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LABOUR MANAGEMENT RELATION

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I INTRODUCTION

AN ATTEMPT has been made here to survey that significant decisions of the Supreme Court reported in the year 2014 in the area of industrial relations law. As in the previous years, this year too there has not been any significant decision by the apex court in the area of collective dispute except the one in *ABP (P) Ltd*. v. *Union of India*[1]. While upholding the constitutional validity of the Newspaper Employees (Conditions of Service) and Miscellaneous Provision Act, 1955 as amended by the Amending Act, 1974, the court also upheld the constitution of the two wage boards for the working journalists and other employees (non-journalists), respectively, as also the wage structure recommended by them.

In the year under survey, the court has, besides the issue of grant of appropriate reliefs for violation of the mandatory provisions of the retrenchment law, dealt with the scope of the power of reference of the appropriate government and the need for properly drawing up of the points of reference by it for adjudication by the labour court/ industrial tribunal. The court has also dealt with the issues of misconduct, disciplinary action and the scope of the power of the industrial adjudicator under section 11 A of the ID Act, 1947 in detail.

In *Hari Nandan Prasad* v. *Employer I/R to Management of Food Corporation of India*,[2] Sikri J., has made a clear distinction between cases where the term of reference relates to the grant of relief to casual, temporary or daily rated workers for violation of mandatory provisions of retrenchment law, if any, on the one hand, and the cases where the subject matter of reference is not confined merely to the alleged violation of the mandatory provisions of retrenchment law but where the subject matter of reference includes within its scope the issue of adjudication of alleged unfair labour practice or discrimination in the matter of regularization by the employer of the employees in public employment and the relief to which the

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1 (2014) 3 SCC 327.

2 (2014) 7 SCC 190 (In short, *Hari Nandan Prasad*).

workers are entitled to, on the other hand. The court has made it clear that it is in the latter case that the power of the industrial adjudicator extends to grant of relief by way of regularization of casual, daily rated or temporary worker/s in public employment but not in the former.

In *Raghubir Singh* v. *General Manager Haryana Roadways, Hissar*[3] Gowda J., has held that article 311 of the Constitution is attracted only in cases of civil servants and not in cases of other public servants. This distinction cannot be overlooked as was done by both the labour court and the High Court of Punjab and Haryana in *Raghubir Singh* by applying the second proviso to article 311 (2) to the petitioner who was not a civil servant but a public servant, being an employee of the state owned undertaking. No significant decision has been reported either under the Trade Unions Act, 1926 or the Industrial Employment (Standing Orders) Act, 1946.

II INDUSTRIAL DISPUTES ACT, 1947

Powers of the appropriate government and subject matter of reference

The Supreme Court in *Tata Iron and Steel Company Limited* v. *State of Jharkhand*[4] has re-emphasized that the industrial tribunal/labour court constituted under the ID Act is a creature of that statute. It acquires jurisdiction on the basis of reference made to it and has to confine itself within the scope of the subject matter of reference and matter incidental thereto and cannot travel beyond the same.[5]

Need for clearly delineating the scope of reference under section 10

In *TISCO*, the Supreme Court has clearly spelt out the powers of the appropriate governments under section 10 (1) of the Industrial Disputes Act, (IDAct) and also the need for them to apply their mind while making a reference and delineating its scope. The court has come heavily against the manner the appropriate governments are drawing the points of reference for adjudication which more or less lack application of mind or understanding the true scope of the dispute. This caution becomes necessary as consistently courts have found that the appropriate governments do not take the job of making reference seriously. It has to be remembered that an industrial adjudicator has no power to enlarge the scope of the reference or go beyond the points of reference on the basis of pleadings of the parties. The legal position is clear that the industrial adjudicator has to confine himself to the points of reference and at best can go beyond the point of reference to consider only what are "matters incidental to the points of reference". In the guise of dealing with matters "incidental to the points of reference", the industrial adjudicator cannot cut at the very root of the points of reference.

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3 (2014) 10 SCC 301.

4 (2014) 1 SCC 536 (hereinafter, *TISCO*).

5 *National Engineering Industries Ltd*. v. *State of Rajasthan* (2000) 1 SCC 371; also see *Sindhu Resettlement Corpn. Ltd*. v. *Industrial Tribunal of Gujarat*, AIR 1968 SC 529; Express *Newspapers (P.) Ltd*. v. *Workers*, AIR 1963 SC 569; *Indian Tourism Development Corporation* (ITDC) v. *Delhi Administration*, 1982 Lab IC 1309 (Del); *Moolchand Kharati Ram Hospital K. Union* v. *Labour Commr*. (2002) 10 SCC 708.

This case is a good example to illustrate as to what should have been referred for adjudication was not referred necessitating the quashing of the reference by the Supreme Court with direction to the state government to make fresh reference of the disputes culled out by the court for adjudication. The Supreme Court required the appropriate government to issue fresh reference with due application of mind in delineating the scope of reference.

The necessity to issue such directions arose in the following facts and circumstances of the case:

The appellant apart from engaging in its core business of manufacturing of steel was having a cement division as well. Pursuant to the decision to follow policy of disinvestment necessitated by the government's policy of liberalization and economic compulsions, the appellant sold its cement division to one Lafarge India Pvt. Ltd. (in short M/s. Lafarge). The agreement with Lafarge, *inter alia*, provided that M/s. Lafarge would take over the company personnel, in terms of section 25 FF of the ID Act. This decision to hive off and transfer the cement division by the appellant to M/s. Lafarge was communicated to the employees of cement division as well to whom M/s. Lafarge in turn issued fresh appointment letters and who started working with it.

It seems that these workers were not satisfied with the working condition in M/s. Lafarge. They submitted a demand letter to the appellant seeking their posting back in the appellant company alleging that their consent was not taken when they were directed to work with M/s. Lafarge. They demanded that they be taken back with the appellant company to which the appellant company paid no heed. The workers initiated conciliation proceedings where the appellant took the plea that the cement division was sold to M/s. Lafarge and these workmen had consented to become the employee of M/s. Lafarge who had issued fresh appointment letters to them. The conciliation proceedings failed and the dispute was referred by the Government of Jharkhand between the workers and the appellant to labour court under section 10 (1) of the Industrial Dispute Act with following terms of reference:

> Whether not to take back Shri K. Chandrashekhar Rao and 73 other workmen (list enclosed) of M/s Tisco Ltd., Jamshedpur in service by their own TISCO management after their transfer to M/s. Lafarge India Ltd., is justified? If not what relief are they entitled to?

The case of the appellant before the Supreme Court was that the manner in which the reference was worded did not depict the true nature of the dispute between the parties. Further, the workman concerned was no longer in their employment and, therefore, could not have raised any grievance or industrial dispute against the appellant as no employer- employee relationship subsisted between them. If M/s Lafarge, the transferee company, did not provide assured service terms, they could have raised the dispute only against the transferee company which was their employer but M/s Lafarge was not even made party in the reference proceedings. Also the conciliation officer had not considered the material on record before him and by sheer non-application of mind had submitted a failure report leading to the reference in question. The writ petition filed by the appellant challenging the

reference before the High Court of Jharkhand at Ranchi seeking quashing of the said reference was dismissed by it with observation that the labour court which was seized of the matter could very well adjudicate and answer the reference after considering the rival contentions. This decision was upheld by the high court in the intra-court appeal leading to the present proceedings.

The court at the very outset stated that an industrial dispute had arisen between the parties in view of the contrary stands taken by the parties in the matter. The workers, on the one hand, asserting that they were entitled to serve the appellant as they continued to be its workers and were wrongly transferred to M/s Lafarge. The appellants, on the other hand, contending that with the hiving off the cement division and transferring the same to M/s Lafarge along with the workers who gave consent to become the employees of the transferee company, the relationship of master and servant ceased to exist between the appellant and the workers who had now no right to come back to the appellant.

The court was of the opinion that once the above respective contentions were raised before the labour department, it did not have the power to assume the role of adjudicator to decide the dispute. Its role was confined to discharge administrative function referring the dispute to the labour court /industrial tribunal for adjudication and M/s Lafarge also had to be arrayed as a necessary party. The court was of the opinion that the terms were not appropriately worded inasmuch as the terms of reference did not reflect the real disputes between the parties. The reference pre-supposed that the respondent workmen were the employees of the appellant. The reference also proceeded on the foundation that their services had been 'transferred' to M/s Lafarge. On this supposition the limited scope of adjudication was confined to decide as to whether the appellant was under an obligation to take back these workmen in service which was not reflective of the real dispute between the parties. It not only depicted the version of the respondent workmen but in fact accepted the same as correct and mandated the labour court/ industrial tribunal to only decide as to whether the appellant was required to take them back in its fold.

On the contrary, it was the case of the appellant that it was not a case of transfer of workmen to M/s Lafarge but their service were taken over by M/s Lafarge by issuing fresh appointment letters to them in the capacity of new employer which was a different company and the relationship between the appellant and their erstwhile employees stood snapped. This version of the appellant went to the root of the matter. Not only it was not included in the reference, the appellant's right to put it as defence, as a demurer, was altogether shut and taken away, considering the manner the reference was worded. The reference in the present form did not leave scope for the appellant to contend that the relationship between it and the workmen had since ceased.

The Supreme Court, in the instant case, rightly brought to focus the bone of contention which was as to whether the respondent workmen were simply transferred by the appellant to M/s Lafarge or their services were taken over by M/s Lafarge and they became its employees. The second incidental question that would follow there from would be whether they possessed any right to join back the services with the appellant in case their service conditions, including salary

etc., which they were enjoying with the appellant were not given or protected by M/s Lafarge? If it was proved that their service conditions were violated by M/s Lafarge, then another equally important question would be that can they claim service benefits/protection from M/s Lafarge or have they a right to go back to the appellant?

The aforesaid issues should have been the subject matter of reference to the labour court. But what was referred to the labour court was a glaring case of a defective reference as it did not take care of the correct and precise nature of the dispute between the parties. The manner in which the reference was worded showed that the appropriate government had already decided that the workmen were employees of the appellant and further, that their services were simply transferred to M/s Lafarge. This would preclude the appellant to put forth its case as the labour court, by virtue of the terms of reference, would be deterred to go into those issues. This clearly implies that the appropriate government assumed the role of adjudicator and decided those contentious issues which power it did not possess under the ID Act and were exclusively reserved for the labour court/ industrial tribunal which alone was competent to adjudicate on merits of the case.

As a consequence, the apex court allowed the appeal of the appellant and set aside the impugned judgment of the high court. The court, accordingly, quashed the reference made in the present form and at the same time directed the appropriate government to make a fresh reference to the labour court incorporating the real essence of the disputes as discussed in the judgment within a period of two months from the date of the receipt of the copy of the judgment.

