The court in 2018 decided to hear the state governments on the question of grant of interim relief to these workers. The State of Assam responded positively. There were 16,133 retired workers and staff of the state tea corporation, many of whom had retired over 20 years back. Another, 839 persons had retired but were continuing in service. The corporation owned 15 tea estates in the State of Assam. The state undertook to place in the hands of the corporation a substantial sum of money with 90 days for disbursal to the workers of the corporation for which a MoU was signed between the corporation and the state government.

In these circumstances, the court passed various directions for preparing the list of the workers and disburse the interim compensation to them and where the workers had died to their representatives within 60 days from the date of the order after proper verification. The court also made it clear that the Government of Assam would be entitled to recover these amounts from all those employers whose primary duty was to pay the wages, as a revenue demand or through any other efficacious manner. In respect of the gardens not owned by the corporation, the court decided to give a right of hearing to such garden owners before passing the order.

In respect of the workers in 45 tea estates in the State of West Bengal, the state government submitted that it had already spent large amounts on the development of various schemes for those workers. The court saw no reason why the state should not temporarily spend further amounts for paying dues to the workers of an unorganised sector in respect of wages due to them for the work actually rendered. Having regard to the plight of the workers and the pitiable conditions in which they were living, the court considered it appropriate, in the interests of justice, to direct the state government to give the necessary funds of Rs. 15 crores which would be disbursed amongst the employees upon verification within 60 days. In cases of death, the amount was to be paid to their legal representatives upon proper verification. The court made it clear that the state government would be entitled to recover those amounts from all those employers whose primary duty was to pay the wages, as a revenue demand or through any other efficacious means.

In the State of Tamil Nadu again the workers were working in tea estates which were not run by the state or the state corporation. The court directed it to make available Rs. 9.5 crores for disbursal amongst the workers or their representatives in the event

of death, as the case may be. Other directions passed by the court were similar to those passed in the case of the State of West Bengal.

IV TRADE UNIONS

Trade union: Definition

In *All Escorts Employees Union* v. *State of Haryana*,[37] the moot question that arose for consideration of the Supreme Court was whether the trade union which primarily had the membership of a particular establishment or industry can broaden its scope by opening membership even to those who are not employees of the establishment in respect of which the said trade union has been formed? This question arose in the following factual matrix:

The appellant union had workmen employed in the establishments of the Escort groups of industries like Escort Ltd, Escort Yahama, Escort Hospital, Escort JCB Ltd. and Escort Class Ltd. The union was a registered one and duly recognised by the employer as well. Escort Yahama Ltd was a joint venture of the Escort management and Yahama Motor Co, Japan. In the year 2001, this company was taken over by Yahama Motor co, Japan and it's name was changed to Yahama Motor India Pvt. Ltd.

Clause 4 of the constitution of the union spelt out as to who could be a member of the union. According to the said clause "any workers who are employed in any Escort concern in Faridabad and agree to follow rules and regulation of the union can become a member ……." In terms of the said clause, the workmen working in the Yahama Motor India Pvt Ltd ceased to be members of the appellant union. With intent to take them into its fold again, the appellant union amended clause 4 thus:

> any workman who is employed in any of the industry originally established by the Escort group and agrees to follow rules, regulations and objectives of the union can become a member …

clarification

The change in the name of an industry established by the Escort group or change of management would not affect the membership of the union.

The appellant union sent the amendment to the Registrar, Trade Union Haryana for its record and approval, but it was not approved by the registrar on the ground that there was no commonness of purpose with the current workers of the group. It held that the appellant union could not be said to be a trade union *vis-à-vis* the Yahama and that it could only function *vis-à-vis* the Escorts Ltd. The said view of the registrar was upheld by the single judge as well as the division bench of the High Court of Punjab and Haryana, respectively. The appellant union filed a special leave petition in the Supreme Court. It is pertinent to state here that during the pendency of the writ petition of the appellant union before the high court, a further amendment was made in clause 4 in 2007 which was approved by the registrar. This amendment read as follows:

> Any worker who is employed in any Escorts concern in Faridabad and agrees to follow the rules ……...can become a member…….

37 (2017) 16 SCC 336: 2017 (11) SCALE 427.

The aforesaid amendment however was not brought to the notice of the high court.

