IN THE HIGH COURT OF ORISSA, CUTTACK

W.A. No. 208 of 2008

An application under Article 4 of the Orissa High Court Order, 1948 read with Clause 10 of the Letters Patent Act, 1992 read with Chapter VIII Rule 2 of the Rules of the High Court of Orissa, 1948.

Urmila Shah	……	Appellant
	-Versus-	
Presiding Officer, Industrial Tribunal and others	……	Respondents

RVWPET No. 57 Of 2010

The Secretary, Sundargarh Central Co-operative Bank Ltd.	……	Petitioner
	-Versus-	
Satrughan Pani	……	Opposite party

RVWPET No. 58 Of 2010

The Secretary, Sundargarh Central Co-operative Bank Ltd.	……	Petitioner
	-Versus-	
Arjun Charan Sahoo	……	Opposite party

RVWPET No. 59 Of 2010

The Secretary,
Sundargarh Central
Co-operative Bank Ltd. …… Petitioner

-Versus-

Luptanjali Samantray …… Opposite party

RVWPET No. 60 Of 2010

The Secretary,
Sundargarh Central
Co-operative Bank Ltd. …… Petitioner

-Versus-

Saroj Kumar Sarangi …… Opposite party

RVWPET No. 61 Of 2010

The Secretary,
Sundargarh Central
Co-operative Bank Ltd. …… Petitioner

-Versus-

Damodar Behera …… Opposite party

RVWPET No. 62 Of 2010

The Secretary,
Sundargarh Central
Co-operative Bank Ltd. …… Petitioner

-Versus-

Arupananda Parida …… Opposite party

RVWPET No. 63 Of 2010

The Secretary,
Sundargarh Central
Co-operative Bank Ltd. …… Petitioner

-Versus-

Abani Kumar Panigrahi …… Opposite party

RVWPET No. 64 Of 2010

The Secretary,
Sundargarh Central
Co-operative Bank Ltd. …… Petitioner

-Versus-

Lalita Bag …… Opposite party

RVWPET No. 65 Of 2010

The Secretary,
Sundargarh Central
Co-operative Bank Ltd. …… Petitioner

-Versus-

Sailendra Kumar Rout …… Opposite party

For Appellant: - Mr. J.R. Dash
(in the writ appeal)

For Petitioners: - Mr. Sukumar Ghose
(in all review petitions)

For Opp. Party: - Mr. K.K. Mohapatra
(in all review petitions)

P R E S E N T:

THE HONOURABLE ACTING CHIEF JUSTICE KUMARI SANJU PANDA

AND

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Judgment: 29.01.2020

S. K. SAHOO, J. In the writ appeal vide W.A. No.208 of 2008, the appellant Urmila Shah has challenged the impugned order dated 19.06.2008 passed by the learned Single Judge of this Court in W.P.(C) No.298 of 2003 in dismissing the writ petition and thereby confirming the award dated 23.10.2002 passed by the learned Presiding Officer, Industrial Tribunal, Rourkela in I.D. Case No.12 of 2001.

I.D. Case No.12 of 2001

2. In pursuant to the provision under section 10(1)(d) read with section 12(4) of the Industrial Disputes Act, 1947 (hereafter 'I.D. Act'), the appropriate Government referred the following dispute vide letter No.8096/L.E dated 07.06.2001 for a decision:

> "Whether the termination of services of the workman Urmila Shah working as Accounts Assistant at Mahila Branch, Basanti Colony, Rourkela of the Bank by the Secretary, Sundargarh Dist. Central Coop. Bank Ltd,

Sundargarh with effect from 28.07.2000 is legal and/or justified? If not, to what relief the workman Urmila Shah is entitled?"

On the basis of such reference, I.D. Case No.12 of 2001 was initiated before the learned Presiding Officer, Industrial Tribunal, Rourkela. The Secretary and Branch Manager of Sundargarh District Central Cooperative Bank (hereafter 'the Bank') were the 1st parties and appellant Urmila Shah was the 2nd party in the said proceeding. It is the case of the appellant-2nd party that she was selected as Account Assistant and joined the Bank on 02.04.1997 and continued there as such till 27.07.2000 when her services from the Bank were terminated. The Bank employed her in the post without regularizing her service which continued till her retrenchment. The appellant used to work sincerely and diligently and to the full satisfaction of the authority. She discharged her duties which were assigned to her. In spite of giving her full remuneration as per banking rules, she was being paid Rs.80/- per day and without following the due procedure under section 25-F of the I.D. Act, her services were terminated. She prayed for reinstatement in the Bank, payment of her back wages with compensation and all other consequential service benefits.

It is the case of the 1st parties Bank that the services of the appellant were not under regular establishment and she was working as a casual worker on daily wage basis. She was not selected as per the Staff Service Rules of the Bank rather she was engaged by the Branch Manager of the Bank without following due procedure prescribed for recruitment of regular employees. It is the further case of the 1st party Bank that the Branch Manager appointed the appellant in the Bank in a concealed, clandestine and illegal manner for which there was a special audit in the Bank and the amount paid to the appellant was to be recovered from the concerned Branch Manager.

3. The learned Tribunal in I.D. Case No.12 of 2002 framed the following issues for determination:-

(i) Whether the 2nd party workman was in continuous employment for more than one year under the 1st party management?

(ii) Whether the termination of service of 2nd party workman by the 1st party management w.e.f. 28.07.2000 is legal and/or justified?

(iii) If not, to what relief the 2nd party is entitled?

(iv) Whether the reference is maintainable?

4. While answering the issue no.(i), the learned Tribunal in its award dated 23.10.2002 held that the appellant was engaged in the services of the Bank on daily wage basis and worked there continuously for more than two hundred and forty days and the rate of her daily wage was enhanced from time to time. While answering the issue no.(ii), the learned Tribunal held that the appointment of the appellant was void ab-initio and illegal in view of the fact that the authority was not competent under Staff Service Rules to appoint her in the Bank. The then Branch Manager made the illegal appointment for which she was placed under orders of suspension and facing a departmental proceeding as per charge sheet submitted against her. While answering issue no.(iii), the learned Tribunal held that it would be justified and equitable to award compensation at the rate of wages for fifteen days on completion of every 240 days when the appellant had worked in the Bank at the existing and prevalent scale of Rs.80/- a day. While answering issue no.(iv), the learned Tribunal held that the dispute is within the jurisdiction of the Tribunal for adjudication and therefore, the reference is maintainable.

5. The appellant challenged the award dated 23.10.2002 of the learned Tribunal before this Court in W.P.(C) No.298 of 2003 which was disposed of as per order dated

19.06.2008 by the learned Single Judge wherein after narrating the fact of the case, the finding of the learned Tribunal, the contentions raised by the respective parties, it was held as follows:-

> "Considering the submission of the parties and the principles of law laid down by the Apex Court as referred to above and keeping in view the findings of the learned Labour Court (inadvertently mentioned in place of Industrial Tribunal) as given in the impugned award and the reasons assigned in support of the same, no impropriety or illegality can be said to have been committed by the learned Labour Court (again inadvertently mentioned in place of Industrial Tribunal) in passing the impugned award so as to warrant any interference by this Court."