Labour court/ industrial tribunals not to be caught in the technicalities of the law of limitation in exercising power of rendering substantive justice

In *Raghubir Singh* v. *Haryana Roadways Corporation*[6] the Supreme Court has minutely considered and dealt with issues of great importance, which for long have either not been properly addressed or appreciated, in their proper perspective. The court here had to remind the labour courts/industrial tribunals about their duties and powers under the ID Act which it stated have to be exercised to impart substantial justice without getting caught in the web of technicalities of the law of limitation or otherwise, while rendering justice. Delay in approaching the authorities under the ID Act may be a factor that the industrial adjudicator should take into account while moulding the relief but it cannot be used as a basis for not examining the reference on merits which is its primary duty when seized of a reference under section 10 or an application under section 2A of the Act. Further, the court has rightly made a distinction between civil servants of the state to whom article 311 of the Constitution applies and the employees of statutory corporations who are not civil servants and not covered under the said article and are governed by Industrial Employment (Standing Orders) Act, 1946 in which provision similar to article 311 may or may not have been adopted.

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6 (2014) 10 SCC 301.

In the present case, the labour court as well as the single judge and division bench of the high court had erred both on the duties of the labour court as also the applicability or otherwise of article 311, more particularly article 311 (2) (b) of the Constitution of India to a statutory body like the respondent herein.

To appreciate the judgment of the Supreme Court and understand the infirmities writ large in the award of the labour court and also the approach of the high court, it is necessary to give the factual matrix in so far as it is material:

The appellant had put in number of years of service as conductor in the respondent corporation when a criminal case was registered against him under section 409 IPC for an alleged criminal misappropriation of the amount collected from the sale of passenger tickets and not depositing the same in time. The appellant was arrested by the police and sent to judicial custody on 15.09.1994. Charge sheet dated 08.09.1994 issued under rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 was sent to the village address of the appellant but it could not be served on him. The appellant was informed through the newspaper dated 04.10.1994, when he was in the judicial custody, that he should join his duties and deposit the amount collected through sale of tickets within 15 days of publication of the notice and submit his reply. Since the appellant could not respond being in judicial custody, the respondent formed the view that it will be in public interest not to keep him in its service on the ground of unauthorized absence. Therefore, purportedly acting under article 311 (2) (b) of the Constitution, an order dated 21.10.1994 of termination of services was passed with immediate effect and further, the appellant was treated absent from duty.

Subsequently, when the appellant was released on bail, he presented himself for work with the respondent.It was his case throughout that he was given an assurance that he would be reinstated in the post if he was acquitted by the criminal court before whom his trial had already begun. On 11.07.2002 he was acquitted by the court and he reported for duty but was informed by the respondent that his services stood terminated w.e.f. 21.10.1994 and could not be reinstated. He raised an industrial dispute relating to his non-employment and the conciliation proceedings before the conciliation officer failed leading to a reference to the labour court by the state government under the ID Act. After adjudication of the points of disputes referred to it, the labour court gave an award dated 22.05.2009 declaring the termination of his service as illegal and ordered his reinstatement with 60% back wages from the date of issuance of the demand notice till the publication of the award and full back wages thereafter, till reinstatement.

Aggrieved by the said award, the respondent filed a writ petition before the High Court of Punjab and Haryana. A single judge of the court remanded the case to the labour court for fresh adjudication in the light of the applicability of the provisions of article 311 (2) (b) of the Constitution to the appellate workman. It is submitted that this order of the high court was patently wrong as article 311 (2) (b) was not applicable nor was there any provision referred to by the respondent under the standing orders which was *pari materia* with article 311 (2) (b).

This time the labour court passed an award against the appellant on the ground that the reference of the industrial dispute was time barred without adjudicating

on merits of the claim. The appellant challenged the correctness of the said award before the single judge of the high court who dismissed the writ petition holding that the decision of the respondent was in the public interest and therefore, the same did not warrant interference. This order was upheld by the division bench holding that the services of the appellant having been terminated by the respondent in exercise of the powers conferred upon it under the article 311 (2) (b) of the Constitution was faultless.

Aggrieved, the appellant approached the Supreme Court urging the following legal submissions in support of his case:

1. The award of the labour court, as upheld by the single and the division bench of the high court, dismissing his claim on the ground of limitation without considering the merits of his claim was liable to be set aside as there was no delay on his part in seeking reinstatement; more so, the delay could at best be only a factor to be taken into account in moulding the relief and not dismissing the claim out-rightly.

2. The respondent could not have proceeded against the appellant under rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 which was not applicable to him as he was governed by the certified model standing orders framed under the Industrial Employment (Standing Orders) Act, which should have been followed and therefore, the order of termination stood vitiated.

3. Article 311(2)(b) was not applicable to him and the reasons accorded by the respondent were not justified for dispensing with the enquiry procedure in relation to the allegations against the appellant.

4. The order of termination of the services of the appellant on the alleged misconduct of unauthorized absence was bad in law as no departmental enquiry was held before the said termination. The respondent could not have terminated his services without complying with the principles of natural justice.

On the basis of the above submissions, the appellant prayed that he be reinstated with back wages and continuity of service.

The court observed that it is the settled legal position under section 10 (1) of the ID Act that the appropriate government has the powers to make reference, at any time, to the authorities under the Act for adjudication of the dispute. The only requirement is that there must be some material which will enable it to form an opinion that an industrial dispute exists or is apprehended. Further, the function of the government under section 10 (1) is an administrative function in contradiction to the judicial or quasi-judicial function. The court held that the labour court had erroneously rejected the reference without judiciously considering all the relevant factors of the case, particularly, the points of disputes referred to it and answered the second issue regarding the reference being barred by limitation but not on the merits of the case. The court referred to its earlier decisions[7] where it had been

held that the provisions of the Limitations Act under article 137 had no application to the reference made by the appropriate government to the labour court for adjudication of industrial dispute between the workman and the employer. It is the settled legal position that in cases where there is a delay in raising the dispute and the dispute subsists, the labour court has the power to mould the relief accordingly, but it has no power to reject the reference. Since the dispute about non-employment subsisted between the management and the worker, the appropriate government had rightly exercised its powers under section 10(1)(c) of the Act and referred the points of disputes to the labour court in accordance with the law laid down by the court in *Avon Services Production Agencies (P.) Ltd.* v. *Industrial Tribunal*[8] and *Sapan Kumar Pandit* v. *U.P. SEB.*[9] The court relied on its earlier decision in *S.M. Nilajkar* v. *Telecom District Manager*[10]where it had been held that the worker could not be denied relief only on the ground of delay in raising the industrial dispute.

Here, the court held that the workman had raised the dispute with the management regarding his non-employment within a reasonable time, considering the circumstances of the case, firstly, as there was a criminal case pending against him and secondly, the respondent had assured him that he would be reinstated after his acquittal in the criminal case. The labour court ought to have adjudicated the dispute on merits, more so, when there was no mention that there was unavailability of material evidence due to the delay. The court relying upon *Ajaib Singh* v. *Sirhind Coop. Mktg-cum-Processing Service Society Ltd*,[11] held that it was of the considered view that the delay in raising the industrial dispute and referring the same for adjudication would not debar the workman for claiming the rightful relief from the employer. The court held that having regard to the facts and circumstances of the case, it was convinced that there was no delay on the part of the workman in raising the dispute and getting it referred to the labour court by the state government. The failure of the labour court to adjudicate the dispute on merits amounted to abdication of its statutory responsibility which was not in the interest of industrial harmony, it being one of the important concerns of the industrial jurisprudence of the country. Such an approach on the part of the labour court was bound to affect the public interest at large. The court found this to be a fit case to exercise its jurisdiction and grant appropriate relief to the appellant.

Further, the court held that article 311 (2) (b) of the constitution had no application in the case at hand as the appellant was an employee of a statutory corporation and was not a civil servant. Also rule 7 of the Haryana Civil Services

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7 *Avon Services Production Agencies (P) Ltd.* v. *Industrial Tribunal* (1979) 1 SCC 1; *Sapan Kumar Pandit* v. *U.P. SEB*, (2001) 6 SCC 222; *S. M. Nilajkar* v. *Telecom District Manager* (2003) 4 SCC 27; *Ajaib Singh* v. *Srhind Coop Mktg-cum-Processing Services Society Ltd.* (1999) 6 SCC 82.

8 (1979) 1 SCC 1.

9 (2001) 6 SCC 222.

10 (2003) 4 SCC 27.

11 (1999) 6 SCC 82.

(Punishment and Appeal) Rules, 1987 applicable to civil servants had no application to the appellant and, therefore, the disciplinary proceeding under the said rule was not only untenable in law but also contrary to the legal principles laid down by the court. The appellant was a workman under section 2 (s) of the ID Act and could have been proceeded only under the Model Standing Orders or the certified standing orders framed by the undertaking, as the case may be.

The court further held that neither the labour court nor the high court had appreciated that the workman had been condemned unheard in violation of the principles of natural justice. They also failed to appreciate that an order stating the impossibility of conducting the enquiry and dispensing with the same was not issued to the appellant. Further, assuming for the sake of argument that the unauthorized absence which was the charge against the workman was a fact, the respondent was empowered to grant leave without wages or extraordinary leave to him which was not done. Having regard to the period of unauthorized absence and in the facts and circumstances of the case, the court deemed it proper to treat the unauthorized absence as leave without pay. It held that the punishment of removal from service was disproportionate to the gravity of misconduct against the workman. His service should not have been dispensed with by passing an order of termination on the alleged ground of unauthorized absence without considering the leave to his credit and further examining whether he was entitled to leave without wages or extraordinary leave.

According to the court, the order of termination by the statutory undertaking was passed against the fundamental rights guaranteed under article 14, 16, 19 and 21 of the Constitution and against the statutory rights conferred upon him under the ID Act as well as the law laid down by it. The court also deprecated the role of the labour court in not going to the merits of the case and exercising its powers under section 11 A of the ID Act which confers appellate powers on it in matter of disciplinary action of dismissal or discharge of the services of the workmen by the management. Accepting the contention of the workman the court held that both the labour court and the high court had failed to adjudicate the dispute on its merits resulting in miscarriage of justice. It directed the respondent to reinstate the appellant workman with back wages from the date of raising of the industrial dispute *i.e.*, March 2, 2005 till the date of reinstatement with all consequential benefits such as continuity of services, wages and other statutory monetary benefits and implement the order from the date of receipt of the copy of this judgment.

