16

LABOUR MANAGEMENT RELATIONS

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I INTRODUCTION

THE YEAR 2020 witnessed one of the worst human crisis in the history. COVID-19 pandemic spread like a wild fire and played havoc with the life and livelihood of people across the globe. All the societies, irrespective of their state of development faced colossal challenges. No country worth the name, whether developed or developing, had sufficient wherewithal by way of medical infrastructure, doctors or paramedical professionals and other facilities or readiness, to meet this extra-ordinary emergency. COVID-19 brought to the fore the imperative need on the part of all the states to make substantial investment in health sector and accord it top priority. In order to arrest the spread of pandemic and save the lives of the people, most of the countries declared lockdowns as an effective measure to control community spread of the virus.

The direct consequence of the lockdown was closure or suspension of the industrial and the production activities. As a result of this the employers, both in organised and unorganised sector, were either forced to close their establishment or lay-off, retrench or terminate the services of their employees. The worst affected population was the down trodden, marginalised and the unorganised labour. In India, the scene was quite grim because of the concentration of migrant workers mainly in industrial cities or townships with large production and economic activities and service networks which were geographically far away from their homes.

In view of the critical situation created by the pandemic, followed by the lockdown declared by the Central Government under the Disaster Management Act, 2005, migrant workers feared that lockdown may last for an indefinite period of time. Loss of their only source of livelihood made them panicky. Starvation and survival were staring at their faces. They started leaving for their native places along with their families by whatever means possible, even travelling barefoot for hundreds of kilometres to reach their habitats where their families could support them in this difficult hour.

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The miseries and sufferings of migrant workers became the subject matter of public interest litigation and other writ proceedings before the Supreme Court and the high courts, respectively.[1] It was expected that the Supreme Court which was considered as the last resort of the down trodden and marginalised people would intervene in order to protect their human and fundamental rights and give succour to them, but alas! that was not to be, at least in the early days of the lockdown. The court's reluctance to intervene may have stemmed from a belief in letting the executive to handle the fallout of an unprecedented global crisis but in the process, it was found wanting in discharging its primary responsibility of protecting fundamental rights of the most vulnerable.[2] The court accepted the sweeping claims of the Central Government that there were no migrant workers on the roads anymore and that the media was spreading fake news about their plight.

It was only after this soft attitude of the court towards the central and state governments came under severe criticism that the court decided to take the sufferings of the migrant workers seriously. So far as the contribution of the various high courts during this period in the matter of enforcing human and fundamental rights of the labour are concerned, it will not be an exaggeration to say that some of them did stellar job in upholding the human and fundamental rights of the workers and holding the central, state administrations and their instrumentalities accountable.

Part I of this survey is devoted to assessing the role of the Supreme Court and some of the high courts while dealing with the issues that arose due to COVID-19 pandemic having direct a bearing upon right to life and livelihood of the workers.

In the year under survey, there have been a very few judgments handed down by the Supreme Court under the Industrial Disputes Act, 1947. Its reported decisions and also some decisions of the high courts under this Act have been surveyed here under Part II. No decision of the Supreme Court has been reported either under the Trade Unions Act, 1926 or the Industrial Employment (Standing Orders) Act, 1946 in the year 2020. However, there is a decision of the Supreme Court under the Motor Vehicles Act, 1988 handed down on April 15, 2020 which has laid down certain basic tests for determining master and servant relationship as against that of an independent contractor. This has a direct bearing upon the provisions of the ID Act and has been analysed and discussed.[3]

1. 2020 SCC OnLine SC 345 (*Alakh Alok Srivastava*); *Problems and Miseries of Migrant Labourers*, *In re*, (2020) 7 SCC 231 (*Problems and Miseries of Migrant Labourers*-I); *Problems and Miseries of Migrant Labourers, In re*, (2020) 7 SCC 226 (*Problems and Miseries of Migrant Labourers* -II); *Problems and Miseries of Migrant Labourers, In re*, (2020) 7 SCC 181 (*Problems and Miseries of Migrant Labourers*-III); *Jana Samparka Samithy Ernakulam District Committee* v. *State of Kerala*, 2020 SCC OnLine Ker 2639 (*Jana Samparka Samithy Ernakulam District Committee*); *Mohammed Arif Jameel* v. *Union of India*, 2020 SCC OnLine Kar 538 (*Mohammed Arif Jameel*-I)); *Mohammed Arif Jameel* v. *Union of India*, 2020 SCC OnLine Kar 537 (*Mohammed Arif Jameel*-II) and *Mohammed Arif Jameel* v. *Union of India*, 2020 SCC OnLine Kar 539 (*Mohammed Arif Jameel*-III).
2. Editorial, "Belated, but welcome: On Supreme Court move on migrant workers" *The Hindu,* May 30, 2020.
3. *Sushilaben Indravadan Gandhi* v. *New India Assurance Co. Ltd.*, (2021) 7 SCC 151.

II LIFE AND LIVLIHOOD OF MIGRANT WORKERS: ISSUES DURING COVID PANDEMIC

Miseries and plight of the migrant workers: judicial responses

Response of the apex court

In *Alakh Alok Srivastava*,[4] the petitioners before the Supreme Court were practising advocates who, in public interest, filed various writ petitions before the court highlighting the plight of thousands of migrant labourers who along with their families were walking hundreds of kilometres from their workplace to their villages/ towns for lack of public transport. The petitioners sought redressal of their grievances, including directions to the authorities to shift the migrant labourers to government shelter homes, provide them with accommodation and basic amenities like food, clean drinking water, medicines and other welfare facilities.

In view of the grievances of the migrant labourers, the court directed the Union of India to submit its response. The Union of India filed a status report wherein it referred to the various steps taken by it to prevent the spread of corona virus. The status report also referred to the constitution of an expert group headed by a member of the Niti Aayog to provide guidance to the Government of India for prevention of the spread of the virus in the country. It also referred to the measures taken by it to meet the basic requirements and amenities in the form of food, clean drinking water and medicines to the people belonging to the lower strata of the society.

The court made it very clear that in the present writ petitions, it was concerned only about the conditions of migrant labourers who had started leaving in hordes their places of work to reach their home towns/villages located in different states. It also took notice of the fact that thousands of migrant workers had left Delhi by walking on the highways because they had been rendered unemployed due to lockdown. The workers were apprehensive about their survival in Delhi and commercial cities because the rumours were spreading that the lockdown would continue for an indefinite period.

The initial reaction of the state governments and the union territories was to transport migrant labourers from their borders to their native villages. However, the circular issued by the Ministry of Home Affairs, Government of India dated March 29, 2020 prohibited the movement of migrant workers because it apprehendedthose overcrowded buses would lead to large scale spread of the virus across the states. This would go contrary to the object underlying the order directing lockdowns which was to control the spread of the virus. It was feared the remedy would be worse than the disease itself.

In such a view, the movement of the migrant labourers was prohibited and states were accordingly advised to stop them wherever they were and shift them to nearby shelter homes/ relief camps. Further directions were issued to collectors/ magistrates to ensure that the medical tests were done and they be provided with basic amenities like food, cleaning drinking water and medicines. The court was informed by the Solicitor General, during the course of the hearing, that thousands of relief camps

4. *Supra* note 1.

were set up in order to cater to their basic needs. Migrant workers had been shifted there and the basic amenities were being provided to them.

Surprisingly, contrary to the actual facts on the ground, the court believed the statement of the Solicitor General that no persons were walking on the roads in an attempt to reach their homes. Shockingly, it chose not to appoint its own commissioners to verify these statements made on behalf of the Central Government which were *ex facie* contrary to the ground realities.

The court, after considering the submissions by the petitioners and the Solicitor General and also on the perusal of the status report filed on the behalf of the Union of India, without verifying their veracity, felt satisfied that the steps taken by the Central Government for preventing the spread of the virus were adequate. The court also noted on the basis of the submission of the Solicitor General and also the status report filed by the Union of India that mass migration had stopped.The court wanted the police to act with humane approach towards the labour and not deal with them harshly or inhumanly.

The court blamed the media for triggering a panic by creating fake news that the lockdown would continue for more than three months. The media was blamed for the loss of lives of the labourers in the process. The court surprisingly tried to shift the burden for this menace to the electronic, print and social media. The court threatened that under section 54, the Disaster Management Act, 2005, those responsible for spreading such news would be severely dealt with and punished. Further, any disobedience of the order of the public servants would also invite punishment under section 188 of the Indian Penal Code, 1860. The court expected that the people would follow the instructions of the public authorities. It also expected all the forms of media to maintain a strong sense of responsibility in reporting news and ensure that any news capable of causing panic was not disseminated without verification.

It was surprising and shocking that the court did not address the real issues that were raised before it and got involved in issues which should have been better left for the government to deal with. The court should have issued adequate and robust directions to the central and state governments to find ways and means to satisfactorily address the question of return of migrant workers to their home towns/states while maintaining adequate and proper COVID-19 protocols. The central and the state governments ought to have been directed to submit proper schemes to ensure that basic amenities were made available to each and every migrant worker and his family at the place where they were put up to the point of arrival at their residence and provision was to be made for their sustenance or fruitful engagement thereafter. Unfortunately, these issues were not addressed by the court in these petitions.

The court, however, addressed these issues in subsequent proceedings[5] which it initiated *suo motu* after its approach in *Alakh Alok Srivastava* came under severe criticism. In fact, there was a public outcry againstits status quoist approach.

5. *Problems and Miseries of Migrant Labourers* -I, *Problems and Miseries of Migrant Labourers*-II and *Problems and Miseries of Migrant Labourers* -III, *supra* note 1.

In *Problems and Miseries of Migrant Labourers*-I,[6] the Supreme Court took cognizance of the problems and miseries of migrant labourers who had been stranded in different parts of the country. The importance of this *suo motu* cognizance is that the approach of the court in *Alakh Alok Srivastava*[7] had showed the court in very poor light. This time the court took cognizance of the newspaper reports and the media reports which had been continuously portraying the actual pitiable and miserable conditions of the migrant labourers who were walking on foot and cycles for long distances.

