IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 8072 of 1997

==========

DIGVIJAY CEMENT CO LTD

Versus

WORKMEN EMPLOYED UNDER IT & 3 other(s)

==========

Appearance:
MR. RISHIN R PATEL, ADVOCATE for the Petitioner(s) No. 1
MR VIVEK BHAMRE, MR MOHSINALI SAIYED, ADVOCATE for the Respondent(s) No. 2 - 3
MR PARITOSH CALLA, ADVOCATE for the Respondent(s) No. 4
RULE SERVED for the Respondent(s) No. 1 - 3

==========

CORAM: **HONOURABLE MS JUSTICE SONIA GOKANI**

Date : 15/03/2017

ORAL ORDER

1.0 This is a petition under Articles 226 and 227 of the Constitution of India assailing the award passed in Reference (IT) No. 482 of 1992 by the Industrial Tribunal, Ahmedabad, Dated: 04.08.1997, whereby, the Tribunal directed the petitioner to treat 'Badli' workers as if they are permanent workman with effect from 28.06.1989 and to pay them all the benefits of permanent workmen such as applicable pay scale, difference in pay as also wages for the days for which they had not been offered work, as per the settlement dated 19.12.1992.

2.0 The brief facts in capsulized form are that the petitioner is a company incorporated under the Companies Act, 1956, and is engaged in the business of manufacturing of asbestos cement pressure pipes and roofing sheets. It is the say

of the petitioner that it commenced production in the year 1962 for captive use, a small cement grinding mill, which was a separate and independent establishment. The respondents, herein, were employed in the factory of the petitioner. Two machines, viz. one for pipe manufacturing and another for roof-sheet manufacturing, had initially been installed. As the demand in the market had grown, one more machine was installed in the year 1968 and later on in the year 1982, it installed another machine. It is the say of the petitioner that it utilized its manufacturing capacity to the optimum level, as market conditions were favourable and it maintained necessary manpower for its permanent role to meet with the requirement of its all machines. It also needed to fill-up the vacancies from time-to-time through other workers during such a period.

2.1 It is lamented that from the year 1989 onwards, the market situation drastically changed with the introduction of PVC pipes in the market, the demand of the pipes manufactured by the petitioner substantially reduced, as PVC pipes were available at far more affordable price.

2.2 It is, further, the say of the petitioner that it used to use asbestos fibre

which was an item imported from Brazil, Swaziland etc. During the financial year 1990-91, the price of the asbestos fiber in the international market had increased and the rupee was devalued with the also relative increase of the price of the dollar and the finished product became expensive. In such a situation, the petitioner had to cut down its production by 50% and and it also resulted into stoppage of machines. It is, further, its say that between November, 1991 to March, 1993 only one machine, out of four machines installed by it, could be run and the regular work-force was also sitting idle. The regular work-force was around 250 workers. The petitioner also entered into two major agreements on 28.06.1989 and 19.12.1992 in respect of wage raise and betterment of service conditions. Respondents are all Badli workers for whom a separate register was maintained. The pay registers of theirs are also separate. They were members of the Digvijay Cement and Asbestos Mazdoor Sabha (for short, 'Sabha') and separate settlements for wages, allowances etc. had been arrived at for Badli workers with Sabha. A final settlement for wage revision was arrived at for the Respondent-Union at 28.06.1989. However, they did not change the status of the Badli workers and they were not made permanent. There was, thus, a specific distinction made out from the

clause of agreement, whereby, the Badli workers were to be paid Rs.500/- *ex gratia*, as against Rs.1000/- to the permanent workers.

2.3 A fresh settlement with the respondent was also arrived at on 19.12.1992 in respect of revision of wages, allowances etc. for all the workers. A distinction, however, in that also continued to be maintained so far as *ex gratia* payment was concerned. It is maintained that in all the settlements arrived at between the parties, the Badli workmen were not made permanent and there was a clear distinction visible from the agreements so far as these workmen are concerned.

2.4 It is the say of the petitioner that the present respondents worked as Badli workers for the petitioner-Company, till the petitioner was in a position to utilize all the machines installed by it. However, when the market condition did not remain feasible, the number of days on which the Badli workers were being provided the work, started reducing. Therefore, the demand was raised by the union vide its communication dated 07.03.1992 for all 161 workmen that they may be paid basic-pay and other allowances from the date of their entry in service. Such a demand eventually resulted into

order of reference dated 30.11.1992 by Dy. Commissioner of Labour, Ahmedabad, to the Industrial Tribunal, Ahmedabad. As mentioned in the memo of the petition, the Reference was in respect of 161 workmen named in the schedule to the reference being permanent workmen should be paid basic wages and other allowances as are paid to permanent workmen from the date of their joining service and they be also paid full wages and consequential benefits for the days on which, they were not given work, as if, they had worked on those days. The reference was numbered as Reference (IT) No. 482 of 1992, wherein, the Union filed its statement of claim. It was alleged that sufficient work was not provided by the petitioner-Company, which resulted into illegal lock-out and the action of the petitioner-company of not giving work was also an illegal way of lay-off.

2.5 This was denied by the petitioner-company by filing written statement vide Exhibit-7. Further, the maintainability of the Reference was also challenged in wake of the existing settlement. It was predominantly contended that all the respondents being Badli workers, they are not entitled to get the benefits, which are otherwise available to the permanent workmen. Whenever, the permanent workmen were not

available, they would be getting the work. However, they, in no manner, shall have any right to get similar benefits, as are otherwise available to the permanent workmen. After both the sides adduced evidence, documentary as well as oral, the Tribunal on appreciation of the rival contentions and the evidence that were led, allowed the Reference and directed the petitioner to treat the Respondents-workmen as permanent workmen under the settlements dated 28.06.1989 and 19.12.1992 and grant them all the benefits, which would include applicable pay-scale and the wages for the days on which they did not work on the grounds raised in the memo of the reference. The petitioner challenges the approach of the Tribunal and its conclusion. It is the say of the petitioner-company that the findings are grossly erroneous and solely on the ground of documentary evidence of identitying card produced by one of the respondent-workmen, wherein the status of the said workmen as Badli worker was not mentioned, the Tribunal concluded the same as a clinching evidence. It is, further, the say of the petitioner-company that is wrong to say that there was unfair labour practice under the Industrial Disputes Act, 1947(for short, ‘the ID Act’), and merely because there was no distinction of the workmen mentioned in the identity card, it led the tribunal to conclude

that the Respondents-were permanent workmen and the same has necessitated the petitioner to challenge the same, seeking following reliefs:

> "17. …
>
> (A) Be pleased to issue a writ of certiorari and / or any other writ, order or direction in the like nature quashing and setting aside the award dated 4.8.97 of the Industrial Tribunal, Ahmedabad in reference (IT) No. 482/1992 at annexure A;
>
> (B) Pending hearing and final disposal of this petition, be pleased to stay the operation, effect and implementation of the award dated 4.8.97 of the Industrial Tribunal, Ahmedabad in reference (IT) No. 482/92 at Annexure A;
>
> (C) ..."

3.0 General Secretary of the union filed a reply affidavit, challenging the very maintainability of the present petition on the ground that unless the authority has acted without jurisdiction or has exceeded its jurisdiction or has acted in violation of the principles of natural justice, writ of certiorari cannot be granted to quash and set aside the decision of the inferior Court. Also on the ground that mere wrong on that in any manner is not to attract the jurisdiction of the High Court under article 227 of the Constitution. It is

contended that the Court is not to correct an error apparent on the face of the record, much less an error of law. It is to ensure that the labour Court or Tribunal function within the scope of its limits. Since, the award impugned does not suffer from any jurisdictional error or any such vice, this would not attract jurisdictional interference and this petition is not maintainable. It is the say of the respondent that they have been treated permanent with effect from 28.06.1989 and have been held to be entitled to all the benefits and the salary, in accordance with the settlements dated 28.06.1989, should be made available as per directions issued by the tribunal to the respondent-workmen so also as per settlement dated 19.12.1998 and 19.12.1992. The tribunal has, according to the Respondent, has struck a balance between the demand of the workmen and responsibility of the petitioner-company. On the ground of the workmen had worked for more than 240 days in each year, the Tribunal was also not convinced about the justifiability of their being Badli workers, as the absenteeism is only 5% to 8%. Several fresh workmen were also engaged by the petitioner, and therefore, to deny the benefits of settlement to the Badli workmen was not found sustainable. It is also their say that the reduction or decline in the production of company would also have no bearing

so far as the status of the permanent to be accorded to the respondent is concerned and that the same may have bearing so far as the retrenchment aspect is concerned, but, not when it comes to the respondent considering as permanent workmen. Ground-wise denial has been taken in the affidavit, which shall be referred to at an appropriate stage.

4.0 Rejoinder affidavit has also been filed by the Manager, Personnel, of the petitioner. The details of the same shall be discussed later on.

5.0 The fulcrum of consideration in the present petition is, as to whether the award passed by the Tribunal warrants interference on the ground of either the jurisdictional error or on any other legal ground.

6.0 This Court has heard, at length, the learned Sr. Advocate, Mr. K.M. Patel, with learned Advocate, Mr. Rishin Patel, for the petitioner. It is fervently urged along the line of petition that the petitioner submitted plethora of evidence before the Tribunal, as enlisted in the memo of the petition. It is also his say that not only it had been pleaded that globalization made a major impact in the

reduction of production of the products of the Petitioner but from the documentary evidence also, it had been established before the Tribunal that this cut-down in production had made even its permanent workforce idle. Moreover, according to the learned Sr. Advocate, Mr. Patel, the respondents failed to establish anything to indicate that they had been treated as permanent employees. According to him, merely because there is no mention of status of Badli worker in the identity card that would not prove anything at all. The identity card did not contain any label, as per the Model Standing order 5A. So long as there are vacant posts, the Badli workers were adjusted against those posts and were made regular and the data and order making them permanent had also been produced before this Court. It is, further, argued that the unfair labour practice, as provided under Schedule-5 2(RA) of the ID Act provides that the employer hiring Badli workers casually or temporary and to continue them such for years with an object to deprive them of status and privileges of permanent workman, has not been established at all. There is no *mala fide* intention nor can it be said to be an unfair labour practice, as the petitioner had continued to absorb the Badli workers, whenever the vacant post had arisen. It is, further, say of the learned Sr. Advocate that

disregarding factual scenario and also the factual matrix, which had been presented before the tribunal, it passed the award and even decided the terms of the Reference. The approach of the tribunal is erroneous as the Petitioner-Company was incurring loss and that nobody has been made permanent after 1984 and those, who are made permanent after 1984 were senior to the present respondents. It is argued on behalf of the petitioner that in utter disregard of the details, which had been presented before the tribunal and by overlooking the terms of settlement, which had been arrived at between the parties, it regarded the respondent workmen on post of permanent workman. The only evidence of Mr. Girirajsingh Ugamsingh has been taken into consideration, which hardly throws any light on the issues, which had been referred to the Tribunal.

6.1 Written-submissions have also been filed by the petitioner-company, relying on the following authoritative pronouncements:

(1) ‘***GIRDHARLAL LALJIBHAI VS. M.N. NAGRASHNA & ANOTHER,*** (1964) 5 GLR 413;

(2) ‘***ABAD DAIRY VS. MANIBHAI***

DHANJIBHA', 2000(3) GLH 409;

(3) ***'GUJARAT MINERAL DEVELOPMENT CORPORATION LTD. VS. JAYANT SHRIRAM KALAL'***, 2000 (3) GLH 419;

(4) ***'MANAGEMENT OF KAIRBETTA ESTATE, KOTAGIRI P.O. VS. RAJAMANICKAM'***, AIR 1960 SC 893;

(5) ***'KARNATAKA STATE ROAD TRANSPORT CORPORATION AND ANOTHER VS. S.G. KOTTURAPPA AND ANOTHER'***, (2005) 3 SCC 409;

(6) ***'PRAKASH COTTON MILLS PVT. LTD. VS. RASHTRIYA MILLS MAZOOR SANGH'***, AIR 1986 SC 1514;

(7) ***'M/S. SONIK INDUSTRIES, RAJKOT, VS. MUNICIPAL CORPORATION OF THE CITY, RAJKOT'***, AIR 1986 SC 1518;

(8) ***'GHAZIABAD DEVELOPMENT AUTHORITY AND OTHERS VS. VIKRAM CHAUDHARY AND OTHERS'***, (1995) 5 SCC 210;

(9) ***'VIJAY PAL SINGH AND ANOTHER VS. DY. DIRECTOR OF CONSOLIDATION***

AND OTHERS', (1995) 5 SCC 212;

(10) ***'REGIONAL MANAGER, SBI VS. RAKESH KUMAR TEWARI'***, (2006) 1 SCC 530;

(11) ***'KERALA SOLVENT EXTRACTIONS LTD. VS. A. UNNIKRISHNANA AND ANOTHER'***, SC LLJ. 888;

(12) ***'REGIONAL MANAGER, SBI VS. RAKESH KUMAR TEWARI'***, (2006) 1 SCC 530;

7.0 Learned Advocate, Mr. Bhamre, appearing for the learned Advocate, Mr. Saiyed, strenuously urged that the Court may not interfere with the award passed by the Tribunal. According to him, in absence of jurisdictional error or any error in law, this Court need not interfere. He also contended that the Respondents-workman worked for a considerably long time, and therefore, the Union had demanded that they all should be treated as permanent employees and yet, the petitioner employer did not give the benefits. The evidence that had been led before the Tribunal had been correctly appreciated by it and rightly concluded in favour of the respondents. The identity card of one of the Badli workers was also brought on record, which

had been given to the permanent workmen, but, they were not treated likewise and for grant of all the benefits, they had to move the Tribunal. A detailed discussion on the part of the Tribunal that respondent are the permanent workers of the company and not the Badli workers, should not be displaced, merely because the petitioner-Company ventilated its grievance against globalization and made hue and cry in terms of reduction in production for days together. He urged that when the Respondent had not been given the work and when they had worked for considerably long time of 240 days in each year, the respondents were compelled to move the authority concerned, which had made reference to the Tribunal.

