PUNJAB LAND DEVELOPMENT AND RECLAMATION CORPORATION LTD., CHANDIGARH ETC.

v.

PRESIDING OFFICER, LABOUR COURT, CHANDIGARH ETC.

MAY 4, 1990

[SABYASACHI MUKHARJI, CJ., B.C. RAY, M.H. KANIA, K.N. SAIKIA AND S.C. AGARWAL, JJ.]

Industrial Disputes Act 1947:

Section 2(oo)—"Retrenchment"—Interpretation of—Whether termination by the employer of the services of a workman by employer for any reason whatsoever or termination by the employer of the services of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action—Whether to be understood in its narrow, natural and contextual meaning or in its wider literal meaning.

Precedent—Ratio decidendi of the earlier decision—How to ascertain—Major premise, minor premise and decision in a case—Whether may be narrowed or widened by the subsequent decision.

Constitution of India, 1950—Article 141—Supreme Court is not bound by its earlier decision—Stare decisis—doctrine of.

Decision per incuriam—meaning and effect of non reference to an earlier larger bench decision of Supreme Court—Subsequent decision of Supreme Court will be per incuriam only if the ratio of the earlier decision is in conflict with it.

Interpretation of Statutes—Wider literal construction—When preferable to narrower, natural and contextual construction—Definition clause using the word means 'instead' of 'includes'—Shows that no other meaning can be assigned.

This batch of eighteen appeals by special leave involves a common question of law, regarding the scope and ambit of the word 'retrenchment' as defined in Section 2(oo) of the Industrial Dispute Act, 1947.

A One of the appeals is by the workmen against the order of the High Court affirming the award of the Labour Court refusing to interfere with the order of termination of their services by the employer for their trade union activities, while the rest are by the employers/managements against the orders of High Courts/Industrial Tribunal/Labour Court setting aside the orders of termination of the services of
B the illegal for non-compliance of the provisions of Section 25F of the Act.

While the employers' contention is that the word "retrenchment" as defined in Section 2(oo) of the Act means termination of service of a workman only by way of surplus labour for any reason whatsoever, the
C workmen contend that "retrenchment" means termination of the service of a workman for any reason whatsoever, other than those expressly excluded by the definition in Section 2(oo) of the Act.

Disposing of the appeals, this Court,

D HELD: (1) Definition of 'retrenchment' in Section 2(oo) means termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action and those expressly excluded by the definition. This is the wider literal interpretation as distinguished from the narrow, natural and contextual interpretation of the word to mean termination by the
E employer of the service of a workman as surplus labour for any reason whatsoever. [156C; 131B]

B.N. Mutto v. *T.K. Nandi,* [1979] 2 SCR 409; *Jugal Kishore Saraf* v. *Raw Cotton Co. Ltd.,* [1955] 1 SCR 1369; *Sussex Peerage Case,* [1844] II Cl & Fin 85: 8 ER 1034 (HL); *Thompson* v. *Goold & Co.,* 26
F TLR 526; *Ealsing L.B.C.* v. *Race Relations Board,* [1972] 1 All ER 105; *Whiteley* v. *Chappell,* [1868] LR 4; *Prince Ernest of Hanover* v. *Attorney General,* [1956] Ch D 188 and *Muir* v. *Keay,* 44 MJMC 143, referred to.

(2) Difficulty was created by defining 'retrenchment' to mean
G something wider than what it naturally and ordinarily meant. Such a definition created complexity as the draftsman himself in drafting the other sections using the definition may slip into the ordinary meaning instead of the defined meaning. However, a judge facing such a problem of interpretation cannot simply fold his hands and blame the
H draftsman. [149A-B; F]

(3) The definition has used the word 'means'. When a statute says that a word or phrase shall 'mean'—not merely that it shall 'include'—certain things or acts, "the definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition." [150F-G] A

Queen **v.** *Commissioners under the Boiler Explosions Act, 1882,* **[1891] 1 QBD 703 and** *Gough* **v.** *Gough,* **[1891] 2 QB 665: 65 LT 11; relied on.** B

(4) There are apparent incongruities when the definition Clause Section 2(oo) is considered in the context of the main provisions viz. Sections 25F, 25G and 25H but there is room for harmonious construction. The definitions contained in Section 2 are subject to there being anything repugnant in the subject or context. [152C-D] C

Vishwamitra Press **v.** *Workers,* **AIR 1953 SC 41;** *Presidency Jute Mills Co. Ltd.* **v.** *Presidency Juite Mills Co. Employees Union,* **[1952] I LLJ 796 (LAT) (Cal);** *Iron & Steel Mazdoor Union, Kanpur* **v.** *J.K. Iron and Steel Co. Ltd.,* **[1952] LAC 467;** *Halar Salt and Chemical Works, Jamnagar* **v.** *Workmen,* **[1953] 2 LLJ 39;** *Prakriti Bhushan Gupta* **v.** *Chief Mining Engineer, Railway Board,* **[1953] LAC 373;** *Sudarshan Banerjee* **v.** *Mcleod and C. Ltd.,* **[1953] LAC 702;** *Srinivasa Enterprises* **v.** *Union of India,* **[1980] 4 SCC 507;** *Reserve Bank of India* **v.** *Peerless Central Finance and Investment Co. Ltd.,* **[1987] 2 SCR 1, referred to.** D E

(5) The express exclusion of volitional element in cl. (a) and (b) of Section 2(oo) namely, voluntary retirement, and retirement on superannuation age implies that those would otherwise have been included. If such cases were to be included, termination on abandonment of service, on efflux of time and on failure to qualify, though only consequential or resultant would be included as those have not been excluded. Then there appears to be a gap between the first part and the exclusion part. When such a gap is disclosed, the remedy lies in an amending Act. The Court has to interpret a statute and apply it to the facts. [150C-E] F

Duport Steels **v.** *Sirs,* **[1980] 1 All ER 529, referred to.** G

(6) Construing retrenchment in its wider sense, the rights of the employer under the standing orders and under contracts of employment may have been affected by Sections 2(oo) and 25F and other relevant sections. Secondly, it may be said that the rights as such are not affected or taken away but only additional social obligation has been H

A placed on the employer so as to give retrenchment benefit to affected. workmen perhaps for tiding over immediate financial distress. Seen from this angle, there is implicit a social policy. So goes the maxim—*Stat Pro ratione voluntes populi*—the will of the people stands in place of a reason. [153E-G]

B (7) In *Sundara Money* and subsequent cases the Supreme Court has adopted wider liberal meaning rejecting the narrow natural and contextual meaning. The question of subsequent decisions of the Supreme Court being *per incuriam* on grounds of failure to apply the earlier law laid down by the Constitution Bench in *Hariprasad Shukla* case could arise only if ratio in *Sundara Money* and subsequent decisions was in conflict with the ratio in *Hariprasad* and *Anakapalli.* C *Hariprasad* case is not an authority for the proposition that Section 2(oo) only covers cases of discharge of surplus labour and staff. *Sundara Money* and subsequent decisions in the line could not be held to be *per incuriam* in as much as in *Hindustan Steel* and *Santosh Gupta* cases the Division Benches of the Supreme Court had referred to D *Hariprasad* case, and rightly held that its ratio did not extend beyond the case of termination on the ground of closure and as such it would not be correct to say that subsequent decision overlooked a binding precedent. In a fast developing branch of Industrial and Labour Law it may not be always of particular importance to rigidly stick to a precedent and a precedent may need to be departed from if the basis of legislation E changes. [143B-C; 145E]

L. Robert D'Souza v. *Executive Engineer, Southern Railway and Anr.*, [1979] 1 LLJ 211; *Rajasthan State Electricity Board* v. *Labour Court,* [1966] 1 LLJ 381 (Raj.); *Goodlas Nerolac Paints* v. *Chief Commissioner, Delhi,* [1967] 1 LLJ 545 (Punj.) and *The Managing Director,* F *National Garages* v. *J. Gonsalves,* [1962] 1 LLJ 56 (Bom.), overruled.

Delhi Cloth and General Mills Ltd. v. *Shambhu Nath Mukherjee and Ors.*, [1978] 1 SCR 591; *Hindustan Steel Ltd.* v. *The Presiding Officer, Labour Court,* [1977] 1 SCR 586; *Santosh Gupta* v. *State Bank of Patiala,* [1980] 3 SCR 884; *Gammon India Ltd.* v. *Niranjan Das,* G [1984] 1 SCC 509 and *Reg* v. *Home Secretary, Ex P. Khawaja,* [1984] AC 74 (HL), relied on.

Pipraich Sugar Mills Ltd. v. *Pipraich Sugar Mills Mazdoor Union,* [1956] SCR 872; *Sub Nomine Barsi Light Railway Co.* v. *K.N. Joglekar,* [1957] 1 LLJ 243 (SC); *Hariprasad Shivshankar Shukla* v. H *A.D. Divikar,* [1957] SCR 121; *Anakapalla Co-operative Agricultural*

and Industrial Society Ltd. v. *Workmen*, [1963] Supp. 1 SCR 730 and *Workmen of Subong Tea Estate* v. *The Outgoing Management of Subong Tea Estate and Anr.*, [1964] 5 SCR 602, distinguished.

Employees v. *India Reconstitution Corporation Ltd.*, [1953] LAC 563; *Indian Hume Pipe Co. Ltd.* v. *Workmen*, [1960] 2 SCR 32; *Benett Coleman and Company Ltd.* v. *Employees*, [1954] 1 LLJ 341 (LAT); *Mohan Lal* v. *Bharat Electronic Ltd.*, [1981] 3 SCR 518 and *Surendra Kumar Verma* v. *Central Government Industrial Tribunal-cum-Labour Court, New Delhi*, [1981] 1 SCR 789, referred to.

(8) Article 141 embodies, a rule of law, the doctrine of precedents on which our judicial system is based. [136H]

(9) *Per Incuriam* means through inadvertance. A decision can be said generally to be given *per incuriam* when the Supreme Court has acted in ignorance of its own previous decision or when a High Court has acted in ignorance of a decision of the Supreme Court. The problem of judgment *per incuriam* when actually arises, should present no difficulty as the Supreme Court can lay down the law afresh if two or more of its earlier judgments cannot stand together. Article 141, which embodies as a rule of law, the doctrine of precedents, was enacted to make the law declared by the Supreme Court itself. [136G; 138G; 137F]

Re Dawson's Settlement Lloyds Bank Ltd. v. *Dawson*, [1966] 3 All ER 68 and *Bengal Immunity Company Ltd.* v. *State of Bihar*, [1955] 2 SCR 603, relied upon.