It is worthwhile to state that in this *suo motu* petition notice was issued by the court on May 26, 2020 within a month of the disposal of the petitions in *Alakh Alok Srivastava*. Unlike what was stated earlier, this time the court did not find the media reports false or spreading fake news and decided to see the reality being described by the fourth estate which was not only speaking the truth but also capturing the ground realities.

On the next date of hearing, *i.e*., May 28, 2020 the court also took note of the fact that it had received several letters and representations from different sections of the society highlighting the problems of the migrant labourers.[8] The court observed that the crisis being faced by the migrant labourers was on a continuous basis. It took cognizance of the fact that a large section of them was still stranded on the highways, railway stations and the state borders without food and water. The court emphasised that they needed to be given succour and all kinds of help by the governments concerned, especially the Government of India and the states and union territories. There was a need for adopting appropriate measures to provide transport facilities, food and shelters to them free of cost. The court found the measures adopted by the governments inadequate and full of lapses. It was of the view that effective and concerted efforts were required to redeem the situation.

It accordingly issued notice to the Central Government and the states/ union territories to submit their responses looking into the urgency of the matter. In response to its order dated May 26, 2020, the court received responses from some states and also a preliminary report from the Central Government. After examining their responses, the court thought it appropriate to issue, *inter alia,* the following interim directions:

> (i) No fare either by train or bus was to be charged from the migrant workers. The railway fare and the bus fare were required to be shared by the states in terms of the arrangement placed before the court by the Solicitor General. The court made it very clear that no fare shall be charged from any migrant worker by the states and the railways.
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> (ii) The states were duty bound to ensure that the stranded migrant workers were provided food free of cost till the workers were waiting for their turn to board the train or bus.

6. *Supra* note 1.
7. *Ibid*.
8. *Problems and Miseries of Migrant Labourers* -II, *supra* note 1.

(iii) The originating state was to provide water and meals to the migrant workers free of cost and the same facility was to be provided by railways during their journey. The states were required to take care of providing necessities like water and meals during the period of transportation either in the bus or in the camps on the way.

(iv) The states were directed to speed up the process of registration of migrant workers and provide helpdesks for registration where they were stranded. After registration the workers were to be asked to board the train or bus at the earliest and this information needed to be effectively made available to the stranded migrant labourers. The migrant workers found walking on the highways and the roads were required to be immediately taken care of the states/union territories concerned. They were to provide facilities like food and water to those found walking on the road.

(v) The receiving states after the migrant workers reach their native place were required to provide transport, health screening and other facilities free of cost.

Additionally, the court further directed the Central Government, the state governments and the union territories to give all necessary details about the number of migrant workers, the plan to transport them to their destination, the mechanism of registration and other details and the time period for completion of this process so that no worker should undertake on foot journey to their destination.

In pursuance of the order dated May 28, 2020, detailed responses by the central and the state governments were submitted in the court of which the court took cognizance on June 9, 2020.[9] On the said date, the National Human Rights Commission also had sought intervention in the matter owing to the involvement of critical human rights issues of the migrant workers. The court after considering the matter threadbare, found it proper to impress on the state and the union territories to streamline the vigilance and supervision of the actions of their officers and staff and to take appropriate steps so that the lapses and shortcomings were overcome and benefits reached those to whom they were meant.

The court appreciated the work of the non-governmental organisations in extending help by providing food, water and transportation at their cost. It took note of the fact that as far as the transportation of the migrant workers by train, road or other means was concerned, transportation of substantial portion of the stranded workers had already been accomplished by the state governments, railways and other organisations. The court found that there were still stranded migrant workers in the states and they needed to be transported back to their native places.

Therefore, more trains were needed to be pressed into service and also road transport had to be made available so that the next stage of attending to the needs of the migrant labourers, namely, their sources of employment and providing food and ration to them could be looked into. The court expected that all stranded workers

9. *Problems and Miseries of Migrant Labourers*-III, *supra* note 1.

would be transported from the places where they were stranded to their native places by making available transport by all modes within 15 days from the date of the order. The court issued the following directions in addition to the earlier directions issued on May 28, 2020 to the Central Government, all states and union territories:

(i) All the states, union territories were to take all necessary steps regarding identification of migrant workers in their state which were willing to return to their native places and take steps for their journey by train/ bus in a period of 15 days from the date of the order. In the event of any additional demand, in addition to the already agreed 171 shramik trains, within the period of 24 hours when such demand was made, the railways were to facilitate the return journey of the migrant workers.

(ii) The Central Government was required to give details of the schemes which could be availed by the migrant workers who had returned to their native places. All the state and union territories were also required to give details of all the schemes which were current in the states, benefit of which could be taken by the migrant labourers including different schemes for providing employment.

(iii) The states were required to establish counselling centres, helpdesks at block and district levels for providing all necessary information regarding schemes of the government and to extent helping hand to migrant labourers to identifying avenues of employment and benefits which could be availed by them under different schemes.

(iv) The details of all migrant labourers who had reached to their place were required to be maintained with details of their skill, nature of employment and earlier place of employment to enable the administration to extend benefit of different schemes which might be applicable to such migrant workers.

(v) The counselling centres were also directed to provide necessary information to those migrant workers who wanted to return to their place of employment and their readiness to extend their helping hand in this endeavour.

(vi) All the states and union territories were required to withdraw all complaints under Section 51, Disaster Management Act, 2005 and all other related offences lodged against the migrant labourers for walking on foot during lockdown period.

Response of the high courts

In *Jana Samparka Samithy Ernakulam District Committee*,[10] a division bench of the High Court of Kerala was dealing with matters relating to the pathetic condition of migrant workers in the labour camps situated within the State of Kerala. The court took *suo motu* cognizance of a judgment of a single judge in which the judge had portrayed the appalling conditions in which the migrant workers were living in labour camps in the state. The single judge had directed the secretary of the concerned *gram panchayat* to seal the building of the respondents,with directions to the district

10. *Supra* note 1.

administration and the local government to take immediate steps to avert nuisance caused by the property, removal of the contaminants and restore it to ensure safe habitation of the nearby residents. Further, the district collector, Ernakulam was directed to depute a very senior officer to conduct the inspection of the premises and close down the labour camp by providing alternate facilities for accommodating the migrant labourers, collection of samples from the well water and to conduct analysis of the same. The single judge after taking into account the social ramifications that emerged out of the specific instances brought before it,also directed that the writ petition be placed before the chief justice with a request to take a decision as to whether a *suo motu* public interest litigation needed to be initiated. Consequently, the present *suo motu* proceedings were initiated by the chief justice of the high court.

The reports that were sought by the single judge and filed before the division bench of the court presided by the chief justice demonstrated the unhygienic conditions and the poor maintenance of the bathrooms and toilets in the labour camps. Further, the pollution problems were reported which had been a perennial problem of these camps. On identifying that the situation in the labour camps was grave on the basis of the reports submitted, the court found that COVID pandemic situation had further aggravated the miseries of the migrant labourers.

The migrant workers were keen to go back to their native places. However, due to the guidelines and the standard operating procedures issued by the Government of India, trains as well as other means of transport were not available at that point of time.The migrant labour became panicky and they started agitations. Thereupon the government took various steps to resolve the issues by providing food and shelter to the labourers and issuing appropriate directions to the employers. The government was successful in pacifying them by ensuring continuous supply of goods and provisions to them. With the relaxation in the COVID protocols, the state governments organised dedicated trains for transporting them to their native places and accordingly they were sent back.

In the meantime, the Supreme Court had taken note of the miseries and the plight of the migrant labourers due to the restrictions to travel to their native places and had issued various guidelines in a registered *Suo Motu* Writ Petition (Civil) no. 6 of 2020.[11]

The high court looked into the history of influx of the migrant workers to the State of Kerala which dates back to almost two decades. Consequent to which, various problems arose including some cases of migrants being involved in serious reported crimes. The court took note of the fact that though a large number of migrant labourers have returned to their native places due to the COVID pandemic this was only a temporary phenomenon. The chances of them returning to the state could not be ruled out. Therefore, the problem faced by migrant workers needed serious attention. In order to avoid any inconvenient situation, it was necessary for the state and the authorities to take appropriate steps with regard to their stay in the state. The state was duty bound to ensure that the details of the migrant labourers were collected as and when they returned to the state so as to enable the authorities to understand their

11. For detailed directions issued by the Supreme Court, see *supra* note 8 at 229 – 30.

difficulties consequent to the employment and to resolve in the event of any eventualities.

The court was of the opinion that the said aspect should be made a part of duty and obligation of the district collectors and nodal officers appointed for the guidance and welfare of such workers. So also, the employers, who would be instrumental in utilising their services, needed to be saddled with the responsibility of collecting information and apprising the same to the nodal officers. The court also felt that the owners of the buildings that provided shelter on rent to the migrants should also be held responsible for collecting and providing information to such officers.

The court felt that the above aspects needed to be emphasized in the light of several shocking and gruesome crimes committed by the migrants in the past and the said measures were necessary to ensure security to all in the state. At the same time, it was the duty of the state that life and liberty under article 21 of the Constitution was protected of all the people in the state including the migrant labourers who were entitled to lead as a matter of right, a healthy, happy, peaceful and meaningful life which is the constitutional obligation of every welfare state. The court expected all concerned to follow the above guidelines and directions without fail.