7.1 In support of its submissions, learned Advocate sought to rely on the following decisions:

(1) '***SHAMA PRASAHANT RAJE VS. GANPATRAO AND OTHERS***', (2000) 7 SCC 522;

(2) '**MINERAL EXPLORATION CORPORATION EMPLOYEES' UNION VS. MINERAL EXPLORATION CORPORATION LTD. AND ANOTHER**', (2006) 6 SCC 310;

(3) '***ATLAS CYCLES (HARYANA) LIMITED VS. KITAB SINGH***', (2013) 12 SCC 573;

(4) ***'CHIEF MANAGER, BANK OF INDIA, RAJKOT, VS. ANIL POPATLAL GHELANI'***, 2016(1)GLR 361;

(5) ***'BHAVNAGAR DISTRICT PANCHAYAT & ANOTHER VS. MAHENDRA JASHVANTRAI DAVE AND ANOTHER'***, 2016((3)GLH 476;

(6) ***'RADHA RAMAN SAMANTA VS. BANK OF INDIA AND OTHERS'***, (2004) 1 SCC 605;

(7) ***'M/S. SRIRAM INDUSTRIAL DISPUTE ENTERPRISES LIMITED VS. MAHAK SINGH AND OTHERS'***, AIR 2007 SC 1370;

(8) ***'AGRICULTURE PRODUCE MARKET COMMITTEE VS. BHANDERI DHIRUBHAI NARSHIBHAI'***, 2008(2) GLR 1153;

(9) ***'PRINCIPAL, S.V. DOSHI GIRLS HIGH SCHOOL AND ANOTHER VS. LILABEN SOMABHAI GADASA'***, 2008 (1) GLH 286';

(10) ***'ANOOP SHARMA VS. EXECUTIVE ENGINEER PUBLIC HEALTH DIVISION NO.1, PANIPAT (HARYANA)'***, (2010) 5 SCC 497;

(11) ***'RASHTRA MAJOOR MAHAJAN SANGH***

VS. UNA TALUKA KHEDUT SAHAKARI KHAND UDYOG LTD. AND ANOTHER', 1995(1)GLR 580;

(12) '***MAHMADSAFI JANMAHMAD MEMON NEWR GHANCHIVAD MAJZID VS. BANK OF INDIA, GENERAL MANAGER, PERSONNEL DEPARTMENT AND OTHERS'***, Special Civil Application No. 3233 of 2000, Dated: 15.11.2005;

(13) '***GUJARAT MAZDOOR MANCH THROUGH GENERAL SECRETARY AND ANOTHER VS. GUJARAT COMPOSITE LIMITED AND ANOTHER'***, Special Civil Application No. 7180 of 2011, Date: 30.01.2017;

8.0 On careful consideration of the submissions made by both the sides, the law on the subject would require consideration. The Apex Court in the case of '***SHAMA PRASAHANT RAJE VS. GANPATRAO AND OTHERS'*** (Supra) considered the role of the High Courts in proceeding under Articles 226 and 227 of the Constitution of India by holding and observing that it cannot sit in appeal over the findings recorded by the Court of competent jurisdiction and the jurisdiction of the High Courts is supervisory and not appellate. Article 226 is not intended to enable the High

Court to convert itself into a Court of appeal and to examine the maintenance of a petition and set aside the view taken or ordered by the Court concerned. The apex Court held that notwithstanding this, on a mere perusal of the order of the Tribunal, when the High Court concludes that a manifest error is made by mis-construing certain documents and other material, which is not possible for a reasonable man to come to a conclusion arrived at by the Tribunal or the Tribunal has ignored to take into consideration certain relevant materials which are not admissible, then the High Court will be fully justified in interfering with the findings of the inferior Tribunal. Paragraph-5 thereof reads thus;

> *"In view of the rival submissions we have carefully scrutinised the orders of the Controller, that of the Appellate Authority under the Control Order and the order of the learned Single Judge which has been affirmed by the Division Bench. Undoubtedly, in a proceeding under Articles 226 and 227 of the Constitution the High Court cannot sit in appeal over the findings recorded by a competent Tribunal. The jurisdiction of the High Court, therefore, is supervisory and not appellate. Consequently Article 226 is not intended to enable the High Court to convert itself into a Court of Appeal and examine for itself the*

correctness of the decision impugned and decide what is the proper view to be taken or order to be made. But notwithstanding the same on a mere perusal of the order of an inferior Tribunal if the High Court comes to a conclusion that such Tribunal has committed manifest error by mis-construing certain documents, or the High Court comes to the conclusion that on the materials it is not possible for a reasonable man to come to a conclusion arrived at by the inferior Tribunal or the inferior Tribunal has ignored to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible, then the High Court will be fully justified in interfering with the findings of the inferior Tribunal. Then again the two questions on which the Tribunal under the Rent Control Order were required to give finding, namely, habitual defaulter and subletting are not pure questions of fact but can be held to be mixed questions of fact and law. In this view of the matter, on going through the Appellate order passed by the District Collector as well as the order of the learned Single Judge, we are not in a position to hold that the High Court exceeded the parameters prescribed for interference with the findings of an inferior Tribunal. Under Clause 13(3) (ii) Controller has to be satisfied that the tenant is habitually in errors with the rent. The expression habitually would obviously connote some act of continuity. Under the Lease Deed

dated 8.4.1982 between the landlord and the tenant Clause 4 made it obligatory for the tenant to pay the rent before 10th day of each English Calendar month, and under Clause 9 in the event of arrears of rent over 3 months is not paid then the landlord was entitled to give notice and then if the matter is not settled within one month from the date of the notice then the landlord is entitled to terminate the tenancy. Reading the aforesaid two Clauses it would not be correct, as contended by Mr. Verma, learned senior counsel appearing for the appellant, that under the agreement itself 4 months period has been provided to enable the tenant to pay the rent. If a tenant, notwithstanding the obligation of paying the rent by 10th day of each English calendar month continuously makes a default of paying the rent for the first month by two months thereafter, and pays the rent in similar manner, then he must be held to be habitually in arrear with the rent in question. This being the posititon, the fact that the rent for September to November 1984 was paid in December only after the Distress Warrant was issued and that again from December 1984 to March 1985 the rent had not been paid and were deposited within the 10th of next month, as stipulated in the lease agreement would constitute the tenant to be habitually in arrear within the meaning of Section 13(3)(ii) of the Control Order. The Appellate Authority under the Control Order was obviously in error in interfering with the well

> *reasoned conclusion of the Controller on this score, and the High Court was fully justified in correcting the said error by interfering with the finding of the lower Appellate Authority on the question of applicability of Section 13(3) (ii) to the case in hand. Similarly, on the question of subletting, there is no dispute with the proposition that the two ingredients; namely, parting with the possession and some consideration therefor, had to be established. The conclusion of the lower Appellate Authority on this score was obviously on a mis-construction of the document Exhibit N2 and the High Court, therefore, was entitled to correct the error which was based upon a construction of the aforesaid document. The different Clauses of the lease deed unequivocally indicates that the sum of Rs.1,500/- p.m. was the consideration money for parting with the possession of the premises and allowing the Singer Sewing Machine to do business in the premises."*

8.1 In case of '***ATLAS CYCLES (HARYANA) LIMITED VS. KITAB SINGH***' (Supra), the Apex Court has reiterated the basic principles that the the High Court while issuing writ of certiorari cannot be permitted to assume the role of appellate Court. However, if it is shown that the Tribunal or the Labour Court has erroneously refused to consider the admissible material, evidence and has admitted any inadmissible

evidence, the writ Court would be well-within its power to interfere. In the matter before the Apex Court, the learned Single Judge of a High Court thoroughly examined all the aspects and arrived at the conclusion, the Court held that the labour Court arrived at findings overlooking the material on record, which would amount to perversity and the writ Court shall be fully justified in interfering with the conclusion. However, while exercising writ jurisdiction, it is not to assume the powers of an appellate Court. Paragraph-12 thereof reads thus:

> *"Before considering the merits of the claim of both the parties, it is useful to refer the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India. After adverting to earlier decisions, this Court in Surya Dev Rai vs. Ram Chander Rai & Ors., (2003) 6 SCC 675 summarized various circumstances under which the High Court can exercise its jurisdiction under Articles 226 and 227 of the Constitution which are as under:*
>
> *"38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:*
>
> *(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High*

Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction – by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction – by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave

injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error

though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot

> *substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case." In the light of the above principles, while reiterating the same, we have to consider whether the High Court has exceeded its power as claimed by the learned counsel for the appellant?"*

8.2 The Constitution Bench of the Apex Court considered the scope of High Courts' jurisdiction to issue a writ of certiorari involving challenge to the orders passed by the authorities entrusted with the quasi judicial functions. In the case of ***'SYED YAKOOB Vs. K.S. RADHAKRISHNAN & OTHERS',*** AIR 1964 SC 477, the Apex Court held that the writ of certiorari can be issued for correcting an error of jurisdiction committed by the inferior Court or the Tribunal, where, the orders are passed by the Tribunal or the Court without jurisdiction or is in excess of it or as a result of failure to exercise the jurisdiction vested in it. A writ can be issued by the High Court in exercise of jurisdiction conferred on it, when the decision taken by the inferior Court or

tribunal is legal or impermissible. Wherein, the Apex Court observed and held thus:

> *"The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the 69 dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on*

the face of the record can be corrected by a writ, but not an error of tact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the. Tribunal had. Erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was' insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque(1), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam(2), and Kaushalya Devi v. Bachittar Singh(3). It is,

of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manliest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly rounded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases. the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be

> *open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."*

8.3 In light of the principles, which have been detailed herein above, this Court needs to consider, as to whether, this Court requires to exercise the powers of certiorari or supervisory jurisdiction without converting itself into a Court of appeal and indulge in re-appreciation or revision of the evidence.

8.4 At this stage, requirement is to reiterate the reference for adjudication before the Industrial Tribunal in Reference (IT) No. 482 of 1992;

(i) Workmen shown in schedule being permanent workmen, whether they should be given basic pay and other allowances from the date of their

joining the Company or not?

(ii) Whether, the workmen, as per the schedule should be given the benefit of salary and other consequential benefits with effect from date of their joining the company even for the days on which they had not been offered work or not?

8.5 It is quite clear from the terms of reference that the demand essentially was for grant of basic pay and other allowances from the date of their joining company as if, the respondents are the permanent workmen. They never claimed in the terms of reference that they be treated as permanent workmen, but, on the basis of that in the schedule, the workmen have not been shown as permanent workmen, the benefits should be made available by the company or not and whether such benefits be made available from the date of their joining, even for those days on which they were not offered any work. Reference for the workmen was filed by the Gujarat Mazdoor Panchayat and the petitioner, which was before the Tribunal, is essentially referred to as the Company. Noteworthy would be the Statement of Claim filed by the Mazdoor Panchayat. It is from the beginning their say that they are doing the

same work as done by other workmen, but, they are not treated equal to others and have not been paid equal salary and other benefits. Their exploitation is by paying them law salary without any justifiable cause. This violation of principles of ‘equal pay for equal work’ and discrimination amongst the workmen is alleged to be unfair labour practice and such action on the part of the petitioner Company is violative of the conditions of service. It is also the grievance on the part of the respondent that they are permanent workmen of the petitioner-Company and it is obligatory on the petitioner-company to offer them work on daily basis, which is not offered to them, which amounts to lockout. But, before implementation of such a lockout, no intimation or no cause was assigned to the workmen by the petitioner. It is also deducting wages of the workmen and thus, the petitioner Company is implementing illegal lockout and such a step of the company is illegal, as per the Chapter-5B, as under the law it is obligatory to obtain permission and without such permission, the act is arbitrary and would amount to exploitation.

8.6 The petitioner-company filed its written statement vide Exhibit-7 and Exhibit-15 before the Tribunal. Denying the averments in the

statement of the Respondent-union with a plea that it must be put to strict proof thereof. It was denied that the workmen were permanent employees of the petitioner company and they were working since many years and / or that the concerned employees being 161 in numbers, they were being exploited from the date of their employment. It is also denied that they were paid less wages and were also not given the benefit of the service conditions, which other permanent workmen of the petitioner company were getting. The company was paying basic, dearness allowance and other allowances to the other permanent employees of the Company, as per the settlement arrived at with the Union from time to time.

