V.GOPALA GOWDA, CJ & I.MAHANTY, J.

W.A. NO.42 OF 2006 (Decided on 28.7.2010).

BIJAY KUMAR SAHOO …….. Appellant.

.Vrs.

CENTRAL ELECTRICITY SUPPLY CORPORATION (CESCO) & 2 ORS. …….. Respondents.

INDUSTRIAL DISPUTES ACT, 1947 (ACT NO.14 OF 1947) – SEC.2(OO) 2-A, 25 - F, 25-N.

For Appellant - M/s. Manoj Ku. Mishra, P.K.Das & A.K.Nayak.
For Respondents – M/s. B.K.Pattnaik, P.K.Sahoo & R.K.Nayak.

V. GOPALA GOWDA, C.J. This writ appeal is directed against the judgment and order dated 28.09.2000 passed by the learned Single Jude in O.J.C. No. 16363 of 1998 affirming the award passed by the Labour Court, Bhubaneswar on 19.8.1998 in I.D. Case No. 85 of 1994 urging various legal grounds.

2. The brief facts for the purpose of appreciating the rival legal contentions of the case and to find out as to whether there is any substantial question of law involved in this case for reconsideration of the matter and the interfere with the impugned judgment and order passed by the learned Single Judge as well as the award passed by the Labour Court respectively are that the appellant herein was a workman. On the recommendation of his name by the Principal of I.T.I., Puri, to undergo apprenticeship training and on being selected he took training from 21.11.1985 to 21.11.1986 with the respondent's Corporation (hereinafter called "Corporation") and received monthly stipend. After completion of the apprenticeship training, the appellant requested the aforesaid Corporation to allow him to work on casual basis from 1.2.1988 till 30.9.1988 i.e. for 243 days. During his casual employment, on signing the payment slips he was getting his remuneration as an NMR worker. However, the appellant's service was terminated by the Corporation of 30th September, 1988 on the of an oral order without any prior notice. Thereafter dispute arose with regard to the termination of the appellant's service and to settle the dispute, the Asst. Labour Officer, Puri initiated conciliation proceeding and in that conciliation proceeding the Executive Engineer of the Corporation agreed to pay the retrenchment benefit of the workman, but the appellant refused to accept the same and insisted for his re-engagement as NMR. Thereafter, reference was made to the Labour court, Bhubaneswar for adjudication of the existing industrial disputes and accordingly I.D. Case No. 85 of 1994 was registered. In that case, the parties filed their written statement in justification of their claims and counter claims. The Labour Court answered the question against the appellant-workman rejecting the relief as prayed for. Against the order passed by the Labour court, the appellant herein full O.J.C. No. 16363 of 1998, in which the learned Single Judge affirmed the award passed by the Labour Court and dismissed the writ petition. Hence this appeal.

3. Mr. Mishra, learned counsel for the appellant submits that the order or termination of the services of the appellant it is a retrenchment as defined under Section 2(00) of the Industrial Disputes Act, 1947 (hereinafter called 'the Act') and his appointment does not attract 2(00) (bb) of the Act and therefore he had invoked his statutory right under Section 2-A of the Act and there was non-compliance of Section 25-F read with Section 25-K of Chapter –V-B and 25-N of the Act in not obtaining prior permission of the State Government, the action of the Respondent-employer (hereinafter called as the employer in short) does not tantamount to misconduct. Since the mandatory and statutory requirements of the above provisions of the Act was not followed and therefore the order of termination/ retrenchment is void abinitio in law and hence the same should have set aside and passed order of reinstatement with consequential benefits.