(10) The doctrine of *ratio decidendi* has also to be interpreted in the same line. To consider the *ratio decidendi* Court has to ascertain the principle on which the case was decided. The *ratio decidendi* of a decision may be narrowed or widened by the judges before whom it is cited as a precedent. [139G-H]

State of Orissa v. *Sudhansu Shikhar Misra*, [1968] 2 SCR 154; *F.A. & AB Ltd.* v. *Lupton (Inspector of taxes)*, [1972] A.C. 634; *Osborne* v. *Rowlett*, 13 Ch D 774 and *Quinn* v. *Leathem*, [1901] AC 495, relied on.

Griffiths v. *J.P. Harrison (Watford) Ltd.*, [1963] AC 1; *Finsbury Securities Ltd.* v. *Inland Revenue Commissioners*, [1966] 1 WLR 1402, referred to.

A CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3241-48 of 1981 Etc.

From the Judgment and Order dated 20.7.1983 of the Punjab & Haryana High Court in C.W.P. Nos. 469, 748, 750, 751, 752 and 753 of 1981

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B.N. Shinghvi, V.A. Bobde, M.K. Ramamurthy, N.B. Shetty, K.K. Venugopal, Dr. Anand Prakash, S.S. Javali, H.S. Gill, Brij Bhushan, M.G. Ramachandran, M.C. Dhingra, A.K. Sanghi, U.A. Rana, B.R. Agarwala, R.C. Pathak, Naresh Mathur, S.K. Sajwan, Baby Lal, Praveen Kumar, B.B. Singh, Vineet Kumar, B.D. Ahmed, C R.S. Hegde, Parijat Singh, Mrs. Jayshree Wad, S. Balakrishnan, Ms. Janani, Mrs. Urmila Kapoor, T.T. Kunhikannan, H.K. Puri, S. Srinivasan, Mrs. M. Karanjawala, Vijay Kumar Verma, Ashok Grover, V.N. Ganpule, M.A. Gagrat, Mrs. P.S. Shroff, Anil Gupta, R.A. Gupta, A.K. Ghosh, S. Mandal, Ranjit Kumar, M. Veerappa, Girish Chandra, Dr. Meera Aggarwal, A.K. Srivastava, K.R. D Nambiar, A.G. Ratnaparkhi, R. Satish, P.H. Parekh, S.A. Shroff and K.V. Sree Kumar for the appearing parties.

The Judgment of the Court was delivered by

E **K.N. SAIKIA, J.** This analogous cluster of seventeen appeals by special leave, and a special leave petition involves a common question of law though they arise out of the following respective facts:

C.A. Nos. 3241-3248 of 1981

F These eight appeals by the Land Development and Reclamation Corporation, Chandigarh are from the Judgment and Order of the Punjab and Haryana High Court dismissing its writ petitions challenging the Award dated 2.8.1980 of the Labour Court, Chandigarh holding that the respondents were entitled to reinstatement with back wages except Yaspal (C.A. No. 3242 of 1981) who was to get wages up to 10.10.1979, with benefits of continuity of service. The respondents G were workmen under the management of the Corporation and their services were terminated on the ground that the Chairman had no power to appoint them. The Labour Court in its Award held that their services were terminated illegally without payment of retrenchment compensation under the Industrial Disputes Act, 1947, hereinafter referred to as 'the Act', and that they were entitled to reinstatement.

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C.A. No. 686(NL) of 1982

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This appeal is from the Judgment dated 9.11.1981 of the High Court of Bombay (Nagpur Bench). The first respondent was an employee of the appellant's corporation since 1972. He was taken on probation in 1975 for one year which was extended from time to time, lastely from 1.9.1977 to 31.10.1977, whereafter his services being not found satisfactory were terminated with effect from 1.11.1977 under Regulation 44(b) of the State Transport Employees Service Regulations of the Corporation. The Labour Court took the view that it amounted to retrenchment and the provisions of s. 25F of the Act having not been complied with the termination was illegal. The appellant's writ petition therefrom was dismissed.

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C.A. No. 1817 of 1982

The respondent workman was employed by the appellant Bank on 3.10.1962 as a clerk and he was put on probation for six months. As allegedly there was total lack of confidence of the bank in the employee it terminated his service on 27.7.1974 on payment of three month's salary. The industrial tribunal by its award dated 3.12.1981 directed reinstatement of the workman with full back wages on the ground of non-compliance with the provisions of s. 25F of the Industrial Disputes Act. The employer Bank now appeals from that Award.

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C.A. No. 1898 of 1982

Respondent Nos. 2-6 were employed on probation by the appellant a partnership firm on 12.6.1975. Respondent Nos. 2-5 assaulted a supervisor and being afraid of police remained absent from 29.3.1976 and abandoned their jobs and their services were terminated. Respondent No. 6 stopped attending duties from 9.8.1975 and he left the service of his own accord. The Labour Court by its Award dated 16.9.1980 held that their termination amounted to retrenchment and was illegal for non-compliance with the provisions of s. 25F of the Act and they were entitled to reinstatement with full back wages. The Management's writ petition challenging the Award having been unsuccessful, it has appealed.

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C.A. No. 3261 of 1982

Respondent Namdeo was a clerk under the appellant Maharashtra State Road Transport Corporation. Pursuant to a disciplinary

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A proceeding his service was terminated with effect from 23.4.1963 by giving him one month's salary in lieu of notice. Moved by the respondent, the Assistant Commissioner under s. 16 of the C.P. & Berar Industrial Disputes Settlement Act, 1947 held the Inquiry Proceeding to be an empty paper formality and the termination amounted to dismissal and accordingly he set aside the order and directed the corporation to reinstate and pay him his back wages amounting to Rs. 15,971.66 within one month. The Corporation having moved the State Industrial Court at Nagpur under s. 16(5) of the Settlement Act, that Court by its order dated 29.9.1973 allowed the application and set aside the Assistant Labour Commissioner's judgment and dismissed the workman's application holding that the acts of misconduct fairly stood proved and he deserved to be dismissed from service. The High Court on being moved by the workman set aside the Labour Court's order and restored that of the Assistant Labour Commissioner. Hence this appeal.

CIVIL APPEAL NO. 3025 ..... OF 1990

The services of the workman Sri Pratap Singh, driver respondent No. 3 were terminated with effect from 18.10.1974 under clause 9(a)(i) of the DRTA (Conditions of Appointment and Service) Regulations 1952. As the conciliation efforts failed, the order was placed before the Labour Court, Delhi, who set aside the order on the ground of non-compliance with the provisions of s. 25F of the Act and ordered reinstatement with full back wages and continuity of service. The High Court having dismissed the writ petition therefrom, the appellant seeks special leave. We grant special leave and hear the appeal.

C.A. No. 885 of 1980

The workmen appellants Nos. 2 and 3 were discharged on 11.11.1972 for their trade union activities. The Labour Court, Bombay by its Award dated 25.8.1977 refused to interfere. Challenge to the Award in the High Court having failed, the workmen appealed to this Court.

C.A. No. 1866 of 1982

The workman respondent No. 2 reported for artisan training on 25.9.1963 and was absorbed as artisan trainee on 16.3.1964. He was made a skilled machine operator, under the appellant company and was discharged with effect from 23.7.1970. The Labour Court by its

Award dated 1.8.1980 held the termination to be illegal on ground of non-compliance of s. 25F of the Act, though the order of discharge was issued under Standing Order 18(1). The Company has appealed against the said order.

C.A. No. 1868 of 1984

The respondent was an employee in the appellant's factory as welder and his services were terminated with effect from 21.11.1972 under Standing Order No. 28. The Labour Court by its Award dated 30.12.1980 held the order of termination amounted to retrenchment and bad for non-compliance with s. 25F and hence set it aside and ordered reinstatement with full back wages. Hence this appeal.

C.A. No. 8456 of 1983

The respondent was dismissed by the appellant—Corporation after disciplinary inquiry by order dated 28.5.1971 paying one month's wages in advance. The workman having raised an industrial dispute, the Labour Court, Aurangabad by its Award daed 9.11.1979 held the order of termination to be legal and proper. The respondent's writ petition therefrom was allowed and the Award was quashed and the workman was declared entitled to reinstatement. Hence this appeal.

C.A. No. 10828 of 1983

The respondent was a store keeper of Rungta Colliery. His name was struck off the rolls of the Colliery with effect from 8.7.1975. He having raised an industrial dispute, the Industrial Tribunal, Jabalpur by its Award dated 22.8.1977 held the striking off to be unjustified and that the termination amounted to retrenchment and bad for non payment of retrenchment compensation. In the workman's Letters Patent Appeal the Division Bench of the High Court also held that the termination amounted to retrenchment. Hence this Management's appeal.

The respective cases were argued with some dexterity by the learned counsel Mr. B.N. Singhvi, Mr. N.B. Shetye, Mr. S.S. Javali, Mr. K.K. Venugopal, Mr. V.A. Bobde, Mr. M.K. Ramamurthy, Mr. M.G. Ramachandran & Mr. R.S. Hegde.

On the above diverse facts two rival contentions are raised by the parties. The learned counsel for the employers contend that the word 'retrenchment' as defined in s. 2(oo) of the Act means termination of

A service of a workman only by way of surplus labour for any reason whatsoever. The learned counsel representing the workmen counted that 'retrenchment' means termination of the service of a workman for any reason whatsoever, other than those expressly excluded by the definition in s. 2(oo) of the Act.

B The precise question to be dcided, therefore, is whether on a proper construction of the definition of "retrenchment" in s. 2(oo) of the Act, it means termination by the employer of the service of a workman as surplus labour for any reason whatsoever, or it means termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and those expressly excluded by the definition. In C other words, the question to be decided is whether the word "retrenchment" in the definition has to be understood in its narrow, natural and contextual meaning or in its wider literal meaning.