8.7 The preliminary contention raised by the petitioner-Company was that 161 employees were working as Badli workers and they were assigned the duties given to the Badli workmen. They are provided the Badli work on leave or vacancy of a permanent workman and that is how they were getting the work and that they were not carrying out the work on permanent basis. It is, therefore, contended that depending upon the absenteeism of the permanent workmen, Badli workers were provided the work. There were about 635 permanent workmen in the petitioner-company, who were skilled and unskilled employees and in

case of their leave or vacancy, the respondent workmen were given the Badli work. It was emphasized by the petitioner that the status of Badli workmen and permanent workmen were distinct and separate and that it used to maintain separate registers for the Badli workers and the permanent workers and the settlements arrived at with the Union were also distinct and separate for both the class of workers. They are separate factors throughout, which is also quite apparent from the settlements between the petitioner-Company and the representatives of the trade union. That the payment of lump-sum amount, by way of interim amount, which provides for different payment for the Badli workers and the permanent workers and yet, another settlement came to be made. The company, therefore, submitted that the demand raised by the union for 161 Badli workers by the charter of demand dated 07.03.1992, raising the dispute that all Badli workers should be paid basic pay, dearness allowance and other benefits at par with regular / permanent workers of the petitioner company. They are covered by the existing settlement and the dispute cannot be said to be an industrial dispute under the I.D. Act and the demand raised being covered by previous settlement, there cannot be a second round of adjudication for the disputes, which already got

resolved.

8.8 The terms of reference is beyond the original scope of demand and the conciliation proceedings were also without jurisdiction and this is a case of non-application of mind. In essence, it was the case of the petitioner-Company that there were about 635 permanent employees working with the company and out of them about 190 workmen are working as clerical and supervisory staff, whereas, 161 employees were working as Badli workers, who were getting work on leave or vacancy of a permanent workmen. There would be no guarantee of employment and the right of Badli a workman is that of a contingent right and it is not obligatory on the petitioner-employer to make the work available to Badli workers. Various agreements and awards were settled with the representatives of the Union under the ID Act for both the permanent workmen and Badli workmen. Therefore, the Badli workmen cannot claim to be at par with the permanent employees of the company. The company had also raised issue with regard to receding global trend for its products. Initially, it was utilizing maximum production capacity, and therefore, there was a need to engage more workmen. However, from the year 1989, when the international market situation reversed and the price of PVC pips and

other pipes were also reduced suitably with the with enhancement or increase in the price of asbestos fibre and devaluation of the rupee, the Company had been compelled to reduce its production. The production percentage also had constantly reduced and out of four working machines only 1 machine was being utilized between the period from 1991 to 1993. Thus, on the ground that the permanent workmen also were having no work, the petitioner company showed its inability to further take anu other workmen or to give work to those, who approached the Tribunal.

8.9 The documents, which were produced before the Tribunal, by the petitioner-company were copies of settlement dated 19.12.1992, 28.06.1989, a copy of the interim settlement dated 12.10.1988, copies of the settlements dated 12.05.1987, 01.07.1985 and 09.08.1982 were also produced. There are a couple of other documents also, which have been referred to in Paragraph-9 of the award of the Tribunal. It was admitted that there was no appointment letter given to these workmen. The salary statements prior to the year 1988 were also not made available. However, the settlements prior to the year 1982 are not relevant for the purpose of reference made. After referring to the oral depositions and also cross-examination, it

noted down the undisputed facts in respect of the company. The Tribunal noted that the workmen under the reference were carrying out the same work, as is done by the permanent workmen. The issue of ‘equal pay for equal work’, as has been given to the permanent workmen of the Company, also had been put forth. On the ground that neither ticket nor the identity card issued by the petitioner-Company contained any classification in particular and the workmen covered under the present reference had completed more than 240 days in the year when they joined service, the Tribunal examined the issue thread bare. The Court was conscious of the fact that, according to the petitioner, the respondents were Badli workers and it was the very issue, which was to be adjudicated, and therefore, it started with the classification of the status or position of the respondents, who had been 161 in number, before the Tribunal. The Tribunal in Paragraph-19 of its order very consciously noticed that the workmen under the present reference were the permanent workmen. However, the adjudication in the reference will have to be borne in mind the subsistence of the reference, as to how these workmen could be classified and to which class they belonged to. The Tribunal also noted in Paragraph-20 that as per the say of the petitioner-company, they were Badli workers, and

therefore, keeping in mind the same, this will have to be decided.

8.10 The Reference was under Section 3.2 (c) of the Model Standing Order, which speaks about Badli or substitute workmen appointed on the post of a permanent workmen or a probationer, who is temporarily absent or whose name was entered in the register of permanent workmen. It emphasized that there has to be classification of the Badli workmen and the permanent workmen and their names should figure in the register meant for permanent or Badli workers. These requirements are held to be must by way of documentary evidence for classification of Badli workers. It is also necessary to show that in whose place a Badli worker is employed and his name should be tnetered in the register meant for Badli workers. The Badli register should also mention the name of the person, in whose absence he need to work on the permanent post.

8.11 A demand was also made by the Respondent-workmen from the employer by preferring an application seeking all such documents. The workmen had not been issued any letter of appointment. The witness examined also had stated that such a letter of appointment, at no point of time, had been issued. On the ground

that it was the duty of the petitioner-Company to maintain and adduce the documentary evidence and to produce it to establish the factum of the respondents being the Badli workers, the Tribunal held that it has a reason to believe that those documents did not exist. The standing order demanded the maintenance of such Badli registers to expressly show as to in whose place a Badli workman has to work. The burden would lie, according to the Tribunal, upon the petitioner-company which failed to produce relevant documentary evidence. In absence of maintenance of such registers, it also breached the provisions, which otherwise also are mandatory in nature, and therefore, it is concluded that the respondents were not Badli workers.

8.12 The workman also adduced oral evidence contending that they had worked on the post and not for any other workman. Since, no evidence led by the Company to establish that fact, and therefore, it chose to conclude that there was nothing available to establish the status of the Badli workers.

8.13 Moreover, Administrative Rule 5(1) emphasizes to the effect that there was issuance of ticket of a particular class / type to which a workman belongs. Section 3 provides that to which

department a workman belongs to should be stated in the said ticket. The Rule 5(2) also provides that in which department the workman works should be referred to and the ticket should also contain his number and the same should be issued to each workman. These tickets have not been issued in favour of any of the respondents. The identity card produced by one of the workmen, who had examined himself before the Tribunal, the Tribunal did not find any type having been mentioned on such identity card. The ESI and PF numbers have been issued to the workmen and Administrative Rule provides that each owner should issue every workman an identity card, a pass or a ticket. When the ticket and identity card were produced before the tribunal, it held that it was no different than that of the permanent workers. Therefore, the classification of the Badli workers was not feasible, according to the Tribunal. There was a one and common culture of the workmen and there was no distinction between both the Badli workers and the permanent workers. After the detailed examination of the entire material on record, the Tribunal concluded that the settlement dated 20.06.1989 to be treated as the workman under the Reference to be treated as permanent from 20.06.1989 and that they are entitled to all the benefits, viz. difference of wages etc..

8.14 It can, thus, be seen from the detailed scrutiny and analysis of the evidence, which had been adduced before the Tribunal that it did not find any requisite material, which otherwise was required to be maintained by the Company. It also did not find any difference, much less any vital difference, between those, who were working as permanent workmen, and those, who were alleged to be working as Badli workmen. It gave the reason for not believing the conversion set out by the employer and the non production of the documents, which had been called for, for the grounds on which the entire reference was allowed.

8.15 At this stage, the law on the subject deserve consideration. In case of '***CHIEF MANAGER, BANK OF INDIA, RAJKOT, VS. ANIL POPATLAL GHELANI***' (Supra), this Court was considering the action of absorption of Badli workers, who were appointed after following the required procedure of recruitment. The office memorandum of Bank of India provided for absorption on completion of 240 days of continuous service in a block of 12 months. Respondent employee was said to have completed requirement in a block of 12 months. It was their case that he was employed as Badli Sepoy and he was continued in service for 16 years and for the entire period, he had worked

for more than 240 days for continuously 12 years. This was considered by the Court to be a clear cut unfair labour practice by the petitioner-Bank in the form of office memorandum issued to all the Branch Managers by an officer of the rank of Asst. General Manager to ensure that Badli days of a Badli Sepoy does not exceed 240 days in a block of 12 months. It was also contended by the Bank that unless an employee completes 240 days in a particular branch, his case cannot be considered for absorption. This was when challenged before the Labour Court, it directed the Bank to consider the case for absorption. When the same was challenged before this Court, this Court confirmed the award of the Labour Court directing reinstatement of the employee and to regularize his services.

8.16 In ***BHAVNAGAR DISTRICT PANCHAYAT & ANOTHER VS. MAHENDRA JASHVANTRAI DAVE AND ANOTHER'*** (Supra), there was a question of regularization of services of daily wager, who was the daily rated employee, employed by the Bhavnagar District Panchayat on the post of Dressor and, who was discontinued from service on 01.01.1989. The case of the authority was that the workman was a daily wager and working purely on temporary basis and was appointed without following the due process of recruitment, who had

sought regularization of service, and the industrial dispute which was referred to the Labour Court treated the workman as permanent and made him available the consequential benefits. The Court held that if the stand taken by the authority is allowed, it would amount to nothing but the breach of valid recognized principles. The award of the Labour Court was thus not disturbed.

> *"18. One another facet to be taken into consideration that a plea is taken by the petitioners authority that the services of the respondent workman was not as per the recruitment process, not in consonance with the Rules and therefore, the respondent workman is not entitled to seek any regularization or absorption on permanent set up as a matter of right. It is this point which deserves to be dealt with in the context that it is this very petitioners authority, who kept the respondent workman in employment and it is this very authority despite the rule having been available to them as per their say, has recruited and allowed continuance in the employment and now, to allow this plea to be taken at the behest of petitioners authority, it would tantamount to give a premium to their mistake, if any and therefore, in one of the decisions of the Hon'ble Apex Court, it has been propounded that this plea is not available to the petitioners*

authority as it is the authority who committed that mistake and allowed the workman to be in employment. Therefore, in the background of this fact, a decision of the Hon'ble Supreme Court in case of ***Bhartiya Seva Samaj Trust Tr. Pres. & Anr. V/s. Yogeshbhai Ambalal Patel & Anr.****, reported in* ***AIR 2012 SC 3285*** *is also worth to be taken note of while coming to a final conclusion in the present proceedings. Relevant Para.21, 22 and 23 of the aforesaid decision read as under :*

> *21. A person alleging his own infamy cannot be heard at any forum, what to talk of a Writ Court, as explained by the legal maxim allegans suam turpitudinem non est audiendus'. If a party has committed a wrong, he cannot be permitted to take the benefit of his own wrong.*
>
> *(Vide: G. S. Lamba & Ors. v. Union of India & Ors., AIR 1985 SC 1019; Narender Chadha & Ors. v. Union of India & Ors., AIR 1986 SC 638; Molly Joseph @ Nish v. George Sebastian @ Joy, AIR 1997 SC 109; Jose v. Alice & Anr., (1996) 6 SCC 342; and T. Srinivasan v. T. Varalakshmi (Mrs.), AIR 1999 SC 595). This concept is also explained by the legal maxims Commodum ex injuria sua nemo habere debet; and 'nullus commodum capere potest de injuria sua propria'. (See also: Eureka Forbes Ltd. v. Allahabad Bank & Ors.,*

> *(2010) 6 SCC 193; and Inderjit Singh Grewal v. State of Punjab & Anr., (2011) 12 SCC 588).*
>
> *22. Thus, it is evident that the appellant has acted with malice alongwith respondent and held that it was not merely a case of discrimination rather it is a clear case of victimisation of respondent No.1 by School Management for raising his voice against exploitation.*
>
> *23. After going through the material on record and considering the submissions made by learned counsel for the appellant and the respondent No.1-in-person, we do not find any cogent reason whatsoever to interfere with the aforesaid findings of fact.*

8.17 So far as the regularization is concerned, the Court has referred, in the above judgment, to the principles of regularization enunciated in '***SECRETARY, STATE OF KARNATAKA VS. UMA DEVI***', AIR 2006 SC 1806, wherein, the Apex Court held thus:

> *"14. Even at the threshold, it is necessary to keep in mind the distinction between regularization and conferment of permanence in service jurisprudence. In STATE OF MYSORE Vs. S.V. NARAYANAPPA [1967 (1) S.C.R. 128], this Court stated*

that it was a mis-conception to consider that regularization meant permanence. In R.N. NANJUNDAPPA Vs T. THIMMIAH & ANR. [(1972) 2 S.C.R. 799], this Court dealt with an argument that regularization would mean conferring the quality of permanence on the appointment. This Court stated:- "Counsel on behalf of the respondent contended that regularization would mean conferring the quality of permanence on the appointment, whereas counsel on behalf of the State contended that regularization did not mean permanence but that it was a case of regularization of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized.

Ratification or regularization is possible of an act which is within the power and province of the authority, but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

In B.N. Nagarajan & Ors. Vs. State of Karnataka & Ors. [(1979) 3 SCR 937], this court clearly held that the words "regular" or "regularization" do not connote

permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This court emphasized that when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization.

15. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-

fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

16. Without keeping the above distinction in mind and without discussion of the law on the question or the effect of the directions on the constitutional scheme of appointment, this Court in Daily Rated Casual Labour Vs. Union of India & Ors. (1988 (1) SCR 598) directed the Government to frame a scheme for absorption of daily rated casual labourers continuously working in the Posts and Telegraphs Department for more than one year. This Court seems to have been swayed by the idea that India is a socialist republic and that implied the existence of certain important obligations which the State had to discharge. While it might be one thing to say that the daily rated workers, doing the identical work, had to be paid the wages that were being paid to those who are regularly appointed and are doing the same work, it would be quite a different thing to say that a socialist republic and its Executive, is bound to give permanence to all those who are employed as casual labourers or

> *temporary hands and that too without a process of selection or without following the mandate of the Constitution and the laws made thereunder concerning public employment. The same approach was made in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation (1989 Suppl. (2) SCR 513) where this Court directed regularization of daily rated workers in phases and in accordance with seniority."*

8.18 So far as the decision in '***RADHA RAMAN SAMANTA VS. BANK OF INDIA AND OTHERS***' (Supra) is concerned, it was the case of Municipality of petition under Article 226, where the writ-petitioner had alleged himself to be Badli worker, claimed regularization by way of bipartite agreement. The employer-Bank opposed his claim. The learned Single Judge allowed the writ-petition, but, the Division Bench remanded the matter to the Learned Single Judge to dispose of the same after considering the Bank's stand. The learned Single Judge again decided in favour of the writ-petitioner. However, the Division Bench reversed that decision on the ground that instead of filing a writ-petition, the claim ought to have been sought earlier under the ID Act. When generally a writ-petition is for the enforcement of right other than fundamental right, as provided under Article 226 of the

Constitution, the Apex Court held and observed that the writ-petition is also maintainable. Badli worker's writ petition claiming regularization in terms of private agreement between the Management and the Union, the High Court could issue appropriate directions even at this stage, the petition otherwise is justified. The Court also held that under Article 226 of the Constitution, when certain questions of facts arose with regard to the status of an employee, examination of any disputed documents for determining such a question is permissible. It was permissible on the part of the Court to look into those documents and to infer as to the status of the employee, as the examination is not debarred in the proceedings under Article 226 of the Constitution.

8.19 It was a case where the appellant was appointed as Badli subordinate staff / sepoy against one permanent vacant post in a branch of Bank of India from the year 1988 to 1991. The Branch Manager asked him not to work any more and therefore, he made a representation to the Zonal Manager, requesting him to employ him, by quoting circular No. XVIII/90/20, Dated: 07.09.1990, which referred to absorption of Badli Sepoys and bipartite agreement entered into between the management and the Union. It provided

that the Badli worker, who has done more than 240 days work in the permanent vacancy after February, 1988, in a block of 12 months, would be absorbed against clear vacancies as and when arise. As no reply was received from the Bank, he moved the High Court seeking direction for absorption. A direction was given by the learned Single Judge to absorb him, this was challenged. Here, it would be profitable to reproduce the relevant observations made by the Apex Court at Paragraphs-13, 14, 17 to 19 read thus:

> *"13. It is too elementary to state that powers under Article 226 of the Constitution could be exercised for the enforcement of Fundamental Rights available under Part III of the Constitution, and also for any other purpose. High Courts have often exercised their power under Article 226 of the Constitution for enforcement of a legal right. It is, therefore, open to the learned single Judge to issue an appropriate direction to the respondent-Bank, if otherwise justifiable on facts. To make matters clear, We may cite Style (Dress Land) v. Union Territory Chandigarh, [1999] 7 SCC 89, in which this Court held that :*
>
> *"Action of renewability should be gauged not on nature of function but public nature of the body exercising that function and such action shall be open to judicial review even if it pertains to the contractual*

field"

(Emphasis supplied)

14. In this case, pursuant to the direction of the Division Bench in FMAT No. 1119 of 1996, the learned single Judge looked into the relevant documents produced by the Respondent bank and formed an opinion that the Appellant herein was working with the bank during the relevant period. It is also not improper for the learned single Judge to look into undisputed documents and to infer as to the status of employment of the appellant. Examination of undisputed facts is not debarred in a proceeding under Article 226 of the Constitution vide K.K. Kochunni v. State of Madras, [1959] 2 Supp. SCR 316; Ikram Hussain, Mohd. v. State of U.P., [1964] 4 SCR 86; Govt. of A.P. v. Karri Chinna Venkata Reddy, [1995] Supp. 1 SCC 462. Therefore, the procedure adopted by the learned single Judge pursuant to the direction of the Division Bench is perfectly within the limits of its powers under Article 226 of the Constitution.

XXX XXX XXX

17. In the instant case the question for consideration is whether the appellant is a Badli worker or not. Rival argument advanced before us is that he will not come under the Explanation of Badli workman to Section 25-C of the Industrial Disputes Act. That definition of Badli workman under the Explanation is limited only to

the purposes of Section 25-C of the Industrial Disputes Act and not necessarily applicable to the facts arising in the present case. In Lalappa Lingappa v. Laxmi Vishnu Textile Mills, [1981] 2 SCC 238, this Court held that "... The badli employees are nothing but substitutes. They are like 'spare men' who are not 'employed' while waiting for a job....." In Budge Budge Jute Mills Co. Ltd. v.

Workman, (1970) 1 LLJ 222, it was held that "....A badli or a special badli is a workman who is appointed in a vacant post of a permanent workman or a probationary who is temporarily absent...". Thus a Badli workman only means a person who is employed as a casual workman who is working in place of another. By virtue of bipartite agreement published in the circular No. XVIII/90/20 dated 7th September 1990 of the Federation of the Bank, such a Badli worker is entitled to be absorbed if he completes 240 days of badli service in a block of twelve months or a calendar year after 10th February 1988. Based on the conclusion arrived at by the learned single Judge after considering the relevant documents, the fact of Appellant's service for the required period cannot be disputed. Nomenclature of his work profile may change, but it is clear that he rendered services in a vacancy of a temporary post for more than 240 days. This is sufficient to treat him as a Badli for the purpose of absorption. Hence, he has a legal right to be absorbed in the

Respondent bank by virtue of the bipartite agreement. (See generally Gujarat Agricultural University v. Rathod Labhu Bechar & Others, [2001] 3 SCC 574). Order made by the learned single Judge deserves to be affirmed in reversal of the order of the Division Bench.

18. The learned single Judge had directed the creation of a supernumerary post if no posts were available in any branch of the respondent-Bank. The appellant was directed to be regularised in service against such post with effect from the date of joining. Two months time was granted for this purpose.

19. At this stage, the learned counsel for the Respondent-Bank submitted that now the Bank has taken a policy decision to down size its work force by reducing the number of new recruits and also offering Voluntary Retirement Scheme to the existing employees. It would not be proper to give a direction to absorb an additional employee against the general policy of the Bank. In the circumstances, in modification of the relief granted by the learned single Judge, we direct that the respondent-Bank shall absorb the appellant in a vacant post or, in the absence of any vacancy in an appropriate post, compensate the appellant monetarily. The compensation shall be calculated in accordance with Voluntary Retirement Scheme of the respondent-

> *Bank on the basis that the appellant had been regularised in service on 1st January 1999 and voluntarily retired from such service from the date of this judgment. Either of the benefits must be granted within two months from today.*

8.20 The Apex Court held that Badli workman is a person, who is employed as casual workman and is working in place of another workman. The bipartite agreement published in the circular of Federation of the Bank held such a Badli worker entitled to be absorbed. While so doing, the Court relied on the decision in '***GUJARAT AGRICULTURAL UNIVERSITY VS. RATHOD LABHU BEHCAR'***, (2001) 3 SCC 574. It was a case of non-regularization of services by the University for a long period of daily rated workers, who were engaged *de hors* the rules, as carpenter, sweeper, etc.. They served the University for a long period of 10 years, but, the University did not consider their case for regularization. Such an action on the part of the university was, therefore, held to have constituted unfair labour practice. The Court approved the scheme of the University to regularize 51,000 daily rated workers in a phased manner.

8.21 Yet, another decision, which is sought to be relied on by the Respondents of Apex Court

is in '***M/S. SRIRAM INDUSTRIAL DISPUTE ENTERPRISES LIMITED VS. MAHAK SINGH AND OTHERS***', where, the Court was concerned with the question of continuity of service under the ID Act and it held that in order to be in continuous service, the employee must have worked for a period of 240 days in any calender year and Section 2(g) of the U.P. Industrial Disputes Act, 1947, does not require a workmen to prove that he had worked for 240 days, only during the preceding period of 12 months prior to termination of his services.

> *"29. Having carefully considered the submissions made on behalf of the respective parties and the statutory provisions, we are of the view that a decision in this matter will depend on the understanding of the expression "continuous service" as used in Section 6 N read with Section 2 (g) of the U.P. Act as against its usage in Section 25 B (2) (a) (ii) of the Central Act. In order to appreciate the difference between the two provisions, Sections 6N and 2(g) of the U.P. Act and Section 25 B 2 (a) (ii) of the Central Act are reproduced hereinbelow:-*
>
> *"6-N. Conditions precedent to retrenchment of workmen.-- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until*

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months, and

(c) notice in the prescribed manner is served on the State Government.

2g. 'Continuous service' means uninterrupted services, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman, and a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry.

Explanation.In computing the number of days on which a workman has actually worked in an industry, the days on which

(i) he has been laid off under the agreement or as permitted by standing order made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the industrial establishment, the largest number of days during which he has been so laid off being taken into account for the purposes of this clause,

(ii) he has been on leave with full wages, earned in the previous year, and

(iii) in the case of a female, she has been on maternity leave; so however that the total period of such maternity leave shall not exceed twelve weeks, shall be included;

Definition of continuous service.

25B. For the purposes of this Chapter,-

(2) Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

(ii) two hundred and forty days, in any other case;"

(iii)

30. As pointed out by Mr. Viswanthan, the exclusion of the word "preceding" from Section 2 (g) of the U.P. Act indicates that a workman in order to be in continuous service may have worked continuously for a period of 240 days in any calendar year during his period of service. In fact, such an interpretation has already been given by this Court in the case of U.P. Drugs and Pharmaceuticals Company Ltd. (supra). The case made out by the respondents before the Tribunal was also on the same lines in the Adjudication cases filed before the labour court, where the respondents had made out a case that they had never worked as temporary hands but had worked continuously from 26th February, 1991 to 31st January, 1995 without break."

8.22 Interpreting the definition of Section 2(g) of the UPID Act, which had excluded the word ‘preceding 12 months’, the Court held that in order to prove that the workman worked continuously for a period of 240 days in a

calender year during his period of service, held that it rightly drew adverse inference for non-production of register and the muster rolls for the years 1991 onwards. The best evidence having been withheld, the High Court was entitled to draw such adverse inference. The views expressed by the Court on the question of burden of proof in '***RANGE FOREST OFFICER VS. S.T. HADIMANI***', (2002) 3 SCC 25, which is watered down by '***R.M. YELLATTI VS. THE ASST. EXECUTIVE ENGINEER***', (2006) 1 SCC 106 case and therefore, the Apex Court held that the workman had discharged judicial onus of production of documents in their possession.

8.23 This Court in the case of '***AGRICULTURE PRODUCE MARKET COMMITTEE VS. BHANDERI DHIRUBHAI NARSHIBHAI***' (Supra), held that the pleadings of the party required to be substantiated by the leading evidence and the pleadings cannot take place of the proof in absence of any evidence led by the employer, and therefore, the labour Court was justified in believing oral evidence of the workman.

8.24 In case of '***PRINCIPAL, S.V. DOSHI GIRLS HIGH SCHOOL AND ANOTHER VS. LILABEN SOMABHAI GADASA***' (Supra), the question had arisen before the Court, whether the workman was in continuous

service and had completed 240 days. She had stated on oath of having completed 240 days of continuous service, admittedly. There was no document supplied to the workman to prove the case. In such circumstances, the Court held that the legal evidence is led by the workman against the employer and the burden would shift to the employer to disprove the claim.

8.25 In respect of the contention to the continuous service, the question of 240 days was raised by the petitioner before the Labour Court as required under Section 25(B)(2) of the ID Act. The Labour Court held that the definition of continuous service is given under Section 25 (B) of the ID Act having deeming fiction of completion of one year service, but, sub-Section provides that, if any, workmen remained in service for the entire year and in between there is no termination and if work is not given not due to any fault on the part of workman then, such service shall be considered to be continuous, as in between one year, no termination order was passed by the petitioner.

8.26 In the matter before this Court, the workman remained in service from 1997 to 2005 and his service was not terminated by the petitioner. If, the services were interrupted not

due to any fault on the part of the workman, it was considered to be continuous service within the meaning of Section 25-B of the ID Act. The High Court also held that, if, one year's continuous service is completed, within the meaning of Section 25(B)(1) of the ID Act is satisfied, then also, Section 25(F) of the ID Act is required to be followed.