4. The respondent-Corporation filed a detailed statement of counter, inter alia, justifying its action by refusing the employment and denying the claim made by the employee. At paragraph 5 of the counter affidavit it is specifically stated that the appellant joined as a trainee after signing the contract as per the provisions of Sub-Sections (1) and (2) of Section 4 of the Apprentice Act and was relieved from his training on21.11.1986. During the said training period he was paid stipend as provided under the Apprentice Act, 1961. Thereafter, on his own request he was engaged by the Executive Engineer of the Corporation as a casual, un-skilled labour during the period from 1.2.1988 to 30.9.1988. As per the requisition of the S.D.O. (Electrical), Construction Sub-division, Puri, some additional NMR workers were engaged under No. II JE, Sakhigopal against R.E.C. work at Satyabadi and Kanas. The petitioner was one amongst some other NMR workers engaged in the aforesaid work under the Construction Sub-division, Puri and his employment came to an end from 30.09.1988. He was not engaged thereafter as claimed by him. During his engagement as unskilled labour, he was getting a daily wage @ Rs.11/- per day. No other N.M.R. workers junior to the petitioner engaged for the purpose of execution of the said project work have been retained to continue to work after disengagement in the establishment. Further the petitioner was not appointed against any permanent post therefore it is not a case of retrenchment and compliance of the provisions of either under Chapter V-A or V-B is not attracted for consideration. It is further contended that if Section 25-B(2)(ii) of the act is attracted, even then the workman is required to continue for 240 days in 12 calendar months to consider that his is entitled for the statutory benefit for retrenchment by compensation as provided under the Act. In the instant case no doubt the workman worked for a period of 243 day during the period he was employed but not in 12 calendar months. Therefore, neither Section 25-F nor Sections 25-G or 25-H of the Act is attracted in this case as he has
worked purely as an NMR. The respondent-corporation wants to justify the order of dis-engagement of the appellant stating that the Labour Court by recording valid and cogent reasons and taking all the evidence or record in the consideration has rightly arrived at the conclusion of the points of dispute referred to it and held that the dis-engagement of the appellant is right on the part of the employer and it does not amount to retrenchment. Therefore, it is submitted by the learned counsel for the respondents that as it is not a retrenchment within the definition of Section 2(00) of the Act, neither the provisions of Section 25F nor Section 25-F nor Sections 25-G & H is attracted to the facts of the case and therefore, on this ground also the workman is not entitled to the relief sought for.

5. It is further submitted on behalf of the respondents that the correctness of the findings recorded by the Labour Court on the points of the dispute in the Award was questioned by the workman before this Court by filing writ petition urging various grounds, inter alia, contending that the findings of fact recorded by the Labour Court on the basis of the pleadings and evidence on record is erroneous one and therefore, it was prayed before the learned Single Judge that the decision rendered by the Labour Court may be set aside as the same is erroneous one since the evidence on record was not considered properly by the Labour Court. The learned Single Judge after adverting to the rival legal contentions, examined the correctness of the findings recorded by the learned Presiding Officer of the Labour Court on the points of dispute and finally affirmed the same by recording reasons that the said findings of fact cannot be substituted in exercise of extra ordinary discretionary and supervisory jurisdiction of the Court as the said findings are neither erroneous nor error law. Further, he has held that temporary employee or daily wage employee has no right to any post as has been held by the Hon'ble Supreme Court in series of cases. Therefore, it submitted as the learned Single Judge after carefully examining all the facts and circumstances of the case, did not find any justification to interfere with the decision of the Labour Court, the same need not require any further consideration by this Court and prayed for dismissal of this writ appeal.