Security of employment: expectations from the state instrumentalities

In *State of Maharashtra and Anr.* v. *Sarva Shramik Sangh, Sangli*,[12] the question of legality of the termination and the reliefs to which the workmen were entitled to was the principal issue before the Supreme Court. This issue arose in the following factual matrix:

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12 (2013) 16 SCC 16. (In short, *Sarva Shramik Sangh, Sangli*).

The Irrigation Development Corporation Maharashtra Limited (the corporation), Government of Maharashtra undertaking, a set up 25 lift irrigation schemes to provide free services to farmers in the aftermath of a terrible drought which afflicted the state in the year 1972. Some 256 workers were employed by it to work on its irrigation schemes. Their services were terminated as the execution of the irrigation schemes was transferred to a sugar factory. Although the state government could have given them alternate employment in other sections of the irrigation department, it did not do so. Many of these workers had put in about 10 years of service, though it was alleged that the nature of their job was temporary or casual. The notice of termination of service did not technically fulfil the requirement of one month notice which was mandatory under section 25 F (a) of the ID Act. Out of the total of 256 workers, 163 initially approached the High Court of Bombay by way of a writ petition against the corporation seeking a restraint order against transfer of the undertaking to the sugar factory. This petition was dismissed by the high court and on appeal by the Supreme Court as well on the ground that the workers were the employees of the state government rather than of the corporation and, therefore, the relief should have been sought against the former.

The court, however, granted liberty to the respondent to seek appropriate legal remedy against the state government. Subsequently, they raised an industrial dispute against the state government which became the subject matter of reference. The labour court held that since one month's statutory notice as required under section 25F was not given, the termination was illegal. It ordered payment of retrenchment compensation under section 25F of the ID Act taking into account the number of years of service rendered by them. It also directed the state to give preference to all these employees whenever some additional work became available or consider them for absorption. Legal heirs of the employees who had died, were held entitled to receive the compensation amount.

This award was when challenged by the workers union before the single judge of the High Court of Bombay. It set aside the said award on the ground that the process of pumping water was a "manufacturing process'' and, therefore, an 'establishment' amounting to a 'factory' and since it was employing more than 100 workers, section 25 N of the ID Act was applicable which required prior permission of the appropriate government before effecting 'retrenchment.' The single judge ordered reinstatement of the workmen with continuity of service and 25% back wages. The letters patents appeal (LPA) by the appellant was dismissed by the division bench on the ground that LPA was not available against an order passed in a writ petition under article 227 of the Constitution of India.

The State of Maharashtra approached the Supreme Court by way of special leave petition (SLP), contending that it was a case of transfer of undertaking and, therefore, section 25FF of the ID Act was applicable rather than section 25N or section 25F. It was further contended that section 25F had application limited to calculation of compensation payable under section 25FF as 'deemed retrenchment' compensation.

On the contrary, the contention of the respondents was that the case pertained to section 25N and not section 25FF. They respondent also relied on another award of the labour court granting reinstatement with 25% backwages given in the case

of another group of 10 workers. This award was not interfered with a single judge of the high court before whom it was impugned by the state in a writ petition. The said award eventually became final as the SLP was dismissed by the Supreme Court on account of delay and the same was the fate of the review as well as the curative petition filed by the state.

It is important to state that the Supreme Court while granting SLP against the impugned order of the Bombay High Court had stayed the judgment of the single judge subject to the compliance with the provision of section 17-B of the ID Act, 1947.

After considering the rival contentions of the parties, the Supreme Court held that the process of pumping water was a manufacturing process and, therefore, the corporation was an industrial establishment to which the ID Act applied. The court considered the social context underlying the Act which is to provide security of employment to the workers. It observed thus: [13]

> Continuation of service under the existing employer, or re-engagement under the new one should be the preferred approach, when such an occasion arises. Termination of services should normally be the last resort.

Reverting to the present case, the court deprecated the attitude of the state government in not putting effort either to absorb these workers in other activities of the irrigation department as directed by the labour court or to have insisted upon the sugar factory to absorb them. It expected the state government to display a better attitude than a private sector employer as there was no explanation given by it of any difficulty that it faced necessitating the termination of services of these employees. The court also took into account the fact that already in similar situations an award of a labour court had been implemented and the government could not treat workers similarly placed differently. It deemed it an appropriate case, in the facts and circumstances, to exercise its jurisdiction under article 142 of the Constitution to do complete justice in the matter before it.

The court observed that it would not be just and proper to restrict the relief limited to the compensation payable under section 25FF read with section 25F of the Act. Recognising that most of the workers whose services were terminated would have by now reached the age of superannuation, it did not pass an order of reinstatement. The court divided the workers before it into three categories i.e., (a) those who had already reached the age of superannuation; (b) those who were yet to reach the age of superannuation; and (c) those who had expired. It directed that these workers would be entitled to the reliefs in the following manner:

i. The workmen in all the three categories would be entitled to get 25% back wages over and above the last drawn wage that they had received under section 17-B of the Act. The back date wages were to be calculated on the basis of the directions given in paras ii. to iv below.

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13 *Supra* note 12 at 28.

ii. The benefits to the workmen in category (a) would be till the date of their superannuation.

iii. For category (b) they would get the benefits till the date of judgment.

iv. For those in category (c), the benefits would be available to the legal heirs till the date of the expiry of the workmen concerned.

v. The workmen in all the three categories would be entitled to continuity of service until the date of superannuation or until the date of judgment or until the date on which the concerned workmen expired, as the case may be.

vi. All the workmen would be entitled to the same retirement benefits, if any, depending on their eligibility, as given to the other ten workmen covered by the award which had become final in other proceedings.

In view of the above directions, no reinstatement of any worker was ordered by the Supreme Court.

Dispute relating to 'non-employment'

The decision of the Supreme Court in *Ishwarlal Mohanlal Thakkar* v. *Paschim Gujaratvij Company Limited* [14] assumes significance as the issue related to refusal to correct the date of birth leading to early superannuation of the employee who raised an industrial dispute relating to his non-employment in the following facts and circumstances:

In the year 1987 the appellant who had become the employee of the respondent company gave an application for the change in his date of birth in the record from 27.6.1937 to 27.6.1940 which was rejected by it. He was asked to submit the school leaving certificate or one issued by the municipality. The registrar of birth and death records, on the directions of the court order issued a birth certificate recording his date of birth as 27.6.1940 which he submitted in the office but was rejected as he was now required to produce the school leaving certificate with the date of birth as 27.06.1940. The respondent pursuant to date of birth on its record, terminated his services on attaining the age of superannuation. The appellant raised an industrial dispute regarding his non-employment which was subsequently referred by the state government to the labour court. The labour court, after considering the merits of the case, allowed the reference and passed an award holding the termination of services of the appellant pre-mature and illegal. It directed the respondent to pay full salary till the date of his actual retirement with all other benefits that he became entitled to. It also awarded a cost of Rs. 1500/- in favour of the workman.

The respondent challenged the award of the labour court before the High Court of Gujarat at Ahmadabad which set aside the said award of the labour court

14 (2014)6 SCC 434.

and allowed the writ petition. Aggrieved by this order, the appellant filed a SLP in the Supreme Court.

The apex court, speaking through Gopala Gowda, J., found the judgement and award of the labour court well reasoned and based on facts. It found that there was no scope for the high court to interfere with a well reasoned award given the fact that the high court when exercising its power can interfere only on limited grounds and none of such grounds existed in present case. The court held thus: [15]

> The High Court erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the Labour court in its award as it is well settled that the High Court cannot exercise its powers under Article 227 of the Constitution as an appellate court or re-appreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court.

The court observed that this position laid down by it is also supported by its earlier decisions in *Shalini Shyam Shetty* v. *Rajendra Patil*,[16] *Harjinder Singh* v. *Punjab State Warehousing Corporation*[17] and *Heinz India (P) Ltd.* v. *State of U.P*.[18] with respect to the jurisdiction of the high court under article 227. It further observed that a grave miscarriage of justice had been committed against the appellant as the respondent should have accepted the birth certificate submitted by him as the conclusive proof of the age.[19] The court held that the high court had wrongly held that the appellant was stopped from raising the issue of his date of birth as he had signed records in 1978 and, therefore, he had knowledge of this error. The high court had committed this serious error of applying the rule of issue estoppel without appreciating that in 1978 the respondent had issued a circular giving all the employees an opportunity to correct their dates of birth in the records.

Statutory boards in print industry: Validity of the constitution and recommendations

The decision of the Supreme Court in *ABP (P) Ltd.* v. *Union of India*[20] holds importance for various reasons.The argument of liberalization and globalization to deregulate fixation and revision of wages by the statutory wage boards did not appeal to the court. Further, the argument that only the print media is being regulated by the Act and the electronic media has been left out resulting in discrimination between the two medias did not find favour with the court to strike down a welfare legislation.

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15 *Id.* at 440-441.

16 (2010)8 SCC 329.

17 (2010)3 SCC 192.

18 (2012)5 SCC 443.

19 *Supra* note 14, at 442.

20 (2014) 3 SCC 327.

In this case the constitutionality of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Misc. Provisions Act, 1955 and the Amending Act of 1974 and also the awards of the wage boards, for working journalists and also the wage board for other employees (non-journalists) in the newspaper industry, respectively, were challenged on various grounds. The ground of challenge, *inter alia,* were that the said legislation only regulates the print media and not the electronic media and that in the era globalization and liberalization, the necessity for wage boards has eclipsed due to significant socio-economic changes due to deregulation and privatization. It was argued that to shackle one part of the industry with regulations is unreasonable, unfair and arbitrary and, therefore, violative of articles 14, 19 (1) (a) and (g) of the Constitution. It was also contended that in other industries such as cotton, cement, coal mines, coffee, rubber, tea plantation, jute, all the wage boards have been abolished over a period time (sugar being the last in 1989). To buttress the argument of the industry, it was contended that the Second National Commission on Labour in 2002 had, in unequivocal terms, recommended that there is no more need for a wage board to be constituted.

The court upheld the constitutional validity of the legislation as well as the constitution of the statutory wage boards for journalists and non-journalists, respectively, and also upheld the awards of the two wage boards. The court held that the petitioners had no *locus standi* to complain about discrimination on behalf of the electronic media which grievance could be agitated only by the employees of the said media. It held that the wage boards were constituted in accordance with law and had functioned in a fully balanced manner. They had fixed the wage structure in accordance with well settled principles laid down by the court in earlier judgments. The wage boards had followed well settled norms while making recommendations about variable pay which was within their jurisdiction to recommend. The court held that the statutory wage boards like the ones before it are creation of the statute which is a welfare legislation enacted to regulate wage fixation in print industry keeping in view the peculiar service requirements of the employees of that industry.