8.27 In the case of '***GIRDHARLAL LALJIBHAI VS. M.N. NAGRASHNA & ANOTHER'***, it is held and observed by this Court that a Badli worker, who has completed one year's continuous service, could not claim lay-off compensation for the days on which he could not be employed as no permanent workman or a probationer and had remained absent on the day in question. Referring to the Bombay Industrial Relations Act, 1946, this Court, further, held that the term 'Badli worker' is defined under the Model Standing Orders and settled under the Bombay Industrial Relations Act is one, who is employed on the post of a permanent operative or a probationer, who is temporarily absent. It is, therefore, held that a Badli worker's right of employment is dependent on there being some temporary vacancy of a permanent employee or a probationer. When a Badli worker is not able to get employment on a particular day because no permanent worker or a

probationer was absent on that day, it could not be said to be a case of a lay-off of that Badli worker on the day in question. The term ‘lay-off’, as defined under Section 2(kkk) of the ID Act, provides that the workman must have a right to get the work or the employment on the day in question and he must have been refused employment on that day for any of the reasons falling under Section 2(kkk) of the ID Act. The Court also held that the term “is employed” in explanation to Section 25C of the ID Act leaves no doubt that the explanation seeks to cover a Badli worker in whose case actual substitution has taken place. The explanation, however, would not apply to a case, where there is no question of any vacany being filled in by employing a Badli worker in place of the some other workman on the muster rolls. Paragraph-2 reads as under:

> *“2. The short question that arises in this petition is whether a badli worker who had completed one year's continuous service could claim lay-off compensation on the days on which he would not be employed as no permanent workman or a probationer had remained absent on the days in question. The term "lay-off" has been defined in S. 2(kkk) as under :*
>
> *"'lay-off' (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account*

of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched."

Then follows the explanation which is not material for our purpose. This definition of the word "lay-off" has now been interpreted by the Supreme Court in the case of Kairbetta Estate, Kotagiri P. O. v. Rajamanickam [1960 - II L.L.J. 275 at 277] as under :

"It is clear that the lay-off takes place for one or more of the reasons specified in the definition. Lay-off may be due to shortage of coal or shortage of power or shortage of raw materials or accumulation of stocks or breakdown of machinery or any other reason. 'Any other reason' to which the definition refers must, we think, be a reason which is allied or analogous to reasons already specified."

It is, therefore, settled that the lay-off must be for any of the reasons which are mentioned in this definition or for any similar or analogous reason. Shri Daru, the learned advocate for the petitioner, contended that the category which is found to be common in all these reasons is that the reason is beyond the control of the employer. The

standing orders settled under the Bombay Industrial Relations Act, 1946, which are determinative under S. 40 thereof and which govern the parties before us define "a badli worker" as under : 'badli' is one who is employed in the post of a permanent operative or a probationer, who is temporarily absent. It is, therefore, clear that a badli worker's right of employment is dependent on there being some temporary vacancy of a permanent employee or a probationer. He has no right to get work every day. Therefore, if a badli worker is not able to get employment on a particular day because no permanent worker or a probationer was absent on that day, it could not be said to be a case of lay-off of that badli worker on the day in question, for some reason which was beyond the control of the employer. It is implicit in the definition of the word "lay-off" that the workman must have a right to get the work or the employment on the day in question and he must have been refused employment on that day for any of the reasons falling under S. 2(kkk). The learned Judge, was, therefore, right in holding that from the very nature of his employment a badli worker was not entitled to work, unless a permanent workman or a probationer was absent and that the question of refusal or failure to give him employment could only arise when a permanent workman or a probationer was absent."

8.28 This Court in the case of '***ABAD DAIRY VS. MANIBHAI DHANJIBHA***' (Supra), was considering the Industrial Employment (Standing Orders / Rules), 1959, to hold that Badli or substitute workmen are only appointed to a post till a permanent workman is available and that no comparison can be made with temporary employees. The benefit of regularization under a settlement which is reached otherwise than in course of conciliation proceedings is not binding on workmen employed subsequently and no benefit of such settlement can be claimed. The relevant observations made by this Court at Paragraphs-16, 17, 30 reads thus:

> *16. On behalf of the workman that Badli workmen employed subsequent to the settlement, can be held to have been covered by it. Keeping into consideration the background in which the settlement was reached, it appears to us clear that it was intended to regulate the service conditions of erstwhile employees of the dairy who were serving under the Municipal Corporation at the time of transfer of the Industrial Unit. The erstwhile employees of Municipal Corporation working in the dairy and employees, who came in employment after taking over by the Unit, may be in contemplation for being governed by the terms of the settlement but the settlement, in terms of the Section 18(1)of the*

Industrial Disputes Act would bind only the parties to the settlement as it was not reached in course of conciliation. The workman cannot wriggle out of this legal effect of the provisions of Section 18(1) read with Section 18(3)(d) of the Act.

17. Giving a benevolent reading to the settlement and the circulars issued thereunder, we are unable to accept the interpretation placed on them by the Learned Counsel for the workman that the `Badli workers' employed as `substitutes' for regular or daily rated employees were also covered by the terms of the settlement and the policy decision taken from time to time. As we have seen the Industrial Law maintains a distinction between a `permanent' or `temporary' workman and a `Badli worker'. Badli Worker gets employment only when a regular workman is absent or on leave. He gets employment as a substitute. It would be reading more than what is contained in the settlement and the policy decision to infer that the new employer agreed to regularise even such workman who happened to be employed as and when necessary, by the employers as substitutes or Badlis. In our considered opinion therefore, the Learned Single Judge has committed an error in holding that the settlement and policy decisions can constitute just and valid foundation for the workman's claim for regularisation.

XXX XXX XXX

30. Considering the claim of

regularisation or reinstatement and backwages to the workmen, the financial condition of the Industry and its requirement for the jobs or posts cannot be overlooked. As a matter of fact, these are very relevant circumstances and might justify denial in a given case. In the instant case, admittedly Abad Dairy is now a sick unit. Due to competitive market in Gujarat its business has gone down so much that it is under tremendous financial strain. There are few job opportunities available with it. As has been pointed out in the reply affidavit the sale of milk in the year 1994-95 was 3 lacs litres per day which at the time of filing reply in the petition in the month of February 1995 had gone down to hardly 45000 litres per day. The statement on affidavit reads:

"With the sale of milk taking nose-dive as aforesaid, it was no longer possible for the respondent Dairy to provide work to even its permanent workmen. Since large number of permanent workmen were surplus in the Dairy there is a burden of idle wages. The employer had to introduce voluntary retirement schemes resulting in 671 workmen availing the benefit of retirement. The adverse market conditions has financially crippled the dairy. It showed accumulated losses at the end of financial year 31st March, 1994 to the tune of Rs.27,75,03,767/-. As a result it was declared sick unit by the Board of Industrial and Financial Construction by order

passed on 26.10.1994."

Without going into the legal question whether the provisions of Section 22(3) of the Sick Industrial Undertakings Act would bare any such proceedings at the instance of the workmen for regularisation and back wages, we are clearly of the opinion that it would be highly unjust to grant workmen the relief of regularisation and back wages as prayed by them which the sick unit is unable to provide.

8.29 In the case of '***MANAGEMENT OF KAIRBETTA ESTATE, KOTAGIRI P.O. VS. RAJAMANICKAM***' (Supra), the Apex Court has made a distinction between the 'lockout' and the 'lay off' to hold that lockout does not fall under the definition of lay off so as to entitle the workmen to claim lay off compensation under Section 2(kkk) of the ID Act.

8.30 In case of '***KARNATAKA STATE ROAD TRANSPORT CORPORATION AND ANOTHER VS. S.G. KOTTURAPPA AND ANOTHER***' (Supra), the Apex Court was considering the case of Badli workers, their status and rights. Their services came to be terminated and it was held that so long as a worker remains a Badli worker, he does not enjoy a status and his services may be discontinued like that of a probationer, if he is not found suitable for the job for which his services were

utilized as Badli worker. On facts, the memo in terms before the Apex Court, in which the respondent was appointed, was clearly stating that he was appointed as a Badli workman and that he did not have any right to appointment merely because his services were so utilized on a day-to-day basis. For the repeated acts of misconducts by the respondents during the period of service, minor punishments were imposed. Further, the employer watched the conduct of respondents for a year and only on completion of period during which the select-list remained valid, terminated their services as not having been found satisfactory. It was also not a case, where the respondent completed 240 days service as required under Section 25F of the ID Act. The Court, therefore, held that the respondents did not acquire any legal right to be continued in service and also not entitled to the protection under Section 25F and 25N of the ID Act. The Badli workers were appointed by the said Corporation under the Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982. The rights of the Badli worker were not absolute. The Apex Court, while allowing the appeal preferred by the Karnataka State Road Transport Corporation held that the terms and conditions of employment of a Badli worker may have a statutory flavour but the same

would not mean that it is not otherwise contractual. So long as a worker remains a Badli worker, he does not enjoy a status. His services are not protected by reason of any provisions of the statute. He does not hold a civil post. The services of a Badli worker may be discontinued, if for any reason he is not found suitable for the job for which his services were utilized as Badli worker. A Badli worker is eligible for payment of wages only for the number of days his services are utilized. Services of a temporary employee or a Badli worker can be terminated upon compliance with the contractual or statutory requirements. The apex Court further held that a dispute as regards purported wrongful termination of services can be raised only if such termination takes place in violation of the mandatory provisions of the statute governing the services. The Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982, provided procedure for appointment of Badli workers. Regulation 16 of the said regulations lays down that a 'Badli' worker is one who is employed on a day to day basis in any vacancy caused by the absence of any employee and who is paid for the number of days he works as such, either daily or once in a month. It also provide that a list of Badli workers shall be maintained in a Depot or Workshops. The appointment of a

Badli worker shall be made from among those in the list of Badli workers who are present at the Depot/Workshop, preference being given to the person who arrived first at the place of duty. If for any reason a Badli worker is not found suitable for the post, his name may be removed from the list of Badli workers. Thus, the regulations, according to the apex Court, were pointers to the fact that the right of a Badli worker is not absolute in nature. Regulation 10 of the aforesaid regulations, provides for procedure for appointment. The disqualification is also provided under the said regulations.

8.31 In '***PRAKASH COTTON MILLS PVT. LTD. VS. RASHTRIYA MILLS MAZOOR SANGH***' (Supra), an appeal was preferred by the appellant-Prakash Cotton Mills Pvt. Ltd. against the order of Industrial Tribunal, inasmuch as it directed the appellant to pay compensation to its employees and some of the Badli workers for a specific period during which the mill had been closed down under the circumstances beyond the control of the appellant. The appellant mill was engaged in the business of manufacturing of cotton textile goods. The Apex Court, under the circumstances, held that the Badli worker got work only in absence of temporary or otherwise of regular employees and they do not have any guaranteed

right of employment. Their names are not borne on the muster roll of the establishment concerned and the Badli workers are really casual employees without any right to be employed. They are not entitled to any compensation on closure, wherein, at Paragraphs- 15 and 16, it observed and held as under:

> *15. The next question that remains to be considered is whether the Industrial Court is justified in directing payment of compensation to some of the Badli workmen. It is not in dispute that Badli workmen get work only in the absence, temporary or otherwise, of regular employees, and that they do not have any guaranteed right of employment. Their names are not borne on the muster rolls of the establishment concerned. Indeed, a Badli workman has no right to claim employment in place of any absentee employee. In any particular case, if there be some jobs to be performed and the employee concerned is absent, the Company may take in a Badli workman for the purpose. Badli workmen are really casual employees without any right to be employed. It has been rightly submitted by the learned Counsel for the appellant that the Badli employees could not be said to have been deprived of any work to which they had no right and, consequently, they are not entitled to any compensation for the closure. Indeed, the Industrial Court has itself observed that to allow the claim of Badli workmen would be*

tantamount to penalising the appellant. In spite of the said observation, the Industrial Court directed payment of compensation to the Badli workmen in place of certain categories of regular employees. We fail to understand how the Industrial Court can direct payment of compensation to the Badli workmen when, admittedly, such Badli workmen, as noticed already, have no right to be employed. It may be that the Company may not have to pay closure compensation to the three categories of employees, as mentioned by the Industrial Court, but that does not mean that the Company has to pay compensation to the Badli workmen in place of these categories of employees. In this connection, we may refer to section 25C *of the 427* Industrial Disputes Act*, 1947 which excludes a Badli workman or a A casual workman from the benefit of compensation in the case of layoff.*

16. In the circumstances, although we uphold the order of the Industrial Court for payment of compensation to the regular employees of the appellant at the rate fixed by it, we are unable to subscribe to the view that the compensation which would have been payable to the three categories of employees, should be paid to the Badli workmen. In other words, we hold that Badli workmen have no right to claim compensation on account of closure.

8.32 In '***GHAZIABAD DEVELOPMENT AUTHORITY AND***

OTHERS VS. VIKRAM CHAUDHARY AND OTHERS' (Supra), the Apex Court held held that in absence of availability of any regular post for appointment, such a claim cannot be entertained. However, they should be given the minimum wages under the statute or the prevailing wages in the locality. The High Court directing the said authority not to terminate the services of such employees and follow the principle of 'First Come, Last Go'.

