A BHUVNESH KUMAR DWIVEDI

v.

M/S HINDALCO INDUSTRIES LTD.

(Civil Appeal Nos.4883-4884 of 2014)

APRIL 25, 2014

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[GYAN SUDHA MISRA AND V. GOPALA GOWDA, JJ.]

Labour Laws – Interference with order of Labour Court / Industrial tribunal – Jurisdiction of High Court – Held: High C *Court can interfere with an order of the Tribunal only on the procedural level and in cases, where decision of the lower courts was arrived at in gross violation of the legal principles – High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour* D *Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts – Constitution of India, 1950 – Arts. 226 and 227 – Judicial review.*

E ***Harjinder Singh v. Punjab State Warehousing Corporation* (2010) 3 SCC 192: 2010 (1) SCR 591;** *Heinz India (P) Ltd. v. Union of India* **(2012) 5 SCC 443: 2012 (3) SCR 898 and** *Devinder Singh v. Municipal Council, Sanaur* **(2011) 6 SCC 584: 2011 (4) SCR 867 – relied on.**

F *Labour Laws – Termination – Legality – Respondent-employer terminated the services of appellant-workman as per practice with the reason 'sanction expired' – Plea of appellant that the termination was a clear case of retrenchment as opposed to the provision in s.6N of the UPID Act which is in* G *pari materia with s.25N of the ID Act – Held: Appellant rendered continuous service for six continuous years (save the artificially imposed break) as provided u/s.25B of Act and could therefore be subjected to retrenchment only through the procedure mentioned in the ID Act or the UPID Act (the State*

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Act in pari materia) – Action of respondent was a clear case of retrenchment of appellant, which required compliance with the mandatory requirement of s.6-N of UPID Act – Since the same was not complied with, therefore, order of retrenchment was rendered void ab initio in law – s.2(oo)(bb) of the I.D. Act not attracted in the case herein – Industrial Disputes Act, 1947 – s.2(oo)(bb) and 25N – Uttar Pradesh Industrial Disputes Act, 1947 – s.6N and 25B.

Labour Laws – Termination – Entitlement for reinstatement with full back wages and other consequential reliefs – Held: Termination of appellant being found illegal and void ab initio, he was entitled to reinstatement – Burden of proof that appellant was gainfully employed post termination of his service was on respondent-employer – However, claim of respondent that appellant was gainfully employed somewhere was vague and could not be considered and accepted – Appellant accordingly entitled to full back wages from the date of termination till the date of reinstatement – High Court erred by exceeding its jurisdiction u/Art.227 of the Constitution in holding that appellant in fact, resigned by not joining his duty as a 'badly' worker and also awarding that retrenchment compensation to the tune of 1,00,000/- will do justice to appellant without assigning reasons, which was wholly unsustainable in law.

U.P. State Sugar Corporation Ltd. v. Om Prakash Upadhyay **(2002) 10 SCC 89;** *State Bank of India v. Shri N. Sundara Money* **AIR 1976 SC 1111: 1976 (3) SCR 160;** *Anoop Sharma v. Executive Engineer, Public Health Division No. 1 Panipat* **(2010) 5 SCC 497;** *Shiv Nandan Mahto v. State of Bihar & Ors.* **(2013) 11 SCC 626;** *General Manager, Haryana Roadways v. Rudhan Singh* **(2005) 5 SCC 591: 2005 (1) Suppl. SCR 569 and** *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya* **(2013) 10 SCC 324: 2013 (9) SCR 1 – relied on.**

A Allowing the appeals, the Court

HELD:1.1. In the case at hand, the periods of service of the appellant extended to close to 6 years save the artificial breaks made by the respondent with an oblique motive so as to retain the appellant as a temporary worker and deprive the appellant of his statutory right of permanent worker status. The aforesaid conduct of the respondent perpetuates 'unfair labour practice as defined under Section 2(ra) of the I.D. Act, which is not permissible in view of Sections 25T and 25U of the I.D. Act read with entry at Serial No. 10 in the Vth Schedule to the I.D. Act regarding unfair labour practices. The respondent, in order to mitigate its conduct towards the appellant has claimed that the appellant was appointed solely on contract basis, and his service has been terminated in the manner permissible under Section 2 (oo) (bb) of the I.D. Act. However, this contention of the respondent cannot be accepted for the following reasons:- (i) Firstly, the respondent has not produced any material evidence on record before the Labour Court to prove that it meets all the required criteria under the Contract Labour (Regulation and Abolition) Act, 1970, to be eligible to employ employees on contractual basis which includes license number etc.; (ii) Secondly, the respondent could not produce any material evidence on record before the Labour Court to show that the appellant was employed for any particular project(s) on the completion of which his service has been terminated through non-renewal of his contract of employment. Therefore, it is deemed fit to construe that the appellant has rendered continuous service for six continuous years (save the artificially imposed break) as provided under Section 25B of the I.D. Act and can therefore be subjected to retrenchment only through the procedure mentioned in the I.D. Act or the state Act in pari materia. [Paras 23, 24 and 25] [1103-F, G; 1104-D-H; 1105-A]