Canteen employees: Whether employees of the principal employer

In *Balwant Rai Saluja* v. *Air India Limited and Others,*[21] there was a difference of opinion between a division bench of two judges[22] in the Supreme Court on the issue as to whether the workmen engaged in the statutory canteens of Air India run by the contractor HCI (a wholly owned subsidiary of Air India) in the premises of the Air India were actually the employees of the principal employer. Gowda, J, in his forceful judgment, held that the contractor HCI was a sham device adopted by Air India and on lifting the veil the contract employees in the canteen were in fact employees of the principal employer who had due control and supervision over the employees. This view of Gowda J, was not agreed to by Prasad J, who gave his

21 (2014) 9 SCC 407.

22 *Balwant Rai Saliya and Another* v. *Air India Limited and other* (2013) 15 SCC 85.

separate opinion holding that Air India had no control or supervision over the canteen workers engaged by HCI. In view of the difference of opinion between the two judges, the matter was placed before the Chief Justice of India for constituting a larger bench for consideration of the matter. The matter was referred to a three judge division bench of the Supreme Court headed by Dattu, CJI.

The three judges bench agreed with the view taken by Prasad, J, and observed that the Companies Act, in India and all over the world have statutorily recognised subsidiary company as a separate legal entity. The doctrine of "piercing the corporate veil" has to be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability. The intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company. The application would thus depend upon the peculiar facts and circumstances of each case.

Coming to the facts of the present case, the court observed that it was an admitted position that HCI is a wholly owned subsidiary of Air India. Its primary object had no direct relation with Air India. Mere ownership and control was not sufficient a ground to hold that it is Air India which was exercising control and supervision over the employees of HCI. The court further observed that on perusal of the memorandum of association and the articles of association of HCI, it could not be said that Air India intended to create HCI as a mere façade for the purposes of avoiding liability towards the appellate workmen herein under the labour laws. The supervision that was exercised by Air India was as a consequence of the obligation imposed under the Delhi Factories Rules, 1950. The employees in the canteen run by HCI were employees of Air India, limited to the Factories Act, 1948 alone, as section 46 of this Act places a statutory obligation on the occupier of a factory to provide and maintain a canteen in the factory where more than 250 workers are employed. The fact that they were not employees of Air India for other labour law legislation including the ID Act, it was clear that the petitioners were employees of HCI and not that of Air India.

Retrenchment

Violation of retrenchment law

In *Bharat Sanchar Nigam Limited* v. *Bhurumal*,[23] the appellant, a state instrumentality, tried to evade, when faced with a challenge to its illegal action of terminating of the services of the respondent, by denying employer-employee relationship itself and stating unsuccessfully that he was an employee of the contractor. The sensitivity with which the Central Government Industrial Tribunal (CGIT) approached the matter on reference of the dispute by the appropriate government is appreciable. The action of the employer, who was supposed to be a model employer, had to be x-rayed by the tribunal to find out that there was no truth in the stand of the appellant. To appreciate the consistent sensitivity with which the industrial tribunal, as also the high court and the Supreme Court, dealt

23 (2014) 7 SCC 177.

with the matter, it will be appropriate to state some relevant facts before going into the legal issues and the principles of law laid down by the supreme court in this case, which are as under:

The respondent's case before the CGIT was that he had been in the employment of the appellant as a line-man on daily wages basis for nearly 15 years. While attending to a complaint of a customer of the appellant he received an electric shock necessitating his admission to a hospital for treatment which was organised by the officers of the appellant company. After he recovered, he was not allowed to resume his duties. He raised an industrial dispute alleging violation of the mandatory provisions of retrenchment law. The conciliation proceedings having failed, the State of Haryana referred the industrial dispute to the CGIT, Chandigarh for adjudication. The appellant denied employee-employer relationship with him and stated that he was a contract labour of the contractor engaged by it.

The CGIT on the basis of the photocopies of the two diaries in which he had entered all the jobs attended by him on the different dates of the clients of the appellant and also taking note of the fact that the appellant had failed to produce the original records summoned by the tribunal and after drawing an adverse inference against the appellant, gave a clear finding that the respondent was working directly under the administrative control of the appellant as a line-man. Further, it also held that his services had been terminated in violation of the mandatory provisions of the retrenchment law by the appellant. The CGIT, accordingly, answered the reference in favour of the respondent workman and directed the appellant/management to reinstate him with back wages. This award was upheld both by the single as well as the division bench of the high court. It stated concurrently that the award of the CGIT, both on facts as well as on law, warranted no interference.

In appeal to the Supreme Court, it observed that the finding of the CGIT was not to be interfered with by the high court under article 226 of the Constitution or by it under article 136 unless it was either totally perverse or was based on no evidence. The court very clearly stated that insufficiency of evidence could not be a ground to interdict the findings of the tribunals as it is not its function to re-appreciate the evidence. The court was satisfied that the findings of the CGIT that the respondent had worked for the appellant were genuine. The diaries produced of the last two years of his work clearly showed that he had worked with the appellant as lineman preceding his termination.

Further question that the court considered was whether the respondent did this work as a contract employee or as an employee of the appellant directly. Once it was established that the respondent had been doing the work of the appellant, it was for the appellant to prove as to who was the contractor and to whom the work was awarded and that the contractor had recruited the respondent. The court did not find any evidence to this effect produced by the appellant on record. In fact, the appellant had itself accepted the fact in the evidence placed before the CGIT that the work of line-man was not given on contract basis. Thus, the court was satisfied that no case of interference was warranted as there was no perversity in the findings of the CGIT as upheld by the high court. It observed that there might be some dispute as to whether the respondent in fact worked for 15 years as the

award was passed on the basis that the respondent had worked for 240 days in the preceding 12 months prior to his termination and, therefore, it was a clear case of violation of section 25 F of the ID Act. The court held that the CGIT had rightly come to the conclusion that the termination was illegal and that there was no perversity in this outcome.

The next question to be considered was whether the relief of reinstatement with full back wages was rightly granted by the CGIT. After discussing the whole gamut of appropriate relief to be granted in different situations, the court held that the appropriate relief in case of violation of the mandatory provisions of section 25 F of the ID Act in the case of daily wagers under the new approach of the court should be compensation and not reinstatement and to that extent it interfered with the award of the CGIT as upheld by the high court. That being the law it would be appropriate to grant him compensation only. Relying upon its earlier judgment in *BSNL* v. *Man Singh*[24] where the court had granted a compensation of rupees two lacs to each of the workman who had worked for nearly 240 days, the court directed, keeping in view the fact that he had worked for longer period, that he shall be paid by the appellant a compensation of rupees three lacs within two months failing which he shall also be entitled to interest @ 12% p.a. from the date of the judgment. It also awarded the cost of Rs. 15000/- in favour of the respondent in the appeal.

The court stated that the reasons for denying the relief of reinstatement and ordering payment of compensation in such cases are that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under section 25-F of the ID Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. In the case of daily rated worker even after he is reinstated, he has no right to seek regularization. When he cannot claim regularization and may again face a situation of termination on compliance with the mandatory retrenchment provisions and procedure, no useful purpose is going to be served by ordering his reinstatement and therefore payment of monetary compensation will be the appropriate relief. Giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

The court, however, made it clear that compensation might not be the appropriate relief where termination of a daily-wage worker was found to be illegal on the ground that it was resorted to as an unfair labour practice or in violation of the principle of last come first go, *viz.*, while retrenching such a worker, daily wagers junior to him were retained. There might also be a situation that persons junior to him were regularized under some policy but the services of the workman concerned were terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there were some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated, such a relief can be denied. Similarly, where the service of a regular/ permanent workman is terminated illegally, or *mala fide*, or by way of victimization,

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24 (2012) 1 SCC 558.

unfair labour practice, etc., reinstatement with back-wages must ordinarily be the relief granted by the industrial adjudicator.

In *Bhuvnesh Kumar Dwivedi* v. *Hindalco Industries Limited*,[25] the workman was appointed as a labour supervisor with the respondent company and worked in that position for more than six years, when his services were terminated with the reason that the sanction in respect of his appointment had expired, though the post was of permanent in nature, without following the mandatory requirements of section 6-N of the U.P. Industrial Disputes Act. He raised an industrial dispute relating to his non-employment which became the subject matter of reference to the labour court. Before the labour court no plea was made by the management in the written statement on the applicability of section 2(oo) (bb) of the ID Act and that termination of the appellant from his service fell within the said provision. Nonetheless, this legal ground without any factual foundation was pressed before the labour court at the time of addressing its submissions. The labour court referred to the said submissions but rejected them on the basis of the reasons given by it. It passed an award in favour of the workman holding that the termination of his service was not justified and was contrary to section 6-N of the Act. It also held that the workman was entitled to reinstatement with back wages and other consequential benefits as if his services were never terminated. The management challenged the award before the single judge of the High Court of Allahabad, questioning its correctness, legality and validity. It submitted before the court that the finding of the labour court that the action of the management amounted to retrenchment was factually and legally not correct in view of the fact that the termination of the service of the appellant fell within the provision of section 2(oo)(bb) of the ID Act. The single judge concurred with the findings of the labour court that the management's action in terminating the services was in contravention of the retrenchment law. However, it substituted the relief of reinstatement, back wages and continuity of service by issuing a direction that the respondent employer pay to the workman a sum of Rs. 1,00,000/- as compensation within three months and in case of default 12% interest per annum till the actual payment/deposit/ realization.

The workman challenged this decision of the high court before the Supreme Court and sought restoration of the award of the labour court. The management, on the other hand, challenged the judgment and order of the high court granting compensation to the tune of Rs. 1,00,000/- in favour of the workman on the ground that the workman was not entitled to any relief. The Supreme Court heard both the appeals together and formulated the following issues for its consideration on merits:

i. Whether the high court in exercise of the powers under articles 226 and 227 of the Constitution was right in setting aside the award of reinstatement, back wages and other consequential reliefs and substituting it with the award of Rs. 1,00,000/- toward damages?

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25 (2014) 11 SCC 85.

ii. Whether the concurrent findings of the labour court and the high court that the services of the workman being in violation of the section 6-N of the U.P. ID Act was *void ab initio* and not accepting the plea of the management that the case fell under section 2(oo)(bb) of the Act was correct and valid?

iii. Whether the workman is entitled to reinstatement with full back wages and other consequential reliefs?

iv. What relief?