In *Mohammed Arif Jameel*-I,[12] the High Court of Karnataka referred to the experiences of two sections of the Indian society, one, which was resourceful and had the support of the state to celebrate marriage and festivities when the whole country was experiencing the pandemic and its terrible effects, and the second which was the most marginalised who were facing imminent threat to their lives and livelihood due to pandemic and wanted to go back to their home towns to save themselves from hunger and starvation caused by loss of their jobs. The court was aghast that the state was not coming out with the true facts on both these counts. In the former case, the court wanted to know as to why did the state allow protection to the powerful members of the society to evade the covid restrictions with impunity, whereas in the latter case, it had failed to make available to the court the clear picture of the possible number of migrant workers in the state who wanted to go back to their home states. The court was shocked that the state government could not even give a broad estimate of such workers. The state had accepted that migrant workers were walking on the highway and roads though it was trying to make arrangements to provide them temporary shelters at various places. It also stated that arrangements were being made for registering such workers to take them to their home states from the migrant camps in order to provide them relief. The court said that the migrant workers also have fundamental rights and the issue of violation of those rights was a serious matter, more so when they were unable to approach the writ court for reasons of their poverty, marginalised status and inability to enforce their rights.

On the next date of hearing, *i.e.*, May 21, 2020, the court therefore wanted to hear the centre and states in detail regarding their approach in the matter.[13] The State

12. *Supra* note 1.

13. *Mohammed Arif Jameel*-II, *supra* note 1.

of Karnataka made a vague submission before the court that it would continue to take care of migrant workers and ensure that they found vocation within the state itself, but if they wished to leave the state, it would not put any restriction for such travel. The Central Government stated before the court that it was organizing trains for carrying stranded migrant workers to their respective places and there was need for the departing state and receiving state to arrive at some workable arrangement about the costs involved. Also, there was need to take railways on board so that these migrant workers could be moved at the earliest. The court noted that the situation had arisen due to the reason that there was no time available to the migrant workers many of whom were accompanied by women and children also to go back to their respective states after lockdown was declared. By the time the embargo to travel from one state to another state was diluted, many of the migrant workers might have lost their jobs or source of livelihood and therefore would be unable to pay the return charges. The court here referred to the concept of welfare state which has been the guiding philosophy under the Indian Constitution. The court also recorded that it was not merely the issue of survival of migrant workers who were unable to go back to their respective states because they don't have money, there are other needs as well such as the health of their families. The migrant workers were also in the precarious position because they were unable to send money for the maintenance of their respective families. These were all the human issues which needed to be addressed by the state governments as well as the Central Government given the fact that they were instrumentalities of the welfare state and the welfare of the people, especially the marginalised, had to be the primary concern of the state.

It is important to state here that when this matter was being heard by the High Court of Karnataka, the apex court was also hearing a *suo motu* petition concerning the migrant labour and it was in the process of passing orders therein. The court continued hearing this matter as it was hearing specific factual issues arising in the State of Karnataka and there was no order passed by the apex court which prevented the high court from dealing with the issue of migrant workers. On May 28, 2020, the court noted that the process of transporting the migrant labour and their family members had commenced in the State of Karnataka from May 3, 2020 and already nearly 2,56,000 of them were transported which was even less than one-third of the total number registered on the website.[14] The court was conscious of the fact that the state was required to deal with more than 9,00,000 such persons who wished to go back to their respective states.

Basic and fundamental rights of the labour cannot be sacrificed to meet economic stringency caused by covid pandemic

In *Gujarat Mazdoor Sabha* v. *State of Gujarat*,[15] the State of Gujarat had invoked its power under section 5 of the Factories Act, 1948 by virtue of which it exempted factories from observing certain statutory obligations which employers had to fulfil towards the workmen employed by them, particularly observing a maximum of 48

14. *Mohammed Arif Jameel*-III, *supra* note 1.
15. (2020) 10 SCC 459 (*Gujarat Mazdoor Sabha*).

hours of working in a week and payment of overtime wages at double the normal rate of wage. This action came under challenge before the Supreme Court under article 32 of the Constitution by the petitioner union as being violative of basic and fundamental rights of the workers under articles 14, 21 and 23 of the Constitution. The government tried to justify its action in denying overtime to workmen and in extending weekly hours of work from 48 hours to 72 hours on the ground that industrial employers were faced with financial stringency in the economic downturn resulting from the outbreak of COVID-19 which amounted to public emergency within the meaning of section 5 of the Factories Act and the explanation appended to it. The government argued that the said powers had been therefore rightly invoked by it to meet the economic stringency arising out of COVID-19.

The court stated economic shutdown created by covid-19 pandemic did not qualify as a threat to the security or as an internal disturbance disturbing the security of the state. It observed thus:[16]

> Unless the threshold of an economic hardship is so extreme that it leads to disruption of public order and threatens the security of India or of a part of its territory, recourse cannot be taken to such emergency powers which are to be used sparingly under the law. Recourse can be taken to them only when the conditions requisite for a valid exercise of statutory power exists under section 5. That is absent in the present case.

The court observed that the need for protecting labour welfare on one hand and combating a public health crisis occasioned by the pandemic on the other, may require careful balancing. But these balances must accord with the rule of law.The court observed thus:[17]

> A statutory provision which conditions the grant of an exemption on stipulated conditions must be scrupulously observed. It cannot be interpreted to provide a free reign for the state to eliminate provisions promoting dignity and equity in the workplace in the face of novel challenges to the state administration, unless they bear an immediate nexus to ensuring the security of the state against the gravest of threats.

The court observed that the right to overtime wages at double the rate of the wages is founded upon the principle that it works as a bulwark against the severe inequity that may otherwise pervade a relationship between the workers and the management and this right cannot be contracted out in any circumstance. No worker who has faced the brunt of pandemic can be denied humane working conditions and overtime wages provided by law. Such an action is an afront to the worker's right to life and the right against forced labour that are secured by articles 21 and 23 of the Constitution. The court was cognizant of the current financial exigencies which needed

16. *Id*. at 482 – 83.
17. *Id.* at 486 – 87.

amelioration. However, financial losses could not be offset on the weary shoulders of the labouring workers who provide the backbone of the economy.

The court held that section 5 of the Factories Act could not be invoked to issue a blanket notification that exempted all factories from complying with humane working conditions and adequate compensation for overtime, as a response to a pandemic. Ithad not resulted in an "internal disturbance" of a nature that posed a "grave emergency" whereby the security of India is threatened within the meaning of section 5 read with the explanation appended to it. Further, the court was also cognizant of the fact that many of the welfare measures of the Factories Act were broadly in conformity with the International Labour Organisation (ILO) Conventions ratified by India. Also, it could not resile from its international obligations and the commitments to the people contained in the national charter in the form of the fundamental rights and the directive principles of state policy.

III INDUSTRIAL DISPUTES ACT, 1947

Jurisdiction of civil court: when barred

In *Rajasthan State Road Transport Corp.* v. *Ramesh Kumar Sharma*,[18] a civil suit was filed by the workmen for declaration and permanent injunction assailing a fine imposed on them by the management which they said was done in violation of Regulation 35 of the Certified Standing Orders. The management resisted the suit by raising the plea that the plaint was liable to be rejected as the same was barred under section 9 of the Code of Civil Procedure, 1908 (CPC) and the workmen be relegated to the remedy under the ID Act. The civil court dismissed the plea of the management which order was challenged by it in a revision petition before the high court. The same was dismissed by the high court. The management preferred a special leave to appeal before the Supreme Court. This appeal came up for final hearing after a decade or so.The short question for its determination was whether the decision of the two courts below was valid or not. The Supreme Court at the very outset observed that it had only issued a notice in the matter and no interim order was passed by it and yet the suit had not proceeded in normal course. Had it so proceeded, the suit itself would have been decided in the meantime. The court was informed that the suit had not proceeded on merits on the basis that the matter was pending before the Supreme Court. The court was pained that the recourse to justice could be delayed for such an *ad infinitum* period of time even when there was no impediment in proceeding ahead with the merits of the case.

The court referred to two of its earlier classic judgments,[19] in which the scope of section 9 of CPC was enunciatedand the legal position was clearly spelt out with respect to the situations in which the jurisdiction of the ordinary civil courts stood ousted with the passing of the ID Act. In both these cases the court had observed that

18. 2020 SCC OnLine SC 139.

19. *The Premier Automobiles Ltd.* v. *Kamlekar Shantaram Wadke of Bombay*, (1976) 1 SCC 496 and *Rajasthan State Road Transport Corporation* v. *Krishna Kant*, (1995) 5 SCC 75.

disputes arising out of the general law of contract *i.e.*, where reliefs can be claimed on the basis of the general law of contract, the suits filed in civil courts cannot be said to be not maintainable even though such dispute may also constitute an "industrial dispute" within the meaning of sections 2(k) or 2A of the ID Act.

The court observed that it is only when the dispute involves recognition, observance or enforcement of obligations created by the ID Act, that the remedy would be exclusively under the provisions of the ID Act. In the cases referred to above, the question involved was termination of service of workmen for which the court held the remedy was, *inter alia*, under the ID Act.

The court observed that the present case involved recovery of certain fine amount which is not coverable under section 2A of the ID Act. The workmen in their wisdom approached the civil court and have been left high and dry for the last 15 years without any adjudication on merits of their claim. The court also observed that the impugned orders were also in a sense interlocutory in character.

In these circumstances, the court held that there was no ground made out to interfere with the impugned order and the appeal was consequently dismissed. The court directed the civil court to forthwith proceed to try the suit on merits and endeavour to complete the trial and pronounce the judgment, if not already pronounced, within six months from the date of the receipt of the order.

Circumstances when writ petition under article 226 of the Constitution not maintainable

In *PTI Employees Union* v. *Press Trust of India Ltd.*,[20] the employees union approached the High Court of Delhi by way of writ petitions under article 226 of the Constitution seeking quashing of the notices of retrenchment of a number of employees on the ground, *inter alia*, that the same were in violation of the provisions of sections 25F and 25G of the ID Act. It seems that the high court by an interim order stayed the operation of those notices. Subsequently, when the matter came up for hearing before the high court on the completion of the pleadings, the court decided first to deal with the preliminary objections on the maintainability of the writ petitions before dealing with the merits of the case.