Mr. N.B. Shetye, Mr. K.K. Venugopal, and the learned counsel D adopting their arguments refer to the introduction of the provision of "retrenchment" in the Act. Retrenchment was not defined either in the repealed Trade Disputes Act, 1929, or in the Industrial Disputes Act, 1947, as originally enacted. Owing to a crisis in the textile industry in Bombay, apprehending large scale termination of services of workmen, the Government of India issued an Ordinance which later E became the Industrial Disputes (Amendment) Act, 1953 (Act 43 of 1953) which was deemed to have come into force on the 24th day of October, 1953. Besides introducing the definitions of "lay-off" [Clause 2 (kkk)] and "Retrenchment" [Clause 2(oo)] this Amendment Act of 1953 also inserted Chapter VA in the Act which dealt with "lay-off" and "Retrenchment". That Chapter contained sections 25A F to 25J. Section 25A provided that sections 25C to 25E inclusive shall not apply to certain categories of industrial establishments. Section 25C dealt with right of workmen laid-off compensation. Section 25D provided for maintenance of muster rolls of workmen by employers and section 25E stated the cases in which the workmen were not entitled to lay-off compensation. Section 25F dealt with conditions prece- G dent to retrenchment of workmen. Section 25G dealt with procedure for retrenchment and section 25H dealt with re-employment of retrenched workmen; and section 25J dealing with the effect of laws inconsistent with this Chapter said that the provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law (including standing orders made under the H Industrial Employment (Standing Orders) Act, 1946 (XX of 1946);

provided that nothing contained in this Act shall have effect to derogate from any right which a workman has under any award for the time being in operation or any contract with the employer.

The Statement of Objects and Reasons of the Amendment Act, 1953 was as under:

> "The Industrial Disputes (Amendment) Bill, 1953 seeks to provide for payment of compensation to workmen in the event of their lay-off or retrenchment. The provisions included in the Bill are not new and were discussed at various tripartite meetings. Those relating to lay-off are based on an agreement entered into between the representatives of employers and workers who attended the 13th session of the Standing Labour Committee. In regard to retrenchment, the Bill provides that a workman who has been in continuous employment for not less than one year under an employer shall not be retrenched until he has been given one month's notice in writing or one month's wages in lieu of such notice and also a gratuity calculated at 15 days' average pay for every completed year of service or any part thereof in excess of six months. A similar provision was included in the Labour Relations Bill, 1950, which has since lapsed. Though compensation on the lines provided for in the Bill is given by all progressive employers, it is felt that a common standard should be set for all employers"

Clause 2(oo) as inserted read as under:

> " 'Retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—
>
> (a) voluntary retirement of the workman; or
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> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
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> (c) termination of the service of a workman on the ground of continued ill-health."

A We are referred to contemporaneous interpretation of the word "re trenchment'. In *Employees of Messrs India Reconstruction Corporation Ltd., Calcutta* v. *Messers. India Reconstruction Corporation Ltd.,* reported in 1953 LAC 563 it was observed by the Calcutta High Court:

> "Ordinarily retrenchment means discharge from service of
> B only the surplus part of the labour force but in the case of closure the whole labour force is dispensed with. In substance the difference between closure and normal retrenchment is one of degree only. As in the case of retrenchment so in the case of closure the workmen are not responsible for closing their jobs. In both the cases, what is called
> C compensation by way of retrenchment relief should be admissible."

In *Messrs Benett Coleman and Company Ltd.* v. *Their Employees,* reported in 1954 LAC 24 it was observed by Calcutta High Court:

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> "Thus whether the closure was justified or not, the workmen who have lost their jobs would in any event get compensation. If it was not *bona fide* or not justified, it may be that the measure of compensation would be larger than if it was otherwise."

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The above almost contemporaneous exposition is worth consideration, *Contemporanea expositio est optima et fortiosima in lege,* (2 Inst. 11). Contemporaneous exposition is the best and strongest in the law. A statute is best explained by following the construction put upon it by judges who lived at the time it was made.

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In *Pipraich Sugar Mills Ltd.* v. *Pipraich Sugar Mills Mazdoor Union,* [1956] SCR 872, the appellant company could not work its mills to full capacity owing to short supply of sugar-cane and got the permission of the Government to sell its machinery but continued crushing cane under a lease from the purchaser. The workmen's union in order
G to frustrate the transaction resolved to go on strike and serving a strike notice did not cooperate with the management with the result that it lost heavily. On the expiry of the lease and closure of the industry, the services of the workmen were duly terminated by the company. The workmen claimed the share of profits on the basis of the offer earlier made by the company and accepted by the workers. The com-
H pany having declined to pay and the dispute having been referred,

the Industrial Tribunal held that the company was bound to pay and accordingly awarded a sum of Rs.45,000 representing their share of the profits and the award was affirmed by the Labour Appellate Tribunal. Question before this Court in appeal was whether the termination of the workmen on the closure of the industry amounted to retrenchment. It was held that the award was not one for compensation for termination of the services of the workmen on closure of the industry, as such discharge was different from the discharge on retrenchment, which implied the continuance of the industry and discharge only of the surplusage, and the workmen were not entitled either under the law as it stood on the day of their discharge or even on merits to any compensation.

The contention of the workmen was that even before the enactment of Industrial Disputes (Amendment) Act, 1953, the tribunal had acted on the view that the retrenchment included discharge on closure of business and had awarded compensation on that footing and that the award of the tribunal in *Pipraich's* case could be supported in that view and should not be disturbed. This was based on the decision in *Employees of Messrs India Reconstruction Corporation Ltd. Calcutta* v. *Messrs India Reconstruction Corporation Ltd.*, (supra); and *Messrs Benett Coleman and Company Ltd.* v. *Their Employees,* (supra). But their Lordship did not agree. Venkatarama Ayyar, J. speaking for the four Judge Bench said:

> "Though there is discharge of workmen both when there is retrenchment and closure of business, the compensation is to be awarded under the law, not for discharge as such but for discharge on retrenchment, and if, as is conceded, retrenchment means in ordinary parlance, discharge of the surplus, it cannot include discharge on closure of business."

As a result it was held that the Award in *Pipraich* was against the agreement and could not be supported as one of compensation to the workmen.

Thus this Court in *Pipraich* (supra) was dealing with the question whether the discharge of the workmen on closure of the undertaking would constitute retrenchment and whether the workmen were entitled on that account to retrenchment compensation; and it was observed that retrenchment connoted in its ordinary acceptation that the business itself was being continued but that a portion of the staff or

A the labour force was discharged as surplusage and the termination of services of all the workmen as a result of the closure of the business could not, therefore, be properly described as retrenchment, which in the ordinary parlance meant discharge from the service and did not include discharge on closure of business.

B The same view was expressed in *Hariprasad Shivshankar Shukla* v. *A.D. Divikar,* [1957] SCR 121; also reported *sub nomine Barsi Light Railway Co.* v. *K.N. Joglekar,* [1957] 1 L.L.J. 243 (SC), wherein the Constitution Bench heard two appeals, namely, Civil Appeal Nos. 103 and 105 of 1956. In Civil Appeal No. 105 of 1956 the main appellant was the Barsi Light Railway Company Ltd., and the principal respondent was the President of the Barsi Light Railwaymen's Union. C Under an agreement dated August 1, 1895 between the Secretary of State for India in Council and the Railway Company, the Secretary of State could purchase and take over the undertaking after giving Railway Company a notice. On December 19, 1952 a notice was given to the Railway Company for and on behalf of the President of India D that the undertaking of the Railway Company would be purchased and taken over as from January 1, 1954. On November 11, 1953, the Railway Company served a notice on its workmen intimating that as a result of the talking over, the services of all the workmen of the Railway Company would be terminated with effect from December 31, 1953. The notice further stated that the Government of India intended to E employ such of the staff of the company as would be willing to serve on the railway on terms and conditions which were to be notified later. About 77 per cent of the staff of the Railway Company were re-employed on the same scales of pay, about 23 per cent were re-employed on somewhat lower scales of pay and only about 24 per cent of the former employees of the Railway Company declined service F under the Government. Applications for compensation having been filed on behalf of the erstwhile workmen of the Railway Company under s. 15 of the Payment of Wages Act, 1936, for payment of retrenchment compensation to the said workmen under clause (b) of s. 25F of the Act, the question was whether the erstwhile workmen were entitled to claim compensation under clause (b) of s. 25F of the Act; G and whether they had been retrenched by their former employer within the meaning of the expression 'retrenchment' in the Act. In Civil Appeal No. 103 of 1956, the main appellant was Sri Dinesh Mills Ltd. Baroda and the principal respondent was District Labour Officer and Inspector under the Payment of Wages Act. The appellant company was running a woollen mill at Baroda and had abut 450 workmen and H 20 clerks who worked in shifts day and night. On or about October 31,

1953, the appellant put up a notice declaring its intention to close down the entire mill. As a result of the closure, the services of all 450 workmen and 20 clerks were terminated and the appellant company claimed that the closure was *bona fide* being due to heavy losses sustained by the company. The principal respondent claimed retrenchment compensation for the workmen of the appellant under clause (b) of s. 25F of the Act.

Section 25F at the relevant time stood as follows:

> "25F. *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 the 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 appropriate Government."

In both the appeals the question before the Constitution Bench was whether the claim of the erstwhile workmen both of the Railway Company and of Shri Dinesh Mills Ltd., to the compensation under clause (b) of s. 25F of the Act was a valid claim in law. Observing that the Act had a 'plexus of amendments', and some of the recent amendments had been quite extensive in nature and that s. 25F occurred in Ch. VA of the Act which dealt with 'lay off and retrenchment' in the Amending Act, and analysing s. 25F as it then stood, S.K. Das, J. speaking for the Constitution Bench observed that in the first part of the section both the words 'retrenched' and 'retrenchment' were used and obviously they had the same meaning except that one was verb

A and the other was a noun and that to appreciate the true scope and effect of s. 25F one must first understand what was meant by the expression 'retrenched' or 'retrenchment'.

Analysing the definition of 'retrenchment' in s. 2(oo) the Court found in it the following four essential requirements: (a) termination of the service of a workman; (b) by the employer; (c) for any reason whatsoever; and (d) otherwise than as a punishment inflicted by way of disciplinary action. The Court then said:

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> "It must be conceded that the definition is in very wide terms. The question, however, before us is does this definition merely give effect to the ordinary, accepted notion of retrenchment in an existing or running industry by embodying the notion in apt and readily intelligible words or does it go so far beyond the accepted notion of retrenchment as to include the termination of sservices of all workmen in an industry when the industry itself ceases to exist on a *bona fide* closure or discontinuance of his business by the employer?"