1.2. The Labour Court was correct in holding that the action of the respondent/employer is a clear case of retrenchment of the appellant, which action requires to comply with the mandatory requirement of the provision of Section 6-N of the U.P. I.D. Act. Undisputedly, the same has not been complied with and therefore, the order of retrenchment has rendered void ab initio in law. [Para 26] [1105-B, C]

Case Law Reference:

2010 (1) SCR 591	**relied on**	**Para 9**
2012 (3) SCR 898	**relied on**	**Para 16**
2011 (4) SCR 867	**relied on**	**Para 16**
(2002) 10 SCC 89	**relied on**	**Para 20**
1976 (3) SCR 160	**relied on**	**Para 27**
(2010) 5 SCC 497	**relied on**	**Para 28**
(2013) 11 SCC 626	**relied on**	**Para 30**
2005 (1) Suppl. SCR 569	**relied on**	**Para 31**
2013 (9) SCR 1	**relied on**	**Para 32**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4883-4884 of 2014.

From the Judgment and Order dated 10.03.2011 of the High Court of Judicature at Allahabad in CMWP No. 8784 of 2002 dated 12.01.2011 in CMWP No. 8784 of 2002, CMRA No. 118006 of 2011.

Bharat Sangal, R.R. Kumar for the Appellant.

C.U. Singh, Syed Shahid Hussain Rizvi for the Respondent.

The Judgment of the Court was delivered by

A **V.GOPALA GOWDA, J.** 1. Leave granted.

2. These appeals are filed against the final judgment and order dated 10.03.2011 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 8784 of 2002 and also against judgment and order dated 12.10.2011 passed by the High Court of Allahabad in Civil Misc. Review/ Recall Application No. 118006 of 2011 by allowing the writ petition filed by the respondent-employer and setting aside the award passed by the Labour Court which substituted the same by issuing direction to the respondent-employer (for short "the employer") to pay a sum of 1,00,000/- as damages to the appellant-workman. The direction issued by the High Court in its judgment further states that the amount shall either be paid through draft to the workman or deposited before the Labour Court within three months for immediate payment to the workman. In case of default, 12% interest per annum shall be payable on Rs. 1,00,000/- after three months till actual payment/ deposit/realisation.

3. However, the backdrop of industrial dispute between the parties is briefly stated hereunder to find out whether the appellant is entitled for the relief as prayed in these appeals.

It is the case of the appellant-workman that he was appointed as Labour Supervisor in the employer's factory on 30.12.1992 and he worked continuously in terms of Section 25B of the Industrial Disputes Act, 1947 (for short "the I.D. Act") in the said post till 28.7.1998- the day on which his services were terminated. It is the case of the appellant-workman that he has worked for six calendar years from the date of his appointment till the termination of his service and he has rendered more than 240 days of continuous service in every calendar year before his termination. The respondent-employer terminated the services of appellant-workman on 27.7.1998 as per practice with the reason 'sanction expired'. The respondent-employer neither paid retrenchment compensation nor issued any notice or paid wages in lieu of the same to the appellant-

workman as mandated under Section 6N of the U.P. Industrial Disputes Act (for short "the U.P. I.D. Act"). The respondent-employer engaged the appellant-workman for work against a post which was permanent in nature but his appointment was made only for a temporary period from 1992 to 1998 with oblique motive to deprive his statutory rights. At the end of every working year, the workman was handed over a receipt of 'relieved from work' and after 4-6 days, he was again engaged for three or six months but without proper procedure and in this manner, he was continuously made to work for full one year and each time the annual increase in wages was shown in the fresh appointment letter. During the entire period of service of the appellant-workman with the respondent-employer, the management followed the process of annually terminating him from service and again reappointing him in the same post by assigning the same Badge No., ID No. in the same department of Construction Division with the marginal increase of salary and dearness allowance per month.