The primary preliminary objection of the respondent management was that the writ petitions were not maintainable as there was an alternative remedy available to the employees under the ID Act which provided an efficacious remedy to them for redressal of their grievances raised in the writ petitions. It was further contended by the respondent management that the said statute was a self-contained code and, therefore, the writ petitions deserved to be dismissed and the petitioners be required

20. 2020 SCC OnLine Del 1216 (*PTI Employees Union*).

to raise an industrial dispute and seek their adjudication under the ID Act. It relied upon various decisions of the Supreme Court in support of this contention.[21]

On the other hand, the case of the employees union was that there is no bar for enforcing the rights of their members under article 226 of the Constitution given the fact that there were no disputed questions of fact involved in this case. The union also referred to a number of decisions of the apex court in support of their contentions.[22]

The court after perusing the judgments cited by the parties before it, set out to summarise the principles emanating therefrom, which are as under:

i. Industrial Disputes Act is a complete code in itself which provides the remedies to the employees in respect of all industrial disputes. All industrial disputes, in the first place have to be adjudicated by the labour court/industrial tribunal, as the case may be, under the ID Act and the awards of the labour court/industrial are amenable to the writ jurisdiction of the high courts. This is the legislative policy and intendment underlying the ID Act.

ii. The writ petition should not be entertained in respect of industrial disputes for which a statutory remedy is available under the ID Act unless 'exceptional circumstances' are made out.

iii. If the writ petition involves a disputed question of fact, the same shall not be entertained. The writ jurisdiction is a discretionary jurisdiction and should not ordinarily be exercised if there is an alternate remedy available to the petitioner.

iv. The sole test for entertaining a writ petition relating to industrial dispute is the existence of 'exceptional circumstances.' If the court is satisfied on the existence of 'exceptional circumstances,' then and only then the court shall proceed to ascertain whether the writ involves disputed questions of fact. If the court finds 'exceptional circumstances'but the writ involves disputed questions of fact then the writ petition shall not be entertained. In other words, the writ petition may be entertained only if the court is satisfied, firstly, on the existence of 'exceptional circumstances' and secondly, the writ petition does not involve disputed questions of fact.

21. *Premier Automobiles Ltd.* v. *Kamlekar Shantaram Wadke of Bombay* (1976) 1 SCC 496;*U.P. State Bridge Corporation Ltd.* v. *U.P. Rajya Setu Nigam S. Karamchari Sangh* (2004) 4 SCC 268; *A.P. Foods* v. *S. Samuel* (2006) 5 SCC 469, *State of Uttar Pradesh* v. *Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti*, (2008) 12 SCC 675; *Transport and Dock Workers Union* v. *Mumbai Port Trust* (2011) 2 SCC 575; *Avishek Raja* v. *Sanjay Gupta* (2017) 8 SCC 435; *Satpal Singh* v. *Delhi Sikh Gurdwara Management Committee* (2011) 181 DLT 45; *Bombay Union of Journalists* v. *'Hindu' Bombay*, AIR 1963 SC 318 and *Management of Messers Hotel Samrat* v. *Government of NCT*, 2007 SCC OnLine Del 17.

22. *Indian Petrochemicals Corpn. Ltd.* v. *Shramik Sena* (1999) 6 SCC 439; *Chennai Port Trust* v. *Chennai Port Trust Industrial Employees Canteen Workers Welfare Assn.* (2018) 6 SCC 202; *Marwari Balika Vidyalaya* v. *Asha Srivastava*, 2019 SCC OnLine SC 408 and *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* v. *V.R. Rudani* (1989) 2 SCC 691.

A bare perusal of the above principles brings out the following main points which need to be kept in mind always while exercising the power of judicial review under article 226 of the Constitution:

i. If the writ petition discloses 'exceptional circumstances' and does not involve disputed questions of fact, the writ petition in respect of an industrial dispute may be entertained.

ii. If the writ petition discloses 'exceptional circumstances' but the facts are disputed, it should not be entertained and the petitioner should be relegated to invoke the statutory remedies available to him under law.

iii. If the writ petition does not disclose 'exceptional circumstances,'it should not be entertained in respect of whether the facts are disputed or not.

iv. Writ jurisdiction is a discretionary jurisdiction and the discretion is not ordinarily exercised, if an alternative remedy is available to the petitioner. The powers conferred under article 226 of the Constitution are very wide but these are extraordinary remedies subject to self-imposed restrictions.

Coming back to the case at hand the petitioners had challenged the notices of retrenchment issued to 297 employees by the management of the PTI. The court observed that the retrenched employees had a statutory remedy to seek redressal under the ID Act for violation of its provisions. It was of the opinion that there was no exceptional circumstances for the exercise of writ jurisdiction under article 226. In this regard, the court relied on the judgment in *U.P. State Bridge Corporation Ltd.* v. *U.P. Rajya Setu Nigam Karamchari Sangh*,[23] where the Supreme Court had held that the high court had erred in entertaining the writ petition since the disputes related to the enforcement of a right/obligation under the ID Act for which a specific remedy was provided under the Act itself.

The mere pendency of the writ petition and eventual delay in taking up the matter for adjudication was not itself a ground for the high court to short circuit the process. The court observed that the courts are required to maintain uniformity in applying the law. It emphasised that the principle of uniformity and predictability are important principles of jurisprudence. Merely because there were no disputed questions of fact could not itself be a ground for entertaining a writ petition. The court dismissed both the writ petitions on the ground that the employees had the statutory remedy under ID Act and no exceptional circumstances had been made out by the petitioners to invoke the writ jurisdiction of the high court.

The court granted liberty to the retrenched employees to avail the appropriate remedy under the ID Act. It accordingly directed the registry of the High Court of Delhi, subject to the approval of the Chief Justice, to incorporate the following column in the check list of writ petitions:[24]

> Whether the writ petitioner has an alternative remedy? If so, disclose the 'Exceptional circumstances' which may warrant the exercise of

23. (2004) 4 SCC 268.

24. *Surpa* note 20.

writ jurisdiction in the Synopsis as well as in the opening paras of the writ petition?

Issues relating to 'industry' and 'workman'

In *Union of India* v. *Raju Kumar Shah*,[25]a single judge of the High Court of Delhi has dealt with some basic aspects which must be kept in mind by the courts while dealing with the statutory definitions under the ID Act and the significance of legislative intent and the context in which it has to be discerned. The court observed that "statutory instruments are often far-removed from the common place understanding of the expression(s) defined. This, it is trite, is a perfectly legitimate legislative device."[26] The court further observed thus:[27]

> While examining a definition clause, therefore, it is entirely inappropriate to allow the imagination to boggle, merely because of the manner in which the expression is commonly understood. To cognoscenti and laity alike, the expression 'industry', as used in everyday conversation, ordinarily connotes a factory-like enterprise, manufacturing goods, with a multitude of workers and, perhaps, steam bellowing from the chimneys overhead. 'Industry', as statutorily conceptualised in the ID Act is, however, an altogether different creature. The office of the Chief Conservator of Forests, hospitals, educational institutions, municipal authorities – none of these would, by the fastest stretch of imagination, be regarded as 'industry', by the man on the street. They remain, however, transcendentally 'industry', for the purposes of the ID Act. There is a rationale, and a philosophy, for this, relatable to the object and purpose of the ID Act itself. The *raison d'etre* of the ID Act is maintenance and fostering of healthy industrial relations, between management and workmen.

Explaining the import of the definition of 'workman' under the ID Act the court observed thus:[28]

> The definition of "workman", as contained in clause(s) of Section 2 of the ID Act, excludes, from its sweep, personnel discharging managerial or supervisory functions. Officers in the higher echelons of an enterprise would not, therefore, be "workmen". It is the supervised, who is the workman, not the supervisor. It is self-evident that the aim and object of the ID Act is, therefore, to ensure that the small workman, who supervises, and manages, no one and is, rather, managed and supervised by all, has a ready avenue to ventilate his legitimate grievances, relatable to his employment in the establishment.

25. (2020)III LLJ 282 (Del) (*Raju Kumar Shah*).
26. *Id.*at 312.
27. *Ibid.*
28. *Id.*at 312-313.

Describing the aim and object of the ID Act and the role expected of the courts, it observed:[29]

> The intent and purpose of the ID Act, therefore, require, preambularly, according, to its various expressions, an expansive interpretation. The effort has, therefore, to be to include, rather than exclude, workmen – and, equally, establishments – from the fold of the ID Act. If, therefore, governmental departments which, otherwise, may not be capable of being regarded as 'industries', are industries for the purposes of the ID Act, that is only to ensure that the petty workmen, engaged in the establishment, would have access to the Labour Court and the Industrial Tribunal to ventilate their service grievances, and would not have to subject themselves to a protracted and expensive litigative process, entailing, in its wake, burdensome expenses. It is necessary to bear, in mind, this aspect, while examining whether any particular establishment ought, or ought not, to be regarded as 'industry', for the purposes of the ID Act. Any colouring, of the judicial vision, by the commonplace understanding of 'industry', while examining the issue, is likely to result in a palpably erroneous conclusion.

In the case at hand, the respondents were employed with the office of the Comptroller General of Patents, Designs and Trademarks. They were suddenly disengaged on March 31, 2009. The respondents initially moved the Central Administrative Tribunal by way of original applications (OAs) which were, however, not maintainable. Subsequently, the respondents withdrew the said applications and raised industrial disputes which were referred to the conciliation officer. On the expiry of 45 days from the date of moving to the conciliation officer, the respondents filed their claims before the industrial tribunal under section 2A (2) of the ID Act. The tribunal identified the following issues for its determination:

i. Whether management is an 'industry' within the meaning of section 2(j) of theIndustrial Disputes Act, 1947?

ii. Whether the claimant is a 'workman' within the meaning of section 2(s) of theIndustrial Disputes Act, 1947?

iii. Whether orders dated 21.04.2010 passed by Central Administrative Tribunaloperates as *res judicata*?

iv. Whether claimant rendered continuous service of 240 days as contemplated bysection 25B of the Industrial Disputes Act, 1947?

v. Whether the claimant is entitled to relief of reinstatement in service?