8.33 In light of the discussion herein above, the award, which is impugned, deserves close scrutiny, though, the evidence that has been adduced in this case and the model standing orders, which are sought to be relied on by the petitioner-employer. The factual scenario, which has been discussed herein above and the rival contentions as noted in judicial parlance reflected that the rival dispute is as to whether the Respondents were Badli workers or not. In terms of reference, as mentioned herein above, though, have not sought regulations in clear terms, it is in essence regularization, which was requested for by terming it as the unfair labour practice by taking work of permanent workers and not paying their dues, as is given to the permanent workers, the reference has been couched. It is also understood by both the sides as to what is the clear terms of the Reference,

and therefore, on that ground along, the award passed by the Tribunal cannot be interfered with. It will be vital and necessary, at this stage, to refer to well laid down principles that initially even when the onus of adducing evidence is that of the workman, who have approached the Tribunal, once oral evidence is given and necessary documents are adduced, the burden would shift on the employer. The decision of the Apex Court in '***R.M. YELLATTI VS. THE ASST. EXECUTIVE ENGINEER***' (Supra) in this regard has been referred to at Paragraph-23 in '***M/S. SRIRAM INDUSTRIAL DISPUTE ENTERPRISES LIMITED VS. MAHAK SINGH AND OTHERS***' (Supra). Muster rolls 61 in numbers, 5 files of pay registers were produced with the Exhibits-12 and 13 and 14. This contained the names of Badli workmen. According to the petitioner, 78 applications of the concerned workmen, who applied for the appointment as Badli workman had been produced. It is the very grievance of the petitioner that overlooking the plethora of evidence that are adduced before the Tribunal, it recorded the conclusion that the workmen were permanent workmen and were entitled to the benefits available to the permanent workmen in wages for days on which they had not been provided the work. It is true that the Apex Court in the case of '***PRAKASH COTTON MILLS PVT. LTD. VS. RASHTRIYA MILLS MAZOOR SANGH***' (Supra), has

held that the Badli worker are casual employees and the decision in '***KARNATAKA STATE ROAD TRANSPORT CORPORATION AND ANOTHER VS. S.G. KOTTURAPPA AND ANOTHER***' (Supra), also speaks of the categorical status that Badli workmen and the casual employees. Exception is also taken of the findings of the tribunal, which had held that not providing work to the Badli workers, who have completed 240 days of work, would amount to being contrary to the settled legal position. Section 25 of the Act provides that Badli workman shall cease to be related for the purpose of Section 25C, if, he has completed 1 year of continuous service. It is lamented that the findings of the Tribunal that the workmen concerned are permanent workmen and not Badli workmen is wholly erroneous.

8.34 At this stage, this Court is conscious of the well laid down principle as to what is the scope of judicial review so far as the invocation of the powers under Article 226 of the Constitution are concerned. This examination herein after is in accordance with the well laid down principle of law, as to whether, there is any perversity in the findings and whether some of the vital evidences, which have been adduced, have been overlooked, which resulted into perversity. This Court in '***BHAVNAGAR DISTRICT***

PANCHAYAT & ANOTHER VS. MAHENDRA JASHVANTRAI DAVE AND ANOTHER' (Supra) has already considered this aspect in detail, referring to various decisions of the Apex Court, while examining the scope and ambit of Articles 226 and 227 of the Constitution of India. The relevant observations made by this Court at Paragraphs-11 to 13 are as under:

> *11. From the aforesaid background which is emerging from the record, whether to disturb the award passed by the learned Presiding Officer is justifiable or not, more particularly in exercise of extraordinary jurisdiction essentially under Article 227 of the Constitution of India, is a vital issue before the Court and therefore, before dealing with the same, the scope of Article 227 of the Constitution of India is worth to be taken into consideration and for that purpose, taking aid of various decisions of the Hon'ble Apex Court, this Court is coming to the conclusion that well reasoned award passed by the learned Presiding Officer does not call for any interference. The scope of Article 227 which is analyzed by various authorities deserves to be quoted hereinafter.*
>
> *11.1 In a decision of the Honble Apex Court in case of **Mohd. Yunus V/s. Mohd. Mustaqim and Ors.**, reported in **AIR 1984 SC 38**, it is held in Para.7 as under :*
>
> *"7.The supervisory jurisdiction*

conferred on theHigh Courts udder Art. 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Art.227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

11.2 In a decision of the Honble Apex Court in case of ***State of Haryana V/s. Manoj Kumar****, reported in* ***2010 Law Suit (SC) 120****, it is held in Para.22 to 29 as under :*

"22. The appellants urged that the jurisdiction of the High Court under Article 227 is very limited and the High Court, while exercising the jurisdiction under Article 227, has to ensure that the courts below work within the bounds of their authority.

23. More than half a century ago, the Constitution Bench of this court in Nagendra Nath Bora and Another v. Commissioner of Hills Division and Appeals, Assam & Others AIR 1958 SC 398 settled that power under Article 227 is limited to seeing that the courts below function within the limit of its authority or jurisdiction.

24. This court placed reliance on Nagendra Nath's case in a subsequent judgment in Nibaran Chandra Bag v. Mahendra Nath Ghughu AIR 1963 SC 1895. The court observed that jurisdiction conferred under Article 227 is not by any means appellate in its nature for correcting errors in the decisions of subordinate courts or tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority.

25. This court had an occasion to examine this aspect of the matter in the case of Mohd. Yunus v. Mohd. Mustaqim & Others (1983) 4 SCC 566 . The court observed as under:-

"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record, much less an error of law. For this case there was, in our opinion, no error of law much less an error apparent on the

face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

26. This court again clearly reiterated the legal position in Laxmikant Revchand Bhojwani & Another v. Pratapsing Mohansingh Pardeshi (1995) 6 SCC 576. The court again cautioned that the High Court under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

27. A three-Judge Bench of this court in Rena Drego (Mrs.) v. Lalchand Soni & Others (1998) 3 SCC 341 again abundantly made it clear that the High Court cannot interfere with the findings of fact recorded by the subordinate court or the tribunal while exercising its

jurisdiction under Article 227. Its function is limited to seeing that the subordinate court or the tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and re-appreciating it.

28. In Virendra Kashinath Ravat & Another v. Vinayak N. Joshi & Others (1999) 1 SCC 47 this court held that the limited power under Article 227 cannot be invoked except for ensuring that the subordinate courts function within its limits.

29. This court over 50 years has been consistently observing that limited jurisdiction of the High Court under Article 227 cannot be exercised by interfering with the findings of fact and set aside the judgments of the courts below on merit.

11.3 In a decision of the Honble Apex Court in case of ***Sameer Suresh Gupta TR PA Holder V/s. Rahul Kumar Agarwal****, reported in* ***2013 Law Suit (SC) 651****, it is held in Para.7 to 9 as under :*

"7. In our view, the impugned order is liable to be set aside because while deciding the writ petition filed by the respondent the learned Single Judge ignored the limitations of the High Court's jurisdiction under Article 227 of the Constitution. The parameters for exercise of power by the High Court under that Article were considered

by the two Judge Bench of this Court in Surya Dev Rai vs. Ram Chander Rai and others (2003) 6 SCC 675. After considering various facets of the issue,the two Judge Bench culled out the following principles:

"(1) Amendment by Act No.46 of 1999 with effect from 01-07-2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e. when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning

failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court

has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge

in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

8. The same question was considered by another Bench in Shalini Shyam Shetty and another vs. Rajendra Shankar Patil (2010) 8 SCC 329, and it was held:

"(a) A petition under Article

226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh and the principles in Waryam Singh have been repeatedly followed by

subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh, followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, "within the bounds of their authority".

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in L. Chandra Kumar v. Union of India and therefore abridgment by a constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both

administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality."

12. Keeping aforesaid proposition of law reverting back to the case of the petitioners that respondent workman is not entitled to be

regularized and in that case, reliance is placed on the Full Bench decision of this Court in case of Amreli Municipality (supra). No doubt, this Court is bound by the said ratio laid down in the said Full Bench decision of this Court. However, a fact deserves to be taken note of that this Court despite the aforesaid Full Bench decision has over a period of time change in the position of law, has propounded and held that regularization is permissible and therefore, if the current position is to be taken into consideration, the award in question is not required to be disturbed.

13. Learned counsel for the petitioners also relied upon a decision of the Hon'ble Apex Court in case of ***Nand Kumar V/s. State of Bihar and Ors.****, reported in* ***(2014) 5 SCC 300*** *wherein, it has been held that regularization cannot be, as a matter of course, made. The same would depend upon the facts of the case and can be then by strict adherence to the Rules and Regulations. The Hon'ble Apex Court in that particular case has no doubt held that proposition but, this proposition has later on being gradually altered as it appears and therefore, in the background of present facts and circumstances, this Court is bound by the later decision delivered by the Hon'ble Apex Court which have been cited. In that case, the Legislature in the year 2006 has passed Bihar Agriculture Produce Market (Repeal) Act,2006 w.e.f. 1.9.2006. With the result, the Bihar Agriculture*

Produce Market Act,1960 and the Rules framed thereunder in 1975 stood repealed and the validity of the provisions of the said Act was never challenged and in that set of circumstance, claim of regularization of a daily rated employee was a subject matter of controversy before the Hon'ble Apex Court since the under the said Repeal Act, the concerned workmen were to be relieved and therefore, the background of the said case appearing to be almost different from the case on hand."

8.35 Taking firstly the list of Actual Attendance of Badli workers with it for five years, starting from 1989, this Court notices that in the first column, the date of joining of those from Sr. Nos. 2 to 42 had been appointed in the year 1982, whereas, the workman at Sr. No.1 was appointed in 1980. Further, the workman at Sr. No. 43 was appointed in the year 1983 and from Sr. Nos. 44 to 99, the appointment was in the year 1984. From Sr. No.100 to 123, the workmen were appointed in the year 1985 and two of them, at Sr. Nos. 124 and 125, were appointed in the year 1986, whereas, the workmen from 126 to 144 were appointed in the year 1987. The remaining workman, i.e. at Sr. Nos. 145 to 154, were appointed in the year 1988. It is to be noted that the Actual Attendance of Badli Workers has been produced by the petitioner-company of

the last five years only. Some of them have worked from 1980, 1982, 1983 and 1984 and yet, the material which has come on record is of the last five years only. When, in fact, financial condition of the petitioner-company, according to it, as per the global market trend had started receding. There also, as can be noticed, in the year 1989 many workers up to Sr. No. 80 completed 240 days. So far as the year 1990 is concerned, those up to Sr. Nos. 50, barring a very few in between, have completed more than 240 days, whereas, in the year 1991, the workmen up to Sr. No.53, barring a few in between, have completed 240 days. These details in the opinion of this Court is incomplete, despite the specific query had been raised as to why record is not available from the date of these persons have been working as Badli workers, no satisfactory answer is available. As discussed herein above, the onus initially shall be on those approaching the Court for discharging their burden by proving facts in issue. However, once that initial burden is discharged, the burden would shift on the employer, who shall be well equipped to maintain all the registers and the documents in accordance with law prevailing and the provisions of the labour laws.

8.36 Annexure ‘C’ is the statement of the

Badli worker engaged during the year 1989 to 1993, which suggest that average per day Badli Workmen during the years from 1989 to 1993 were as under;

1989	1990	1991	1992	1993
99	74	62	23	16

8.37 whereas, the average permanent workmen for the very same period were as under;

1989	1990	1991	1992	1993
693	674	642	639	632

8.38 Taking, first, the settlement dated 09.08.1982, the Asbestos Products Division of the petitioner-company was served with a notice of demand on 03.03.1982, whereby, the Union demanded equal wages for Badli workers, as are being paid to the permanent workers, and negotiations were held with the Union. This revision of wages of the Badli worker had been settled the in the following terms;

> *"1. It is agreed by and between the parties that with effect from 1/1/1982 the Badli workmen will be paid consolidated wages of Rs. 15.50 per day for the first one year. The wages of that Badli workmen*

will be raised to Rs.17.00 per day for the next one year and to Rs.18.50 per day for the third year effective from 1/1/1983 and 1/1/1984 respectively for the second and third year.

2. It is further agreed by and between the parties that this settlement will remain in force till 31/12/1984.

3. It is further agreed by and between the parties that the Union will not raise any claim or will not place any fresh demand for revision of wages of Badli workmen during the period of this settlement.

5. It has been agreed by and between the parties that normally Badli workmen will be utilized to fill up the vacancies resulting from absenteeism / leave or permanent and casual workmen of Grade-I whereas the vacancies arising in Grade-I, IV special, IV, III and II will be filled in by change of duty as agreed under the previous settlement which is in force.

The Union assures full cooperation to the Management in maintaining good productivity and industrial peace and the management reciprocates to maintain healthy industrial relations by resolving genuine, legitimate and lawful demands of the

workmen."

8.39 There was no claim to be made with fresh demand or revision of wages during the said period. It had been also agreed that the Badli workmen will be utilized to fill-in the vacancies resulting from absenteeism or leave of a permanent workman or casual workman of Grade-I, whereas, the vacancies arising in Grade-V, IV special, IV, III and II will be filled in by change of duty as agreed under the previous settlement which is in force.