Accordingly, while dismissing the writ petition, the learned Single Judge observed that it is open to the petitioner (appellant) to file a representation before the Management for her appointment, which may be considered in accordance with law.

RVWPET No. 57 of 2010

6. RVWPET No. 57 of 2010 arises out of W.P.(C) No.1139 of 2003 filed by the opposite party Satrughana Pani challenging the order dated 14.11.2002 passed by the Presiding

Officer, Industrial Tribunal, Rourkela in Industrial Dispute Case No.11 of 2001. In the said I.D. Case, the facts are similar to the aforesaid I.D. Case No.12 of 2002. The following reference was made by the appropriate Government in its letter no.8086 dated 07.06.2001:

> "Whether the termination of services of the workman Sri Satrughna Pani working as Accounts Assistant at Fertiliser Branch, Fertiliser Town, Rourkela-7 of the Bank by the Secretary, Sundargarh District Central Cooperative Bank Ltd., Sundargarh with effect from 28.07.2000 is legal and/or justified? If not, to what relief the workman Sri Pani is entitled?"

Similar issues were framed like the aforesaid I.D. Case No.12 of 2002 and similar observations were made that the opposite party Satrughana Pani even though worked in the Bank from 01.03.1997 to 27.07.2000 as Accounts Assistant on daily wage basis but he had not undergone the procedure of appointment and his appointment was void ab-initio and illegal in view of the Staff Service Rules and accordingly, it was held that Sri Pani would get compensation at the rate of wages for fifteen days on completion of every two hundred forty days at the existing and prevalent scale of Rs.80/- a day.

RVWPET No. 58 of 2010

7. RVWPET No. 58 of 2010 arises out of W.P.(C) No.1194 of 2003 filed by the opposite party Arjuna Chandra Sahoo challenging the order dated 14.11.2002 passed by the Presiding Officer, Industrial Tribunal, Rourkela in Industrial Dispute Case No.23 of 2001. In the said I.D. Case, the facts are similar to the aforesaid I.D. Case No.12 of 2002. The following reference was made by the appropriate Government in its letter no.8864 dated 22.06.2001:

> "Whether the termination of services of the workman Sri Arjun Charan Sahoo working as peon at Fertiliser Branch, Rourkela of the Bank by the Secretary, Sundargarh District Central Cooperative Bank Ltd., Sundargarh w.e.f. 28.07.2000 is legal and/or justified? If not, to what relief the workman Sri Sahoo is entitled?"

Similar issues were framed like the aforesaid I.D. Case No.12 of 2002 and similar observations were made that the opposite party Arjun Charan Sahoo even though worked in the Bank from 01.10.1995 to 27.07.2000 as peon on daily wage basis but he had not undergone the procedure of appointment and his appointment was void ab-initio and illegal in view of the Staff Service Rules and accordingly, it was held that Sri Sahoo would get compensation at the rate of wages for fifteen days on

completion of every two hundred forty days at the existing and prevalent scale of Rs.80/- a day.

RVWPET No. 59 of 2010

8. RVWPET No. 59 of 2010 arises out of W.P.(C) No.1406 of 2003 filed by the opposite party Luptanjali Samantaray challenging the order dated 23.10.2002 passed by the Presiding Officer, Industrial Tribunal, Rourkela in Industrial Dispute Case No.20 of 2001. In the said I.D. Case, the facts are similar to the aforesaid I.D. Case No.12 of 2002. The following reference was made by the appropriate Government in its letter no.8383/LE dated 13.06.2001:

> "Whether the termination of services of the workman Luptanjali Samantaray working as Accounts Assistant at Mahila Branch, Basanti Colony, Rourkela of the Bank by the Secretary, Sundargarh District Central Cooperative Bank Ltd., Sundargarh w.e.f. 28.07.2000 is legal and/or justified? If not, to what relief the workman Smt. Samantaray is entitled?"

Similar issues were framed like the aforesaid I.D. Case No.12 of 2002 and similar observations were made that the opposite party Luptanjali Samantaray even though worked in the Bank from 07.03.1997 to 27.07.2000 as Accounts Assistant on daily wage basis but she had not undergone the procedure of

appointment and her appointment was void ab-initio and illegal in view of the Staff Service Rules and accordingly, it was held that Smt. Samantaray would get compensation at the rate of wages for fifteen days on completion of every two hundred forty days at the existing and prevalent scale of Rs.80/- a day.

RVWPET No. 60 of 2010

9. RVWPET No. 60 of 2010 arises out of W.P.(C) No.6952 of 2003 filed by the opposite party Saroj Kumar Sarangi challenging the order dated 13.03.2003 passed by the Presiding Officer, Industrial Tribunal, Rourkela in Industrial Dispute Case No.10 of 2001. In the said I.D. Case, the facts are similar to the aforesaid I.D. Case No.12 of 2002. The following reference was made by the appropriate Government in its memo no.8009(6) dated 06.06.2001:

> "Whether the termination of services of Sri Saroj Kumar Sarangi working as Accounts Assistant at Rourkela Branch of the Bank by the Secretary, Sundargarh District Central Cooperative Bank Ltd., Sundargarh w.e.f. 28.07.2000 is legal and/or justified? If not, to what relief the workman Sri Sarangi is entitled?"

Similar issues were framed like the aforesaid I.D. Case No.12 of 2002 and similar observations were made that the opposite party Saroj Kumar Sarangi even though worked in the

Bank from 02.02.1997 to 28.07.2000 as Accounts Assistant on daily wage basis but he had not undergone the procedure of appointment and his appointment was void ab-initio and illegal in view of the Staff Service Rules and accordingly, it was held that Sri Sarangi would get compensation at the rate of wages for fifteen days on completion of every two hundred forty days at the existing and prevalent scale of Rs.80/- a day.

RVWPET No. 61 of 2010

10. RVWPET No. 61 of 2010 arises out of W.P.(C) No.6953 of 2003 filed by the opposite party Damodar Behera challenging the order dated 13.03.2003 passed by the Presiding Officer, Industrial Tribunal, Rourkela in Industrial Dispute Case No.15 of 2001. In the said I.D. Case, the facts are similar to the aforesaid I.D. Case No.12 of 2002. The following reference was made by the appropriate Government in its memo no.8277(6) dated 18.06.2001:

> "Whether the termination of services of Sri Damodar Behera working as Accounts Assistant at Rourkela Branch of the Bank by the Secretary, Sundargarh District Central Cooperative Bank Ltd., Sundargarh w.e.f. 28.07.2000 is legal and/or justified? If not, to what relief the workman Sri Behera is entitled?"

Similar issues were framed like the aforesaid I.D. Case No.12 of 2002 and similar observations were made that the opposite party Damodar Behera even though worked in the Bank from 02.02.1997 to 27.07.2000 as Accounts Assistant on daily wage basis but he had not undergone the procedure of appointment and his appointment was void ab-initio and illegal in view of the Staff Service Rules and accordingly, it was held that Sri Behera would get compensation at the rate of wages for fifteen days on completion of every two hundred forty days at the existing and prevalent scale of Rs.80/- a day.