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The Court further said:

> "There is no doubt that when the act itself provides a dictionary for the words used, we must look into that dictionary first for an interpretation of the words used in the statute. We are not concerned with any presumed intention of the legislature; our task is to get the intention as expressed in the statute. Therefore, we propose first to examine the language of the definition and see if the ordinary, accepted notion of retrenchment fits in, squarely and fairly, with the language used."

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The Court reiterated the following observations in *Pipraich* (supra):

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> "But retrenchment connotes in its ordinary acceptation that the business itself is being continued but that a portion of the staff of the labour force is discharged as surplusage and the termination of services of all the workmen as a result of the closure of the business cannot therefore be properly described as retrenchment."

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This was the ordinary accepted notion of 'retrenchment' in an industry before addition of s. 2(oo) to the Act, as retrenchment in that case took place in 1951. Replying to the argument that by excluding the *bona fide* closure of business as one of the reasons for termination of the service of workmen by the employer, one would be cutting down the amplitude of the expression 'for any reason whatsoever' and reading into the definition the words which did not occur there, the Court agreed that the adoption of the ordinary meaning would give to the expression 'for any reason whatsoever' a some what narrower scope; one might say that it would get a colour in the context in which expression occurred; but the Court did not agree that it amounted to importing new words in the definition and said that the legislature in using that expression said in effect: "It does not matter why you are discharging the surplus; if the other requirements of the definition are fulfilled, then it is retrenchment". In the absence of any compelling words to indicate that the intention was to include *bona fide* closure of the whole business, it would be divorcing the expression altogether from its context to give it such a wide meaning as was contended. About the nature of the definition it was said:

> "It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended. Where, within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined."

The Court in *Hariprasad* dealt with two other contentions; one was that before the amending Act of 1953 the retrenchment had acquired a special meaning which included the payment of compensation on a closure of business and the legislature gave effect to that meaning in the definition clause and by inserting section 25F. The second was that section 25FF inserted in 1956 by Act 41 of 1956 was 'Parliamentary exposition' of the meaning of the definition clause and of section 25F. Rejecting the contentions the Court held that retrenchment meant the discharge of surplus workmen in an existing or continuing business; it had acquired no special meaning so as to include discharge of workmen on *bona fide* closure of business, though a number of Labour Appellate Tribunals awarded compensation to

workmen on closure of business as an equitable relief for variety of reasons. The Court accordingly held:

> "... that retrenchment as defined in s. 2(oo) and as used in s. 25 has no wider meaning than the ordinary, accepted connotation of the word; it means the *discharge of surplus labour or staff* by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on real and *bona fide* closure of business as in the case of Shri Dinesh Mills Ld. or where the services of all workmen have been terminated by the employer on the business or undertaking being taken over by another employer in circumstances like those of the Railway Company."

It is interesting to note that the Amending Act No. 41 of 1956 inserted original section 25FF on September 4, 1956. The objects and reasons were stated thus:

> "Doubt has been raised whether retrenchment compensation under the Industrial Disputes Act 1947 becomes payable by reason merely of the fact that there has been a change of employers, even if the service of the workman is continued without interruption and the terms and conditions of his service remain unaltered. This has created difficulty in the transfer, re-constitution and amalgamation of companies and it is proposed to make the intention clear by amending section 25F of the Act."

Hariprasad's case (supra) was decided on November 27, 1956. The Industrial Disputes (Amendment) Ordinance, 1957 (4 of 1957) was promulgated immediately thereafter with effect from December 1, 1956 and that Ordinance was replaced by the Industrial Disputes (Amendment) Act 1957 (XVIII of 1957). The following was the Statement of Objects and Reasons:

> "In a judgment delivered on the 27th November, 1956, the Supreme Court held that no retrenchment compensation was payable under section 25F of the Industrial Disputes Act, 1947, to workmen whose services were terminated by an employer on a real and *bona fide* closure of business, or when termination occurred as a result of transfer of owner-

ship from one employer to another (see AIR 1957 SC 121). This has led and is likely to lead to a large number of workmen being rendered unemployed without any compensation. In order to meet this situation which was causing hardship to workmen, it was considered necessary to take immediate action and the Industrial Disputes (Amendment) Ordinance, 1957 (4 of 1957), was promulgated with retrospective effect from 1st December, 1956."

"This Ordinance was replaced by an Act of Parliament enacting the provisions contained in sections 25FF and 25FFF. These sections provide that 'compensation would be payable to workmen whose services are terminated on account of the transfer or closure of undertakings.' In the case of transfer of undertakings, however, if the workman is re-employed on terms and conditions which are not less favourable to him, he will not be entitled to any compensation. This was the position which existed prior to the decision of the Supreme Court. In the case of closure of business on account of the circumstances beyond the control of the employer, the maximum compensation payable to workmen has been limited to his average pay for three months. If the undertaking is engaged in any construction work and it is closed down within two years on account of the completion of its work, no compensation would be payable to workmen employed therein."

Hariprasad (supra) having accepted the ordinary contextual meaning of retrenchment, namely, termination of surplus labour as the major premise it was surely open to the Parliament to have amended the definition of retrenchment in s. 2(oo) of the Act. Instead of doing that the Parliament added s. 25FF and 25FFF which said:

"25FF. Compensation to workmen in case of transfer of undertakings—Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer, in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

A Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if—

(a) the service of the workman has not been interrupted by such transfer;

B

(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and

C (c) the new employer is under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer."

D "25FFF. Compensation to workmen in case of closing down of undertakings—(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice E and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched;

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the F workmen under clause (b) of section 25-F shall not exceed his average pay for three months."

Thus, by this Amendment Act the Parliament clearly provided that though such termination may not have been retrenchment technically so-called, as decided by this Court, nevertheless the employees in G question whose services were terminated by the transfer or closure of the undertaking would be entitled to compensation, *as if* the said termination was retrenchment. As it has been observed, the words "as if" brought out the legal distinction between retrenchment defined by s. 2(oo) as it was interpreted by this Court and termination of services consequent upon transfer of the undertaking. In other words, the pro- H vision was that though termination of services on transfer or closure of

the undertaking may not be retrenchment, the workmen concerned were entitled to compensation as if the said termination was retrenchment.

Thus we find that till then the accepted meaning of retrenchment was ordinary, contextual and narrower meaning of termination of surplus labour for any reason whatsoever.

In *Anakapalla Co-operative Agricultural and Industrial Society Ltd.* v. *Workmen,* [1963] Suppl. 1 SCR 730, a company running a sugar mill was suffering losses every year due to insufficient supply of sugarcane and wanted to shift the mill. The cane-growers formed a co-operative society and purchased the mill. As agreed between the company and the society, the company terminated the services of the employees and paid retrenchment compensation to them under section 25FF of the Act. This society employed some of the old employees and refused to absorb some of them who raised an industrial dispute. The Industrial Tribunal having directed the purchaser-society by its award to re-employ them, the society contended that it was not a successor-in-interest of the company and hence the claim of re-employment was not sustainable and the services of the employees having been terminated upon payment of compensation by the company under s. 25FF no claim could be made against the transferee society. This Court held that the society was the successor-in-interest of the company as it carried on the same or similar business as was carried by the vendor-company at the same place and without substantial break in continuity. It was further held that the employees were not entitled to both compensation for termination of service and immediate re-employment at the hands of the transferee and section 25H was not applicable to the case as the termination of service upon transfer or closure was not retrenchment properly so called and that termination of service dealt with in s. 25FF could not be equated with retrenchment covered by s. 25F. It was observed that the words 'as if' in s. 25FF clearly distinguished retrenchment under s. 2(oo) and termination under s. 25FF. Gajendragadkar, J., as he then was, speaking for the five Judges Bench said that in *Hariprasad* this Court was called upon to consider the true scope and effect of the concept of retrenchment as defined in s. 2(oo) and it held that the said definition had to be read in the light of the accepted connotation of the words, and as such, it could have no wider meaning than the ordinary connotation of the word and according to this connotation retrenchment meant the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise then as a punishment inflicted by way of disciplinary action, and did

A not include termination of services of all workmen on the *bona fide* closure of industry or on change of ownership or management thereof. It was observed:

> ". . . . . the effect of this decision was that though the definition of the word 'retrenchment' may perhaps have included the termination of services caused by the closure of the concern or by its transfer, these two latter cases could not be held to fall under the definition because of the ordinary accepted connotation of the said word. This decision necessarily meant that the word 'retrenchment' in s. 25FF had to bear a corresponding interpretation."

C In *Workmen of Subong Tea Estate* v. *The outgoing Management of Subong Tea Estate and Anr.*, reported in [1964] 5 SCR 602, it was similarly observed at page 613 of the report:

> "In dealing with the question of retrenchment in the light of the relevant provisions to which we have just referred, it is, however, necessary to bear in mind that the management can retrench its employees only for proper reasons. It is undoubtedly true that it is for the management to decide the strength of its labour force, for the number of workmen required to carry out efficiently the work involved in the industrial undertaking of any employer must always be left to be determined by the management in its discretion, and so, occasions may arise when the number of employees may exceed the reasonable and legitimate needs of the undertaking. In such a case, if any workman become surplus, it would be open to the management to retrench them. Workmen may become surplus on the ground of rationalisation or on the ground of economy reasonably and *bona fide* adopted by the management, or of other industrial or trade reasons. In all these cases, the management would be justified in effecting retrenchment in its labour force. Thus, though the right of the management to effect retrenchment can not normally be questioned, when a dispute arises before an Industrial Court in regard to the validity of any retrenchment, it would be necessary for industrial adjudication to consider whether the impugned retrenchment was justified for proper reasons. It would not be open to the management either capriciously or without any reason at all to say that it proposes to reduce its labour

force for no rhyme or reason. This position can not be seriously disputed" A

In *Delhi Cloth and General Mills Ltd.* v. *Shambhu Nath Mukherjee and Ors.*, reported in [1978] 1 SCR 591 where the post of motion setter was abolished and the respondent was given a job of a trainee on probation for the post of Assistant Line Fixer and the B management found him unsuitable for the job even after extending his probation period upto nine months and offered him the post of fitter on the same pay and the respondent instead of accepting the offer wanted to be given another chance to show his efficiency in his job and the management struck off his name from the rolls without complying with the provisions of s. 25F(a) and (b) of the Act and the Labour C Court having given award in the respondent's favour and the appellant's writ petition was rejected by the High Court, Goswami, J. speaking for three Judges Bench said: "Striking off the name of the workman from the rolls by the management is termination of his service. Such termination of service is retrenchment within the meaning of s. 2(oo) of the Act. There is nothing to show that the provisions D of section 25F (a) and (b) were complied with by the management in this case. The provisi ns of s. 25F(a), the proviso apart, and (b) are mandatory and any order of retrenchment in violation of these two peremptory conditions precedent is invalid." The appeal was accordingly dismissed. The earlier decisions were not referred to.