The issue no. 3 as framed by the tribunal, being not of significance was not pressed since the OA was withdrawn without any *res* having been decided and therefore it was obvious that the proceeding before the tribunal could not be said to be barred by *res judicata*.

29. *Id.* at 313.

The tribunal applying the principles of *Bangalore Water Supply & Sewerage Board* v. *A. Rajappa*,[30] held that admittedly, the functions performed by the management were not sovereign functions and it rendered services to the community at large by granting patents on new non-obvious inventions which could be useful for society and it carried on systematic activity with the co-operation between employer and employees. It concluded that the activities performed by the management fell within the ambit of 'industry' as defined under section 2(j) of the ID Act.

Regarding issue no. 2, it found that the respondents have been engaged as casual labour to do manual unskilled work and therefore were 'workmen' within the meaning of section 2(s) of the ID Act. The tribunal gave a finding that the claimants had established before it that they had served for a period of two years continuously and had rendered 240 days of continuous service for the period of one year preceding the date of their termination. The tribunal took notice of the fact that their engagement was through employment exchange and they could not be treated as backdoor entrants. It directed their reinstatement with 40% of their last drawn wages as back wages for the period after their disengagement bythe petitioner.

Aggrieved by the aforesaid award, the petitioners invoked the jurisdiction of the High Court of Delhi by filing the present writ petition under article 226 of the Constitution. During the pendency of the proceedings before the high court, the operation and implementation of the award was stayed by it and the back wages as awarded stood deposited in the court.

The case of the petitioner before the high court was that the proceedings before the industrial tribunal were *ab initio* without jurisdiction as the petitioner could not be regarded as 'industry.' It was contended that the petitioner was discharging the sovereign functions inasmuch as the right to grant patents has exclusively been conferred on the government and the said function is fundamentally 'sovereign' in nature. On the contrary, the respondents contended that only such 'sovereign' functions which were essential such as administration of law and justice, security of borders, etc. stood excluded from the definition of 'industry' under the ID Act and not the ordinary functions discharged by the government even if they were statutorily so conferred. It was further contended by the respondents that the present writ petition was maintainable under article 226 or under article 226 read with article 227 of the Constitution and reliance to this effect was placed on various decisions of the Supreme Court.[31] It was further contended by the respondents that there was, *inter alia*, violation of section 25G of the Act, *i.e.,* 'last come first go' principle, for which the industrial tribunal had rightly granted the relief in its award.

Coming to the merits of the case, the High Court Delhi observed that the office of the Comptroller General, *ex facie*, satisfied the triple test. The activity of the office

30. (1978) 2 SCC 213.

31. *Radhey Shyam* v. *Chhabi Nath* (2015) 5 SCC 423; *Sadhna Lodh* v. *National Insurance Company* (2003) 3 SCC 524; *Jogendrasinghji Vijaysinghji* v. *State of Gujarat* (2015) 9 SCC 1; *Sushma Sharma* v. *State of Rajasthan*, 1985 Supp SCC 45: 1985 (3) SCR 243 and *New Meneckchowk Spinning and Weaving Co. Ltd.* v. *Textile Labour Association, Ahmedabad* (1961) 1 LLJ 521 (SC).

of the Comptroller General is systematic and unquestionably the valuable services rendered, with the help of its employees, to the people who seek patents, designs and trademarks. The important question that therefore arose was whether the office of the Comptroller General was discharging sovereign functions so as to be immunised from section 2(j) of the ID Act.

The court observed that the office of the Comptroller General, though performs multifarious functions, cannot be treated as inalienable sovereign or akin to the functions of taxation, eminent domain, legislative functions, administration and maintenance of law and order, internal and external security and police pardon nor, in the opinion of this court, could they be regarded as core sovereign functions which, are constitutionally incapable of delegation. The court held that the office of the Controller General is an 'industry' within the meaning of section 2(j) of the ID Act. The court further held that no fault could be found in the findings of the tribunal to this effect and upheld the same on this issue.

The other important aspect dealt with by the court was that the high courts are required to be conscious of their limitations, laid down by the Supreme Court, while exercising the powers of judicial review.[32] From the said judgments the court culled out the following propositions:[33]

i. The Labour Court/Industrial Tribunal is the final fact-finding authority.

ii. The High Court, in exercise of its powers under Article 226/227, would not interfere with the findings of fact recorded by the Labour Court, unless the said findings are perverse, based on no evidence or based on illegal/ unacceptable evidence.

iii. In the event that, for any of these reasons, the High Court feels that a case for interference is made out, it is mandatory for the High Court to record reasons for interfering with the findings of fact of the Labour Courts/Industrial Tribunal, before proceeding to do so.

iv. Adequacy of evidence cannot be looked into, while examining, in writ jurisdiction, the evidence of the Labour Court.

v. Neither would interference, by the writ court, with the findings of fact of the Labour Court, be justified on the ground that a different view might possibly be taken on the said facts.

The court examined the merit of the controversy in light of these propositions, particularly, whether the respondents fell within the definition of 'workman' under the ID Act and they had worked for 240 days in the years immediately preceding their date of disengagement. It had no hesitation in holding that each of the respondents had served the petitioner as manual unskilled workers for more than 240 days in the

32. *D.D.A.* v. *Mool Chand*, 245 (2017) DLT 437; *Management of Madurantakam Cooperative Sugar Mills Ltd.* v. *S. Viswanathan*, (2005) 3 SCC 193; *P.G.I. of Medical Education and Research, Chandigarh* v. *Raj Kumar*, (2001) 2 SCC 54 and *M.P. State Electricity Board* v. *Jarina Bee*, (2003) 6 SCC 141.

33. *Supra* note 25.

period of one year immediately preceding the date of termination within the meaning of section 25B (1) of the ID Act. The court found no error of fact or law that could be attributable to the findings of the industrial tribunal which merited interference by the court in exercise of the power of judicial review under articles 226 and 227 of the Constitution. It was of the opinion that the decision in the *State of Karnataka* v. *Umadevi* (3)[34] could not impact the jurisdiction or the power of the labour court or industrial tribunal or its jurisdiction while exercising powers by way of judicial review under article 227 of the Constitutionof India.

As a result, these writ petitions were dismissed. The petitioner was directed to take the respondents back in service, within a period of two weeks from the date of receipt by it of a certified copy of this judgement. The court further directed the amounts deposited by the petitioner, in the high court, during the pendency of these writ petitions, along with the interest, if any, accrued thereon, shall be released to the respondents by the Registry of the High Court of Delhi, forthwith.

Test to determine master servant relationship

It is important to state that the issues that arose for consideration of the court in *Sushilaben Indravadan Gandhi*,[35] did not directly emanate from any proceedings either under the ID Act or under the Factories Act, 1948 but arose under the Motor Vehicles Act, 1988. However, the principles laid down in this case have considerable importance on the question of determining the distinction between contract *of* service and contract *for* service – a fundamental question that always arises in respect of applicability or otherwise of the industrial relations law. The applicability of the ID Act, in particular, is dependent on the presence of the fundamental concept of contract of employment-master and servant relationship. The material facts of this case were as under:

> On 09.06.1997, the husband of the appellant, an eye surgeon, was travelling in a minibus that was owned by the Rotary Eye Institute (Institute) along with other medical staff. The vehicle was being driven with excessive speed, as a result of which the driver lost control and it turned turtle. The eye surgeon was seriously injured and ultimately succumbed to his injuries. In 1997, the respondent Institute had entered into a comprehensive private car 'B' policy from the respondent no. 1 insurance company for one year. The limited liability of the respondent no. 1 was to indemnify the insurer in the event of an accident caused by or arising out of the use of a motor car against all sums including claimant's cost, expenses which the insured would become liable to pay in respect of death or bodily injury to any person, including occupants caused by the motor cars *but the insurance company was not liable where such death or bodily injury arose out of and in the course of employment of such person with the insured Institute*. (Emphasis supplied)

34. (2006) 4 SCC 1 (*Umadevi*); for detailed critique of *Umadevi*, see Bushan Tilak Kaul, "Labour Management Relations" XLII *ASIL* 480 (2006) at 525.

35. *Supra* note 3.

The vexed question that arose for consideration of the court was whether the eye surgeon was an employee of the insured Institute on the date of the accident as a result of which the limitation of the insurance liability's prohibition in favour of the insured Institute would kick in. In other words, the question was whether the relationship between the eye surgeon and the Institute was that of master and servant, *i.e.*, contract *of* service as against contract *for* service which would depend upon the true interpretation of the contract between the eye surgeon and the Institute.

The court referred to its earliest decision in *Dharangadhra Chemical Works Ltd.* v. *State of Saurashtra*[36] and other landmark cases thereafter[37]on the subject. It observed that a conspectus of all these judgments showed that in a society which has moved away from being basically an agrarian society to a complex modern society in the technological age, the earliest simple test of control, whether or not actually exercised, has now yielded to more complex tests in order to decide complex matters which would have factors both for and against the contract being contract *of* service as against contract *for* service. The court observed thus:[38]

> …The early "control of the employer" test in the sense of controlling not just the work that is given but the manner in which it is to be done obviously breaks down when it comes to professionals who may be employed. A variety of cases come in between cases which are crystal clear – for example, a master in a school who is employed like other employees of the school and who gives music lessons as part of employment, as against an independent professional piano player who gives music lessons to persons who visit her premises. Equally, a variety of cases arise between a ship's master, a chauffeur and a staff reporter, as against a ship's pilot, a taxi driver and a contributor to a newspaper, in order to determine whether the person employed could be said to be an employee or an independent professional. The control test, after moving away from actual control of when and how work is to be performed to the right to exercise control, is one in a series of factors which may lead to an answer on the facts of a case slotting such case either as a contract of service or a contract for service. The test as to whether the person employed is integrated into the employer's business or is a mere accessory thereof is another important test in order to determine on which side of the line the contract falls. The three-tier

36. 1957 SCR 152 (*Dharangadhra Chemical Works Ltd.*).