8.40 The settlement dated 01.07.1985 was also relating to the rise of wages of the Badli workmen, since, the earlier settlement dated 09.08.1982 was in operation upto 31.12.1984, and therefore, the Sabha terminated the said settlement and served a fresh charter of demand on 16.01.1985. After the meeting of the representatives of the petitioner-company and office bearers of the Sabha, it had been amicably resolved and the demand forwarded by the Sabha vide its communication dated 16.01.1985 was agreed by both the sides. It was also agreed to be referred to the Industrial Tribunal under Section 10(2) of the ID Act. The terms of the settlement, which are vital to be reproduced, are as under;

> *"In view of this settlement Badli workmen specifically agree to maintain discipline and cooperative whole heartedly for optimum working and not to involve in any activities like go slow, stoppage in production, strike, detrimental to the interest of the company.*
>
> *This settlement shall be applicable to only those Badli workmen directly employed in the company who specifically agree and sign to abide by the terms of this settlement as acceptance of the terms of this settlement.*
>
> *It is further agreed between the parties that the company shall deduct a sum of Rs.50/- from the dues of arrears payable to each concerned badli workmen and deposit the same with the Sabha as Sabha's contribution. "*

8.41 The settlement dated 25.10.1986 pertained to the rise in wages of the Badli workmen again, as Sabha approached the petitioner-company demanding the wages from 01.01.1986. The terms were to be given effect from 01.01.1986, which reads as follows:

> *"It is agreed by and between the parties that all the Badli workmen employed in the company will be given an increase in the daily wages at the following rates:*

With effect from 1/1/1986 Rs.3.00 per day

With effect from 1/1/1987 Rs.2.30 per day

With effect from 1/1/1988 Rs.2.30 per day

The parties have agreed that no joint application before the adjudicating authority to seek an award in respect of wage rise including rise in Dearness Allowances in respect of Badli workmen is necessary since the demand for wage rise including rise in D.A. Of Badli workmen does not come within the scope of charter of demands dated 13/11/1984 placed by the Sabha and jointly referred to the Industrial Tribunal for adjudication under Section 19(2) of the Industrial Disputes Act, 1947-

This settlement shall be applicable to only those Badli Workmen directly employed by the company. The Badli workmen accepting benefits under this settlement shall be bound by all clauses this settlement and that such recipients shall not be at lib to dispute the legality or validity of any clause of this settlement and further that such recipients shall have to sign a declaration a specimen of which is attached hereto, in support o his having understood and having willingly accepted all the terms of this settlement.

It is further agreed between the

parties that the Badli workmen taking benefits under this settlement shall pay an amount of Rs.50/ (Rs. Fifty only) to digvijay cement & Asbestos Mazdoor Sabha, towards their contribution. It is further agreed that the company shall deduct the said amount from the arrears payable to the workmen and shall deposit the same with the Sabha.

That in case of any workmen failing to sign the declaration form stipulated herein above, he shall not be eligible to receive from the company any benefit under this settlement. For such a workmen it would be considered that the present settlement has not been signed at all.

It is further agreed by and between the parties will that this settlement will remain in force till 31/12/1988.

It is also agreed by and between the parties that the Sabha will not raise any claim or will not place any fresh demand for revision of wages of Badli Workmen during the period of this settlement.

It has been agreed by and between the parties that normally Badli workmen will be utilized to fill up the vacancies resulting from absenteeism / leave or permanent and casual workmen of Grade-I whereas the vacancies arising in Grade-I, IV special, IV, III and II will be filled in by change of duty as agreed under the previous settlement

which is in force.

In view of this settlement, the Badli workmen specifically agree to maintain discipline and whole heartedly cooperate with the management for optimum working and not to involve in any activities like go-slow, strike etc. which are detrimental to the interest of the company.

It is expressly understood that no SI contribution would payable on arrears which the Badli workman would receive account of this settlement."

8.42 There was yet another settlement under Section 2(p) of the ID Act dated 12.10.1988, which was an interim settlement between the parties. It is also for both the permanent workmen so also for Badli workmen. Same was to be given effect from November, 1988, in case of the permanent workmen and from 01.01.1989 in case of the Badli workmen. The terms of settlement of the said settlement reads thus;

"1. The cases pending before the Industrial Tribunal / Labour Court will be tried to be resolved by mutual negotiations and if the matters cannot be settle, the parties will proceed further in the matters before the respective courts / tribunals.

2. All the permanent workmen will

be paid Rs.100/ per month effective from November 1988. The badli workmen will be paid Rs.100/- per month effective from 1-1-1989 since the badli workmen are being paid on per day rate basis Rs.100/- per month shall be computed accordingly. The contractor's workmen will be paid Rs.78/- instead of Rs.10/- per month effective from 1-1-1989. The badli workmen /contractor's workmen are to be paid interim relief effective from 1-1-1989 instead of from 1-11-1989 because of the fact that their settlements are expiring on 31/12/1988 unlike those of permanent workmen on 31.10.1988.

3. The amount payable to the workmen as per clause (2) aforesaid is to be treated as interim relief to be adjusted against the final settlement that may be arrived at pursuant to fresh charter of demands put forth by the union including that pertaining to Dearness Allowances.

4. The amount as per clause (2) aforesaid will be paid along with the wages of the month concerned payable in subsequent month.

5. The workmen will be paid bonus at the rate of 8.33% of the wages earned by them during the accounting year 1987 (January to December). The workman will also be paid 6.67% of the wages earned by them during the year 1987 as ex gratia, thus, totaling to 15% of wages to be paid to the workmen for the accounting year 1987.

> *6. In respect of the claim of the workmen for higher quantum than 15% it is agreed by and between the parties to refer the matter to two arbitrators each none to be appointed by the company and the union.*
>
> *7. The union / workmen agree to give active cooperative in achieving quality and acceptable production / productivity and to maintain discipline in the working at all stages.*
>
> *8. Regarding the balance of the interim relief payment of the year 1984/85 as per High Court judgment dated 31/12/86 the parties will negotiate. "*

8.43 So far as settlement dated 28.06.1989 is concerned, it contained various issues in relation to the permanent as well as Badli workers. A final settlement had been arrived under Section 2(p) of the ID Act and during the time when the parties were before the Tribunal or the High Court and the terms of settlement agreed by and between the parties and one with which we are concerned is at Clause-13 under the heading '*Ex Gratia*' under which the petitioner-employer agreed to pay each permanent workmen, who were on the pay roll as on 01.01.1988 and on 01.06.1989, Rs.1000/- as *ex gratia* and Rs.500/- to each Badli workmen. Which reads as under:

> *"CLAUSE NO.13: EXGRATIA PAYMENT*
>
> *That the company agrees to pay each permanent workman who is on pay roll on 1-11-1988 and on 1-6-1989 Rs.1000/- as ex gratia amount and Rs.500/- to each Badli workmen. The said amount will be paid by the company in two installments to permanent workmen and Badli workmen as shown under.*
>
> *Rs.700 to each permanent workmen on or before 31/7/1989*
>
> *and*
>
> *Rs.300/- to each permanent workman on or before 30/9/1989*
>
> *Rs.500/- to each Badli workmen on or before 31/7/1989."*

8.44 The memorandum of settlement under Section 2(P) and under Section 19(1) of the ID Act was between the President of the Gujarat Mazdoor Panchayat and the Vice President of the Digvijay Cement Company Limited. Here also the Clause-14 is for *ex gratia* payment to the permanent and Badli workmen, which is profitably reproduced herein under:

> *"Clause No.14: Ex-gratia payment:*
>
> *That the company agrees to pay an ex-gratia amount to each workmen as under:*
>
> *Rs.1750/- to each permanent workmen.*

Rs. 750/- to each Badli workmen. ”

8.45 That also ensured that no further liability lies on the petitioner-company. The union and the workmen agreed not to raise any further demand during the period of the settlement, i.e. upto October, 1996.

8.46 The minutes of the understanding reached between the management of the petitioner-company and the workmen on 19.07.1993 will also be worth making a mention, at this stage. Particularly, those terms concerning Badli workers as well. These terms also confer benefits on the Badli workmen, who have completed 50 days of work in the previous year so far as the union is concerned. In the matter of casual leave and other allowances, stitching benefits and free transport etc. cover both the permanent workmen as well as the Badli workmen.

8.47 Coupled with this, need will be to refer to the model standing order, which is prevailing in the State of Gujarat, which provides for furnishing identity card to every workmen in the proforma given in the table. Proviso to this states that it shall not be necessary to furnish such an identity card to any workman, who under other law applicable to him already is given identity card. The table providing furnishing of the details deserve reproduction:

"[5A. (1) Every workman shall be furnished with an identity card in the following proforma given in the Table below:

Provided that it shall not be necessary to furnish such identity card to any workman to whom an identity card containing similar particulars and information is furnished under any other law application to him.

TABLE

(a) The name and address of the establishment.

(b) The full name and address of the workman.

(c) Date of birth of workman.

(d) The date of joining the service in the establishment.

(e) Recent passport size photograph of the workman.

Date of issue

Signature of the Employer or his authorized agent.

(2) The cost of such identity card including the cost of recent passport size photograph shall be borne by the employer.

(3) If any workman losses his identity card, a duplicate card shall be furnished to him by the

employer or by any other person authorized by him in this behalf, immediately on production of a recent passport size photograph by the workman for affixing on it, free of charge.

(4) No workman shall be allowed or required to work in any establishment unless he possesses an identity card furnished under clause (1) or (3) of this order]."

8.48 The contention, which has been raised on the part of the petitioner-employer, is that the identity card, which has been provided by one of the workers, at the time of adducing oral evidence, is an identity card, which does not require, as per the model standing order, any specific reference, as to whether a person is a Badli worker or a permanent employee. The 'Presence Card', which is a must as per Rule 26B under the Minimum Wages Act, 1948, would contain the details as to whether, a person is a Badli worker or a permanent workman. It is an admitted fact that neither the petitioner-employer nor the workmen had produced the 'Presence Card' or any other document, except, the identity card produced by one of the workers, as mentioned herein above.

8.49 Reference of the ticket would also mean a pass or a token or a card. It is admitted by

the respondent that they do not have the permanent pass. The same, at the time of this discussion, would lead this Court to hold that assuming that even the identity card is not required to contain the details or classification of a worker, and therefore, his is being a Badli worker is absent on the card, the petitioner employer could have brought on record the presence card or for that matter pass, as it can never be the case of the employer that it would not be retaining any proof of either the presence card or the pass. This Court notices that emphasis all along on the part of the petitioner is that the Tribunal failed to appreciate the legal position that the Badli workmen were not entitled to get the work as of right for they being casual employees with no right to be employed and it ought not to have construed not giving of work to those workman as lockout. It has been urged that in order to make the action of refusing the work to lock out, same has to be in connection with the industrial dispute. It is a fact that not to provide work was on the ground that even the permanent workmen had no work, and therefore, the Badli workmen could not be provided the same. Those, who were not provided the work, although having completed 240 days, is erroneously termed as lay off.

8.50 As referred to herein above, with certain documents and figures, the petitioner attempted to bring home the point that some of the machines had stopped during the period when the Company had no work. The statement from the year 1988 to 1994 indicates the total days of stoppage of such machines. Promotion of some of the workmen to staff cadre and absorption of the Badli workers etc. appears to have stopped from the year 1984. Here, reference would required to be made to the ‘Voluntary Retirement Scheme’ (for short, ‘VRS’) launched by the petitioner-Company on 08.11.1985. In view of the heavy decline in demand for asbestos cement products, more particularly, pipes, the petitioner-company was unable to run more than 1 pipe machine, resulting into financial losses for more than two years, and therefore, it chose to offer VRS to its workmen and staff. The VRS was floated for permanent workmen and staff, who were drawing salary up to Rs.1600/- p.m. and were on the pay roll of the petitioner company as on 01.11.1985. The retirement compensation equally payable under the ID Act, gratuity payable under the Payment of Gratuity Act and 15 days of wages for *ex gratia* payment for each completed years of service etc. were the benefits made available under the VRS. The workmen and the staff members were requested to exercise their option in writing and to

forward the same to the management within the stipulated time period. Likewise, another VRS was floated by the petitioner-company in the year 1991, offering identical benefits in wake of certain financial constraints that the petitioner-company was facing.

8.51 Certain subsequent developments after the judgment and award of the Industrial Tribunal in Reference (IT) No. 482 of 1992 are also placed on record by way of affidavit, which indicates that in the year 2004, the petitioner-company came into serious financial difficulties and all manufacturing operations had come to a grinding halt and the cumulative loss upto 31.03.2003 was Rs.24,76,65,465/-. On account of the same, it failed to pay its creditor Punjab National bank also. A petition being Special Civil Application No. 2212 of 2004 for payment of legal dues towards PF, ESI etc. was filed by Sarvodaya Mazdoor Sangh, for restraining the petitioner-company from disposing of its assets pending Reference (IT) No. 136/2003 in respect of lock out. This Court, though, initially had admitted the aforesaid petition and had restrained the petitioner-Company from disposing of its assets, it eventually had disposed of the same, permitting the petitioner-company to sell the surplus vacant land with certain terms and

conditions for making payment to the bank and other statutory authorities. The reference being Reference (IT) No. 136 of 2003, since, was dismissed by the Tribunal on 07.12.2012, the Union preferred Special Civil Application No. 9126 of 2013, which is pending.

8.52 The Respondents-workman through Union had preferred Special Civil Application No. 7180 of 2001, this was at the time when the Company had stopped functioning, instead of preferring a reference before a labour Court. This Court vide its order dated 30.01.2017, relegated the petitioners, therein, to the Labour Court. It also, further, emerges that the Company has handed over the unit to another company, namely Infrastructure Limited, a manufacturing company, on license basis. Once the period of 7 years of license was over, on account of the disputes between the petitioner and the licensee company, the licensee has started running the plant with more than 300 permanent workmen, who were in the employment of the company.

8.53 In this set of circumstances, the company’s financial condition weakened on gradual basis, as appearing from the material on record. Not only it had specified gradual reduction in the demand world over, but, even its permanent

workers were sitting idle, necessitating it to declare VRS. As a matter of record and it is not in dispute that from the year 1984 no Badli workman has been made permanent. There are instances prior to 1984, where, as and when vacancy arose, those, working as Badli workmen and senior in point of time, were absorbed as permanent workmen. There were different settlements arrived at for Badli workmen. It will not be, however, necessary to once again refer to nearly four to five settlements, which had provided for higher amount of wages and other benefits to the Badli workmen. The very definition of Badli workmen and their legal status clearly indicate that in the place of permanent workmen, these Badli workmen to be engaged. However, they would be entitled to certain rights, if, the petitioner-company despite being clear vacancy on permanent posts chose not to make them permanent, which tantamount to unfair labour practice.