6. Learned counsel for the respondents-employer in order to justify his submission in support of the Award passed by the Labour Court and the order of the learned Single Judge has placed reliance upon the decisions of the Supreme Court in the case of State of Himachal Pradesh Vs. Rupesh Kumar Verma & Anr., AIR 1996 SC 1565; Central Bank of India Vs. S.Satyam & Ors., AIR 1996 SC 2526; Anil Bapurao Kanase Vs. Krishna Sahakari Sakhar Karkhana Ltd., AIR 1997 SC 2698; Managing Director, Haryana Seeds Development Corporation Ltd. Vs. Presiding Officer & Anr., AIR 1997 SC 3086; and Himansu Kumar Vidyarthi & Ors. Vs. State of Bihar & Ors., AIR 1997 SC 3657 and submits that as the workman was engaged as an unskilled causal labourer against a project work and after completion of the said project work his employment was not renewed further, therefore, the observations made by the Hon'ble Supreme Court in the aforesaid decisions support the findings of fact recorded by the Labour Court and affirmed by the learned Single Judge and that decisions are aptly applicable to the fact situation of the case. Further in the absence of evidence with regard to the fact that the appellant was engaged against a permanent vacancy, he is not at all entitled for retrenchment compensation. Therefore, no substantial question of law would arise for consideration by this Court for interfering with either the order of the learned Single Judge or the award passed by the Labour Court.

7. Mr. Mishra, learned counsel for the appellant questioned the correctness of the findings recorded by the Labour Court which are affirmed by the learned Single Judge contending that the findings are totally erroneous and error in law as the same are contrary to the provisions of Section 25F clauses (a) & (b) and

also the provision of Section 25G & H judgment of the Hon'ble Supreme Court in the case of S.M.Nilajkar & Ors. Vs. Telecom District Manager, Karnataka & Ors., reported in AIR 2003 SC 3553, wherein the Apex Court came to the conclusion on facts and evidence in that case and held that the reinstatement with continuity in service is justified and held as under :

> "14. The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme o r project which was to last only for a particular length of time or up to the occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complain that by the act of the employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the above said ingredients so as to attract the applicability of sub-clause (bb) above said. In the case at hand, the respondent employer has failed in alleging and proving the ingredients of sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily wagers in a project. For want of proof attracting applicability of sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment."

8. Mr. Mishra, learned counsel for the appellant questioned the correctness of the findings recorded by the Labour Court contending that the decision of the Labour Court is an erroneous one and the same is contrary to the judgment of the Supreme Court in S.M. Nilajkar (supra) as the employer has failed to produce any documents to prove that the termination of employment fell within the definition of sub-clause (bb) of clause (00) of Section 2 of the Act and non production of such material evidence would amount to retrenchment. It is further contended that the aforesaid decision has not been properly considered by the Labour Court as well as by the learned Single Judge, therefore, the finding of facts recorded by the Labour Court and the learned Single Judge on the contentions issue that arose for their consideration are erroneous in the eye of law and are therefore the substantial question of law that would arose for consideration before this Court in this appeal and therefore Mr. Mishra, requested the Court to set aside the impugned order passed by the learned Single Judge by allowing this appeal.

9. With reference to the aforesaid rival legal contentions raised by the parties, now the substantial question of law which would arise for consideration are that (1) whether the finding of facts recorded by the Labour Court and affirmed by the learned Single Judge is erroneous findings are error in law ? (2) what order ?

10. The aforesaid points are required to be answered in favour of the appellant for the following reasons.

11. The employer is a statutory corporation owned by the government of Orissa is an undisputed fact. It is also an industry as defined under Section 2(j) of the Act. Further the employer has got its certified Standing Order under the Industrial Employment (Standing Orders) Act, 1946 and therefore the same is applicable to the employee and employer of the Corporation. It is also an undisputed fact that the Corporation is represented by its managing Director. Further it was not at all disputed by the employer before the Conciliation Officer and also before the Labour Court that the present appellant was engaged with effect from 1.2.1988 to 30.9.1988 as an unskilled worker not against a permanent vacant post. This engagement was made at the instance of the Executive Engineer of the Division, whereas the Executive Engineer is not the employer or competent person to engage an employee on behalf of the Corporation as because the Corporation is represented by its Managing Director.