RVWPET No. 62 of 2010

11. RVWPET No. 62 of 2010 arises out of W.P.(C) No.6954 of 2003 filed by the opposite party Arupananda Parida challenging the order dated 13.03.2003 passed by the Presiding Officer, Industrial Tribunal, Rourkela in Industrial Dispute Case No.14 of 2001. In the said I.D. Case, the facts are similar to the aforesaid I.D. Case No.12 of 2002. The following reference was made by the appropriate Government in its memo no.8292(6) dated 12.06.2001:

> "Whether the termination of services of workman Sri Arupananda Parida working as Accounts Assistant at Rourkela Branch of the Bank by the Secretary, Sundargarh District Central Cooperative Bank Ltd., Sundargarh

> w.e.f. 28.07.2000 is legal and/or justified? If not, to what relief the workman Sri Parida is entitled?"

Similar issues were framed like the aforesaid I.D. Case No.12 of 2002 and similar observations were made that the opposite party Arupananda Parida even though worked in the Bank from 02.02.1997 to 28.07.2000 as Accounts Assistant on daily wage basis but he had not undergone the procedure of appointment and his appointment was void ab-initio and illegal in view of the Staff Service Rules and accordingly, it was held that Sri Parida would get compensation at the rate of wages for fifteen days on completion of every two hundred forty days at the existing and prevalent scale of Rs.80/- a day.

RVWPET No. 63 of 2010

12. RVWPET No. 63 of 2010 arises out of W.P.(C) No.7009 of 2003 filed by the opposite party Abani Kumar Panigrahi challenging the order dated 13.03.2003 passed by the Presiding Officer, Industrial Tribunal, Rourkela in Industrial Dispute Case No.16 of 2001. In the said I.D. Case, the facts are similar to the aforesaid I.D. Case No.12 of 2002. The following reference was made by the appropriate Government in its memo no.8282(6) dated 12.06.2001:

> "Whether the termination of services of the workman Sri Abani Kumar Panigrahi working as Accounts Assistant at Rourkela Branch of the Bank by the Secretary, Sundargarh District Central Cooperative Bank Ltd., Sundargarh w.e.f. 28.07.2000 is legal and/or justified? If not, to what relief the workman Sri Panigrahi is entitled?"

Similar issues were framed like the aforesaid I.D. Case No.12 of 2002 and similar observations were made that the opposite party Abani Kumar Panigrahi even though worked in the Bank from 01.02.1994 to 28.07.2000 as Accounts Assistant on daily wage basis but he had not undergone the procedure of appointment and his appointment was void ab-initio and illegal in view of the Staff Service Rules and accordingly, it was held that Sri Panigrahi would get compensation at the rate of wages for fifteen days on completion of every two hundred forty days at the existing and prevalent scale of Rs.80/- a day.

RVWPET No. 64 of 2010

13. RVWPET No. 64 of 2010 arises out of W.P.(C) No.7010 of 2003 filed by the opposite party Lalita Bag challenging the order dated 13.03.2003 passed by the Presiding Officer, Industrial Tribunal, Rourkela in Industrial Dispute Case No.4 of 2001. In the said I.D. Case, the facts are similar to the

aforesaid I.D. Case No.12 of 2002. The following reference was made by the appropriate Government in its memo no.9788/LE dated 06.06.2001:

> "Whether the termination of services of the workman Lalita Bag, working as peon at Mahila Branch, Basanti Colony, Rourkela-2 of the Bank by the Secretary, Sundargarh District Central Cooperative Bank Ltd., Sundargarh w.e.f. 28.07.2000 is legal and/or justified? If not, to what relief the workman Lalita Bag is entitled?"

Similar issues were framed like the aforesaid I.D. Case No.12 of 2002 and similar observations were made that the opposite party Lalita Bag even though worked in the Bank from 01.02.1997 to 28.07.2000 as peon on daily wage basis but she had not undergone the procedure of appointment and her appointment was void ab-initio and illegal in view of the Staff Service Rules and accordingly, it was held that Lalita Bag would get compensation at the rate of wages for fifteen days on completion of every two hundred forty days at the existing and prevalent scale of Rs.80/- a day.

RVWPET No. 65 of 2010

14. RVWPET No. 65 of 2010 arises out of W.P.(C) No.13041 of 2003 filed by the opposite party Sailendra Kumar Rout challenging the order dated 29.09.2003 passed by the

Presiding Officer, Industrial Tribunal, Rourkela in Industrial Dispute Case No.17 of 2001. In the said I.D. Case, the facts are similar to the aforesaid I.D. Case No.12 of 2002. The following reference was made by the appropriate Government in its memo no.8287(6)/LE dated 12.06.2001:

> "Whether the termination of services of the workman Sri Sailendra Kumar Rout working as Accounts Assistant at Rourkela Branch of the Bank by the Secretary, Sundargarh District Central Cooperative Bank Ltd., Sundargarh w.e.f. 28.07.2000 is legal and/or justified? If not, to what relief the workman Sri Rout is entitled?"

Similar issues were framed like the aforesaid I.D. Case No.12 of 2002 and similar observations were made that the opposite party Sailendra Kumar Rout even though worked in the Bank from 01.03.1993 to 27.07.2000 as Accounts Assistant on daily wage basis but he had not undergone the procedure of appointment and his appointment was void ab-initio and illegal in view of the Staff Service Rules and accordingly, it was held that Sri Rout would get compensation at the rate of wages for fifteen days on completion of every two hundred forty days at the existing and prevalent scale of Rs.80/- a day.

15. In W.P.(C) No.1194 of 2003 filed by Arjuna Chandra Sahoo (opposite party in RVWPET No. 58 Of 2010), this Court vide judgment and order dated 10.03.2010 held that the moot question is that even accepting that the engagement of Sri Sahoo was not in accordance with the Central Co-operative Banks Staff Service Rules, 1984 (hereafter '1984 Rules') but since it was found that he was a *workman* who had rendered continuous service of two hundred forty days in one calendar year, whether there was necessity for compliance of section 25-F of the I.D. Act. Considering Rule 58 of the 1984 Rules, it was held that the said rule would go to show that none of the rules prescribed thereunder shall operate in derogation of any law applicable and Sri Sahoo having been found to be a workman by the Tribunal, who had put in more than two hundred forty days work in one calendar year, cannot be deprived of his rights under the I.D. Act. Applying the ratio laid down by the Hon'ble Supreme Court in the case of **State Bank of India -Vrs.- N. Sundara Money reported in A.I.R. 1976 S.C. 1111**, it was held that the conclusion arrived at by the Tribunal is fallacious and the provisions under section 25-F of the I.D. Act have been utterly violated by the employer entitling the workman Sri Sahoo to an order of reinstatement as the retrenchment was found to be illegal. Considering the question of back wages, it was held by

this Court that since Sri Sahoo was retrenched w.e.f. 28.07.2000 and nine years had already passed, he was not entitled to get full back wages but for a compensation of Rs.50,000/- (rupees fifty thousand). Accordingly, the award passed by the learned Tribunal was set aside and direction was given to the Bank to reinstate Sri Sahoo in service and to pay a compensation of Rs.50,000/- (rupees fifty thousand), in lieu of back wages.