37. *Chintaman Rao* v. *State of M.P.*, 1958 SCR 1340; *Birdhichand Sharma* v. *Civil Judge*, (1961) 3 SCR 161 (*Birdhichand*); *Shankar Balaji Waje* v. *State of Maharasthra*, AIR 1962 SC 517; *D.C. Dewan Mohideen Sahib and Sons* v. *United Beedi Workers' Union*, AIR 1966 SC 370 (*D.C. Dewan*); *Silver Jubilee Tailoring House* v. *Chief Inspector of Shops and Establishment* (1974) 3 SCC 498 (*Silver Jubilee*); *Hussainbhai* v. *Alath Factory Thezhilali Union* (1978) 4 SCC 257 (*Hussainbhai*); *Shining Tailors* v. *Industrial Tribunal* (1983) 4 SCC 464 (*Shining Tailors*); *Indian Banks Assn.*v. *Workmen of Syndicate Bank* (2001) 3 SCC 36 (*Indian Banks*) and *Indian Overseas Bank* v. *Workmen* (2006) 3 SCC 729.

38. *Supra* note 35 at 179 – 80.

> test laid down by some of the English judgments, namely, whether wage or other remuneration is paid by the employer; whether there is a sufficient degree of control by the employer and other factors would be a test elastic enough to apply to a large variety of cases. The test of who owns the assets with which the work is to be done and/or who ultimately makes a profit or a loss so that one may determine whether a business is being run for the employer or on one's own account, is another important test when it comes to work to be performed by independent contractors as against piece-rated labourers. Also, the economic reality test laid down by the United States decisions and the test of whether the employer has economic control over the workers' subsistence, skill and continued employment can also be applied when it comes to whether a particular worker works for himself or for his employer. The test laid down by the Privy Council in *Lee Ting Sang* v. *Chung Chi-keung*,[39] namely, is the person who has engaged himself to perform services performing them as a person in business on his own account, is also an important test, this time from the point of view of the person employed, in order to arrive at the correct solution. No one test of universal application can ever yield the correct result. It is a conglomerate of all applicable tests taken on the totality of the fact situation in a given case that would ultimately yield, particularly in a complex hybrid situation, whether the contract to be construed is a contract of service or a contract for service. Depending on the fact situation of each case, all the aforesaid factors would not necessarily be relevant, or, if relevant, be given the same weight. Ultimately, the Court can only perform a balancing act weighing all relevant factors which point in one direction as against those which point in the opposite direction to arrive at the correct conclusion on the facts of each case.

The court was cognizant of the situations where this balancing process may often not yield a clear result in hybrid situations. It therefore stated that the context in which a finding is to be made has to be given due importance. Thus, if the context is one of beneficial legislation being applied to the weaker sections of the society, the balance tilts in favour of declaring the contract to be one of contract *of* service as was done in *Dharangadhra, Birdhichand*, *D.C. Dewan*, *Silver Jubilee*, *Hussainbhai*, *Shining Tailors* and *Indian Banks*. On the other hand, where the context is that of legislation other than beneficial legislation or only in the realm of contract, and the context of that legislation of contract would point in the direction of the relationship being a contract *for* service then, other things being equal, the context may then tilt the balance in favour of the contract being construed to be one which is *for* service.

In the present case, since this was mainly a case relating to contract, some of the factors which would point to the contract to be treated as contract *for* service, were enumerated thus:

39. (1990) 2 AC 374 (PC).

i. The heading of the contract itself stated that it was a contract *for* service.

ii. The designation of the doctor concerned was an *Honorary Ophthalmic* surgeon.

iii. He was to be paid Rs. 4000/- per month as honorarium as opposed to salary. In addition, he would be paid a percentage of the earnings of the hospital from out of OPD operation fee component of hospitalisation bills and room visiting fees.

iv. The appointment was contractual for three years, which was extendable only by mutual consent, which showed that it was a tenure-based appointment and pointer towards it being a contract *for* service.

v. There was an arbitration clause for resolution of disputes arising in the course of tenures of his contract which is unusual in a pure master servant relationship.

However, as against the above factors indicating that the contract was a contract *for* service, the following factors would point in the opposite direction:

i. The employment was full time. The concerned doctor could do no other work.

ii. The doctor was to work on all days except weekly offs and holidays. However, he was not entitled to any other financial benefit of any kind as applicable to other regular employees of the Institute.

iii. The doctor was governed by the conduct rules as applicable to regular employees of the institute and in the event of a proven case of indiscipline or breach of trust, the Institute reserved the right to terminate the contract at any time without giving any compensation whatsoever.

The court observed that if the aforesaid factors were weighed in the scales, it was a clear case that the factors which make the contract one *for* service outweighed the factors which would point in the opposite direction. The court stated that first and foremost the intention of the party when gathered from the terms of the contract make it clear that the contract was one *for* service and that with effect from which the contract began, the eye surgeon was no longer to remain as a regular employee of the Institute. It made it clear that for all practical intent and purposes he was an independent professional for which he was to be paid honorarium and a share of the spoils. Also, he entered into the agreement on equal terms as the agreement was for three years, extendable only by mutual consent of both the parties. On the conspectus of the matter, the court had no hesitation in coming to the conclusion that it was a case of contract *for* service as against the contract *of* service and, therefore, the appellant was entitled to recover the damages and entitlements under the insurance policy being an independent contractor.

Retrenchment

In *Mukeshbhai Rangindas Gondalia* v. *Rajkot Municipal Corporation*,[40] the appellant was appointed as a peon in the respondent corporation and his services were terminated nearly three and a half years thereafter without issuance of any notice or payment of retrenchment compensation. He raised an industrial dispute which was referred by the appropriate government to the labour court under section 10(1) of the ID Act. The labour court declared the termination as illegal and void. It directed the respondent to reinstate him with continuity of service along with 25% of back wages within a period of one month from the date of the publication of the award.

The corporation filed a writ petition before a single judge of the high court challenging this award which was partly allowed. The direction to grant continuity of service was set aside. However, the respondent was directed to reinstate the appellant and to pay 25% of the back wages as directed by the labour court. The appellant workman impugned this judgment in intra-court appeal which was dismissed by the division bench of the high court. It was of the opinion that the initial appointment of the appellant wason daily wage basis which was given to him by the employer on sympathetic consideration because of the ill health of his father, who was an employee in the corporation. It observed that the appointment was made without following any procedure for regular appointment.

The Supreme Court held that the appellant was entitled for continuity of service on his reinstatement. The said relief could not be denied to him merely because his appointment was irregular. The termination being contrary to section 25F of the ID Act, the award of the labour court could not be faulted.

Refusal to exercise the power to make reference: When justified

In *Glaxo Smithkline Con. Health Care. Ltd.* v. *Jagjit Singh*,[41] the appellant company had engaged temporary workmen who worked intermittently for about eight years on fixed wages. In June 2005, the management of the appellant company displayed a notice to pay *gratis* payment to the temporary workers for services rendered by them from time to time. The respondent workmen made their individual applications opting for voluntary separation and requesting for the payment of *gratis* amount. The company accepted their prayer for settlement. It settled their claims and paid their dues in full and entered into individual settlement with each workman under the ID Act.

Notably, the Punjabi version of these settlement deeds had been typed on the back of the English version and was signed by the individual workman in the presence of witnesses. The amounts agreed upon under the settlement were paid to the respondent-workmen by cheque and the proceeds thereof were credited in their account and utilised by them. The amounts paid to the respondent-workmen were at no point returned by them. Even the provident fund dues of the respondent-workmen were settled in full and final. However, sometime in August 2005, these respondent-workmen made a demand before the appellant company raising an industrial dispute under

40. 2020 SCC OnLine SC 780.
41. 2020 SCC OnLine SC 785.

section 2A of the ID Act. Their main allegation was that their service had been illegally terminated in view of the fact that the workmen junior to them continued to be working with the appellant company. In the said demand letter, the respondent-workmen did not make any allegation of fraud or forgery of the settlement.

In its reply to such demand notice, the appellant company apprised the assistant labour commissioner of the fact that the workmen had voluntarily entered into individual settlements. Later on, the respondent-workmen withdrew these demand notices on some technical grounds. They sought liberty of the labour commissioner to file fresh demand which was denied to them.

After some months, a fresh demand notice in June, 2006 was made by the respondent-workmen alleging that the settlements in question had been forged and fabricated by the appellant company. In fact, they denied having entered into such settlement and further alleged that their signatureswere obtained fraudulently. In the conciliation proceedings that followed, the workmen admitted that the amount of *ex gratia* compensation mentioned in the individual settlements had been paid to them. The conciliation proceedings ended in a failure report.

The state government after considering the conciliation report and the documents on record, declined to make a reference under section 10 of ID Act. In its order, it observed that since the respondent-workmen had opted for voluntary retirement by entering into an individual settlement and settled their dues in full and final, including the withdrawal of provident fund accumulation, the relationship between the parties as employer and employee had come to an end and it was a fit case for refusal to make reference.

Against this order, the respondent workmen preferred a writ petition before the High Court of Punjab and Haryana seeking quashing of the said order and for direction to the government to consider making a reference to the labour court of their industrial dispute. The court set aside the order of the state government and directed it to consider making a reference before the labour court. Aggrieved, the appellant management filed the present special leave petition before the Supreme Court.

The apex court held that the conduct of the respondent-workmen disentitled them from getting any relief from the court. The court was satisfied that the respondent-workmen had, with open eyes, entered into individual settlements, taken the amounts of settlement including *gratis* compensation and also had settled their provident fund accounts and got that amount credited to their accounts and, thereafter, very strangely started making fresh demands. Initially they made no allegations of forgery or fabrication of their signatures; they withdrew their demand notice and filed a second demand notice which liberty had been denied by the labour commissioner. Yet, a second demand was made with new allegations of forgery, *etc*.

In the considered opinion of the court, even if such a contention were to be accepted, the case of the respondent-workmen could not be accepted inasmuch as undisputedly they had voluntarily filed application to settle the matter with the management and then accepted the amount in full and final settlement paid by the appellant company.