12. It is the case of the Corporation that against a particular project work the workman was engaged. In support of that factual contention no counter statement was filed before the Labour Court and no positive evidence was produced before it in that regard except the pleadings. In this regard, the reference made by the learned counsel for the appellant to the judgment of the Hon'ble Supreme Court in S.M. Nilajkar (supra) is very much relevant in this case. The very same fact came up for consideration before the Supreme Court in the said case and the Supreme Court examined the correctness of the findings recorded by the Labour Court and High Court and at paragraphs 14 and 16 of its judgment held as under :

> "14……. In the case at hand, the respondent employer has failed in alleging and proving the ingredients of sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as causal workers or daily-wagers in a project. For want of proof attracting applicability of sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment.
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> "16…….. The undertaking having been closed on account of unavoidable circumstances beyond the control of the employer, i.e. by its own force as it was designed and destined to have a limited life only, the compensation payable to the workman under clause (b) of section 25F

shall not exceed his average pay for three months. This is so because of failure on the part of respondent employer to allege and prove that the termination of employment fell within sub-clause (bb) of clause (00) of Section 2 of the Act."

13. In the present case, the employer has failed to produce any document with regard to closure of the project work and with regard to the fact that the workman was engaged in a temporary project work. Therefore, in the absence of such material evidence before the Labour Court merely basing on the pleadings that the project work has been completed, the Labour Court as well as learned Single Judge should not have accepted the contentions urged on behalf of the Corporation. Therefore, the findings recorded by the Labour Court and affirmed by the learned Single are erroneous and error in law.

14. Further the contentions of the Corporation that the findings recorded by the Labour Court as well as by the learned Single Judge are correct and needs no interference is wholly untenable in law and misconceived orie for the reason that (1) there is no written appointment order issued in favour of the workman; (2) there is no termination order served upon the workman; (3) the documents with regard to the closure of the project work were not produced; and (4) no permission is obtained from the appropriate Government as required under Section 25-N of the Act as the provisions of Chapter V-B of the Act is applicable to the employer. Therefore, the observation
made by the Hon'ble Supreme Court at paragraphs 14 and 16 of the judgment in S.M. Nilajkar (supra) is aptly applicable to the fact situation of this case.

15. The Constitution Bench of the Hon'ble Supreme Court in Burn & Co. Ltd. Vs. Employees, AIR 1957 SC 38 has defined Section 2 (00) of the Act and held that the Legislature enacted the Industrial Disputes (Amendment) act XLIII of 1953 wherein "retrenchment" was for the first time defined so as to include, subject to certain exceptions, the termination by the employer of the service of workman for any reason whatsoever.

16. A three Judge Bench of the Hon'ble Supreme Court in State Bank of India Vs. N.Sundara Money, reported AIR 1976 SC 1111 has held as under :

> 9…….. Termination … for any reason whatsoever are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is, has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master of the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. Maybe, the present may be a hard case, but we can visualize abuses by employers, by suitable verbal devices, circumventing the armour of Section 25-F and Section 2(00).

> Without speculating on possibilities, we may agree that "retrenchment" is no longer terra incognita but area covered by an expansive definition. It means " to end, conclude, cease". In the present case the employment ceased, concluded, ended on the expiration of one year ten months nine days – automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Section 25-F(b) is inferable from the proviso to Section 25-F(b) is inferable from the proviso to Section 25-F(1) [sic 25-F (a)]. True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25-F and automatic extinguishment of service by effluxion of time cannot be sufficient……"

17. Further another three Judge Bench of the Hon'ble supreme Court in the case of Hindustan Steel Ltd. Vs. Presiding Officer, Labour Court, Orissa & Ors., reported in AIR 1977 SC 31, considered and explained the earlier Constitution Bench decisions in Hariprasad Shivshankar Shukla Vs. A.D. Divikar, AIR 1957 SC 121; and pipraich Sugar Mills Ltd. Vs. Mazdoor Union, AIR 1957 SC 95 and at paragraph 4 of its judgment held as follows :