In other writ petitions i.e. W.P.(C) No.1139 of 2003, W.P.(C) No.1406 of 2003, W.P.(C) No.6952 of 2003, W.P.(C) No.6953 of 2003, W.P.(C) No.6954 of 2003, W.P.(C) No.7009 of 2003, W.P.(C) No.7010 of 2003 and W.P.(C) No.13041 of 2003, it was held as per the orders passed on the same day, i.e. on 10.03.2010 in each case that since the facts of the case are similar to the facts involved in W.P.(C) No.1194 of 2003 and the findings arrived at in the impugned award are also similar to the award impugned in the said writ petition, which was allowed as per judgment passed, no different view could be taken and accordingly, in each case the respective award was set aside and it was directed that the petitioner in the respective writ petitions be reinstated in service and a sum of Rs.50,000/- (rupees fifty thousand) shall be paid to him as compensation in lieu of back wages.

16. Review Petitions Nos.58, 57, 59, 60, 61, 62, 63, 64 and 65 of 2010 were filed by the Secretary, Sundargarh Central Cooperative Bank Ltd. for review of the judgment and order dated 10.03.2010 of this Court passed in W.P.(C) No.1194 of 2003 as well as the orders passed on the same day i.e. on 10.03.2010 in W.P.(C) Nos.1139, 1406, 6952, 6953, 6954, 7009, 7010 and 13041 of 2003 respectively which were disposed of in accordance with the judgment passed in W.P.(C) No.1194 of 2003.

The learned Single Judge of this Court heard all the review petitions analogously and since on the similar set of facts, another learned Single Judge had disposed of W.P.(C) No.298 of 2003 by dismissing the writ petition filed by the workman and confirming the award passed by the learned Industrial Tribunal and thereby had taken a different view; differing from the opinion expressed by the other learned Single Judge while disposing of W.P.(C) No.298 of 2003, as per order dated 12.07.2013, it was directed to place all the matters before the Hon'ble the Chief Justice for passing appropriate order for placing the matters before an appropriate Division Bench under the proviso to Rule 1 of Chapter-III of the Rules of the High Court of Orissa, 1948 to resolve the issues.

Submissions:-

17. Mr. J.R. Dash, the learned counsel for the appellant Urmila Shah in W.A. No. 208 of 2008 while challenging the impugned order dated 19.06.2008 passed by the learned Single Judge in W.P.(C) No.298 of 2003 contended that the learned Tribunal erroneously held that the provision under section 25-F of the I.D. Act is applicable only to regular employment whereas the definition of 'workman' as per the said Act does not prescribe any such kind of distinction in any manner. It was further submitted that while answering to issue no.(iv), the learned Tribunal held that the appellant was a workman under the I.D. Act and therefore, the finding that the provision under section 25-F of the I.D. Act is not applicable particularly when the appellant was continuing in service since 02.04.1997 till 27.07.2000 is erroneous both in fact and law. It is further contended that the learned Tribunal should have confined its adjudication to the points referred and issues framed and should not have travelled beyond the scope of reference by interpreting the mode of appointment of the appellant in absence of such issues and that to without affording opportunity to the appellant in that regard. It is contended that the learned Tribunal had made out a third case by exceeding the scope of reference and its jurisdiction which is arbitrary and without jurisdiction and

therefore, liable to be set aside. It is further contended that the finding of the learned Tribunal that the appointment of the appellant was made in a concealed, clandestine and illegal manner is not acceptable inasmuch as the wages paid to the appellant was intimated to the higher authorities by the Branch Manager every month and expenditure was duly passed by the Management committee meetings and annual general body meetings of the Bank. It is further contended that when no issue was framed as to whether the appointment of the appellant was void ab-initio, no finding in that respect by the learned Tribunal is sustainable. It is contended that the appellant was simply a workman employed in the Bank for which it was not necessary to issue an appointment order and since admittedly the management has not followed/complied the provisions under the I.D. Act while terminating the services of the appellant, the same should be set aside. While concluding his argument, it is contended that the learned Single Judge has not deliberated upon the contentions raised by the learned counsel for the appellant and after noting down the contentions raised by the respective counsel, simply held that there is no impropriety or illegality committed by the learned Tribunal while passing the award, without assigning any reason as to why the submission made on behalf of the appellant's counsel are not acceptable.

18. Mr. Sukumar Ghose, learned counsel appearing for the Bank on the other hand, supported the order dated 19.06.2008 of the learned Single Judge in W.P.(C) No.298 of 2003 in respect of appellant Urmila Shah (appellant in W.A. No. 208 of 2008) and opposed the order dated 10.03.2010 passed in W.P.(C) No.1194 of 2003 filed by Arjuna Chandra Sahoo (opposite party in RVWPET No. 58 Of 2010) and the other connected writ petitions and contended that any appointment made in violation of the recruitment rules would be violative of Articles 14 and 16 of the Constitution of India rendering the same as nullity and since the initial appointment of each of the persons working on daily wage basis was illegal and contrary to the procedure prescribed for recruitment of employee and there was no master and servant relationship existing between the concerned parties, they cannot claim any benefit under law. It is further contended that the view taken by the learned Single Judge in W.P.(C) No.298 of 2003 is a reasonable one and it is quite justified. It was argued that since a co-ordinate Bench had already disposed of the identical matter in W.P.(C) No.298 of 2003 in the case of appellant Urmila Shah, the same should have been considered while disposing of the batch of writ petitions filed by other workmen in the identical facts. It was further argued that in the peculiar scenario, the retrenched workmen

can neither claim reinstatement nor regularization or any benefit arising out of the same and therefore, the direction for reinstatement in service and for payment of compensation of Rs.50,000/- (rupees fifty thousand) was not proper and justified and the same should be set aside. He relied upon the decisions of the Hon'ble Supreme Court in the cases of **Secretary, State of Karnataka -Vrs.- Umadevi reported in (2006) 4 Supreme Court Cases 1, U.P. Power Corporation Ltd. -Vrs.- Bijli Mazdoor Sangh reported in JT 2007 (5) SC 611** and **Nagendra Chandra -Vrs.- State of Jharkhand reported in (2008) 1 Supreme Court Cases 798**.