The court observed that in view of the matter, the state government was justified in concluding that the relationship between the parties as employer and employee had come to an end and no industrial dispute subsisted between them. The court further observed that the high court had erred in setting aside the order of the state government without considering the aforesaid facts appropriately. It allowed the appeal accordingly.

Disciplinary proceedings: reliefs when misconduct not proved

Order of reinstatement includes continuity of service unless expressly excluded

In *Nandkishore Shravan Ahirrao* v. *Kosan Industries (P) Ltd*.,[42] the appellant workman was charge-sheeted for an alleged misconduct for causing disruption of work. A departmental inquiry was initiated. He was found guilty by the inquiry officer. On the basis of this findings the disciplinary authority dismissed him from service. He raised an industrial dispute against his dismissal which was referred by the appropriate government to the labour court for adjudication. The labour court came to the conclusion that the findings in the inquiry were perverse and that the order of dismissal was harsh.

It awarded reinstatement of service with 25% back wages. This award was questioned before a single judge of the High Court of Gujarat by the management. The high court partly allowed the writ petition. While it affirmed the order of reinstatement, it set aside the order of payment of 25% back wages. The single judge also interpreted the award as denying continuity of service. The division bench of the high court dismissed the letters patent appeal holding that it was not maintainable.

The workman preferred the special leave petition before the Supreme Court against the judgments and orders of the high court. It issued notice to the management which was served on it but it failed to appear before the court. In these circumstances, the court proceeded to deal with the appeals on merits.

The main grievance of the appellant-workman before the apex court was two-fold, namely,(i) the high court had erred in misconstruing the award of the labour court in not granting continuity of service; and (ii) the high court ought not to have set aside the award of the labour court in granting 25% of back wages.The court dealing with the first grievance that the labour court had not denied the continuity of service to him inasmuch as reinstatement implicitly included continuity of service, the court referred to the terms of the award which were as follows:[43]

> The reference of second party Nandkishor Shravan Ahirrao…and Kosan Industries Ltd., Worker/Employee Union, Surat is herebypartly allowed.
>
> And the first party of this case is hereby ordered that, they have to reinstate thesecond party in service with 25% back-wages for his surplus days within 30 daysfrom the publication of this order.

The Supreme Court, looking at the terms of the award, observed that it found merit in the submission of the appellant-workman. The court further observed that *ex facie*, the labour court, having awarded reinstatement to the appellant-workman,

42. 2020 SCC OnLine SC 138.
43. *Ibid*.

continuity of service would follow as a matter of law. The award had not specifically denied continuity of service. Hence, the observation of the high court was erroneous and deserved to be corrected. The court held that the appellant-workman was entitled to continuity of service and accordingly ordered so. On the question of back wages, the labour court had confined the award to 25% of the back wages which it felt was more than justified and the high court had no justification to set it aside.

The court also noted the fact that the appellant-workmen had retired from the service during the pendency of proceedings before it. It, therefore, directed that his retiral dues together with payment of 25% of wages for the relevant period be computed by the management and paid over to him within the period of three months from the date of the receipt of a certified copy of the order.

Regularisation and issues relating thereto

In *Oil and Natural Gas Corporation* v. *Krishan Gopal*,[44] the court was considering sub-clause (ii) of clause 2 of the Certified Standing Orders which provided that a temporary workman who has put in not less than 240 days of attendance in any period of 12 consecutive months and who possesses a minimum qualification prescribed by the Oil and Natural Gas Commission (ONGC) may be considered for conversion as regular employee. 'Temporary workman' for the purposes of the said clause meant 'a person who had been on the rolls of the commission having put in not less than 180 days of attendance in any period of 12 consecutive months.'

Gowda J. in an earlier case[45] had held that on completion of 240 days of service, the workman became entitled to be considered for regularisation and acquired a valid statutory right for the same. The court in the said case had observed:[46]

> …the corporation is bound by law to take its decision to regularise the services of the workmen concerned as regular employees as provided under Clause 2(ii) of the Certified Standing Orders after their completion of 240 days of service in a calendar year as they have acquired valid statutory right. This should have been positively considered by the Corporation and granted the status of regular employees of the Corporation for the reason that it cannot act arbitrarily and unreasonably deny the same especially it being a corporate body owned by the Central Government and an instrumentality of the State in terms of Article 12 of the Constitution and therefore, it is governed by Part III of the Constitution.

In the instant case the court observed that in *PCLU* which had construed clause 2(ii) of the Certified Standing Orders, conferring a right to regularisation on completion of 240 days of service in a calendar year, had not considered the earlier decision in *ONGC Ltd.* v. *Engg. Mazdoor Sangh*.[47] It seemed that *Engg. Mazdoor Sangh* was not brought to the notice of the court in *PCLU*.

44. (2020) 4 LLJ 96 (SC).
45. *ONGC Ltd*. v. *Petroleum Coal Labour Union* (2015) 6 SCC 494 (*PCLU*)
46. *Supra* note 44 at 101.
47. (2007) 1 SCC 250 (*Engg. Mazdoor Sangh*).

It may be useful to recollect what was the legal position laid down in *Engineering Mazdoor Sangh*. The court there had noticed that the nature of the work performed by the corporation was geological and geophysical survey for the exploration of petroleum. This work is generally seasonal in character. The workload is far less in the monsoon period and this period is generally referred to as the off season. For this work, it starts recruiting casual/ contingent / temporary workmen for specified periods and their services are terminated at the end of field season. Despite the aforesaid phenomenon relating to employment of seasonal workers, the respondent union raised an industrial dispute seeking regularisation of such workmen. The tribunal came to the finding that only a temporary workman who had put in not less 240 days of attendance during the period of 12 months was entitled to be considered for conversion to regular basis subject to the availability of vacancies. The Supreme Court upheld the said direction as reasonable keeping in view the Certified Standing Orders of ONGC. The court noted that it would be difficult for the corporation if the seasonal workers were to be treated at par with the regular employees. It would have been more difficult for ONGC to adjust the workman in permanent employment when the need for them was only seasonal.

The tribunal had therefore rightly found a via media while directing that the 153 workmen who admittedly completed 240 days of service in the previous 12 months and had acquired temporary status were entitled to be regularised against vacancies as and when such vacancies became available. The court further safeguarded the interest of these workmen by directing that till such time as these 153 workmen were not absorbed in the category concerned, no recruitment from outside should be made by the ONGC.[48]

The Supreme Court in the present case observed that the decision in *PCLU* needed to be revisited in order to set the legal position adopted in that case in conformity with the principles from the earlier line of precedents.[49] It specifically delineated the areas on which *PCLU* needed reconsideration, which it stated were:[50]

(i) The interpretation placed on the provisions of clause 2(ii) of the Certified Standing Orders;

(ii) The meaning and content of an unfair labour practice under Section 2(ra) read with Item 10 of the Vth Schedule of the ID Act; and

48. For a detailed discussion, see Bushan Tilak Kaul, "Labour Management Relations" XLIII *ASIL* 461 (2007) at 494 – 97.

49. *Mahatma Phule Agricultural University* v. *Nasik Zilla Sheth Kamgar Union*, (2001) 7 SCC 346; *Regional Manager, State Bank of India* v. *Raja Ram*, (2004) 8 SCC 164; *Regional Manager, SBI* v. *Rakesh Kumar Tewari*, (2006) 1 SCC 530; *Oil & Natural Gas Corpn. Ltd.* v. *Engg. Mazdoor Sangh*, (2007) 1 SCC 250; *Secretary, State of Karnataka* v. *Umadevi*, (2006) 4 SCC 1; *Ajaypal Singh* v. *Haryana Warehousing Corporation*, (2015) 6 SCC 321; *UP Power Corporation Ltd.* v. *Bijli Mazdoor Sangh*, (2007) 5 SCC 755; *Maharashtra State Road Transport Corporation* v. *Casteribe Rajya Parivahan Karmchari Sanghatana*, (2009) 8 SCC 556 and *Hari Nandan Prasad* v. *Employer I/R to Management of Food Corporation of India*, (2014) 7 SCC 190.

50. *Supra* note 44 at 107.

(iii) The limitations, if any, on the power of the Labour and Industrial Courts to order regularisation in the absence of sanctioned posts. The decision in *PCLU* would, in our view, require reconsideration in view of the above decisions of this court and for the reasons we have noted above.

It accordingly required the registry to place the proceedings before the Chief Justice of India to enable him to consider placing these batch of appeals for consideration by an appropriate larger bench.

Within a week after the aforesaid order, a three-judge bench of the court also handed down a judgment on the issue of regularisation in *ONGC Employees Mazdoor Sabha* v. *Oil and Natural Gas Corporation (India) Ltd*.[51] In this case, the Oil and Natural Gas Corporation (India) Ltd. had called for names from the employment exchange between 1990 and 2001 to fill up sanctioned posts, *i.e.,* Class III and Class IV of 800 workmen on a term basis, *i.e.,* four years. The candidates sponsored by the employment exchange were called for interviews and on the basis of the *inter se* merit of the available candidates, it issued term appointment letters to the selected candidates. However, no public advertisement in the newspapers for appointment were first given, which was an error pointed out by the Supreme Court when the matter reached before it.

The union thereafter demanded regular appointments to 577 term-based employees who were appointed by the ONGC during 1991 to 2001. The industrial dispute that arose in respect of the regularisation of these employees became the subject matter of conciliation proceedings. The conciliation proceedings having failed, the Central Government referred the dispute to the Central Government Industrial Tribunal (CGIT) at Ahmedabad. The CGIT by its award partly allowed the reference and directed regularisation of some of these 577 workmen.