E

Next comes the decision in *State Bank of India* v. *Shri N. Sundara Money,* reported [1976] 3 SCR 160, (Y.V. Chandrachud, V.R. Krishna Iyer and A.C. Gupta, JJ.). In an application under Article 226, the respondent on automatic extinguishment of his service consequent to the pre-emptive provision as to the temporariness of the period of his employment in his appointment letter claiming to have F been deemed to have had continuous service for one year within the meaning of s. 25(B)(2) of the Act, the Single Bench of the High Court having allowed his writ petition and the writ appeal of the appellant having also failed, this Court in appeal found as fact that the appointment was purely temporary one for a period of 9 days but might be terminated earlier, without assigning any reason therefor at the peti- G tioner's discretion; and the employment unless terminated earlier, would automatically cease at the expiry of the period i.e. 18.11.1972. This 9 days' employment added on to what had gone before ripened to a continuous service for a year "on the antecedent arithmetic of 240 days of broken bits of service" and considering the meaning of 're-trenchment' it was held that the expression for any reason whatsoever H

was very wide and almost admitting of no exception. The contention of the employer was that when the order of appointment carried an automatic cessatioin of service, the period of employment worked itself out by efflux of time, not by act of employer and such cases were outside the concept of retrenchment. This Court observed that to retrench is to cut down and one could not retrench without trenching or cutting, but "dictionaries are not dictators of statutory construction where the benignant mood of a law and, more emphatically, the definition clause furnish a different denotation."

Accepting the literal meaning, Krishna Iyer, J. observed:

> "A break down of s. 2(oo) unmistakably expands the semantics of retrenchment. 'Termination ..... for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is, has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of s. 25F and s. 2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is no longer *terra incognita* but area covered by an expansive definition. It means 'to end, conclude, cease.' In the present case the employment ceased, concluded, ended on the expiration of 9 days automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no mokshas from s. 25F (b) is inferable from the proviso to s. 25F(1). True, the section speaks of retrenchment *by the employer* and it is urged that some act of volition by the employer to bring about the termination is essential to attract s. 25F and a omatic extinguishment of service by effluxion of time cannot be sufficient."

It was further observed:

> "Words of multiple import have to be winnowed judicially

to suit the social philosophy of the statute. So screened we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order, one giving employment and the other ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A pre-emptive provision to terminate is struck by the same vice as the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision."

The precedents including *Hariprasad* do not apear to have been brought to the notice of their Lordship in this case. It may be noted that since *Delhi Cloth and General Mills* (supra) a change in interpretation of retrenchment in s. 2(oo) of the Act is clearly discernible.

Mr. Venugopal would submit that the Judgment in *Sundara Money's* case and for that matter the subsequent decisions in the line are *per incuriam* for two reasons: (i) that they failed to apply the law laid down by the Constitution Bench of this Hon'ble Court in *Hariprasad Shukla's* case (supra) and (ii) for the reason that they have ignored the impact of two of the provisions introduced by the Amendment Act of 1953 along with the definition of "retrenchment" in s. 2(oo) and s. 25F namely, ss. 25G and 25H. We agree with the learned counsel that the question of the subsequent decisions being *per incuriam* could arise only if the ratio of *Sundara Money's* case and the subsequent Judgments in the line was in conflict with the ratio in the *Hariprasad Shukla's* case (supra) and *Anakapalla's* case (supra). The issue, it is urged, was, whether it was necessary for the Court to interpret s. 2(oo) as being restricted to termination of services of workmen rendered surplus for arriving at a decision in the case and if it was unnecessary to so interpret s. 2(oo) for the purpose of arriving at a decision in that case, the interpretation of s. 2(oo) would necessarily by rendered *obiter*. According to counsel, the long discussion on interpretation of s. 2(oo) could not be brushed aside as either *obiter* or mere casual observations of the Constitution Bench.

It is urged that for the purpose of *ratio decidendi*, the question is not whether a subsequent Bench of the Supreme Court thinks that it was necessary or unnecessary for the Constitution Bench, or the earlier Bench to have dealt with the issue, but whether the Constitution Bench itself thought it necessary to interpret Section 2(oo) for

A arriving at its final decision. If the smaller Bench of the Supreme Court could ignore the earlier decision of a larger Bench of the Supreme Court by holding that in its opinion, it was not necessary for the earlier Bench to have gone into the issue, equally it would be open to a High Court to adopt the same approach and ignore binding Judgments of the Supreme Court; giving rise to judicial indiscipline. According to B counsel the Constitution Bench, in its unanimous verdict, undoubtedly found it necessary to go into the interpretation of s. 2(oo) and did so with elaborate reasoning supporting its findings, because if the contention of the Management in that case was accepted, namely, that "retrenchment" would cover only termination of surplus labour for any reason whatsoever, the logical result of this finding, would be two-fold: (i) that the termination of the entirety of workmen by reason C of closure, would not be a termination of workmen rendered surplus and, therefore, a case of closure would be outside s. 2(oo), and (ii) secondly, such termination of workmen rendered surplus, could arise only if the industry continued to be a running industry.

D The question whether the positive content of s. 2(oo) restricting the definition of workmen rendered surplus, for any reason, whatsoever, is part of the ratio or not, submits Mr. Venugopal, is wholly an academic question in view of the fact that as many as 9 High Courts have restricted the applicability of s. 25F, 25G and 25H to only cases of termination of services of surplus labour for any reason whatsoever E and not to other types of termination, whatever may be the reason for such termination. Even if a Judgment was to be based on two alternative reasons or conclusions, each one of these alternative reasons or basis, would form the ratio of the Judgment. It is also urged that the argument would equally apply to the ratio of *Anakapalla's* case rendering the Judgments in *Sundra Money's* case and the later deci-F sions *per incuriam,* for not having noticed or followed a binding precedent of the Supreme Court itself, as the Judgment of the Constitution Bench binds smaller Divisions of the Court.

We now deal with the question of *per incuriam* by reason of allegedly not following the Constitution Bench decisions. The Latin G expression *per incuriam* means through inadvertence. A decision can be said generally to be given *per incuriam* when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this Court. It can not be doubted that Art. 141 embodies, as a rule of law, the doctrine of precedents on which our judicial system is based. In *Bengal Immunity Company Ltd.* H v. *State of Bihar,* [1955] 2 SCR 603, it was held that the words of Art.

141, "binding on all courts within the territory of India", though wide enough to include the Supreme Court, do not include the Supreme Court itself, and it is not bound by its own judgments but is free to reconsider them in appropriate cases. This is necessary for proper development of law and justice. May be for the same reasons before judgments were given in the House of Lords in *Re-Dawson's Settlement Lloyds Bank Ltd.* v. *Dawson and Ors.*, [1966] 1 WLR 1234, on July 26, 1966 Lord Gardiner, L.C. made the following statement on behalf of himself and the Lords of Appeal in Ordinary:

> "Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules. Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.
>
> In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law."

Though the above announcement was not made in the course of judicial proceeding it shows that it is open to House of Lords to depart from the doctrine of precedent when considered justified. Section 212 of the Government of India Act, 1935 and Art. 141 of the Constitution of India were enacted to make the law declared by the Supreme Court binding on all courts in the country excluding, as is now being interpreted, the Supreme Court itself. The doctrine of *ratio decidendi* has also to be interpreted in the same line. In England a decision is said to be given *per incuriam* when the court has acted in ignorance of a previous decision of its own or of a court of co-ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords. It has been said that the decision of the House of

A Lords mentioned above, refers to a decision subsequent to that of the Court of Appeal. However, "a prior decision of the House of Lords inconsistent with the decision of the Court of Appeal, but which was not cited to the Court of Appeal will make the later decision of the Court of Appeal of no value as given *per incuriam.*" But if the prior decision had been cited to the Court of Appeal and that court had B misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House to rectify the mistake. In *Halsbury's Laws of England* 4th Ed. Vol. 10 para 745 it has been said:

> "While former decisions of the House are normally binding C upon it, the House will depart from one of its own previous decisions when it appears right in the interests of justice and of the proper development of the law to do so. Cases where the House may reconsider its own previous decisions are those involving broad issues of justice or public policy and questions of legal principle. Only in rare cases will D the House reconsider questions of construction of statutes or other documents. The House is not bound to follow a previous case merely because it is indistinguishable on the facts."

The position and experience in this Court could not be much E different, keeping in view the need for proper development of law and justice.

As regards the judgments of the Supreme Court allegedly rendered in ignorance of a relevant constitutional provision or other statutory provisions on the subjects covered by them, it is true that the F Supreme Court may not be said to "declare the law" on those subjects if the relevant provisions were not really present to its mind. But in this case ss. 25G and 25H were not directly attracted and even if they could be said to have been attracted in laying down the major premise, they were to be interpreted consistently with the subejct or context. The problem of judgment *per incuriam* when actually arises, should G present no difficulty as this Court can lay down the law afresh, if two or more of its earlier judgments cannot stand together. The question however is whether in this case there is in fact a Judgment *per incuriam*. This raises the quetion of *ratio decidendi* in *Hariprasad* and *Anakapalla's* cases on the one hand and the subsequent decisions taking the contrary view on the other.

H

An analysis of judicial precedent, *ratio decidendi* and the ambit of earlier and later decisions is to be found in the House of Lords' decision in *F.A. & A.B. Ltd.* v. *Lupton (Inspector of Taxes),* [19722] AC 634, Lord Simon concerned with the decisions in *Griffiths* v. *J.P. Harrison (Watford) Ltd.,* [1963] A.C. 1, and *Finsbury Securities Ltd.* v. *Inland Revenue Commissioners,* [1966] 1 WLR 1402, with their inter-relationship and with the question whether *Lupton's* case fell within the precedent established by the one or the other case, said:

> "What constitutes binding precedent is the *ratio decidendi* of a case and this is almost always to be ascertained by an analysis of the material facts of the case that is, generally, those facts which the tribunal whose decision is in question itself holds, expressly or implicitly, to be material."