4. It is the further case of the appellant-workman that during the course of his employment with the respondent- employer, he had noticed that very few workmen were actually made permanent by the management and rest of the work force was deprived from the benefit of permanent post by being kept on temporary basis or emergency basis, on daily wage basis or on contract basis. Even though the Construction Division of the employer has been in existence ever since the beginning of its establishment and is necessary for continuous productions in factory, thousands of workmen are employed in the said division in the above mentioned manner and very few of them are made permanent. It is the further case of the appellant-workman that in accordance with the regular orders passed in the practice of the Company, the concerned workman always fell in the category of workman but due to the improper and unfair labour practice as mentioned in Schedule V under s. 2(ra) of the I.D. Act it has kept the appellant as temporary workman for the period of employment, which is opposed to law.

A 5. It is the further case of the appellant-workman that he falls within the definition of workman under s. 2(s) of the I.D. Act and has been rendering service since the day of his appointment on 30.12.1992. Therefore, termination of his contract is a clear case of retrenchment as opposed to the B provision in Section 6N of the U.P. I.D. Act. The employer on the other hand, did not comply with the mandatory provision of s. 6-N of the U.P. I.D. Act which sets the conditions precedent to be fulfilled prior to retrenchment of workmen which is in pari materia with s. 25N of the I.D. Act. The respondent-employer C neither complied with the aforesaid mandatory provisions nor did the respondent pay retrenchment compensation or issue three months notice or notice pay in lieu of the same. Therefore, as per the appellant-workman, termination from his service is in contravention of the provisions of the U.P. I.D. Act and the D legal principle laid down by this Court in catena of cases in this regard which will be adverted into the reasoning portion of the judgment. Therefore, the appellant-workman had raised an industrial dispute with a request to the state government to make reference for adjudication of existing industrial dispute regarding the termination of service of the appellant workman E from his service by the employer. The Assistant Labour Commissioner made Reference Order No. 1454 CP 15/98 dated 24.9.1999 to the Labour Court at Varanasi. The reference was registered in Case no. 59 of 1999 by the Labour Court, Varanasi, U.P. The Labour Court, after conducting enquiry has F adjudicated the industrial dispute between the parties by answering the points of dispute and passed an award in favour of the appellant-workman holding that the termination of his service is not justified since the respondent has not produced any material evidence on record to justify the order of G termination. Further, the Labour Court has held that the appellant is entitled to reinstatement with back wages and other consequential benefits as if his services were never terminated.

6. Aggrieved by the said award, the respondent-employer H filed Civil Misc. Writ Petition No. 8784 of 2002 before the

learned single Judge of the High Court of Judicature at Allahabad questioning the correctness, legality and validity of the award passed by the Labour Court taking the following pleas:

(i) It is pleaded by the respondent that the appellant was employed purely on temporary basis in the project jobs in the Construction Division of the Company for specific periods and finally he was employed with effect from 23.1.1998 for six months and his services automatically came to an end as per terms of the contract of employment in the appointment letter with effect from 28.7.1998 as a result of non renewal of his contract of employment with the respondent.

(ii) It is further pleaded by the respondent that in the Construction Division of the Company, time bound specific project construction work was being undertaken from time to time and thus no regular work force could be maintained for such project work. However, as a gesture of goodwill and to maintain harmonious industrial relations, the employees who worked in a project work were given preference for employment in other project work on their own request. In the instant case, the service of the appellant came to an end as per terms of his employment in the specific project job in the Construction Division and after completion of the term of aforesaid employment, the appellant has also taken clearance of his dues.

(iii) It is further pleaded by the respondent that temporary workmen working in such specific projects are also given preference for employment in the main plant project subject to availability of vacancies and their suitability. After completion of the terms of contract of employment, the appellant was offered fresh employment as Badli worker against vacancies in Potroom Department of the Company. He applied for the same on 22.10.1998 and after completion of necessary formalities he was selected against the said vacancy and was issued appointment letter dated 23.10.1998. He joined his

A duties in Potroom Plant-II Department as substitute workman but did not report to duty on his own and on the other hand he raised baseless industrial dispute for unlawful gain.

(iv) It is further pleaded by the respondent that the service
B of the appellant has not been terminated by the Company but because the appellant did not report for duty on his own after joining duty as mentioned above. Therefore, there is no industrial dispute between the parties and the reference made by the appropriate authorities at the instance of the workman
C to the Labour Court is bad in law. However, the respondent craves leave of the Labour Court to add, amend, alter and rescind its written statement and to produce evidence oral or documentary, if found expedient at the relevant stages of the hearing. However, no plea was made by the respondent in written form on the provision of Section 2(oo)(bb) of the I.D. Act
D that the termination of the appellant from his service falls within this provision. Nonetheless, this legal ground without any factual foundation was pressed into operation before the Labour Court at the time of addressing its rights. The same has been addressed by the Labour Court rejecting the contention on the
E basis of recording its reasons which will be dealt with in the reasoning portion of this judgment.