The appellant union, being aggrieved with the award, approached the High Court of Gujarat challenging the award in so far as it had not granted regularisation of these workmen with effect from the date on which they were initially appointed or from the date on which they completed probation. A single judge of the High Court of Gujarat allowed the writ petition in part. The court ordered the respondent corporation to treat the concerned workmen on regular basis with effect from January 24, 2005 or the date of the first reissuance of the appointment order, as the case may be. Further, it granted notional benefits from the said date till March 3, 2013 and ordered that they be paid regular pay and allowance with effect from April 1, 2013. The court accordingly ordered modification of the award of the CGIT to that extent.

Two letters patent appeals were filed, one by the workmen and the other by the corporation, against this judgment which were dismissed by the division bench. Hence the present special leave petition by the worker's union. The limited question that came for consideration before the Supreme Court was as to what should be the date from which the concerned workmen were to be treated as regular appointees.

51. 2020 SCC OnLine SC 222.

The case of the union was that the workmen ought to be regularised from the date of their initial appointment/ completion of probation and the single judge of the High Court of Gujarat was not correct in confining relief only from January 24, 2005 or the date of the first reissuance of the appointment order. Further, the single judge of the high court was wrong in granting only notional benefits when he should have granted actual benefits from January 24, 2005 or the date of the first reissuance of the appointment order. Hence, the order of the single judge needed to be set aside to that extent. The union strongly relied upon the judgment of the court in *PCLU*, wherein the Supreme Court had granted regularisation to the employees from the date of their entitlement, *i.e.,* on completion of 240 days of service in a calendar year in the corporation in terms of the certified standing orders.

The case of the corporation was that the judgment of the *PCLU* was distinguishable on facts as in that case the award of the industrial tribunal itself had directed the corporation to regularise the service of the workmen concerned from the date on which they completed 480 days of service which was expressly provided in the certified standing orders of the corporation. It was also brought to the notice of the court that the judgment in *PCLU* was pending consideration by a larger bench on a reference order dated February 7, 2020.

The court in the present case observed that what was clear was that as soon as the four years period got over, the employees collectively through the union approached the Central Government and it made a reference of the industrial dispute immediately on December 21, 2004. The dispute was ultimately answered by the Central Government industrial tribunal almost seven years later on November 8, 2011. On the facts of the case, therefore, the court was of the view that the corporation must treat the concerned workmen which included 111 out of these 577 employees who had been regularised earlier, to be in regular employment on and from the date on which the industrial dispute was referred, *i.e.,* December 21, 2004 and accordingly granted actual benefits from the said date till April 1, 2013. The court kept the other directions issued by the single judge of the High Court of Gujarat intact. It accordingly allowed the appeal on the aforesaid terms.

The High Court of Bombay in *Maharashtra Kamgar Sanghatana* v. *CIDCO*,[52] dealt with a writ petition filed by the petitioner union on behalf of its members for various directions against the respondent who had engaged these workers since the last several years as gardeners but had not been paid wages to them from January, 2020 onwards at the rates payable to permanent workers in the unskilled category. They sought directions for payment of unpaid wages from January, 2020 onwards along with commercial interest. The union wanted that the respondents be directed to provide essential service ID cards to the members of the union to enable them to reach their place of work without facing any difficulties during lockdown period and to provide them with masks and gloves to protect themselves while they were outdoors.

It is pertinent to mention here that prior to 2012, these workmen continuously worked for several years as 'malis' for the respondent. The respondent continued to

52. 2020 SCC OnLine Bom 633 (*CIDCO*).

treat them as contract workers. Feeling aggrieved they raised an industrial dispute which was referred by the appropriate government to the Industrial Tribunal, Thane, regarding the permanency of these workmen. The industrial tribunal in January, 2017 passed an award directing that they be absorbed as permanent employees by the respondent and be extended all benefits of permanency from the date they raised the industrial dispute, *i.e*., December 1, 2012. The respondent impugned that award before the high court in a writ petition which was dismissed by the High Court of Bombay on January 31, 2020 stating that the award passed by the industrial tribunal called for no interference.

As a result, the respondent was bound to absorb the concerned workmen as permanent employees and also extend all benefits of permanency to them with effect from December 1, 2012. The respondent not only failed to extend all benefits of permanency with effect from the said date but also deprived the concerned workmen of their earned wages since January, 2020. Thus, despite the high court's decision and despite the workers having continued to work during the COVID-19 pandemic, the respondent forced them to survive on charity, *i.e.,* the ration provided by the NGOs and social workers. The counsel for the respondent informed the high court that some payments were made by CIDCO on April 30, 2020 to the concerned workmen for the month of January, 2020 and it had instructedthe contractor concerned to pay the workmen upto April, 2020 and thereafter for the subsequent months. This statement of his he wanted the High Court of Bombay to record. The counsel informed the court that the respondent had handed over maintenance of the gardens to Panvel Municipal Corporation (PMC) who will have to pay the concerned workmen. He also informed the court that PMC was reluctant to accept them as their workers.

The court came down heavily on the respondent and its counsel for trying to justify the inhuman and callous conduct of non-payment of earned wages since January, 2020. The court stated that merely forwarding papers to their counsel in Delhi for filing an SLP against the order of the high court dismissing its writ petition, the respondent could not violate the terms of the award as upheld by the High Court of Bombay when there was no stay against the operation of the award. The court termed this attitude of the respondents completely inhuman, more so during COVID-19 pandemic. The court noted that in spite of denial of wages the workers were still regularly executing their work even during pandemic period. The court was shocked beyond description by this attitude of the respondents and observed thus:[53]

> Making the concerned workmen work even during the pandemic and thereafter not paying them their earned wages for months, thereby compelling them to extend their hands before NGOs and social workers for ration to feed themselves and the members of their families, is certainly a very inhuman act on the part of CIDCO, which deserves severe condemnation. Even at this stage, CIDCO is not willing to make a statement that CIDCO will make payment to the concerned workmen (who have been directed by the Orders of the Court/Tribunal to absorb

53. *Ibid*.

> them as their permanent employees and extend all benefits of permanency with effect from 1st December, 2012) but is only willing to make a statement that CIDCO will direct the Contractor to make payment to the concerned workmen. Since the next excuse could be that despite being directed by CIDCO, the Contractor has failed to pay the concerned workmen, for which CIDCO cannot be held responsible, I am not willing to accept the statement of CIDCO.

Dealing with other grievances that they were not provided with ID cards, face masks, hand gloves, *etc.,* because of which they were finding it difficult to reach their place of work and were exposed to the rigours of the deadly virus, the court passed the following comprehensive interim directions:

i. CIDCO was directed to pay the concerned workmen their unpaid earned wages up to April, 2020 as per their entitlement under the Award dated January 13, 2018, which was upheld by the Bombay High Court *vide* its Order dated January 31, 2020 on or before May 18, 2020, and thereafter to continue to pay such earned wages on or before the 5th day of each successive month.

ii. CIDCO was directed to issue on or before May 18, 2020 essential service ID cards to the concerned workmen along with face masks, hand gloves, sanitizers/soap, if not provided so far, and replace/replenish the same from time to time.

iii. CIDCO was required to file its Affidavit within a period of two weeks from the date of the order.

IV CONCLUSION

The legitimate expectations of the migrant workers that the Supreme Court will play the role of a guardian during the extraordinary calamity of COVID-19 pandemic, stood belied initially. However, the apex court, in the face of severe mounting criticism, rose to the challenge and intervened at least to ensure that the workers safely reached their homes by rail and other modes of transport. Directions were issued to the Central Government, state governments, union territories and the railways to provide them transport, drinking water and food to make their journey possible without any economic liability.The court should havegiven robust directions to the state and their instrumentalities to take effective steps to create job avenues in their home towns or vicinities for their sustenanceby extending the works under the existing schemes like MGNREGA or by starting more such schemes for their engagements.Further, till this became a reality,it should have directed the state and their instrumentalities, both at the state and central levels, to provide them some meaningful social security nets to take care of them and their families in their home towns.It should also have directedthe central and state governments to take up their matters for reengagement with the employers with whom they were working in the pre-COVID pandemic period and provided effective incentives to the migrant workers to return to their places of work while strictly maintaining covid protocol norms.In short, what the court did was too little and too late.

The judgment of the Supreme Court in *Gujarat Mazdoor Sabha*[54] is a landmark decision and a welcome contribution by to prevent the states from diluting the rights of the labour in the name of economic stringencies. The notifications which were impugned in this case had the effect, *inter alia*, of increasing the hours of work from 48 to 72 in a week and denying overtime to the workers. These notifications were rightly struck down by the court as violative of the fundamental rights of the workers particularly articles 14, 21 and 23 of the Constitution. In this judgment, in particular, the court has played the role of a true guardian of the weaker sections of the society. Its judgment in *Sushilaben Indravadan Gandhi*[55] that explained the tests for determining the master servant relationship has direct relevance to the definition of workman under section 2(s) of the ID Act.The discussion on the need to apply a conglomerate of all applicable tests taken on the totality of the fact situation in a given case is very illuminating. These tests will help to find whether a particular contract is a contract *of* service or a contract *for* service.

It is a matter of great satisfaction that some of the high courts have acted aswatchdogs of the rights of migrant workers during thisperiod. An analysis of the decisions of the High Courts of Kerala, Karnataka and Bombay in *Jana Samparka Samithy Ernakulam District Committee*,[56] *Mohammed Arif Jameel*[57] and *CIDCO,*[58] respectively, very clearly shows that these courts have shown their sensitivity and empathy towards the hapless migrant workers and have come down with heavy hand against the managements for violating their human and fundamental rights and enforced the same. Likewise, the decision of the High Court of Delhi in *Raju Kumar Shah*[59] is an illustration of the importance of social context adjudication. The style adopted by the court has some similarity with the writings on labour law during the era of Krishna Iyer J., and the likes. Such sensitivity and empathy for labour rights one does not find in many of the judgments of the day on industrial relations law.

54. *Supra* note 15.
55. *Supra* note 3.
56. *Supra* note 1.
57. *Mohammed Arif Jameel*-I, *Mohammed Arif Jameel*-IIand *Mohammed Arif Jameel*-III, *supra* note 1.
58. *Supra* note 52.
59. *Supra* note 25.