It has also been analysed:

> "A judicial decision will often be reached by a process of reasoning which can be reduced into a sort of complex syllogism, with the major premise consisting of a pre-existing rule of law (either statutory or judge-made) and with the minor premise consisting of the material facts of the case under immediate consideration. The conclusion is the decision of the case, which may or may not establish new law—in the vast majority of cases it will be merely the application of existing law to the facts judicially ascertained. Where the decision does consititute new law, this may or may not be expressly stated as a proposition of law: frequently the new law will appear only from subsequent comparison of, on the one hand, the material facts inherent in the major premise with, on the other, the material facts which constitute the minor premise. As a result of this comparison it will often be apparent that a rule has been extended by an analogy expressed or implied."

To consider the *ratio decidendi* of a case we have, therefore, to ascertain the principle on which the case was decided. Sir George Jessel in *Osborne* v. *Rowlett,* [1880] 13 Ch. D. 774, remarked that 'the only thing in a judge's decision binding as an authority upon a subsequent judge is the principle upon which the case was decided'.

The *ratio decidendi* of a decision may be narrowed or widened by the judges before whom it is cited as a precedent. In the process the

A *ratio decidendi* which the judges who decided the case would themselves have chosen may be even different from the one which has been approved by subsequent judges. This is because Judges, while deciding a case will give their own reasons but may not distinguish their remarks in a rigid way between what they thought to be the *ratio decidendi* and
B what were their *obiter dicta*, that is, things said in passing having no binding force, though of some persuasive power. It is said that "a judicial decision is the abstraction of the principle from the facts and arguments of the case." "A subsequent judge may extend it to a broader principle of wider application or narrow it down for a narrower application." The submissions of Mr. Venugopal that for the purpose of *ratio decidendi*, the question is not whether a subsequent
C Bench of this Court thinks that it was necessary or unnecessary for the Connstitution Bench, or the earlier Bench to have dealt with the issue, but whether the Constitution Bench itself thought it necessary to interpret s. 2 (oo) for arriving at the final decision has to be held to be untenable in this wide and rigid form.

D

Analysing the compled syllogism of *Hariprasad's* case we find that its major premise was that retrenchment meant termination of surplus labour of an existing industry and the minor premise was, that the termination in that case was of all the workmen on closure of business on change of ownership. The decision was that there was no
E retrenchment. In this context it is important to note what subsequent benches of this Court thought to be the *ratio decidendi of Hariprasad*, and for that matter of *Anakapalla*.

In *Santosh Gupta* v. *State Bank of Patiala*, reported in [1980] 3 SCR 884, O. Chinnappa Reddy, J. sitting with Krishna Iyer, J.
F deduced the *ratio decidendi* of *Hariprasad* thus:

> "In *Hariprasad Shivshankar Shukla* v. *A.D. Divikar*, the Supreme Court took the view that the word 'retrenchment' as defined in s. 2(oo) did not include termination of services of all workmen on a *bona fide* closure of an
G industry or on change of ownership or management of the industry. In order to provide for the situations which the Supreme Court held were not covered by the definition of the expression 'retrenchment', the Parliament added s. 25FF and s. 25FFF providing for the payment of compensation to the workmen in case of transfer of undertakings
H and in case of closure of undertakings respectively."

In *Hariprasad* (supra) the learned Judges themselves formulated the question before them as follows: A

> "The question, however, before us is—does this definition merely give effect to the ordinary, accepted notion of retrenchment in an existing or running industry by embodying the notion in apt and readily intelligible words or does it go so far beyond the accepted notion of retrenchment as to include the termination of services of all workmen in an industry when the industry itself ceases to exist on a *bona fide* closure or discontinuance of his business by the employer." B C

The question was answered by the learned Judges in the following words:

> "In the absence of any compelling words to indicate that the intention was even to include a *bona fide* closure of the whole business, it would, we think, be divorcing the expression altogether from the context to give it such a wide meaning as is contended for by learned counsel for the respondents ..... it would be against the entire scheme of the Act to give the definition clause relating to retrenchment such a meaning as would include within the definition termination of service of all workmen by the employer when the business itself ceases to exist." D E

Rejecting the submission of Dr. Anand Prakash that "termination of service for any reason whatsoever" meant no more and no less than discharge of a labour force which was a surplusage, it was observed in *Santosh Gupta* (supra) that the misunderstanding of the observations and the resulting confusion stem from not appreciating the lead question which was posed and answered by the learned Judges and that the reference to 'discharge on account of surplusage' was illustrative and not exhaustive on account of transfer or closure of business. F

Mr. V.A. Bobde submits, and we think rightly, that the sole reason for the decision in *Hariprasad* was that the Act postulated the existence and continuance of an industry and where the industry i.e. the undertaking, itself was closed down or transferred, the very substratum disappeared and the Act could not regulate industrial employment in the absence of an industry. The true position in that case was that s. 2(oo) and 25F could not be invoked since the undertaking itself G H

A ceased to exist. The ratio of *Hariprasad*, according to the learned counsel, is discernible from the discussion at pp. 131-132 of the report about the ordinary accepted notion of retrenchment 'in an industry' and *Pipraich's* case was referred to for the proposition that continuance of the business was essential; the emphasis was not on the discharge of surplus labour but on the fact that "retrenchment connotes in its B ordinary acceptation that the business itself is being continued ..... the termination of services of all the workmen as a result of the closure of the business cannot therefore be properly described as retrenchment." At page 134 in the last four lines also it was said: "But the fundamental question at issue is, does the definition clause cover cases of closure of business when the closure is real and *bona fide*?" The reasons for arriving at the conclusion are given as "it would be against C the entire scheme of the Act to give the definition clause relating to retrenchment such a meaning as would include within the definition termination of service of all workmen by the employer when the business itself ceases to exist and that the industrial dispute to which the provisions of the Act applies is only one which arises out of an existing D industry". Thus, the Court was neither called upon to decide nor did it decide whether in a continuing business, retrenchment was confined only to discharge of surplus staff and the reference to discharge of surplusage was for the purpose of contrasting the situation in that case, i.e. workmen were being retrenched because of cessation of business and those observations did not constitute reasons for the decision. E What was decided was that if there was no continuing industry the provision could not apply. In fact the question whether retrenchment did or did not include other terminations was never required to be decided in *Hariprasad* and could not, therefore have been, or be taken to have been decided by this Court.

F Lord Halsbury's dicta in *Quinn* v. *Leathem,* [1901] AC 495 at page 506 is:

> "..... every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are G not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only on authority for what it actually decides."

This Court held in *State of Orissa* v. *Sudhansu Misra,* [1968] 2 SCR H 154, that a decision is only an authority for what it actually decides.

What is of the essence in a decision is its ratio and not other observation found therein nor what logically follows from the various observations made in it. We agree with Mr. Bobde when he submits that *Hariprasad's* case is not an authority for the proposition that s. 2(oo) only covers cases of discharge of surplus labour and staff. The Judgments in *Sundara Money* (supra) and the subsequent decisions in the line could not be held to be *per incuriam* inasmuch as in Hindustan Steel and *Santhosh Gupta's* cases, the Division Benches of this Court had referred to *Hariprasad's* case and rightly held that its ratio did not extend beyond a case of termination on the ground of closure and as such it would not be correct to say that the subsequent decisions ignored a binding precedent.

In *Hindustan Steel Ltd.* v. *The Presiding Officer, Labour Court,* [1977] 1 SCR 586 the question was whether termination of service by efflux of time was termination of service within the definition of retrenchment in section 2(oo) of the Act. Both the earlier decisions of the Court in *Hariprasad* (supra) and *Sundara Money* (supra) were considered and it was held that there was nothing in *Hariprasad* which was inconsistent with the decision in *Sundara Money's* case. It was observed that the decision in *Hariprasad* was only that the words "for any reason whatsoever" used in the definition of retrenchment would not include a *bona fide* closure of the whole business because it would affect the entire scheme of the Act. The decisions in *L. Robert D'Souza* v. *Executive Engineer, Southern Railway and Anr.,* [1979] 1 L.L.J. 211; *The Managing Director, National Garages* v. *J. Gonsalves,* [1962] 1 L.L.J. 56; *Goodlas Nerolac Paints* v. *Chief Commissioner, Delhi,* [1967] 1 L.L.J. 545 and *Rajasthan State Electricity Board* v. *Labour Court,* [1966] 1 L.L.J. 381, in which contrary view was taken, were overruled in *Santosh Gupta* holding that the discharge of the workman on the ground that she did not pass the test which would have enabled her to be confirmed was 'retrenchment' within the meaning of section 2(oo) and therefore, the requirement of section 25F had to be complied with. The workman was employed in the State Bank of Patiala from July 13, 1973 till August, 1974 when her services were terminated. According to the workman she had worked for 240 days in the year preceding August 21, 1974 and the termination of her services was retrenchment as it did not fall within any of the three accepted cases. The management's contention was that termination was not due to discharge of surplus labour but due to failure of the workman to pass the test which could have enabled her to be confirmed in the service and as such it was not retrenchment. This contention was repelled.

A Both Mr. Shetye and Mr. Venugopal submit that judicial discipline required the smaller benches to follow the decisions in the larger benches. This reminds us of the words of Lord Mailsham of Marylebone, the Lord Chancellor, "in the hierarchical system of courts which exists in this country, it is necessary for each lower tier ..... to accept loyally the decisions of the higher tiers". However, in view of the *ratio* B *decidendi* of Hariprasad, as we have seen, there is no room for such a criticism.

In *Management of Karnataka State Road Transport Corporation, Bangalore* v. *M. Boraiah,* reported in [1984] 1 SCC 244, a Division Bench of A.N. Sen and Ranganath Misra, JJ. following the decisions C in *State Bank of India* v. *N. Sundara Money,* (supra); *Hindustan Steel Ltd.* v. *Presiding Officer, Labour Court, Orissa,* (supra); *Santosh Gupta* v. *State Bank of Patiala,* (supra); *Indian Hume Pipe Co. Ltd.* v. *Workmen,* [1960] 2 SCR 32; *Mohan Lal* v. *Management of M/s. Bharat Electronics Ltd.,* [1981] 3 SCR 518 and *Surendra Kumar Verma* v. *Central Government Industrial Tribunal-cum-Labour Court, New* D *Delhi,* [1981] 1 SCR 789, held that in the above series of cases that have come later, the Constitution Bench decision in *Hariprasad* (supra) has been examined and the ratio indicated therein has been confined to its own facts and the view indicated by the Court in that case did not meet with the approval of Parliament and, therefore, the law had been subsequently amended.