In response to issue no. (i), the court referred to its own large number of judgments which make it specifically clear that the high court can interfere with an order of the tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. Further, the high court can interfere with factual aspect placed before the labour court only when it is convinced that the labour court made patent mistakes in admitting evidence illegally or has gravely erred in law in coming to the conclusion on facts. The court held that in the present case the high court had gravely erred in replacing the relief of reinstatement, back wages and other consequential reliefs and had exceeded its jurisdiction conferred on it under articles 226 and 227 of the Constitution. It had no hesitation in holding that there was no justification for the high court to interfere with the award of the labour court.

In answer to issue no. (ii), the Supreme Court repelled the submission of the management that section 2(oo)(bb) of the ID Act would be applicable to the factual situation of the case as the workman had been in the contract employment of the project on two grounds. *Firstly*, in the light of the principle laid down by it in *U.P. State Corporation Ltd.* v. *O.P Upadhyay,*[26] the provisions of the U.P. ID Act remain unaffected by the provision of the ID Act in view of section 31 of the ID Act. Hence, section 2(oo) (bb) was not applicable. *Secondly*, the claim of the management that the workman was a temporary worker was not acceptable. The workman had been appointed from time to time after giving normal breaks to him. His services extended close to six years except with the artificial breaks made by the respondent with the oblique motive so as to retain him as a temporary worker and deprive him of the statutory rights of the permanent worker.

The court had no hesitation in coming to the conclusion that the said conduct of the management perpetuated "unfair labour practice" as defined in section 2 (a) read with serial no. 10 of the Schedule V of the ID Act which is impermissible under sections 25 T and U of the ID Act. The contention of the management that the appointment was contractual and that section 2(oo) (bb) of the ID Act was applicable was also not sustainable for the reason that it had failed to produce any material evidence on record before the labour court to show that it met the requirement criteria under the Conduct Labour (Regulation and Abolition) Act, 1970 to be eligible to employ employees on contractual basis which included

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26 (2002) 10 SCC 89.

licence number *etc*. Further, the management had failed to produce any material evidence before the labour court to show that the applicant was employed for any particular project(s) on the completion of which his services was terminated through non-renewal of his contract of employment.

For these reasons, the court held that the workman had rendered continuous service for six continuous years (save the artificially imposed breaks) as provided under section 25-B of the ID Act and could, therefore, be retrenched only through the procedure mentioned in the ID Act or the state Act in *pari materia***.** Therefore, it had no hesitation in holding that the labour court was correct in holding that the action of the respondent employer was a clear case of violation of the mandatory provisions of retrenchment law rendering the acts of retrenchment *void ab inito* in law.

In response to issue nos. (iii) and (iv), the court held that the labour court was correct on factual evidence on record and legal principles laid down by it in a catena of cases[27] in holding that the workman was entitled to reinstatement with all consequential benefits. Therefore, the court set aside the order of the high court and upheld that of the labour court by holding that the workman was entitled to reinstatement in the respondent company.

On the issues of back wages, the court relied on *Shiv Nandan Mahto* v. *State of Bihar,*[28] that if the workman is kept out of service due to the fault or mistake of the management with whom he was working, then the workman is entitled to full back wages for the period he was illegally kept out of service. Further, relying on *Deepali Gundu Surwas* v. *Kranti Junior Adhyapak Mahandyalaya*,[29] the court held that the burden of proof was on the management to prove that the workman was gainfully employed post-termination of the service which it failed to discharge in this case. Resultantly, the worker was entitled to full back wages from the date of termination of his service till the date of his reinstatement. The court was of the opinion that the present case was a clear case of violation of the principles as referred by the court in *YA Mamarde* v. *The Authority Under the Minimum Wages Act*,[30] and the *Harjinder Singh* v. *Punjab State Warehousing Corp.*[31].

The court did not take notice of the settlement arrived at between the management and the workman entered into after it had reserved the judgment in view of the want of said documents on record.

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27 *State of Bombay* v. *State Hospital Mazdoor Sabha*, AIR 1960 SC 610; *Bombay Union of Journalists* v. *State of Bombay*, AIR 1964 SC 1617; *SBI* v. *N. Sundara Money* (1976) 1 SCC 822; *Santosh Gupta* v. *State Bank of Patiala* (1980) 3 SCC 340; *Mohan Lal* v. *Bharat Electronics Ltd*. (1981) 3 SCC 225; *L. Robert D'Sauza* v. *Southern Railway* (1982) 1 SCC 645; *Surendra Kumar Verma* v. *Central Govt. Industrial Tribunal-cum-Labour Court* (1980) 4 SCC 443; *Gammon India Ltd.* v. *Niranjan Das* (1984) 1 SCC 509; *Gurmail Singh* v. *State of Punjab* (1991) 1 SCC 189; *Pramod Jha* v. *State of Bihar* (2003) 4 SCC 619.

28 (2013) 11 SCC 626.

29 (2013) 10 SCC 324.

30 (1972) 2 SCC 108.

31 (2010) 3 SCC 192.

In *State of Madhya Pradesh* v. *Anees Khan,*[32] the labour court passed an *ex-parte* order directing the state government to reinstate the workman, whose services were retrenched after having worked for nearly one year in his original post of assistant driver and further to pay him back wages from the date of his non-employment. The state government did not succeed in getting the said order of the labour court set aside. Ordinarily the workman should have taken steps to get the award of the labour court enforced in its totality. But in this case, he chose to take proceedings for enforcing the payment of only the back-wages due to him which were paid to him. He did not report for duty nor did he seek enforcement of his right of reinstatement by the management. Subsequently, he initiated a second round of proceeding by filing a fresh application claiming back-wages of more than one lac rupees for the period beyond for which he had claimed back-wages earlier under the relevant provisions of the Madhya Pradesh ID Act, 1960 which is *pari materia* with section 33-C (2) ID Act. The labour court awarded the back-wages which order was upheld by the high court. This order was challenged before the Supreme Court.

It was the case of the state government before the apex court that he was engaged in connection with the project and as a result of completion of the said project his services had to be disengaged. It was further argued by the state that he never joined the service after his reinstatement was ordered by the labour court nor did he take any step for seeking enforcement of such order which should be constructed as abandonment of the said relief/claim. After having abandoned his claim he was estopped from claiming back-wages.

The Supreme Court, on perusal of the pleading of the parties, found that there was nothing to state that the workman had initiated any proceedings for enforcing the order of reinstatement in his favour. He had only claimed back-wages and in the absence of any other evidence or documents, it amounted to abandonment of his right to seek reinstatement and his conduct for not reporting for duty disentitled him to back-wages. Therefore, the court held that he could not be entitled to further relief over and above the back-wages already paid to him on the basis of his first application. However, keeping in view the peculiar facts and circumstances, the court directed that the state shall pay him a sum of Rs. 1 lakh within three months from the date of the order though he had neither offered his services to the state nor taken any step to seek enforcement of the direction of the labour court directing his reinstatement.

This case can be also viewed from another angle that the workman having realized how difficult it would be to seek enforcement of the relief of reinstatement awarded by the labour court, confined his pursuit in seeking remedy under the Industrial Dispute Act for enforcement of the money due to him under the award.

In *Director of Horticulture* v *H.A. Kumar*[33] the Supreme Court held that in view of the fact that there was a breach of a mandatory condition under section 25 F of the ID Act, the order of the high court setting aside the order of termination

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32 (2014) 8 SCC 900.

33 (2014) 13 SCC 746.

and ordering reinstatement of the workman without wages could not be faulted and found no reason to interfere it.

Reinstatement and regularisation: Two distinct issues

In *Hari Nandan Prasad* v. *Employer I/R to Management of Food Corporation of India*,[34] the Supreme Court has handed down a landmark decision wherein it has made it clear that violation of 'retrenchment' law and the 'regularization' of workers are two distinct issues. The court had not been able to clarify the distinctness of the two issues with such precision. The distinction between the consequence that follow violation of the mandatory provisions of the retrenchment law applicable to daily rated workers and the issue of regularization of such workers was a felt necessity and more often than not a lot of confusion had invariably crept in because of non appreciation of the distinction, between the two situations.[35] This case makes it very clear that no labour court or industrial tribunal can order regularization as a relief in case of violation of mandatory provisions of the retrenchment law or put the worker in a better position than he held immediately prior to the one before his disengagement unless the worker has also raised the issue of unfair labour practice or sought regularization in terms of the regularization scheme on the ground of unreasonable discrimination in violation of article 14 in public employment law. If such a claim has been referred for adjudication and the issue of regularization was one of the subject matters of reference to the labour court or industrial tribunal or if there is a specific relief prayed before the high court or the Supreme Court seeking the relief of regularization, then grant of regularization in appropriate case may be granted.

This case also presented an opportunity to the court to finally harmonize the decision of the constitution bench of the court in *Uma Devi(3)*[36] and the later decision in *Maharashtra SRTC*.[37]

Regularization of daily rated workers: situations discussed

The opportunity to harmonize the two judgments in *Uma Devi(3)* and *Maharashtra SRTC* came in *Hari Nandan Prasad* [38] in the following factual matrix:

The two appellants before the Supreme Court in a common special leave petition challenged a common judgment passed by the division bench of the High Court of Jharkhand denying them reinstatement and only awarding only compensation in their favour for infraction of section 25-F in both the cases by the respondent. The two appellants were working on casual basis with the FCI.

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34 (2014) 7 SCC 190.

35 See Bushan Tilak Kaul, *Labour Management Relations* XLIX *ASIL* (2013) 827-858 at 837.

36 *State of Karnataka* v. *Umadevi,* (3) (2006) 4 SCC 1.

37 *Maharashtra SRTC* v. *Casteribe Rajya Parivahan Karamchari Sanghatana* (2009) 8 SCC 556.

38 *Supra* note 24.

Appellant no.1 had joined the FCI in 1980 and was disengaged in 1983 without compliance with mandatory provisions section 25-F. He raised an industrial dispute which was referred for adjudication to the Central Government Industrial Tribunal (CGIT) in October, 1992. He claimed reinstatement and regularization on the basis of the regularization policy of the FCI dated 06.05.1987 claiming that he had put in more than three years of service prior to his disengagement. Appellant no.2 was engaged on daily basis as casual typist in 1986 and was disengaged in September, 1990 when his name was struck off from the rolls. In two separate references, the subject matter of the reference was the same, namely, whether the FCI had disengaged them in violation of section 25-F ID Act and whether denying of reinstatement with full back-wages and their claim of regularization of their service was legal and justified, and if not, to what reliefs were they entitled to.