The Supreme Court, after hearing all the parties in the special leave petition, brought to the fore the primary object of a 'trade union' which is to regulate the relationship between employers and employers, employers and workmen, workmen and workmen in trade, business or industry and to provide conducive atmosphere at the workplace. The definition of the trade union under the Act includes any federation of two or more unions. The main point to be appreciated is that this regulation of relationship has to be in a particular establishment or group of establishments having commonality of interest like various establishments of the same industry in a region or locality. This is further strengthened by the definition of 'trade dispute' in section 2(g) of the Act. The trade union of workmen, while regulating their relationship with the employer, will normally have negotiation representing its workmen before the employer and even enter into an amicable settlement to resolve their dispute or if no settlement is arrived at raise a trade dispute with their employer. Section 6 of the Act mandates a trade union to have its constitution/bye laws/rules by incorporating provisions as provided therein. Clause (e) of section 6 deals with the admission of ordinary members who should be persons actually engaged or employed in an industry with which the trade union is connected. This provision implicitly confines ordinary membership only to those who are actually employed in the industry with which the trade union is connected, *i.e.,* where they are employed.

The court took notice of the fact that the workers of the Yahama had already formed their own separate union, known as the Yamaha Motors Employees Union. This union was duly registered by the Registrar, Trade Union, Kanpur, Uttar Pradesh. It was also recognised by the management of the Yahama. In the light of this subsequent event, the court observed the very purpose of amending clause 4 in 2001 stood frustrated. Further, in the light of the amendment made to clause 4 in 2007, where again the scope of membership was restricted to the workers employed in the Escorts group, which amendment was approved by the Registrar, Trade Union, Haryana, the issue of the amendment in the clause 4 carried out in 2001 became a non-issue and the court did not find it necessary to deal with the issue raised in the present appeal as the issue itself did not survive in the light of the 2007 amendment to clause 4. The court, in these circumstances, left the question of law open and dismissed the appeal.

Verification of membership of trade unions: secret ballot is alien both to the VCD and the Maharashtra statutes

In *Moil Janshakti Mazdoor Sangh* v. *Moil Kamgar Sangathan*,[38] the core question that came up for consideration of the Supreme Court was, whether in the State of Maharashtra, verification of membership of trade unions is required to be done by the procedure of secret ballot?

It needs to be mentioned here that the Government of India, *vide* its letter dated June 1, 2010, communicated its decision to the central labour commissioners/state

38 (2008) 11SCC 297.

labour commissioners to conduct verification of membership of trade unions by secret ballot. In the High Court of Bombay , in a writ petition, the respondent union operating in the State of Maharashtra challenged the applicability of the said procedure. The high court relying on the decision of a full bench of the court in *Air India Employees Guild* v. *Air India Ltd.*[39] held that the said directive of the Government of India would not apply in view of the fact that the same would be derogatory to the Code of Discipline, which order of the high court was upheld by the Supreme Court after taking note of the fact that the State of Maharashtra has a specific statute, *i.e.,* the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices ACT, 1971(Maharashtra Act) which governs the procedure for verification of membership of unions under which verification of membership by secret ballot for grant of recognition of trade unions is not the prescribed procedure. It prescribes verification of membership on the basis of having paid union membership fees for at least last three months in a six months period preceding the date on which verification has to be determined. This being the admitted position, the court held that it is the procedure under the said statute which must govern the field. The order of the high court, therefore, to the extent that the procedure under the Maharashtra Act applied to the State of Maharashtra called for no interference. The Supreme Court, however, clarified that the issue with regard to other states was being left open for decision, given the fact that some states have their own statutes in place governing verification procedure for recognition of trade unions.

In another connected matter, the decision of the high court against the appellant union therein was due to a finding of the high court that the statutes in question, i.e., the Bombay Industrial Relations Act, 1946 and the Maharashtra Act did not apply to industries where the appropriate government is the central government. The said conclusion was recorded by the high court by relying on the definition of the 'appropriate government' under section 2 (a) of the ID Act. Here, the attention of the court was drawn by the appellant to the definition of the 'appropriate government' in section 2 of the Trade Unions Act, 1926 under which the 'appropriate government' in relation to a 'trade union' whose objects were not confined to one state, it was the central government and in relation to other trade unions, it was the state government. The court observed that in the present case it was not in dispute that the appellant trade union operated within the State of Maharashtra only and, therefore, by virtue of section 2 of the Trade Unions Act, the ' appropriate government' was not the ' central government' but was the state government. The Supreme Court held that on consideration of the object of the two enactments, *i.e.,* the Industrial Disputed Act, and the Trade Unions Act, the high court had overlooked the provisions of section 2 of the Trade Unions Act to hold that the provisions of the Maharashtra statutes had no application to the establishment in question.