8.54 This Court finds that in award of the Tribunal, a long discussion has taken place in respect of lay off and lockout. The tribunal, after extensive discussion, had found that non-granting of work to the Badli workmen had amounted to lockout, which is a potent tool in the hands of the employer. It also extensively

recorded by action of the petitioner-company amounted to the lay off and would benefit the cause of the Respondent workmen. Remembering, at this stage, well laid down principle as to when this Court is not expected to interfere in exercise of powers under Articles 226 and 227 of the Constitution of India, even if, this Court does not sit an an appellate forum, this Court finds that there is material mis-applications of the principles in appreciating the evidence that had been adduced before the Tribunal.

8.55 One of the vital aspects that has been missed by the Tribunal is that, though, being aware of the fact that the Reference was for making Badli workmen permanent, it had, from the beginning, treated the Respondent-workers as permanent workmen and has held that by adopting unlawful and unfair practices, the petitioner-Company had deprived them of their statutory rights. To work on the premise that they were, though, permanent and were deprived of the benefits of the permanency is the tenor and the tone of the judgment and award, which has been rendered by the Tribunal. This Court also notices that the petitioner-Company has chosen not to reveal total number of days, which each Badli workmen had worked prior to the year 1989. Many of the Badli workman, as stated above, had worked

from the year 1982. There were many preceding years for which the record is not at all placed by way of any evidence. At the same time, knowing the ground realities and the gradual depletion of the funds of the petitioner-company in wake of the global scenario and reduction in the demand of its products, when the permanent workmen were offered VRS and there was no sufficient work for many of them also, to say that non-grant of work to the Badli workmen by the petitioner-company would amount to an act of lockout, and therefore is an illegal act, is where this Court needs to step-in.

8.56 Yet, another aspect which would deserve a little elaboration, at this stage, is the discussion on the aspect of condition of service referring to Section 25B of the ID Act. The Tribunal had denied continuous service, which as per the law, if, along with the period of uninterrupted service, if for a period of one year, a workmen during a period of 12 calender months preceding the same, with reference to which the calculation is to be made in case of the workmen for a period of not less than 190 days, who are employed below the ground in mines, and 240 days in case of others.

8.57 This Court notices that till the

Respondent preferred their reference before the Tribunal in the year 1992, they were continued in work and as and when work was available, they had been assigned the work by the petitioner-employer. As mentioned, herein above, there are about 50 to 60 employees, who, from 1989, worked for more than 240 days, whereas, the some of the juniors employees were unable to get much amount of work. The award came to be passed by the Tribunal on 04.08.1997, declaring them as regular and permanent employees. However, as this award of the Tribunal has been challenged by the petitioner before this Court, the implementation of such award and the judgment is not effected. The respondent-employees continued to work and there was no cause at any point of time either by lay-off or by retrenchment. It is only in the year 2001 that on the ground that giving no notice or out of victimization from services came to be terminated, they approached this Court by filing Special Civil Application No. 7180 of 2001. This was directed against the petitioner-company to take necessary actions for practicing unfair labour practice punishable under Section 25 of the ID Act. The Court, since, was of the opinion that despite the cessation of fact can be decided with the aid of evidence, documentary as well as oral, and it would not be desirable to entertain the dispute raised in this petition, it

did not entertain the same and the relegated them to avail the statutory alternative remedy without entering into the merits of the rival contentions in the dispute. This Court also specified in its order dated 30.01.2017 that any issue or ground of delay or laches would not arise and same would not be treated as essential, as the respondents were pursuing their cause before this Court. Thus, it can be summarized from the entire discussion that from the very beginning, the respondents were working as Badli workers with the petitioner-employer and th continued to so do it till their services came to an end in the year 2001. The challenge to such a termination is a separate cause, which has arisen to the Respondent, which now would be required to be raised in the form of industrial dispute before the appropriate forum. As noted herein above and as is culls out from the evidence, oral as well as documentary, in absence of any specific reference of the identity card of classification of the workmen as Badli workmen and on the ground of many of them having completed 240 days of working, the labour court had chosen to hold them has regular and permanent employees, disregarding the fact that not only there were other permanent employees, who were needed to be given the work and for the receding demand world over of their products of the petitioner-company, some of the

machines which were installed by the petitioner-company also had to be stopped. As it can be established from the record that some of the permanent staff were also sitting idle in view of the gradual receding trend, non-grant of work to some of the Badli workmen has been incorrectly treated by the Tribunal as the lay-off and that status also has been made as a base for grant of permanent status to the respondents.

8.58 Reference would be necessary, at this stage, to the decision in the case of ‘***GIRDHARLAL LALJIBHAI VS. M.N. NAGRASHNA & ANOTHER***’ (Supra), it is held and observed by this Court that a Badli worker, who has completed one year’s continuous service, could not claim lay-off compensation for the days on which he could not be employed as no permanent workman or a probationer had remained absent on the day in question. Referring to the definition of the term ‘lay-off’, as defined under Section 2(kkk) of the ID Act, the Court, as referred to herein above, held and observed that it is settled that the workman must have a right to get the work or the employment on the day in question and he must have been refused employment on that day for any of the reasons falling under Section 2(kkk) of the Act. A badli worker is since, who is appointed purely on temporary basis, his right

would depend on the there being some temporary vacancy of a permanent worker or a probationer and he would have no right to claim permanent employment. Here, it would be relevant to reproduce the relevant observations at Paragraph-3, which reads thus:

> *“3. Mr. Daru further contended that in view of the explanation to S. 25C, the petitioner ceased to be a badli worker at all. Turning to S. 25C, the relevant portion of S. 25C, Clause (1), provides as under :*
>
> *"Whenever a workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid off, he shall be paid by the employer for all days during which he is so laid off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid off.' :*
>
> *Then follows the proviso which is not material for our purpose. Then, there is an explanation which runs as under :*
>
> *"'badli workman' means a workman who is employed in an industrial*

establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment."

The main part of this section first excludes a badli workman from its scope which would disentitle a badli workman from claiming compensation if he was laid off. But the explanation provides that after one year's continuous service he shall cease to be regarded as such for the purposes of this section. The effect of these words which we have italicized is to entitle even such a badli workman to obtain compensation as in the case of a permanent workman if he was laid off on the day in question. Because he was first sought to be excluded, the explanation seeks to bring him within the scope of the section to a limited extent. The explanation provides that it is only for the purposes of S. 25C, i.e., for the purposes of the claim of compensation, that a badli worker ceases to be regarded as such. That would not change the very nature of his employment under which he has a right to get employment only in the vacancies. In fact the explanation in terms makes it clear not only by the words "for the purposes of this section," but also by defining a badli worker specifically as a workman who is employed in an industrial establishment in the

place of another workman whose name is borne on the muster rolls of the establishment. He must not be a person who is only on the badli list and who would have only a chance of employment if a permanent post becomes vacant but his potential rights must be actualized on the day in question. The term "is employed" leaves no doubt that the explanation seeks to cover a badli worker in whose case actual substitution has taken place, i.e., some workman on the muster rolls has been absent and in his place he is actually employed on the day in question. Therefore, the explanation would not apply at all to a case where there is no question of any vacancy being filled in by employing badli worker in place of some other workman on the muster rolls. The petitioner's case is not that some permanent workman was absent on the day in question. The learned Judge, was therefore, right in holding that the effect of the explanation was that when a badli worker was available the employer must provide a badli worker with work if he had completed one year's continuous service. If the employer failed to do so, the badli workman would be entitled to get lay-off compensation, if he had completed one year's continuous service. To put any other construction would not only make the words "for the purposes of this section" redundant but would also lead to a very absurd result. If the factory worked, only a permanent workman would have a right to get an employment and there being no badli vacancy no badli would be entitled

to get work even if he had put in one year's continuous service. While if the factory was closed as a result of breakdown, etc., not only all the permanent workmen but also all the badli workmen who had put in one year's continuous service would be entitled to get lay-off compensation. There could be no right of any lay- off compensation in absence of a right to get employment on the day in question as per the terms of the contract of employment. The right to get work or employment is implicit in the very concept of "lay-off." We, therefore, hold that the learned Judge was right in his view that a badli workman who had completed one year's continuous service was not entitled to claim lay-off compensation for the days on which he could not be employed as no permanent workman had remained absent on the days in question. Even if it was possible to take a different view, we cannot hold that the view of the learned Judge was a perverse one or such as no reasonable man could take. The order of the learned Judge does not therefore, disclose any patent error of law and he has not failed to exercise hie jurisdiction, and no interference with his order is justified at our hands. The petition, therefore, fails and is dismissed. Rule is discharged. No order as to costs."

8.59 The Court, thus, held that even in case of Badli workmen, who had completed one year of continuous service was not entitled to claim lay-

of compensation for the days on which, he could not be made available work, as no permanent workmen or a probationer had remained absent on the days in question. This was on the premise that a Badli workman should be offered the employment, provided that he must have completed one year's continuous service and the employer, if, failed to do so, a badli workman shall be entitled to get lay off compensation. However, in absence of any such situation and if a permanent workman or probationer does not remain absent on the days in question, there would arise no question of his getting lay-off compensation. The explanation, thus, seeks to cover, as per this decision, the badli workers in whose case actual substitution has taken place. He must not be a person on a list alone, but, his potential right must be actualized on the days in question. Even, while agreeing with the petitioners that the terms of the Reference had gone on the premises that the petitioners were, as if, the permanent workmen and were deprived of their rights unauthorizedly by the petitioner-Company. Both the sides, all along, adduced evidences, oral as well documentary, and the attempt on the part of the Respondent was to be declared permanent and the regular employees of the petitioner-company, whereas, in case of the Petitioner-Company, it has accepted the status of

the Respondents of only badli workmen. The petitioner-company resisted the Reference all along of the Respondents being declared as regular and permanent employees. Even if, this Court agrees with the petitioner-Company that working of some of the workmen continuously for 240 days in a year with the petitioner-Company as badli workmen with the evidence, which had been led, would not allow them either the compensation for lay-off on those days on which work was not given to them for they being badli workmen and also on the ground that, itself, may not be a reason for making them regularized or permanent, What weighs with this Court is the evidence that has been led before the Tribunal of Personnel Manager, who, in his cross-examination, admitted of the permanent posts being 750 in numbers. He also agreed that there had been no notice under Section 9A of the ID Act for change. In fact, he agreed, further, that for reduction of the sanctioned strength of the workmen, an application was given to the Labour Commissioner for lay-off in the year 1991-92 and this application had been rejected. No further legal procedure had been undertaken by the petitioner-company. In that view of the matter, out of 750 workmen, when the matter proceeded before the Tribunal, the strength of permanent workmen was 628 in numbers and about 122 persons were there,

who would have completed 240 days in a particular year, would be entitled to the absorption on permanent post. The list has been produced by the petitioner-Company, thus, giving the details of some of the workmen having been made permanent, who are in Grade I, their names are given. However, their department is not specified. It is also not very clear from the evidence, either oral or documentary, that they were seniors to those, who were left out. Assuming that the stand of the petitioner-company is unassailable on this ground that they were seniors to the respondents, herein, who were declared permanent, at the time of cross-examination of the personnel officer of the petitioner-company, during the pendency of the Reference before the Tribunal, there were about 122 posts, which were vacant, which could have been filled-up with the Respondents-workmen, herein. This Court notices that the Petitioner-Company was closed down in the year 2001, but, thereafter, it was given on license to another company, namely Infrastructure Pvt. Ltd.. Till the passing of the award on 04.08.1997, the work of the Company continued uninterrupted. There was, thus, as can be envisaged, work for long time to be made permanent, even when it is is not mentioned categorically and specifically in the terms of Reference, when the issue of regularization and permanency was at large before

the Tribunal, this Court does not find any requirement to interfere with the impugned judgment and award.

9.00 With this, the events that have taken place after the passing of the award and as held by this Court in Paragraphs-5.0 to 6.0 in the case of '***MAHMADSAFI JANMAHMAD MEMON NEAR GHANCHIVAD MAZJID VS. BANK OF INDIA, GENERAL MANAGER, PERSONNEL DEPARTMENT & OTHERS***', in Special Civil Application No. 3233 of 2000 decided on 15.11.2005, where this Court has proposed a compensation to the Respondent-workmen. This Court also has found that subsequently in the year 2001, the Respondent-workmen needed to approach this Court challenging their termination and now recently, on 17.01.2017, they have been relegated to avail the alternative remedy, where they needed to raise terms of Reference against such order of termination. In that view of the matter, this Court deems it fit to ***CONFIRM*** the award passed by the Labour Court and to ***DIRECT*** the petitioner-Company to pay the amount of gratuity and PF to each workman, as per his entitlement individually.

10.0 At this stage, learned Advocate, Mr. Rishin Patel, appearing for the petitioner-

company made a request to extend the stay granted by this Court for a further period of three months.

10.1 The request is acceded to and the stay granted by this Court shall continue for a further period of ***TEN WEEKS*** from the date of receipt of a copy of the judgment.

DISPOSED OF, accordingly.

(SONIA GOKANI, J)

UMESH/-