The CGIT by two separate awards in November 1996 held that their termination was in contravention of section 25-F ID Act. It ordered their reinstatement and regularization of services from the date of their disengagement in terms of the circular of FCI dated 6.5.1987 whereby any temporary workman employed for more than 90 days was entitled to regularization of his service and awarded payment of back-wages to the extent of 50% in both the cases. The tribunal noticed that as per the said circular, management had regularized 70 to 75 similarly placed casual workers but had denied the same benefit to the appellants which amounted to discrimination which was impermissible in law being violative of their fundamental right to equality under article 14 of the Constitution. The single judge of the high court dismissed both the writ petitions filed by the FCI and concurred with the findings and reasons given by the CGIT. The FCI preferred writ appeals before the division bench of the high court which though accepted that there was infraction of section 25-F of the ID Act in both the cases, held that they were not entitled to reinstatement because they were strictly employed as temporary workers without any promise of regularization. It instead, held them entitled to compensation which, according to the division bench, they had already drawn by way of the last drawn salary paid to them under section 17-B of the Act from the date of filing of the writ petition in the high court which it considered was sufficient compensation and, therefore, no further amount was payable.

This judgment and order was assailed by the appellants in a common special leave petition before the Supreme Court. After giving considerable thought to the submissions of the parties before it, the court stated that this case had two facets which were self evident from the reference made to the CGIT by the appropriate government. The first referred to the validity of the termination and the other pertained to regularization.

Dealing with the question of validity of termination, the court observed that this issue hardly posed any problem in the face of admitted position between the parties that both the appellants had worked for more than 240 days continuously preceding their disengagement and there was infraction of the mandatory procedure prescribed in section 25-F of the ID Act rendering the orders of termination illegal which position was not only accepted by the tribunal but also by the single as well as the division bench of the high court. The only question to be decided by it, therefore, was the issue of relief to be granted. Taking note of the various

judgments[39], the court came to the conclusion that in cases of short term appointment's, it is the settled law that reinstatement is not the ordinary relief and compensation is the proper relief in such cases. Even in the case of reinstatement of temporary / daily rated workers regularization cannot be awarded as a matter of right. Further, the order of reinstatement after long years of gap in cases of daily rated workers will not serve much purpose. Therefore, monetary compensation was the appropriate relief. The court, however, added a caveat. It pointed out that where termination of a daily wage worker is found to be illegal on the ground that it was resorted to as an unfair labour practice or in violation of the principle of last come first go; and where the person junior to him was regularized under some policy but the workman concerned was disengaged, the disengaged worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of compensation. In such cases, reinstatement should be the rule and only in exceptional cases, for reasons to be recorded, such a relief can be denied.

The aforesaid principles are applicable where the issues referred to pertain to termination only. However, where the reference made to the industrial adjudicator, like in the present case, was not limited to the validity of the termination but the terms of reference also contained the claim made by the workmen for their regularization of service. If the workmen were entitled to get their service regularized, in that case, it would be appropriate to grant the relief of reinstatement as a natural corollary. The court, therefore, thought it necessary, to examine as to whether the order of the CGIT, as affirmed by the single judge of the high court directing regularization of service of the workers, was justified or the approach of the division bench of the high court in denying that relief was correct.

The court stated that had it been a case where the issue was limited to the validity of termination, neither of the two appellants would be entitled to reinstatement. However, the terms of reference in the instant case also included the issue as to whether the claim of the appellants for their regularization of services was legal and justified. If the appellants were entitled to get their services regularized then the two issues of reinstatement and regularization would overlap because it would have been axiomatic to grant the relief of reinstatement as a natural corollary to the grant of regularization. Therefore, before dealing with the question of regularization, the court examined *Uma Devi* to ascertain whether it has any applicability in the matters concerning industrial adjudication. The

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39 *BSNL* v. *Mansingh* (2012) 1 SCC 558; *In charge officer* v. *Shanker Shetty* (2010) 9 SCC 126; *Jagbir Singh* v. *Haryana State Agriculture Mktg. Board* (2009) 15 SCC 327; *U.P. State Brassware Corpn. Ltd*. v. *Uday Narain Pandey* (2006) 1 SCC 479; *Uttranchal Forest Development Corpn*. v. *M.C. Joshi* (2007) 9 SCC 353*; State of M.P*. v. *Lalit Kumar Verma* (2007) 1 SCC 575; *M.P. Admn*. v. *Tribhuban* (2007) 9 SCC 748; *Sita Ram* v. *Moti Lal Nehru Farmers Training Institute* (2008) 5 SCC 75; *Jaipur Development Authority* v. *Ramasahai* (2006) 11 SCC 684; *GDA* v. *Ashok Kumar* (2008) 4 SCC 261; *Mahboob Deepak* v. *Nagar Panchayat, Gajraula* (2008) 1 SCC 575.

appellants argued that *Uma Devi* had no such application while the FCI, relying on *U.P. Power Corporation Limited* v. *Bijli Majdoor Sang,*[40] argued that *Uma Devi (3)* equally applied to industrial tribunal/ labour courts.

It may be appropriate to state here that in *U.P. Power Corporation* the tribunal had held that the workmen having rendered three years of service were entitled to regularization on the ground that the industrial tribunal/ labour court has the power to modify the contract to employment. In appeal, the Supreme Court held that such an order could not have been passed by the industrial court in view of the decision in *Uma Devi (3)*. The workers had contended that the powers of the industrial adjudicator were not under consideration in *Uma Devi* (3) as the labour court has, unlike civil court, wide powers inasmuch as it can rewrite the contract of employment or create new terms in the contract of employment to maintain industrial peace. The Supreme Court observed that undoubtedly the powers of the industrial adjudicator were not directly in issue in *Uma Devi (3)* but the foundation logic of the said judgment was based on article 14 of the Constitution. Though the industrial adjudicator can vary the contract of employment, it cannot do something which is in violation of article 14. If the case is one which is covered by the concept of regularization, the same cannot be viewed differently. Therefore, in terms of *Uma Devi* it is impermissible to order regularization of a daily rated worker while considering the relief to be granted in the case of illegal termination. The same will be impermissible being violative of article of 14. Thus, the industrial court could not issue a direction for regularization of the service of the daily rated worker in those cases where such regularization would tantamount to infringing the provisions of article 14 of the Constitution. But for that, it would not deter the industrial tribunals/ labour courts in issuing such directions which the industrial adjudicator otherwise possesses, having regard to the provisions of the ID Act specially conferring such powers.

Coming to the ratio of the judgment in *Maharashtra SRTC,* the court observed that in this case the post of the cleaners were in existence on regular basis and that there was a finding of fact recorded that the corporation had indulged in unfair labour practice by engaging these workers on temporary/ casual/ daily rated basis and was paying them a paltry amount even when they were discharging eight hours of duties in a day and performing the same kind of duties as that of the regular employees. It was in this backdrop that the court was of the opinion that directions of the industrial court to accord permanency to these employees against the post which were available, was clearly permissible and was within the powers, statutorily conferred upon the industrial / labour court under section 30 (1) (b) of the MRTU and PULP Act, 1971 which enables the industrial adjudicator to take affirmative action against the hiring employer and those powers are wide enough to include granting of direction to the employer to reinstate the worker permanently. The court held that a close scrutiny of the decisions of the court in *Uma Devi (3), Maharashtra SRTC & UP Power Corp.* would show that these are not contradictory to each other.

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40 (2007) 5 SCC 755.

It is clear from these judgments that power to regularize casual / temporary workers by labour court/ industrial tribunal is to be exercised when the employer has indulged in unfair labour practice by not filling the permanent post even when available and continuing with workers on temporary/ daily rated basis or as contract workers and taking the same work from them as are being performed by regular employees but paying them much less wages. This power is to be exercised only in such circumstances or where the employer has discriminated the temporary workers in the matter of regularization though placed on the same footing and thus acted in violation of article 14 of the Constitution.

The court has very clearly brought parity in the provisions MRTP & PULP Act[41] wherein specific powers have been given to the labour courts to pass such orders of regularization and the implicit powers of the industrial adjudicators in the ID Act by reading them in it and stating in explicit terms that such wide powers equally exist even under the ID Act. This way the court has given a beneficial construction to the provision of the ID Act which has to be welcomed and such powers are to be exercised in that situations enumerated in this case. The court has read this power in the ID Act keeping in view the objective of the Act which is an attempt on the part of the legislature to frustrate the unfair labour practice and secure the objective of encouraging collective bargaining as a road to industrial peace. The court was very clear that a fine balancing is required to be achieved while adjudicating a particular dispute keeping in mind that industrial disputes are settled by industrial adjudication on principles of fair play and justice.

On a harmonious construction of *Uma Devi (3)* and *Maharashtra SRTC*, the court was of the view that when there was post available in the absence of any unfair practice, the labour court would not give directions for regularization only because a worker has continued as a daily wage worker/ ad-hoc/ temporary worker for a number of years. Further, where there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving a direction to regularize such a person, only on the basis of the number of years put in by a daily wage worker may amount to a backdoor entry into the service which is not permissible under article 14 of the Constitution. Further, such a direction should not be given when the workers concerned are ineligible as per the recruitment rules. However, where it is found that similarly situated workmen are regularized by the employer itself under some scheme or the other and the workmen in question who have approached the industrial court are on par with them, direction of regularization in such cases may be justified, as otherwise their non-regularization would amount to invidious discrimination *qua* them and would be violative of article 14 of the Constitution. Here the industrial adjudication would be achieving the equality by upholding article 14, rather than violating the constitutional provision. The court stated that the aforesaid examples are only illustrative. It would depend upon facts of each case as to whether the order of regularization is necessitated to advance justice or it has to be denied if giving such a direction impinges upon the employer's rights.

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41 Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1970.

It is in the backdrop of the above principles that the court finally took up the case at hand for decision and reverted to the facts of the case. The court referred to the circular of regularisation dated May 6, 1987 under which many similarly placed workers had been regularized and granted benefit of regularization. The eligibility condition under the said circular was whether the worker has rendered 240 days of service in a calendar year as daily rated or temporary worker.The circular was not in operation when the services of appellant no. 1 were disengaged in 1983.Therefore, on the date of his disengagement, there was no such scheme hence, the court came to the conclusion that he was not entitled to regularization and was entitled only to compensation. But it needs to be emphasized that the court ought to have granted compensation over and above the wages paid on the basis on section 17-B of the ID Act which was a sustenance wage to meet the litigation cost imposed upon the worker by the management. On this aspect the court has faulted.