> "4. In Hariprasad Shivshankar Shukla V. A.D. Divikar to which the Solicitor-General referred, one of the questions that arose for decision was whether the definition of retrenchment in Section 2(00) goes
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> "So far beyond the accepted notion of retrenchment as to include the termination of services of all workman in an industry when the industry itself ceases to exist on a bona fide closure of discontinuance of this business by the employer?"
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> The question was answered in the negative on the authority of an even earlier case, *Pipraich Suggar Mills Ltd. V. Pipraich Suggar Mills Mazdoor Union3* which held that
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> "retrenchment connotes in its ordinary acceptation that the business itself is being continued but that a portion of the staff or the labour force is discharged as surplusage and the termination of service of all the workman as a result of the business cannot therefore be properly described as retrenchment."
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> Following Pipraich Sugar Mills case it was held in *Hariprasad Shivshankar Shukla V. A.D. Divikar* that the words "for any reason whatsoever" used in the definition would not include a bona fide closure of the whole business because

"it would be against the entire scheme of the Act to give the definition clause relating to retrenchment such a meaning as would include within the definition termination of service of all workman by the employer when the business itself ceases to exist."

On the facts of the case before us, giving full effect to the words "for any reason whatsoever" would be consistent with the scope and purpose of Section 25-F of the Industrial Disputes Act, and not contrary to the scheme of the Act. We do not find anything in *Hariprasad* case which is inconsistent with what has been held in *State Bank of India V. N.Sundara Money."*

18. In Hindustan Steel Ltd. (Supra), placing strong reliance upon its earlier decision in N.Sundara Money (supra) the Supreme Court held as under :

"3. ……It may also be noted that Section 25-F(a) which lays down that no workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer unless he has been given one month's notice or wages in lieu of such notice, has a proviso which says that "no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service", Clearly, the proviso would have been quite unnecessary if retrenchment as defined in Section 2(00) was intended not to include termination of service by efflux of time in terms of an agreement between the parties. This was one more reason why it must be held that the Labour Court was reason why it must be held that the Labour Court was right in taking the view that the respondents were retrenched contrary to the provisions of 25-F."

19. In Mohan Lal Vs. Bharat Electronics Ltd., reported in AIR 1981 SC 1253 the Supreme Court placing strong reliance upon all the decisions referred to supra has held as under :

"9. Reverting to the facts of this case, termination of service of the appellant does not fall within any of the excepted, or to be precise, excluded categories. Undoubtedly therefore the termination would constitute retrenchment and by a catena of decisions it is well settled that where prerequisite for valid retrenchment as laid down in Section 25-F has not been complied with, retrenchment bringing about termination of service is ab initio void.

15. Reverting to the facts of this case, admittedly the appellant was employed and was on duty from December 8, 1973 to October 19, 1974 when his service was terminated. The relevant date will be the date of termination of service i.e. October 19, 1974. Commencing from that date and counting backwards, admittedly he has rendered service for a period of 240 days within a period of 12 months and, indisputably

therefore, his case fall within Section 25-B(2)(a) and shall be deemed to be in continuous service for a period of one year for the purpose of Chapter V-A.

20. Further in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. presiding Officer, Labour Court, Chandigarh & Ors., reported in (1990) 3 SCC 682, a Constitution Bench of the Supreme Court placing reliance upon the aforesaid decisions held as under :