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Speaking for the Court, R.N. Misra, J. significantly said:

> "We are now inclined to hold that the stage has come when the view indicated in *Money* case (supra) has been 'absorbed into the consensus' and there is no scope for putting F the clock back or for an anti-clockwise operation."

More than a month thereafter in *Gammon India Ltd.* v. *Niranjan Dass,* [1984] 1 SCC 509, a three Judges Bench (D.A. Desai, R.B. Misra and Ranganath Misra, JJ.) construing the one month's notice of termination in that case due to reduction of volume of business of the G company said:

> "On a true construction of the notice, it would appeal that the respondent had become surplus on account of reduction in volume of work and that constitutes retrenchment *even in the traditional sense of the term* as interpreted in H *Pipraich Sugar Mills Ltd.* v. *Pipraich Sugar Mills Mazdoor*

A

Union, though that view does not hold the field in view of the recent decisions of this Court in *State Bank of India* v. *N. Sundara Money*; *Hindustan Steel Ltd.* v. *Presiding Officer, Labour Court, Orissa*; *Santosh Gupta* v. *State Bank of Patiala*; *Delhi Cloth and General Mills Ltd.* v. *Shambhu Nath Mukherjee*; *Mohan Lal* v. *Management of M/s. Bharat Electronics Ltd.* and *L. Robert D'Souza* v *Executive Engineer, Southern Railway*. The recitals and averments in the notice leave no room for doubt that the service of the respondent was terminated for the reason that on account of recession and reduction in the volume of work of the company, respondent has become surplus. Even apart from this, the termination of service for the reasons mentioned in the notice is not covered by any of the clauses (a), (b) and (c) of s. 2(oo) which defines retrenchment and it is by now well settled that where the termination of service does not fall within any of the excluded categories, the termination would be *ipso facto* retrenchment. It was not even attempted to be urged that the case of the respondent would fall in any of the excluded categories. It is therefore indisputably a case of retrenchment."

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D

(Emphasis supplied)

In a fast developing branch of Industrial and Labour law it may not always be of particular importance to rigidly adhere to a precedent, and a precedent may need be departed from if the basis of legislation changes. It was in realisation of the idea of a living law that in *Reg* v. *Home Secretary, Ex. P. Khawaja,* reported in [1984] AC 74 (H.L.) it was said at p. 84:

E

> The House will depart from a previous decision where it is right to do so and where adherence to a previous decision may lead to injustice in a particular case. Constitutional and administrative law are not fields where it is of particular importance to adhere to precedent. A recent precedent may be more readily departed from than one which is of long standing. A precedent may be departed from where the issue is one of statutory construction."

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G

We now take up the question of interpretation of s. 2(oo) of the Act dealing with the rival contentions, namely, ordinary or contxtual as against literal meaning.

H

A When we analyse the mental process in drafting the definition of "retrenchment" in s. 2(oo) of the Act we find that firstly it is to mean the termination by the employer of the service of a workman for any reason whatsoever. Having said so the Parliament proceeded to limit it by excluding certain types of termination, namely, termination as a punishment inflicted by way of disciplinary action. The other types of B termination excluded were (a) voluntary retrenchment; or (b) retrenchment of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation on that behalf; or (c) termination of service of a workman on the ground of continued ill health. Had the Parliament envisaged only the question of termination of surplus C labour alone in mind, there would arise no question of excluding (a), (b) and (c) above. The same mental process was evident when s. 2(oo) was amended inserting another exclusion clause (bb) by the Amending Act 49 of 1984, with effect from 18.8.1984, "termination of the service of workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry D of such contract being terminated under a stipulation in that behalf contained therein."

This is literal interpretation as distinguished from contextual interpretation.

E "The only rule of construction of Acts of Parliament", says Tindal, C.J. in *Sussex Peerage* case, [1844] 11 Cl & Fin 85 (143), "is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those F words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver."

In *Mutto* v. *T.K. Nandi,* reported in [1979] 2 SCR 409 (418) it was similarly said: "The Court has to determine the intention as expressed G by the words used. If the words of a statute are themselves precise and unambiguous then no more can be necessary then to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver." As was stated in *Thompson* v. *Gould,* reported in [1910] A.C. 409 (420) "it is a wrong thing to read into an Act of Parliament words which are not H there, and in the absence of clear necessity it is a wrong thing to do

so." "The cardinal rule of construction of statute is to read statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning." [*Jugalkishore* v. *Ram Cotton Co. Ltd.,* [1955] 1 SCR 1369] A

To interpret an Act of Parliament is to give effect to its intention. Lord Simon in *Ealing L.B.C.* v. *Race Relations Board,* [1972] AC 342 (360) said: B

> "The Court sometimes asks itself what the draftsman must have intended. This is reasonable enough: the draftsman knows what is the intention of the legislative initiator (nowadays almost always an organ of the executive); he knows what canons of construction the courts will apply; and he will express himself in such a way as accordingly to give effect to the legislative intention. Parliament, of course, in enacting legislation assumes responsibility for the language of the draftsman. But the reality is that only a minority of legislators will attend the debates on the legislation. Failing special interest in the subject-matter of the legislation, what will demand their attention will be something on the face of proposed legislation which alerts them to a questionable matter. Accordingly, such canons of construction as that words in a non-technical statute will primarily be interpreted according to their ordinary meaning ....." C D E

According to Lord Simon looking into the legislative history or the preparatory works may sometimes be useful but may often lead to abuse and waste, as "an individual legislator may indicate his assent on an assumption that the legislation means so-and-so and the courts may have no way of knowing how far his assumption is shared by his colleagues, even those present." "In the absence of such material it is said, the courts have five principal avenues of approach to the ascertainment of the legislative intention: (1) examination of the social background, as specifically proved if not within common knowledge, in order to identify the social or juristic defect which is likely subject of remedy; (2) a conspectus of the entire relevant body of the law for the same purpose; (3) particular regard to the long title of the statute to be interpreted (and where available, the preamble), in which the general legislative objectives will be stated; (4) scrutiny of the actual words to be interpreted, in the light of the established canons of interpretation; and (5) examination of the other provisions of the statute in question (or of other statutes in *pari materia*) for the illumination which they F G H

A throw on the particular words which are the subject of interpretation.

The Heydon's Rule requires that the court will look at the Act to see what was its purpose and what mischief in the earlier law it was designed to prevent. Four things are to be considered: (i) What was the law before the making of the Act? (ii) What was the mischief and
B defect for which the earlier law did not provide? (iii) What remedy the Parliament had resolved to cure? (iv) What is the true reason for the remedy? The Court shall make such construction as shall suppress the mischief and advance the remedy.

Where the statute has been passed to remedy a weakness in the
C law, it is to be interpreted in such a way as well to bring about that remedy.

The literal rules of construction require the wording of the Act to be construed according to its literal and grammatical meaning whatever the result may be. Unless otherwise provided, the same word
D must normally be construed throughout the Act in the same sense, and in the case of old statutes regard must be had to its contemporary meaning if there has been no change with the passage of time. However, the Law Commission 21 of England has struck a note of caution that "to place undue emphasis on the literal meaning of the words of a provision is to assume an unattainable perfection in draftsmanship".
E In *Whiteley* v. *Chappell*, [1968-9] 4 L.R.Q.B. Div. 147, a statute concerned with electoral malpractices made it an offence to personate 'any person entitle to vote' at an election. The defendant was accused of personating a deceased voter and the court, using the literal rule, found that there was no offence as the personation was not of person entitled to vote. A dead person was not entitled to vote. A deceased
F person did not exist and had no right to vote and as a result the decision arrived at was contrary to the intention of Parliament. As it was pointed out in *Prince of Hanover* v. *Attorney General*, [1956] Ch. Div. 188, the Golden Rule in the form of modified literal Rule, according to which the words of statute will as far as possible be construed according to their ordinary and plain and natural meaning, unless this
G leads to an absurd result. Where the conclusion reached by applying the literal rule is contrary to the intention of Parliament, the Golden rule is helpful. A tested rule is that of *Noscitur a sociis*. The meaning of a word can be gathered from its context. Under this rule words of doubtful meaning may be better uderstood from the nature of the words and phrases with which they are associated [*Muir* v. *Keay*,
H [1875] L.R 10 Q.B. 594]. But this will not apply when the word itself has been defined.

In the case before us the dificulty was created by defining 'retrenchment' to mean something wider than what it naturally and ordinarily meant. While naturally and ordinarily it meant discharge of surplus labour, the defined meaning was termination of service of a workman for any reason whatsoever except those excluded in the definition itself. Such a definition creates complexity as the draftsman himself in drafting the other sections using the defined word may slip into the ordinary meaning instead of the defined meaning.

Way back in the *Queen* v. *The Commissioners under the Boiler Explosions Act, 1882,* [1891] 1 Q.B. Division 703, a boiler for generating steam was situate above ground at a colliery, and a pipe conducted the steam down the shaft and along the working to a pumping engine in the mine. A valve in this pipe, in the mine and near the pumping engine blew off. The question was whether the pipe in which the explosion occurred was a 'boiler' within the interpretation clause of the Boiler Explosions Act, 1882. Lord M.R. Esher said: "If the Act had dealt with the explosion of a boiler and in some other section with an explosion in pipes or in any other specified thing, the matter would be easy; but the draftsman has gone upon that which to my mind is a dangerous method of drawing Acts of Parliament. He has put in a section which says that a boiler shall mean something which is in reality not a boiler. This third section of the Act of 1882 that is the Boiler Explosions Act 1882 is a 'peculiarly bad specimen' of the method of drafting, which enacts that a word shall mean something which in fact it does not mean."

However, a judge facing such a problem of interpretation can not simply fold his hands and blame the draftsman. Lord Denning in his Discipline of Law says at p. 12:

> "Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsman of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would cer-

A tainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language B of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature."