As regards the appellant no. 2, whose services were engaged in 1986 and thereafter disengaged in 1990, when the scheme in operation under which many daily rated workers had been regularized, the court had no difficulty in holding that he was entitled to regularization having put in more than 240 days of continuous service on the day when the scheme came into force and, therefore, according equality in his case by upholding article 14 of the Constitution. The court held that the high court had erred in reversing the direction given by the CGIT which was rightly affirmed by the single judge as well, ordering reinstatement of appellant no. 2 with 50% back-wages and grant of relief regularizing his services on the date of the coming into force of the scheme in terms of that circular. Had it been done, probably he would have been regularized instead of being wrongly or illegally thrown out of the employment in the year 1990.

The court, thus, allowed the appeals partly by dismissing the appeal *qua* appellant no. 1 and accepting it, insofar as appellant no. 2 is concerned. The judgment of the division bench of the high court was set aside in the case of respondent no. 2 and the award of CGIT was restored.

In *Khajjan Singh and Others* v. *State of Haryana*,[42] the case essentially related to discrimination in regularization in public employment and also unfair labour practices on the part of the employer, the State of Haryana, which retrenched the petitioners who were daily rated workers without preparing a seniority list. During the pendency of their cases before the labour court, a scheme of regularization was introduced but they were not given the benefits under the scheme on the ground that the date on which it became operational, they were not in the employment of the employer though their cases were pending before labour court, *etc*. They subsequently succeeded before the labour court which ordered their reinstatement with continuity of service. After securing their reinstatement as daily rated workers, they approached the High Court of Punjab and Haryana by way of writ petitions complaining of discrimination and sought regularization as their

42 (2014) SCC online P&H 10865 ; ILR (2014) 2 P&H 363.

colleagues who had joined subsequent to them had been regularized. The single judge of the high court has raised various seminal issues on regularization and dealt with them extensively. It would have been better if he had confined his discussion to the three main issues, namely, (a) whether there was unfair labour practice committed by the state government; (b) whether the action of the state government in retrenching the petitioners was in violation of article 14 of the Constitution; and (c) whether the workers were entitled to the relief of regularization of their service?

The judge has attempted to harmonize the judgment of the Supreme Court in *Uma Devi*[43] with *Maharashtra State Road Transportation Corp. Ltd.*[44] and rightly so. This is exactly the approach adopted by the Supreme Court in *Hari Nandan Prasad.*[45] The discussion in *Khajjan Singh* is a good addition to the literature on the subject of unfair labour practices by the employer, violation of article 14 of the Constitution by the state instrumentality and the issue of regularization. However, had the single judge confined the discussion to the three issues referred to above and answered them accordingly, there would have been no need for such prolific discussion. The approach adopted in *Hari Nandan Prasad* to reach the conclusions confining discussion to the principal issues is certainly the preferred approach.

Disciplinary proceeding

Management of misconduct: Refusal to carry out additional work in violation of section 9A does not amount to misconduct

In Management of *Sundaram Industries Limited* v. *Sundram Industries Employees Union*,[46] a very interesting question that came up for consideration of the Supreme Court was whether the management was justified in dismissing some of the moulder workers who operated rubber operating machines for having refused to shoulder responsibility of placing their individual bags of production on the weighing scale at the end of their work shift, without any additional remuneration. The facts leading to the dismissal of the workers were as under:

The appellant company was engaged in the manufacture of rubber products for various industrial applications. A large number of employees were working as moulders to operate the rubber moulding machines. After some time, they were informed that instead of placing the bags of their production on the floor at the end of the shift as they were doing earlier they were to place the bags on the electronic weighing scale placed for weighing them which took some time. This work was hitherto being done by another team. It seems that the work of the team doing this work was abolished and was now entrusted to these moulder workers who were promised additional remuneration which was not given. The workers

43 *Supra* note 36.

44 *Supra* note 37.

45 *Supra* note 2.

46 (2014) 2 SCC 600.

resisted this additional responsibility, beyond the shift hours and that too without any additional remuneration being paid. Initially, when threatened with disciplinary action, they agreed to perform the work and apologized but later on declined to discharge this additional responsibility. The management proceeded departmentally against the workers and pending inquiry suspended them and dismissed them on proved charges of persistent disobedience and insubordination. They raised an industrial dispute relating to their non-employment which was espoused by their union resulting in a reference to the Industrial Tribunal, Chennai by the state government for adjudication of the dispute.

The workmen ought to have sought modification of the order of reference by raising the plea that the alleged acts of disobedience did not amount to misconduct and that the disciplinary proceedings against them was uncalled for and their dismissal was bad in law. It seems they did not do so but participated in the proceedings before the tribunal on merits.

The tribunal came to the conclusion that although the domestic inquiry conducted by the management against the delinquent workmen was fair and proper and the charges stood proved, the punishment of dismissal imposed upon the workmen was shockingly disproportionate to the gravity of the misconduct. It accordingly, set aside the order of dismissal and directed their reinstatement with 50% back wages. Aggrieved by this award, the appellant approached the High Court of Madras in appeal which was dismissed both by the single judge as well as the division bench of the high court. The management preferred the special leave petition to the Supreme Court on the ground that the tribunal ought not to have interfered with the punishment after having come to the conclusion that the misconduct stood proved in the inquiry held to be in accordance with the principles of natural justice.

The short question that fell for determination of the court was whether the tribunal and the high court were justified in holding the penalty of dismissal imposed on the workmen was disproportionate to the gravity of the misconduct alleged against the workers.

During the course of the hearing before the Supreme Court, the appellant fairly conceded that since the number of moulders working in the establishment was fairly large and weighing machines were limited in number, the workmen had to wait in a queue for their turn to have their production weighed which was being done by some other workers who had been disbanded.

The court observed that the workmen concerned had declined to undertake this additional responsibility which was not only consuming more time but also required additional effort for which they could not be accused of either deliberate misconduct that could warrant punishment. The tribunal did not go into the question as to whether the charges framed amounted to misconduct, either because this question was not raised or the workers did not seek amendment of the reference by approaching the appropriate government. In principle, refusal to carry out instructions requiring workmen to do additional work beyond the shift hours, clearly tantamounts to changing conditions of service of workmen which was impermissible without complying with the mandatory conditions of section 9 A of the ID Act.

The case of the appellant before the Supreme Court was that the respondent workmen were not legally entitled to assail the findings of the tribunal on the charges framed against them for the reason that they had not raised this issue either before the tribunal or before the high court. The appellant further contended that the findings of the tribunal on that account had attained finality.

The court observed that it was undoubtedly true that the tribunal had held that the charges had been proved but in spite of this finding had ordered their reinstatement with 50% backwages considering the punishment of dismissal to be disproportionate. To this extent, there was no reason for the workers to challenge the award. The court held that the appellant was not correct in stating that workers cannot be allowed to assail the findings of the tribunal that the misconduct stood proved. It observed that the legal position is fairly settled that a judgment can be supported by the party in whose favour the same has been delivered, not only on the grounds found in his favour but also on the grounds that they have been held against him by the court below which situation is clearly envisaged in order 41 rule 22 CPC. The court held that it has no hesitation in rejecting the contentions that the findings regarding commission of misconduct by the workers could not be assailed by them in the proceedings before the Supreme Court. The court referred to the language of order 41 rule 22 CPC and the judicial decision rendered by it in *Jamshed Hormusji Wadia* v. *Port of Mumbai*[47] on the true interpretation of order 41 rule 22 CPC. It observed that even assuming that the findings regarding the commission of misconduct was left undisturbed, the circumstances in which the workmen were alleged to have disobeyed instructions issued to them did not justify the extreme penalty of their dismissal. The labour court having exercised its discretion under section11 A of the ID Act in setting aside the dismissal order on the ground that it was disproportionate, the high court was justified in refusing to interfere with the order under article 226 of the Constitution.The court found no compelling reasons to invoke its extraordinary powers under article 136 of the Constitution to interfere with the concurrent decision of the two courts below. The court found this an appropriate case for dismissal with cost of Rs. 25,000/-.

Holding of disciplinary proceeding and criminal trial simultaneously, if barred: Principles discussed

In *Stanzen Toyotetsu India Pvt.* v. *Girish,*[48] the appellant company was a manufacturer of auto parts while the respondents were their workmen. The allegations against the respondents were that they alongwith other trade union office bearers stage-managed an accident. This was done to create a situation for lawlessness by raising sentiments against the management. They created a ruckus resulting in damage to the property of the appellant. These alleged acts of indiscipline created an atmosphere of fear, tension and resulted in loss of production. It was also alleged by the management that some senior managerial personnel were injured in the incident. The workman who was alleged to have been a victim

47 (2004) 3 SCC 214.

48 (2014) 3 SCC 636.

of the accident had sustained no injury when he was medically examined in a hospital and he resumed his work immediately after the alleged accident. The competent authority placed the respondents under suspension and initiated disciplinary proceedings against them under the standing orders for the alleged acts of indiscipline. The incident in question was also reported to the police and an FIR was registered against the respondents under sections 143, 147, 323, 324, 354, 427, 504, 506, 114 read with 149 IPC. Charge sheet was filed pursuant to the said report.

While the disciplinary inquiry and the criminal case were both pending, the respondent approached the civil court praying for a permanent injunction against the appellant from proceeding with the department at inquiry pending conclusion of the criminal case. The civil court, thereafter the senior sub judge's court and also the high court in the writ petition filed by the appellant upheld the order of the sub judge staying the disciplinary proceedings pending conclusion of the criminal case in respect of the same incident. Hence, the present appeal to the Supreme Court against the orders staying the criminal proceedings against the respondents.

The only question that fell for consideration before the Supreme Court was whether the courts below were justified in staying the ongoing disciplinary proceedings pending conclusion of the trial in the criminal case registered and filed against the respondents. The answer to the said question depended primarily upon whether there was any legal bar to the continuance of the disciplinary proceedings against the employees based on an incident which was also the subject matter of criminal trial against them. It would also depend upon whether the charges in the charge sheet filed against the employees were serious and involved complicated questions of law and fact. The principles of natural justice demand that in such cases the courts should consider the possibility of the prejudice being caused to the employee-accused in the criminal case on account of parallel disciplinary inquiry going ahead against him.