> "14. The precise question to be decided, therefore, is whether on a proper construction of the definition of "retrenchment" in Section 2(00) of the Act, it means termination by the employer of the service of a workman as surplus labour for any reason whatsoever, or it means termination by the employer of the service of a workman for any reason whatsoever, otherwise that as a punishment inflicted by was of disciplinary action, and those expressly excluded by the definition. In other words, the question to be decided is whether the word "retrenchment" in the definition has to be understood in its narrow natural and contextual meaning or in its wider literal meaning.
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> 57. Speaking for the court, R.N.Mira, J.significantly said : (1984) 1 SCC p. 244, at para 12)
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> "We are inclined to hold that the stage has come when the view indicated in Money case, has been 'absorbed into the consensus' and there is no scope for putting the clock back or for an anti-clockwise operation."
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> 62. This is literal interpretation as distinguished from contextual interpretation said Tindal, C.J. in Sussex peerage case:
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> "The only rule of construction of Acts of parliament is that they should be construed according to the intent of the parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those world in their natural and ordinary sense, The words themselves alone do, in such case, best declare the intention of the lawgiver."
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> In B.N.Mutto V. T.K.Nandi it was similarly said :(SCC P.368, Para 14)
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> "The court has to determine the intention as expressed by the words used. If the words of a statute are themselves precise and unambiguous then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver."
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> As was stated in Thompson V. Goold & Co. "it is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do so". "The cardinal rule of construction of statute is to read statutes literally, that is, by giving to

the words their ordinary, natural and grammatical meaning". [Jugalkishore Saraf V. Raw Cotton Co. ltd.]".

21. In this view of the matter, in the instant case, the action of the Corporation in disengaging the workman on the ground that the project work has come to an end and therefore, the disengagement does not amount to retrenchment is quite illegal and not sustainable in the eye of law. Therefore, the case of the appellant is coming within the purview of Section 25-N of Chapter V-B of the Act for which necessary permission was required to be obtained from the State Government, which has not been done in the present case. It is an undisputed fact that the appellant has worked for 243 days of continuous service during 12 calendar months. Therefore, the finding of the Supreme court in Mohan Lal (supra) is aptly applicable to the fact situation of this case. Both the Labour Court as well as the learned Single Judge have not examined the claim of the appellant in the above perspective and therefore the findings on the points of dispute recorded by them are error in law. For the foregoing reasons the order of termination rendered void ab initio in law.

22. learned counsel for the Corporation very vehemently contended that no award of any back wages or any consequential benefit can be given to the appellant, because of the subsequent event which had taken place, i.e., at them time of disengagement of the workman, the Orissa State Electricity Board was functioning and subsequent thereto there is a re-organisation of the corporation on account of economic policy of the Union of India. This aspect of the matter we have carefully considered in this writ proceeding. Once the order of termination is held to be void ab initio, the normal rule is re-instatement with full back wages must be followed in view of the decisions of the Supreme Court in catena of cases. The factual contention of the learned counsel for the Corporation that the project work is completed, the project is closed is not accepted by us. Further contention of the learned counsel for the employer is that in view of the closure of the project, the appellant is not entitled to consequential relief is rejected because on account of reorganization the statutory corporation is not closed but is functioning. This material evidence should have been produced before the Labour Court by the employer in justification. In absence of the production of the material evidence before the Labour Court, it is not for this Court in exercise of writ jurisdiction to record a finding in this regard and reject the relief for which the workman is legally entitled to. Once the order of termination is set aside, the workman is entitled for reinstatement and the consequential relief must follow unless the employer proves by producing cogent evidence that the was gainfully employed during the period from the date of termination till the adjudication of the dispute and subsequently up till this period.

23. In so far as back wages are concerned, the employers counsel has rightly pointed out that the termination took place 22 years back is relevant consideration for not granting full back wages. Keeping in view the fact that at

the time of termination the workman was getting wages at the rate of Rs.11/- per day, there must have been periodical revision of wages by the employer on number of occasions and therefore, it would be suffice for us. Though the employee as a matter of fact is entitled for reinstatement with full back wages, we exercise our discretionary jurisdiction to mould the relief in this regard and direct the Corporation to pay 50% of the back wages from the date of termination till the date of reinstatement to be calculated at the revised rate of wages from time to time to the post in which he was working and also considering the consequential benefit of promotion to the next higher post.

24. As a result of the discussion above, the appeal is allowed. The Award and order passed by the Labour Court as well as by the learned Single Judge respectively are set aside. There shall be no order as to costs.

Appeal allowed.