In view of the above, the apex court allowed the appeal and set aside the order of the high court. The net effect was that even in this case the Central Government

39 (2007) II LLJ 217(Bom.).

order did not apply as the verification of the union was to be governed by the Maharashtra statute.

V CONCLUSION

The approach of the Supreme Court in matters of wrongful retrenchment or termination of employment, has been consistently in favour of award of compensation over reinstatement as the final relief. But, as stated earlier,[40] there is no objective criteria discernible from the judgments of the court in the cases surveyed here also as to how the court has determined the compensation amounts ordered by it. The compensation amounts awarded, by and large, are based upon the individual notion of 'justice' of the bench deciding the case. The compensations being awarded presently seem to be illusory and grossly inadequate given the fact that it takes a worker very many years to take his fight to the apex court and have his stand vindicated there. It is submitted that it is desirable if some specific guidelines or criteria or preferably a formula is evolved to determine the compensation amount which has to be just and proper to deter the employers from resorting to illegal terminations.

At the same time, there are at least two decisions of the court which can be considered as objective oriented and are positive contribution to the development of labour jurisprudence in the country. In *Pradeep Phosphates,*[41] the court has referred to the object of the ID Act which primarily is to protect the interest of the workers who constitute the weaker section of the society since time immemorial. This avowed object of the legislation has greatly influenced the decision of the court in the said case where it has held that section 9A of the ID Act was violated by the management for not following the prescribed procedure under the said provision before bringing change in the service conditions of the employees. It may be recalled here that the management had earlier raised the age of superannuation from 58 to 60 years by an administrative order without amending the certified standing orders/service rules which decision was later reversed by the management without following the procedure under section 9A. The court held the administrative decision raising the age of superannuation, had, none the less, acquired the status of a 'privilege' within the meaning of clause 8 of the Fourth Schedule of the ID Act warranting compliance with section 9A before reversing it.

In the same manner, the court in *Haryana Suraj Malting Ltd.*[42] emphasised that the ID Act is a welfare legislation enacted to promote industrial harmony and provide peaceful resolution of the industrial disputes and, therefore, certain powers to do justice have to be conceded to the labour court/industrial tribunal as inherent or incidental or ancillary. The court, in this case, held the exercise of such power would include setting aside an *ex-parte* award even after the expiry of 30 days from the date of its publication where a party is able to show sufficient cause within a reasonable time for its non-appearance in the labour court/industrial tribunal. The court held that an *ex-parte* award, if so passed, to be a nullity cannot be binding and therefore the

40 See Bushan Tilak Kaul "Labour Management Relations" LII *ASIL* (2016) 733 at 762-63.

41 *Supra* note 11.

42 *Supra* note 22.

question of its enforceability could not arise. It is submitted that this approach of the court to the scheme of the Act is in consonance with the object of the Act and is, therefore, the right approach. Thus, it is important to give preference to the said pragmatic approach over the technical one, adopted by it in earlier decisions. The purposive approach adopted now should be welcomed by all the stakeholders.

However, it is quite sad and disheartening to note that in *International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations*,[43] the court took 12 years to effectively pass directions to the three state governments concerned in the matter regarding non-payment of wages and other entitlements to workers employed for long years in tea estates owned by the state corporations and various private companies which amounted to *begar*. Their cause was finally espoused by the petitioner association in 2006 by invoking writ jurisdiction of the Supreme Court under article 32 of the Constitution. But it was only in 2018 that the court issued directions to the state governments for making funds available for payment of interim relief to the starving workers and their families. It is all the more shocking to note that because no relief was coming forth during the pendency of the writ petition in the apex court some of the workers resorted to commit suicide. The court has not only to be sensitive but also show its concern by taking timely, effective and concrete steps to ensure that the cases of the vulnerable sections of the society are prioritised for early disposal at all levels in the justice dispensation system. This is all the more imperative if these marginalised people are to continue to believe that courts in India are courts of justice and not courts of law only. It is high time that the court took sufferings of the workers, both in the unorganized as well as in organized sector, seriously and performed proactive role which it readily played in the pre-globalized era when it used to be described as the 'last resort of the oppressed and the bewildered.'

43 *Supra* note 36.