19. Mr. K.K. Mohapatra, learned counsel appearing for the opposite parties in the review petitions, on the other hand, placed reliance on two decisions of this Court in the case of **State of Orissa -Vrs.- Hari Behera reported in 1999(II) Orissa Law Reviews 236** and **Muralidhar Sahu -Vrs.- State of Orissa reported in 2003(I) Orissa Law Reviews 178** and argued that the decision rendered in W.P.(C) No.298 of 2003 cannot be treated as precedent inasmuch as the learned Single Judge has not taken into consideration relevant provision like Rule 58 of 1984 Rules which saves the rights and privileges under any other law and there is no discussion whether section 25-F of the I.D. Act has got any application or not and no

reasons have been assigned therein for confirming the award of the Tribunal. The learned counsel supported the view taken by the learned Single Judge in W.P.(C) No.1194 of 2003 and contended that it is a well-reasoned judgment and argued that all the review petitions should be dismissed. He placed reliance in the cases of **Official Liquidator -Vrs.- Dayanand reported in JT 2008 (11) Supreme Court 467, Vikramaditya Pandey -Vrs.- Industrial Tribunal reported in A.I.R. 2001 S.C. 672, Durgapur Casual Workers Union -Vrs.- Food Corporation of India reported in (2015) 5 Supreme Court Cases 786, Maharashtra State Road Transport Corporation -Vrs.- Casteribe Rajya Parivahan Karmchari Sanghatana reported in (2009) 8 Supreme Court Cases 556, General Secretary, North Orissa Workers Union -Vrs.- The Superintendent, Prospecting Division reported in 2019(I) Orissa Law Reviews 485, Hindustan Tin Works Pvt. Ltd. -Vrs.- Employees reported in (1979) 2 Supreme Court Cases 80 , Surendra Kumar Verma -Vrs.- The Central Government Industrial Tribunal reported in A.I.R. 1981 Supreme Court 422** and **Deepali Gundu Surwase -Vrs.- Kranti Junior Adhyapak Mahavidyalaya reported in 2013 AIR SCW 5330**.

Analysis of the submissions

20. The crucial point for consideration is whether on the self-same set of facts, a complete different view was permissible to be taken by the learned Single Judge of this Court in W.P.(C) No.1194 of 2003 vide order dated 10.03.2010 ignoring the earlier view taken by another learned Single Judge in W.P.(C) No.298 of 2003 vide order dated 19.06.2008.

Coming to the order dated 19.06.2008 passed in W.P.(C) No.298 of 2003, it appears that the learned Single Judge after narrating the facts of the case, the findings of the learned Tribunal, the contentions raised on behalf of the respective parties, abruptly came to the conclusion that there is no impropriety or illegality in the order of the learned Labour Court (inadvertently mentioned in place of Industrial Tribunal) in passing the impugned award so as to warrant any interference and while dismissing the writ petition, it was observed that it is open to the petitioner (appellant in W.A. No.208 of 2008) to file a representation before the Management for her appointment, which may be considered in accordance with law. In other words, no reasons have been assigned as to why the contentions raised by the counsel for the petitioner have no merit and the same is not acceptable and why the view taken by the Tribunal is acceptable. It is very easy to dispose of a case for the sake of

disposal mentioning therein that there is no illegality or infirmity in the impugned order/judgment but when a party raises some vital points challenging the impugned order/judgment, it is the duty of a Judge to discuss such points and assign reasons for its acceptance or otherwise.

In the case of **Union of India -Vrs.- Jai Prakash Singh reported in A.I.R. 2007 S.C. 1363**, the Hon'ble Supreme Court held that reasons introduce clarity in an order. Reasons are live links between the minds of the decision taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The 'inscrutable face of a sphinx' is ordinarily incongruous with a judicial or quasi-judicial

performance. The Hon'ble Court further held that the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.

In the case of **Hindustan Times Ltd. -Vrs.- Union of India reported in (1998) 2 Supreme Court Cases 242**, the need to give reasons has been held to arise out of the need to minimize chances of arbitrariness and introduce clarity. In the case of **Arun -Vrs.- Addl. Inspector General of Police reported in (1986) 3 Supreme Court Cases 696**, the recording of reasons in support of the order passed by the High Court has been held to inspire public confidence in administration of justice and help the Apex Court to dispose of appeals filed against such orders. In the case of **Secretary and Curator -Vrs.- Howrah Ganatantrik Nagrik Samity reported in (2010) 3 Supreme Court Cases 732**, reasons were held to be the heartbeat of every conclusion, apart from being an essential feature of the principles of natural justice, that ensure transparency and fairness in the decision making process. In the case of **Ram Phal -Vrs.- State of Haryana reported in (2009) 3 Supreme Court Cases 258**, giving of satisfactory reasons was held to be a requirement arising out of an ordinary

man's sense of justice and a healthy discipline for all those who exercise power over others. In the case of **Director, Horticulture Punjab -Vrs.- Jagjivan Parshad reported in (2008) 5 Supreme Court Cases 539**, the recording of reasons was held to be indicative of application of mind specially when the order is amenable to further avenues of challenge. In the case of **Maya Devi -Vrs.- Raj Kumari Batra reported in (2010) 9 Supreme Court Cases 486**, it is held that recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. An appellate Court or the authority ought to have the advantage of examining the reasons that prevailed with the Court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the appellate Court or the authority of that advantage and casts an onerous responsibility upon it to examine and determine the question on its own. An appellate Court or authority may in a given case decline to undertake any such exercise and remit the matter back to the lower Court or authority for a fresh and reasoned order. That, however, is not an inflexible rule, for an appellate Court may notwithstanding the absence of reasons in support of the order under appeal before it examine the matter on merits and finally decide the same at the appellate stage. Whether or not the appellate Court should remit

the matter is discretionary with the appellate Court and would largely depend upon the nature of the dispute, the nature and the extent of evidence that may have to be appreciated, the complexity of the issues that arise for determination and whether remand is going to result in avoidable prolongation of the litigation between the parties. Remands are usually avoided if the appellate Court is of the view that it will prolong the litigation.

As rightly contended by the learned counsel for the appellant in the writ appeal and learned counsel for the opposite parties in the review petitions that the learned Single Judge in its order dated 19.06.2008 passed in W.P.(C) No.298 of 2003 has not taken into consideration relevant provision like Rule 58 of 1984 Rules as well as applicability of section 25-F of the I.D. Act to the persons who were engaged in the services of the Bank. Rule 58 of 1984 Rules deals with rights and privileges under any other law. It prescribes that nothing contained in the Staff Service Rules shall operate in derogation of any law, applicable or to the prejudice for any right under a registered agreement, settlement, or award for the time being in force or in future or contract of service, if any, as per general law applicable to the members of the staff. Therefore, none of the rules prescribed under the 1984 Rules shall operate in derogation of any law

applicable. Not in derogation of another law or laws means that the legislature intends that such an enactment shall co-exist along with the other Acts or in other words, it is clearly not the intention of the legislature, in such a case, to annul or detract from the provisions of other laws.

In the case of **State of Orissa -Vrs.- Hari Behera reported in 1999 (II) Orissa Law Reviews 236**, this Court held that if earlier decision has not taken note of some of the relevant provision of law, the decision being per incuriam, the same is not binding and the views expressed therein cannot be followed. In the case of **Muralidhar Sahu -Vrs.- State of Orissa reported in 2003(I) Orissa Law Reviews 178**, a Divisional Bench of this Court held that a decision which is not express and is not founded on reason has got no precedential value and has got no binding effect.