7. On the other hand, the appellant, by filing a detailed counter statement before the High Court has sought to justify
F the finding and reasons recorded by the Labour Court contending that the Labour Court, being a fact finding court, on appreciation of all pleadings and undisputed facts regarding the periodical years of service rendered by the appellant with the respondent, held that he had rendered continuous service
G of 240 days in 12 calendar months. Therefore, the Labour Court has held that the termination order was issued by the respondent without complying with the mandatory statutory provisions of Section 6-N of U.P. I.D. Act. The appellant pleaded that neither the compensation for retrenchment was given to him
H nor was he issued the three months notice nor notice pay in

lieu of the same as mandated under Section 6-N of the U.P. I.D. Act. The appellant further sought to justify the finding of the Labour Court that periodical appointment of the appellant for the very same post in the Construction Division of the respondent's Plant with the same Badge Number and marginal increase of basic pay and D.A. is unfair labour practice in terms of Section 25-T of the I.D. which is punishable under section 25-U of the I.D. Act. The High Court concurred with the finding of the Labour Court wherein it has held that the respondent's action is in contravention of Section 6-N of the U.P. I.D. Act.

8. The respondent, on the other hand, contends that the finding on the question of retrenchment is factual and legally not correct in view of the fact that the termination of the service of the appellant falls within the provision of Section 2(oo) (bb) of the I.D. Act. The High Court has exercised its judicial review power under Articles 226 and 227 of the Constitution of India and also referred to the facts that after termination of the service of the appellant from the post of Labour Supervisor, he was offered with employment in the Potroom department w.e.f. 23.10.1998, which he joined and later resigned from that post. Therefore, though the Labour Court came to the conclusion on facts, evidence on record and law on this aspect that keeping the workman as Badli worker was unfair labour practice, the High Court has erroneously held that engagement of some workers as Badli workers is a standard practice in several establishments and is quiet permissible under law. The High Court further came to erroneous conclusion that the appellant did resign and having stated so, the High Court further made observation that the least which was required from the respondent under such circumstance, was to pay retrenchment compensation to the appellant in terms of Section 6-N of the U.P. I.D. Act which was admittedly not done. It was further held by the High Court that an employee engaged for a particular project cannot be directed to be retained after the completion of the project. However, since it was not stated by the respondent that for which particular project or projects the

A appellant was employed, despite the fact that he had been continuously working for six years on different projects, the appellant was conferred with some rights since he had been rendering permanent nature of work.

B 9. The High Court also referred to the resignation of the appellant from the job of Badli worker and held that the same mitigates against his claim. If he wanted permanent job and had been assured the same, he should not have first applied to be selected as Badli worker and then resigned just after selection. Having said so, the High Court with reference to the facts and C circumstances of the case, opined that it was not a case of reinstatement with full back wages. However, by placing reliance upon the judgment of this Court in the case of *Harjinder Singh v. Punjab State Warehousing Corporation*[1] , the correctness of the said substituted award by the High Court is challenged D in this appeal by the appellant urging various facts and legal contentions.

10. The learned counsel Mr. Abdhesh Chaudhary appearing on behalf of the appellant-workman submits that the E finding and reasons recorded by the High Court in reversing and setting aside the award of reinstatement with back wages and other consequential benefits and substituting its award with award of 1,00,000/- as damages is erroneous in law since the action of the respondent in terminating the services of the F appellant is in contravention of Section 6-N of the U.P. I.D. Act. While exercising judicial review power by the High Court under Articles 226 and 227 of the Constitution of India, though it has concluded on the points of dispute in favour of the workman it has erroneously interfered with the award of reinstatement with G back wages and consequential benefits which by the Labour Court. This finding by High Court is in violation of the decision of this Court in the case of Harjinder Singh (supra) in which this Court after adverting to the entire case law on the question of social justice has examined the conferment of power upon the

H 1. (2010) 3 SCC 192.

High Court and held that the Labour Court in exercise of its original jurisdiction is the final court of facts and grants of relief and the same cannot be interfered with in exercise of its supervisory jurisdiction unless the award is shown to be vitiated as erroneous in law. Therefore, the impugned judgment and order is vitiated in law and is liable to be set aside.

11. Further, it is contended that the High Court has further failed to take into consideration the relevant aspect of the matter namely, that the Labour Court on appreciation of pleadings and evidence on record with reference to undisputed fact of non-payment on retrenchment compensation recorded that the Company neither obtained permission from the appropriate Government to retrench the appellant from his services nor did it issue any notice or wages in lieu of the same to him. The action of termination of the service of the appellant on the ground that it is an automatic termination for non-renewal of contract of the employment is in contravention to the statutory provisions of the U.P. I.D. Act and the law laid down by this Court in catena of cases, the relevant paragraphs of which will be adverted to in the reasoning portion of this judgment. On this ground also the impugned judgment is liable to be set aside and the impugned award of the Labour Court is entitled to be restored.