Referring to its earlier decisions,[49] the court observed that the law on the subject is fairly well settled. Although the court has stopped short of prescribing any straightjacket formula for application, it has identified some basic principles which have to be kept in mind while deciding such cases. The general rule is that there is no legal bar to the conduct of disciplinary proceedings and a criminal trial simultaneously but the said principle is subject to an exception. The exception is that the disciplinary proceedings may be stayed if a serious prejudice is likely to be caused to the defence of the employee in a criminal case and the two proceedings are founded on the same facts and involve complex questions of fact and law. The court made it very clear that gravity of the charge/ charges is, however, not by itself enough to determine the question as to whether the criminal trial should be stayed. It has to further examine whether the charge/s involve complicated questions of law and fact. It must also keep in mind that the criminal trial gets prolonged

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49 See *A.P. SRTC* v. *Mohd. Yousuf Miya* (1997) 2 SCC 699, *Karnataka SRTC* v. *M.G. Vittal Rao* (2012) 1 SCC 442 and *Capt. M. Paul Anthony* v. *Bharat Gold Mines Ltd*. (1999) 3 SCC 679.

indefinitely specially where the number of accused arraigned for trial is large as was the case at hand; so may be the number of witnesses cited by the prosecution. Therefore, the court has to draw a balance between the need for a fair trial for the accused on the one hand, and the competing demand for an expeditious conclusion of the ongoing disciplinary proceedings, on the other. An early conclusion of the disciplinary proceedings is itself in the interest of the employee.

Coming back to the charges against the respondents in the present case, the court observed that none of the offences was punishable beyond three years. But the seriousness of the charge alone could not be the complete test, it must be seen the case involved complicated questions of fact and law. In the opinion of the court, this requirement did not appear to be satisfied in an adequate measure to call for an unconditional and complete stay of the disciplinary proceedings pending conclusion of the trial. The incident as reported in the FIR or as projected by the respondents in the suit filed by them did not suggest any complication or complexity either on facts or on law. The respondents had already disclosed their defence in the explanation submitted by them before the commencement of the department at inquiry in which one witness only had been examined by each of the inquiry officers.

In the criminal trial the charges were framed and the trial court had ever since then examined only three so far out of the total of 23 witnesses cited in the charge-sheet. Going by the pace at which the trial was going on, it would take another five years before the trial would conclude. It observed that the disciplinary proceedings could not remain stayed for an indefinitely long period which was neither in the interest of the appellant nor of the respondents who were under suspension and surviving on mere subsistence allowance. The court felt keeping in view the large number of the accused having been charged with group liability, many of whom could as well be eventually held to be innocent, interest of such accused could not be ignored nor could they be made to suffer indefinitely just because some others had committed the offence or offences. In these circumstances and taking into consideration all aspects of the matter and the fact that all the three courts below exercised their discretion in favour of staying the ongoing disciplinary proceedings, the court did not consider it fit to vacate the said order straight away. In the interest of justice, the court directed the trial court to conclude the proceedings within the period of one year from the date of this order. Accordingly, it directed that the stay orders in favour of the respondents shall stand vacated on the expiry of the period of one year from the date of the order.

In *J. H. Patel (dead) By Legal Representatives* v. *Nuboard Manufacturing Company Limited*,[50] the court was called upon to decide as to whether the tribunal having failed to appreciate the evidence adduced by the management of the first time before it in support of the misconduct of the employees could have sustained the action of dismissal of the workers who were admittedly protected workmen. This question arose in the following factual matrix:

The workmen were office bearers of the registered trade union of workers who had been granted the status of protected workmen. Their case was that while

50 (2014) 11 SCC 371.

they were collecting subscription from the members of the union, they were called by the employer and told to refrain from conducting the trade union activities. The receipt book and subscription receipts were also snatched from them by the management representatives. They filed a complaint with the police which was not recorded. They were, thus, constrained to file a complaint with the concerned magistrate. In the said complaint they had arraigned some senior management personnel as accused. The magistrate acquitted all the accused on the ground that the evidence them was insufficient. Thereafter, the management charge-sheeted these workers essentially for having lodged a false allegation against the senior personnel of the company. They filed their explanation. Despite their explanation, no inquiry was held and an order of dismissal was passed against them. The workmen raised an industrial dispute which came up for adjudication before the labour court. Their challenge to the order of dismissal was that they were protected workmen and that prior permission of the authority before which an industrial dispute unrelated to their misconduct was pending, was not taken by the management. The alleged misconduct was not proved and lodging of a criminal case against the officers of the respondent company was not a misconduct.

In the adjudication proceedings before the labour court, the workmen examined themselves and the management examined the officers against whom the criminal complaint was filed. The labour court accepted the contention of the management with respect to the misconduct but held that since no departmental inquiry was held prior to the order of dismissal, this omission amounted to denial of the principle of natural justice and fairness. In view of this, the tribunal denied the relief of reinstatement to the workers but it granted 50% of the back wages from the date of dismissal until the date of the award to the workmen. Being aggrieved, the management filed a writ petitions against the compensation awarded and the workman against that part of the award which denied them reinstatement. The single judge of the high court who heard both the writ petitions together was of the opinion that the order of dismissal was justified in view of the earlier decision of the criminal court and held that the workers were not entitled to the relief of back wages and set aside that part of the award. Being aggrieved by the said judgment and order, the workers approached the Supreme Court by way of special leave to appeal. The court did not deal with the issue of protected workmen and the issue of non-compliance with section 6 E (2) (b) of the U.P. ID Act (which is *pari materia* to section 33 (2) (b) of the ID Act) as it was otherwise satisfied that the labour court had not proceeded in accordance with law.

The court observed that although an opportunity to prove the misconduct was made available to the management in the labour court and it had produced two of the witnesses who were arraigned as accused in the police complaint but in the judgment rendered by the labour court there was no discussion, whatsoever, with respect to the evidence led by these two witnesses. The award did not contain any reason in support of the conclusion arrived at by the labour court that misconduct was proved on the basis of the evidence which was led before it. The management had chosen to proceed departmentally against the workmen after acquittal of its officers in the criminal court. It did not afford any opportunity to them at the departmental level. Afterwards, when the dispute was taken to the

labour court, it was the responsibility of the management to prove the misconduct before the court and that was done by leading evidence in support. However, the evidence had to be discussed by the labour court and only on appreciation of the same, could it come to the conclusion as to whether the workmen were guilty of misconduct or otherwise. The court found that there was no discussion whatsoever about the evidence as to why the labour court had come to the conclusion that misconduct was established.

In these circumstances, the Supreme Court came to the conclusion that the findings of the labour court could not be sustained that the management had proved the misconduct. Since, the misconduct was not proved, the court held that the workmen were entitled to get the relief that they were seeking, namely, a declaration that the termination of their services was bad in law and they were entitled to consequential reliefs. The court observed that when the matter was taken to the high court, it also lost sight of the infirmity committed by the labour court. It instead denied whatever compensation was awarded to the workmen by the labour court. The court held that the order of the high court was erroneous and, accordingly, set aside the order of the high court as well as that of the labour court and held that the termination of the services of the workmen was unjustified on merits.

Coming to the reliefs to which the workmen were entitled to, the court noticed that one of the workmen had expired and his heirs were on record. The other two employees had since superannuated. The court, therefore, awarded compensation to these workers quantified at 50% of backwages with 6% interest per annum from the date of dismissal until the date of superannuation/ death, whichever was earlier. The attention of the court was drawn to the fact that the company had not been functioning and the proceeding was pending before BIFR. The management agreed to pay 40% of the backwages without interest if so directed by the court which offer was accepted by the workers their representatives. The court, accordingly, gave an option to the company to pay either 40% of the back wages within three months without having to pay the amount of interest, or in the event of default, to pay 50% of the backwages with 6% interest as was directed earlier.

Pending proceedings and power to grant interim relief

In *Goa MRF Employees Union* v. *MRF Ltd.*[51], the appellant union, a registered trade union under the Trade Unions Act, 1926, filed a complaint against the management under section 33-A of the ID Act before the industrial tribunal seeking various reliefs against the change of conditions of service of the workmen. In the reliefs sought against the management, the union also prayed for an interim injunction order against the management prohibiting it from replacing 06 days Sunday off system by seven day running system and from making any change in the service conditions during the pendency of its complaint. The industrial tribunal, after hearing the parties, opined that the interim relief prayed for could not be granted in a complaint under section 33-A of the Act which order was set aside by the single judge of the High Court of Bombay, Goa Bench and directed the tribunal

51 (2014) 14 SCC 483.

to decide the union's application for interim reliefs on merits. This decision was set aside by the division bench of the high court restoring the order of the tribunal. Hence, the present special leave appeal before the Supreme Court.

A two judge bench of the Supreme Court directed that in view of its earlier decision in *Hotel Imperial* v. *Hotel Workers Union*,[52] the matter be referred to the larger bench for consideration to decide whether the industrial tribunal has the power to grant relief in the nature of injunction in a complaint filed before it under section 33-A of the Act. This reference to a larger bench was made in view of the use of expressions "matters incidental thereto" in section 10 (4) of the ID Act and also in view of the fact that a complaint under section 33-A of the Act is deemed to be a reference under section 10 of the Act. Accordingly, the matter was placed before a three judge bench of the court.

It was the admitted position between the parties before the three judge bench that for the last 16 years no interim injunction in favour of the union was in operation. The court observed that at this distance of time it would not be in the interest of justice to require the industrial tribunal to consider the question of grant of interim injunction on merits even if it was assumed that power to grant injunction vests in the industrial tribunal in a complaint filed under section 33-A of the Act. In view of the joint statement of the parties before it that the complaint under section 33-A as well as the main matter be referred to the industrial tribunal for adjudication on merits, the court directed the tribunal to decide both the matters within six months. The issue relating to the powers of the industrial tribunal to grant interim relief in a complaint under section 33-A was left by the court to be decided in future case, as and when raised.

This case clearly shows that expeditious adjudication of labour matters has become a distant dream, thus, defeating the very purpose of the ID Act. It would have been better if the three judge bench had decided the important issue referred to it by the two judge bench of the court for certainty in law on the issue rather than leaving it for decision in a future case.

III CONCLUSION

The year under survey has witnessed important contribution to the literature on industrial relations jurisprudence in some of the judgments of the court. The court through Sikri, J., has recognized the power of the industrial adjudicator to order regularization of daily wagers, casual or temporary workers wherever there has been evidence of violation of article 14 of the Constitution by the employer in public employment, or where the employer has resorted to unfair labour practice in terminating their services; or where the reference to adjudication included a claim of regularization by the workers. A very important aspect that has been stressed by the court is that the appropriate governments need to apply their mind properly to the dispute raised by the workers while framing references for adjudication by the industrial adjudicators. More often than not, the terms of the

52 AIR 1959 SC 1342.

reference do not reflect the real disputes between the parties. The reference made by the appropriate government in *TISCO* is a glaring case of defective reference as it did not reflect the correct and precise nature of disputes between the parties.

The court through Gowda, J., in *Sarva Shramik Sangh, Sangli* has stressed the importance of the state instrumentalities to act as model employers and give due weightage to the legitimate expectations of the workers in the matter of security of employment.