Salmond on Jurisprudence (12th edition) observed as follows:

> "A precedent is not destroyed merely because it was badly argued, inadequately considered, and fallaciously reasoned. Thus a rather arbitrary line has to be drawn between total absence of argument on a particular point, which vitiates the precedent, and inadequate argument, which

> is a ground for impugning the precedent only if it is absolutely binding and indistinguishable...

The Hon'ble Supreme Court in the case of **Official Liquidator** (supra) has held that predictability and certainty is an important hallmark of judicial jurisprudence and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the Courts at the grassroot will not be able to decide as to which of the judgment lay down is the correct law and which one should be followed. Discipline is sine qua non for effective and efficient functioning of the judicial system.

In view of such settled position of law, when in the order dated 19.06.2008 passed in W.P.(C) No.298 of 2003, there is total absence of discussion on Rule 58 of 1984 Rules as well as applicability of section 25-F of the I.D. Act and no law has been laid down therein and it is also not a reasoned order, in our humble view, such an order cannot have any precedent value and it is to be treated as having been rendered 'per incuriam' which literally means 'carelessness' and in practice, it means 'per ignoratium'.

Moreover, none of the parties has brought to the notice of the Court during the argument of W.P.(C) No.1194 of 2003 that identical matter in W.P.(C) No.298 of 2003 has been

disposed of vide order dated 19.06.2008 by another learned Single Judge. Therefore, when such an issue was raised for the first time during hearing of the review petitions, the learned Single Judge rightly directed to place all the matters before the Hon'ble the Chief Justice for passing appropriate order for placing the matters before an appropriate Division Bench.

21. It is not in dispute that the appellant in the writ appeal and the opposite parties in the review petitions were engaged in the services of the Bank on daily wage basis and worked under the management of the Bank continuously for more than two hundred forty days in twelve calendar months and they were retrenched from service with effect from 28.07.2000. They were paid annual bonus and arrears of revised wages. It is not the case of the Bank that there were no vacancies in the Bank at the relevant point of time in the posts in which they were working. Therefore, we are of the view that the learned Tribunal rightly came to the conclusion that appellant in the writ appeal and the opposite parties in the review petitions were engaged in the services of the Bank on daily wage basis and worked there continuously for more than two hundred forty days in a calendar year and their daily wages were enhanced from time to time.

Rule 4 of the 1984 Rules classifies the employees of the Bank as permanent, temporary, probationer and officiating and Rule 5 prescribes categories of posts in the Bank and Rule 6 prescribes the appointing authority for different posts. It is not in dispute that there was an order of ban imposed by the Government of Odisha for appointment to any kind of posts of the Bank. The Branch Manager was not the appointing authority for any of the posts of the Bank. Therefore, it can be said that the engagement of the appellant in the writ appeal and the opposite parties in the review petitions were not in accordance with the 1984 Rules.

The learned Single Judge in W.P.(C) No.1194 of 2003 discussed the question as to whether there was necessity for compliance of section 25-F of the Industrial Disputes Act once it is found that the petitioner was a workman who had rendered continuous service for two hundred forty days in one calendar year before termination of his services, even if his engagement was not in accordance with 1984 Rules. The learned Single Judge took into account the ratio laid down by the Hon'ble Supreme Court in the case of **Vikramaditya Pandey** (supra) wherein it is held as follows:-

> "6.....The only issue before the High Court was whether the appellant was entitled to

reinstatement in service with back wages, once the termination of his services had been held to be illegal and more so when the same was not challenged. Ordinarily, once the termination of service of an employee is held to be wrongful or illegal, the normal relief of reinstatement with full back wages shall be available to an employee; it is open to the employer to specifically plead and establish that there were special circumstances which warranted either non-reinstatement or non-payment of back wages. In this case we do not find any such pleading of special circumstances either before the Tribunal or before the High Court...

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By plain reading of the said Regulation, it is clear that in case of inconsistency between the Regulations and the provisions of the Industrial Disputes Act, 1947, the State Act, the Workmen Compensation Act, 1923 and any other labour laws for the time being in force, if applicable to any co-operative society or class of co-operative societies, to that extent Regulations shall be deemed to be inoperative. In other words, the inconsistent provisions contained in the Regulations shall be inoperative, not the provisions of the other statutes mentioned in the Regulation 103. The Tribunal in this regard correctly understood the Regulation but wrongly refused the relief on the ground that no

reinstatement can be ordered on a regular employment in view of the provisions contained in the said Regulation. But the High Court read the Regulation otherwise and plainly misunderstood it in saying that if there is any inconsistency between the Regulations and the Industrial Disputes Act, 1947 and other labour laws for the time being in force, the Regulations will prevail and the Industrial Disputes Act, 1947 and other labour laws shall be deemed to be inoperative. This misreading and wrong approach of the High Court resulted in wrong conclusion. In the view it took as to Regulation 103, the High Court proceeded to state that even if there was retrenchment in view of Regulation 5 of the Regulations, the Labour Court was not competent to direct reinstatement of the appellant who was not recruited in terms of Regulation 5 because the Labour Court had to act within the ambit of law having regard to the Regulations by which the workman was governed. In this view, the High Court declined relief to the appellant which in our view cannot be sustained. The Tribunal felt difficulty in ordering reinstatement as the appellant was not a regular employee. The appellant ought to have been ordered to be reinstated in service once it was found that his services were illegally terminated in the post he was holding including its nature. Thus in our opinion both the Tribunal

> as well as the High Court were not right and justified on facts and in law in refusing the relief of reinstatement of the appellant in service with back wages. But, however, having regard to the facts and circumstances of the case and taking note of the fact that the order of termination dates back to 19.7.1985 we think it just and appropriate in the interest of justice to grant back wages only to the extent of 50%."

The learned Single Judge in W.P.(C) No.1194 of 2003 further discussed the provision under Rule 58 of 1984 Rules and held that a plain interpretation of the Rule would go to show that none of the rules prescribed thereunder shall operate in derogation of any law applicable. It was further held that the petitioner having been found to be a workman by the Tribunal, who has put in more than two hundred forty days work in one calendar year, cannot be deprived of his rights under the I.D. Act. The learned Single Judge then took into account the observation of the Tribunal that the petitioner was retrenched from service and such findings were not challenged by the management and have become final. The learned Single Judge then discussed the ratio laid down by the Hon'ble Supreme Court in the case of **N. Sundara Money** (supra) wherein the respondent N. Sundara Money was appointed off and on, by the State Bank of India and it is held that if the workman swims into

the harbor of section 25-F, he cannot be retrenched without payment, at the time of retrenchment, compensation computed as prescribed therein read with section 25-B (2). A breakdown of section 2(oo) unmistakably expands the semantics of retrenchment. Termination for any reasons whatsoever are the keywords. Whatever be the reason, every termination spells retrenchment. To protect the weak against the strong, the policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. Retrenchment means 'to end, conclude, cease'. The Hon'ble Supreme Court ultimately held that the respondent shall be put back where he left off, but his new salary will be what he would draw were he to be appointed in the same post denovo. The learned Single Judge applying the ratio laid down in the case of **N. Sundara Money** (supra), further held that the conclusions arrived at by the Tribunal are fallacious and the provisions of section 25-F of the I.D. Act have been utterly violated by the employer entitling the petitioner-workman to one order of reinstatement as the retrenchment is found to be illegal.