C Analysing the definition of retrenchment in s. 2(oo) we find that termination by the employer of the service of a workman would not otherwise have covered the cases excluded in (a) and (b), namely, voluntary retirement and retirement on reaching the stipulated age of retirement. There would be no volitional element of the employer. Their express exclusion implies that those would otherwise have been D included. Again if those cases were to be included, termination on abandonment of service, or on efflux of time, and on failure to qualify, although only consequential or resultant, would be included as those have not been excluded. Thus, there appears to be a gap between the first part and the exclusion part. Mr. Venugopal, on this basis, points out that cases of voluntary retirement, superannuation and tenure E appointment are not cases of termination 'by the employer' and would, therefore, in any event, be outside the scope of the main provisions and are not really provisos.

The definition has used the word 'means'. When a statute says that a word or phrase shall "mean"—not merely that it shall F "include"—certain things or acts, "the definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition" (per *Esher, M.R., Gough* v. *Gough,* [1891] 2 QB 665). A definition is an explicit statement of the full connotation of a term.

G Mr. Venugopal submits that the definition clause cannot be interpreted in isolation and the scope of the exception to the main provision would also have to be looked into and when so interpreted, it is obvious that a restrictive meaning has to be given to s. 2(oo).

It is also pointed out that s. 25G deals with the principle of 'last H come, first go', a principle which existed prior to the Amendment Act

of 1953 only in relation to termination of workmen rendered surplus for any reasons whatsoever and that was followed in *Vishwamitra Press, Kanpur* v. *Workers of Vishwamitra Press,* [1952] L.A.C. 20 at p. 33/41; *Presidency Jute Mills Co. Ltd.* v. *Presidency Jute Mills Co. Employees Union,* [1952] L.A.C. 62; *Iron and Steel Mazdoor Union, Kanpur* v. *J.K. Iron and Steel Co. Ltd.,* [1952] L.A.C. 467; *Halar Salt and Chemical Works, Jamnagar* v. *Workmen,* [1953] L.A.C. 134; *Prakriti Bhushan Gupta* v. *Chief Mining Engineer Railway Board,* [1953] L.A.C. 373; *Sudarshan Banerjee* v. *Mcleod and Co. Ltd.,* [1953] L.A.C. 702 (711). Besides, it is submitted, by its very nature the wide definition of retrenchment would be wholly inapplicable to termination simpliciter. The question of picking out a junior in the same category for being sent out in place of a person whose services are being terminated simpliciter or otherwise on the ground that the management does not want to continue his contract of employment would not arise. Similarly it is pointed out that starting from *Sundara Money* where termination simpliciter of a workman for not having passed a test, or for not having satisfactorily completed his probation would not attract s. 25G, as the very question of picking out a junior in the same category for being sent out instead of the person who failed to pass a test or failed to satisfactorily complete his probation could never arise. If, however, s. 25G were to be followed in such cases, the section would itself be rendered unconstitutional and violative of fundamental rights of the workmen under Articles 14, 19(1)(g) and 21 of the Constitution. It would be no defence to this argument to say that the management could record reasons as to why it is not sending out the juniormost in such cases. Since in no single case of termination simpliciter would s. 25G be applicable and in every such case of termination simpliciter, without exception, reasons would have to be recorded. Similarly, it is submitted, s. 25H which deals with re-employment of retrenched workmen, can also have no application whatsoever, to a case of termination simipliciter because of the fact that the employee whose services have been terminated, would have been holding a post which '*eo instanti*' would become vacant as a result of the termination of his services and under s. 25H he would have a right to be reinstated against the very post from which his services have been terminated, rendering the provision itself an absurdity. It is urged that s. 25F is only procedural in character along with ss. 25G and 25H and do not prohibit the substantive right of termination but on the other hand requires that in effecting termination of employment, notice would be given and payment of money would be made and the later procedure under ss. 25G and 25H would follow.

A Mr. Bobde refutes the above argument saying that ss. 25F, 25G and 25H relate to retremchment but their contents are different. Whereas S. 25F provides for the conditions precedent for effecting a valid retrenchment, S. 25G only provides the procedure for doing so. Section 25H operates after a valid retrenchment and provides for re-employment in the circumstnaces stated therein. According to B counsel, the argument is misconceived firstly for the reasons that s. 2 itself says that retrenchment will be understood as defined in s. 2(oo) unless there is anything repugnant in the subject or context; secondly s. 25F clearly applies to retrenchment as plainly defined by s. 2(oo); thirdly s. 25G does not incorporate in absolute terms—the principle of 'last come, first go' and provides that ordinarily last employee is to be retrenched, and fourthly s. 25H upon its true construction should be C held to be applicable when the retrenchment has occurred on the ground of the workman becoming surplus to the establishment and he has been retrenched under ss. 25F and 25G on the principle 'last come, first go'. Only then should he be given an opportunity to offer himself for re-employment. In substance it is submitted that there is no conflict D between the definition of s. 2(oo) and the provisions of ss. 25F, 25G and 25H. We find that though there are apparent incongruities in the provisions, there is room for harmonious construction in this regard.

For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being E anything repugnant in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribed the conditions precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the F reasons for retrenchment and payment of wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workman who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section G 25F "as if the workman had been retrenched". (Emphasis supplied). Section 25-FFA provides that sixty days' notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workmen in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason H whatsoever, every workman who has been in continuous service for

not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasised supplied). Section 25-H provides for re-employment of retrenched workmen. In brief, it provides that where any workmen are retrenched, and the employer proposes to take into his employment any person, he shall, give an opportunity to the retrenched workmen to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workmen concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workmen is "as if the workmen had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workmen whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by introduction of ss. 2(oo), 25F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the affected workmen, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes—*Stat pro ratione voluntas populi*; the will of the people stands in place of a reason.

Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

"It appears to me to be a naked usurpation of the legisla-

tive function under the thin disguise of interpretation. And it is the less justifiable when it is guess work with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act."

The Court has to interpret a statute and apply it to the facts. Hans Kelsen in his Pure Theory of Law (P. 355) makes a distinction between interpretation by the science of law or jurisprudence on the one hand and interpretation by a law-applying organ (especially the court) on the other. According to him "jurisprudential interpretation is purely cognitive ascertainment of the meaning of legal norms. In contradistinction to the interpretation by legal organs, jurisprudential interpretation does not create law". "The purely cognitive interpretation by jurisprudence is therefore unable to fill alleged gaps in the law. The filling of a so-called gap in the law is a law-creating function that can only be performed by a law-applying organ; and the function of creating law is not performed by jurisprudence interpreting law. Jurisprudential interpretation can do no more than exhibit all possible meanings of a legal norm. Jurisprudence as cognition of law cannot decide between the possibilities exhibited by it, but must leave the decision to the legal organ who, according to the legal order, is authorised to apply the law." According to the author if law is to be applied by a legal organ, he must determine the meaning of the norms to be applied; he must 'interpret' those norms (P. 348). Interpretation therefore is an intellectual activity which accompanies the process of law application in its advance from a higher level to a lower level. According to him, the law to be applied is a frame. "There are cases of intended or unintended indefiniteness at the lower level and several possibilities are open to the application of law." The traditional theory believes that the statute, applied to a concrete case, can always supply only one correct decision and that the positive—legal 'correctness' of this decision is based on the statute itself. This theory describes the interpretive procedure as if it consisted merely in an intellectual act of clarifying or understanding; as if the law-applying organ had to use only his reason but not his will, and as if by a purely intellectual activity, among the various existing possibilities only one correct choice could be made in accordance with positive law. According to the author: "The legal act applying a legal norm may be performed in such a way that it conforms (a) with the one or the other of the different meanings of the legal norm, (b) with the will of the norm creating authority that is to be determined somehow, (c) with the expression which the norm-creating authority has chosen, (d) with the one or the other of the contradictory norms; or (e) the concrete case to

which the two contradictory norms refer may be decided under the assumption that the two contradictory norms annul each other. In all these cases, the law to be applied constitutes only a frame within which several applications are possible, whereby every act is legal that stays within the frame." A

The definitions is s. 2 of the Act are to be taken 'unless there is anything repugnant in the subject or context'. The contextual interpretation has not been ruled out. In *R.B.I.* v. *Peerless General Finance,* reported in [1987] 2 SCR 1, O. Chinnappa Reddy, J. said: B

> "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by pharse and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statutemaker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression 'Prize Chit' in *Srinivasa* and we find no reason to depart from the Court's construction." C D E F

As we have mentioned, industrial and labour legislation involves social and labour policy. Often they are passed in conformity with the resolutions of the International Labour Organisation. In *Duport Steels* v. *Sirs,* [1980] 1 W.L.R. 142. the House of Lords observed that there was a difference between applying the law and making it, and that judges ought to avoid becoming involved in controversial social issues, since this might affect their reputation in impartiality. Lord Diplock said: G H

A " A statute passed to remedy what is perceived by Parliament to be a defect in the existing law may in actual operation turn out to have injurious consequences that Parliament did not anticipate at the time the statute was passed; if it had, it would have made some provision in the Act in order to prevent them ..... But if this be the case it is for Parliament, not for the judiciary, to decide whether any changes should be made to the law as stated in the Acts ..."

Applying the above reasonings; principles and precedents, to the definition in s. 2(oo) of the Act, we hold that "retrenchment" means C the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section.

The result is that C.A. Nos. 3241-48 of 1981, 686(NL) of 1982, 1817 of 1982, 1898 of 1982, 3261 of 1982, 1866 of 1982, 1868 of 1982, 8456 of 1983, 10828 of 1983 and the appeal arising out of S.L.P. (C) D No. 3149 of 1983 are dismissed with costs quantified at Rs.3,000 in each appeal. It is stated that in C.A. No. 686 of 1982 the respondent has already been reinstated pursuant to the order dated 24.10.1983 passed by this Court, having regard to the fact that he has served since 1983, he shall be considered for confirmation with effect from his due date according to Rules, if he is not already confirmed by the E Corporation.

In view of the facts and circumstances of the case, we dispose of C.A. No. 885 of 1980 with the direction that the two workmen involved in this appeal be paid compensation of Rs.1,25,000 (Rupees one lakh twentyfive thousand) each in full and final settlement of all F claims including that of reinstatement. The payment shall be spread over a period from 11.11.1972 till date for the purpose of Income-tax.

C.A. No. 4116 (NL) of 1984 was on the board, but the paper book is not available. Hence it is delinked from the series.

G C.A. Nos. 512-513 of 1984 and C.A No. 783 of 1984 were wrongly placed on the board. Their subject matters are different and hence are delinked from this cluster to be heard separately by an appropriate bench.

H R.N.J. Appeals disposed of.