Therefore, we are of the view that the learned Single Judge in W.P.(C) No.1194 of 2003 has passed a reasoned order discussing the contentions raised by the respective parties, the

legal points and also how the conclusions arrived at by the Tribunal are fallacious.

22. The learned counsel for the Review Petitioners mainly contended that any appointment made in violation of the recruitment rules would be violative of Articles 14 and 16 of the Constitution of India rendering the same as nullity and the appointments of the opposite parties being void ab initio, there exists no relationship of master and servant between the review petitioners Bank and the opposite parties and that the provision under section 25-F of the I.D. Act does not come into play.

We have already held that the engagement of the appellant in the writ appeal and the opposite parties in the review petitions were not in accordance with the 1984 Rules. In the case of **Umadevi** (supra) placed by the learned counsel for the Review Petitioners, the observations of the Constitution Bench of the Hon'ble Supreme Court are as follows:-

> "33.....By and large, what emerges is that regular recruitment should be insisted upon, only in a contingency can an adhoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization.
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43.....Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to one end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to one end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.

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45.....In order words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest

in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the serves of the State.

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47.....Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees.

48.....No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a

> right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled."

The learned counsel for the Review Petitioners further placed reliance in the case of **Nagendra Chandra** (supra) wherein the Hon'ble Supreme Court held that if an appointment is made in infraction of the recruitment rules, the same would be violative of Articles 14 and 16 of the Constitution and being nullity would be liable to be cancelled.

The learned counsel for the Review Petitioners in support of his contentions that the principle laid down in the case of **Umadevi** (supra) is also equally applicable to industrial adjudication, placed reliance in the case of **U.P. Power Corporation Ltd.** (supra), wherein it is held as follows:-

> "5. It is true as contended by learned Counsel for the respondent that the question as regards the effect of the Industrial Adjudicators' powers was not directly in issue in **Umadevi**'s case (supra). But the foundational logic in **Umadevi**'s case (supra) is based on Article 14 of the Constitution of India, 1950 (in short the 'Constitution'). Though the Industrial Adjudicator can vary the terms of the contract of the

> employment, it cannot do something which is violative of Article 14. If the case is one which is covered by the concept of regularization, same cannot be viewed differently."

23. Now the vital point for consideration is that since the engagement of the appellant in the writ appeal as well as the opposite parties in the review petitions were not in accordance with the 1984 Rules but they were found to have been engaged on daily wage basis and treated as workmen by the Tribunal, who had put in more than two hundred forty days work in one calendar year and provisions of section 25-F of the I.D. Act have not been followed for their retrenchment, whether any relief can be granted to them.

At this stage, it would be profitable to discuss the principles enunciated in the citations placed by the learned counsel for the opposite parties in the review petitions. In the case of **Durgapur Casual Workers Union** (supra), it is held as follows:-

> "12.....The Industrial Disputes Act is applicable to all the industries as defined under the Act, whether the government undertaking or private industry. If any unfair labour practice is committed by any industrial establishment, whether government undertaking or private undertaking, pursuant to reference made by the

appropriate Government, the Labour Court/Tribunal will decide the question of unfair labour practice.

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20. The effect of the Constitution Bench decision in **Umadevi** (supra), in case of unfair labour practice was considered by this Court in case of **Maharashtra SRTC -Vrs.- Casteribe Rajya Parivahan Karmchari Sanghatana reported in (2009) 8 SCC 556**. In the said case, this Court held that Umadevi's case has not overridden powers of the Industrial and Labour Courts in passing appropriate order, once unfair labour practice on the part of the employer is established. This Court observed and held as follows:

> "34. It is true that **Dharwad District PWD Literate Daily Wages Employees' Assn. -Vrs.- State of Karnataka : (1990) 2 SCC 396** arising out of industrial adjudication has been considered in **State of Karnataka -Vrs.- Umadevi : (2006) 4 SCC 1** and that decision has been held to be not laying down the correct law but a careful and complete reading of the decision in **Umadevi** leaves no manner of doubt that what this Court was concerned with in **Umadevi** was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public

employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognised by the rules or procedure and yet orders of their regularization and conferring them status of permanency have been passed.

35. **Umadevi** is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

36. **Umadevi** does not denude the Industrial and Labour Courts of their statutory power under section 30 read with section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. **Umadevi** cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under section 30 of the MRTU and PULP Act, once unfair labour practice on the part of

the employer under Item 6 of Schedule IV is established."

In the case of **Casteribe Rajya P. Karmchari Sanghatana** (supra), it is held as follows:-

"45. The question now remains to be seen is whether the recruitment of these workers is in conformity with Standing Order 503 and, if not, what is its effect? No doubt, Standing Order 503 prescribes the procedure for recruitment of Class IV employees of the Corporation which is to the effect that such posts shall be filled up after receiving the recommendations from the Service Selection Board and this exercise does not seem to have been done but Standing Orders cannot be elevated to the statutory rules. These are not statutory in nature.

46. We find merit in the submission of Mr. Shekhar Naphade, learned Senior Counsel for the employees that Standing Orders are contractual in nature and do not have a statutory force and breach of Standing Orders by the Corporation is itself an unfair labour practice. The employees concerned having been exploited by the Corporation for years together by engaging them on piece-rate basis, it is too late in the day for them to urge that procedure laid down in Standing Order 503 having not been followed, these employees could not be given status and privileges of permanency. The

argument of the Corporation, if accepted, would tantamount to putting premium on their unlawful act of engaging in unfair labour practice.

47. It was strenuously urged by the learned Senior Counsel for the Corporation that the Industrial Court having found that the Corporation indulged in unfair labour practice in employing the complainants as casuals on piece rate basis, the only direction that could have been given to the Corporation was to cease and desist from indulging in such unfair labour practice and no direction of according permanency to these employees could have been given. We are afraid, the argument ignores and overlooks the specific power given to the Industrial/Labour Court under Section 30(1)(b) to take affirmative action against the erring employer which as noticed above is of wide amplitude and comprehends within its fold a direction to the employer to accord permanency to the employees affected by such unfair labour practice."

In case of **General Secretary, North Orissa Workers Union** (supra), it is held as follows:-

"10.....Adverting to the factual aspect, it is the case of the petitioner that the workmen were continuously working in different projects at different places. Appointment orders were

proved on behalf of the workmen to indicate that artificial breaks were given. There is no dispute that the burden of proof is on the petitioner to show that the workmen had worked for two hundred and forty days in preceding twelve months prior to their alleged retrenchment. The burden can be discharged by adducing cogent evidence, both oral and documentary. If the workman discharges his burden that he had worked for two hundred and forty days in preceding twelve months period prior to his termination without following section 25F of 1947 Act, the termination would be illegal. In case of **R.M. Yellatty -Vrs.- Assistant Executive Engineer reported in (2006) 1 Supreme Court Cases 106**, it is held that in case of termination of service of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt of proof of payment. In most cases, the workman can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. In case of Director, Fisheries Terminal Division (supra), it is held the workman would have difficulty in having access to all the official documents, muster rolls etc. in

> connection with his service. When the workman has come forward and deposed, the burden of proof shifts to the employer to prove that he did not complete two hundred and forty days of service in the requisite period to constitute continuous service.....At the time of their disengagement, even when they had continuous service for such period, they were not given any notice or pay in lieu of notice as well as retrenchment compensation. Thus, mandatory precondition of retrenchment in paying the aforesaid dues in accordance with section 25F of the 1947 Act was not complied with. That is sufficient to render the termination as illegal. Therefore, we are of the view that the observation of the learned Tribunal that the work was contractual in nature and it was not continuous and therefore, the benefits under section 25F is not applicable, is perverse and contrary to the evidence on record."

In the case of **Hindustan Tin works Pvt. Ltd.** (supra), it is held as follows:-

> "9.....Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in

> our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages....”

In the case of **Surendra Kumar Verma** (supra), it is held as follows:-

> “6.....Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It

is as if the order has never been and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The Court may deny the relief of award of full back wages where that would place an impossible burden on the employer....."

In the case of **P Gundu Surwase** (supra), it is held as follows:-

"33.....(v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Articles 226 or 136 of the Constitution and interfere with the

> award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages."

In view of the principle laid down by the Hon'ble Supreme Court, we are in agreement with the view expressed by the learned Single Judge in W.P.(C) No.1194 of 2003 that the opposite parties in the review petitions (similar is the case of the appellant in the writ appeal) were engaged on daily wage basis by the Bank and they worked there continuously for more than two hundred forty days in a calendar year and their wages were revised from time to time. The same was also the view of the Tribunal. We are also in agreement with the view expressed by the learned Single Judge that even though the engagement of the opposite parties in the review petitions (which is also the case of appellant in the writ appeal) were not in accordance with

the 1984 Rules but they were rightly treated as workmen by the Tribunal, who had put in more than two hundred forty days work in one calendar year. We are also in agreement with the view expressed by the learned Single Judge that provisions of section 25-F of the I.D. Act have not been followed by the employer for the retrenchment of the workmen. However, we are not inclined to the view expressed by the learned Single Judge that the opposite parties in the review petitions be reinstated in service. The Hon'ble Supreme Court in the case of **Asst. Engineer, Rajasthan Dev. Corp. & Another -Vrs.- Gitam Singh reported in (2013) 5 Supreme Court Cases 136** has held that it can be said without any fear of contradiction that the Supreme Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations. It has always been the view of the Supreme Court that there could be circumstance(s) in a case which may make it inexpedient to order reinstatement. Therefore, the normal rule that the dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception. Insofar as wrongful termination of daily-rated workers is concerned, the Supreme Court has laid down that consequential relief would depend on post of factors, namely, manner and method of appointment, nature of

employment and length of service. Where the length of engagement as daily wager has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid. It was further held that a distinction has to be drawn between a daily wager and an employee holding the regular post for the purposes of consequential relief. In the said case, the Hon'ble Supreme Court set aside the order of the learned Single Judge as well as the Division Bench of the High Court in confirming the award of the labour Court in directing reinstatement of the respondent Gitam Singh and also 25% of back wages and held that compensation of Rs.50,000/- by the appellant to the respondent shall meet the ends of justice. Similar view has been taken by the Hon'ble Supreme Court in the cases of **State of M.P. and others -Vrs.- Lalit Kumar Verma reported in (2007) 1 Supreme Court Cases 575**, **Uttaranchal Forest Development Corporation -Vrs.- M.C. Joshi reported in (2007) 9 Supreme Court Cases 353**, **Sita Ram and others -Vrs.- Motilal Nehru Farmers Training Institute reported in (2008) 5 Supreme Court Cases 75**, **Ghaziabad Development Authority -Vrs.- Ashok Kumar reported in (2008) 4 Supreme Court Cases 261** and **Jagbir Singh -Vrs.- Haryana State Agriculture Marketing Board and another reported in (2009) 15 Supreme Court Cases**

327. The aforesaid view has also been reiterated by this Court in the case of **Executive Engineer, Badanala Irrigation Division, Kenduguda -Vrs.- Ratnakar Sahoo and another reported in 2011 (Supp.I) Orissa Law Reviews 556**.

In the case of **District Development Officer -Vrs.- Satish Kantilal Amrelia reported in (2018) 12 Supreme Court Cases 298**, it is held that even though the termination was bad due to violation of section 25-G of the I.D. Act but it would be just, proper and reasonable to award lump sum monetary compensation to the respondent in full and final satisfaction of his claim of reinstatement and accordingly a total sum of Rs.2,50,000/- was directed to be paid to the respondent in lieu of his right to claim reinstatement and back wages in full and final satisfaction of the dispute.

In view of the ratio laid down in the aforesaid decisions and in the peculiar facts and circumstances of the case, the direction of reinstatement in service to the opposite parties in the review petitions is not sustainable in the eye of law. However, taking into account the length of service of each of the opposite parties under the Bank, the length of period they faced litigation in different forums, the litigation costs incurred by them, their sufferings and the fact that we are not in favour of their reinstatement, we are of the humble view that the amount

of compensation of Rs.50,000/- (rupees fifty thousand) as has been fixed by the learned Single Judge in W.P.(C) No.1194 of 2003 appears to be just, proper and reasonable.

Conclusion:-

24. In view of the foregoing discussions, we allow the writ appeal vide W.A. No.208 of 2008 filed by appellant Urmila Shah and set aside the order dated 19.06.2008 passed in W.P.(C) No.298 of 2003 but while not inclined to grant reinstatement in service to the appellant, the view taken by the learned Presiding Officer, Industrial Tribunal, Rourkela in I.D. Case No.12 of 2001 in the award dated 23.10.2002 directing payment of compensation at the rate of wages for fifteen days on completion of every two hundred forty days at the existing and prevalent scale of Rs.80/- per day is substituted with a direction to the respondent Bank to pay compensation of Rs.50,000/- (rupees fifty thousand) to the appellant in full and final satisfaction of the dispute. We also dismiss all the review petitions i.e. RVWPET Nos.57, 58, 59, 60, 61, 62, 63, 64 and 65 of 2010 but while upholding the view taken by the learned Single Judge in W.P.(C) No.1194 of 2003 and other connected writ petitions in the judgment and order dated 10.03.2010 regarding payment of compensation of Rs. 50,000/- (rupees fifty thousand) to the each of the respective petitioners in lieu of back wages,

we set aside that part of the order regarding their reinstatement in the service of the Bank. The Bank shall pay the compensation amount within a period of three months from today.

Accordingly, the writ appeal and the review petitions are disposed of. No costs.

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S.K. Sahoo, J.

S. Panda, A.C.J. I agree.

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S. Panda
Acting Chief Justice

Orissa High Court, Cuttack
The 29th January 2020/Pravakar/Sisir/RKM/Sukanta