12. It is further urged that the High Court has further failed to take into consideration the fact that the award of damages as against reinstatement without consequential benefits to the appellant while having concurred with the finding of fact recorded by Labour Court after adjudication of the dispute and also the holding by the Labour Cthat the order of termination is a case of retrenchment and is done in non-compliance of the mandatory requirements as provided under the statute of U.P. I.D. Act is erroneous in law. Therefore, the impugned judgment of the High Court is liable to be set aside.

13. Mr. Chander Udai Singh, the learned senior Counsel

A for the respondent-employer sought to justify the award of damages and setting aside the order of reinstatement with consequential benefits by the High Court by contending that the appellant is not a permanent workman. He was engaged on a temporary basis periodically and he had no permanent status
B as worker and his services could not be continued by the employer. His termination from service from the respondent Company was on account of the condition of automatic termination w.e.f. 28.7.1998, whereby the contract employment has come to an end. Therefore, according to the learned senior
C counsel for the respondent, no order of termination was passed by the respondent. On the other hand, the present case was a situation of automatic termination due to non-renewal of contract which is covered under Section 2(oo) (bb) of the I.D. Act and the same is an exception to retrenchment. This legal aspect,
D according to the learned senior counsel has not been appropriately appreciated by the Labour Court. The same has not been accepted by the Division Bench of High Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India. Therefore, the award of damages could
E not have been awarded by the Labour Court. However, the same has been paid to the appellant and which is accepted by him. Therefore, he would submit that the appellant is not entitled to the relief as prayed in this appeal for the reason that if automatic termination of services on account of the operation of the contract of employment Clause is contained in the
F appointment order, then the claim of the appellant is not a case of retrenchment and compliance of the requirement under Section 6-N of the U.P. Act does not arise. The same aspect has not been taken into proper perspective both by the Labour Court as well as the High Court. Though the appellant has not
G challenged separately by filing SLP the correctness of the impugned judgment can be challenged by the respondent as it has got the right under the provisions of Order 41 Rule 33 CPC to question the correctness of the finding recorded on the question of the termination by the Labour Court and the High
H Court which made concurrent finding holding that it is a case

of retrenchment and the same is in contravention of Section 6-N of the U.P. I.D. Act. A

The High Court while passing the judgment and order and substituting the award of the Labour Court has already granted damages of Rs. 1,00,000/- as retrenchment compensation. The appellant is not entitled to the relief as prayed for in this appeal for another reason namely, that he had accepted the damages awarded in the impugned judgment by the High Court. Therefore, this Court need not interfere with the impugned judgment. B C

14. Another legal contention urged by the learned senior counsel for the respondent is that the appellant is not entitled to back wages since he is not employed with the respondent-Company and has not even filed application under Section 17B before the High Court when the award passed by the Labour Court was challenged by the respondent. Further, the appellant admitted that he did not claim wages under the Act which would clearly go on to show that the appellant was not employed and therefore, he is not entitled to back wages as awarded by the Labour Court. Hence, the award of the back wages by the Labour Court is bad in law and the same has been modified by the High Court having regard to the facts of the case which need not be interfered with by this Court in exercise of its power under Article 136 of the Constitution of India. D E

15. With reference to the above legal contentions the following points would arise for our consideration :- F

(1) Whether the exercise of power by the High Court under Articles 226 and 227 of the Constitution and setting aside the award of reinstatement, back wages and other consequential reliefs and awarding Rs. 1,00,000/- towards damages is legal and valid? G

(2) Whether the concurrent finding recorded by the H

A Labour Court and High Court on the question of termination of services of the workman holding that the case of retrenchment falls under Section 6-N of the U.P. I.D. Act is void ab initio and not accepting the legal plea that the case falls under Section 2 (oo) B (bb) of the Act is correct, legal and valid?

(3) Whether the workman is entitled for reinstatement with full back wages and other consequential reliefs ?

C (4) What Award?

Answer to point No. 1

16. The appellant has claimed that the High Court has modified the award passed by the Labour Court which has D awarded reinstatement of the appellant with full back wages and other consequential benefits to simply awarding compensation to the tune of Rs. 1,00,000/- by the High Court in lieu of reinstatement with back wages and consequential benefits which order is bad in law in the light of the legal principles laid E down by this Court in the catena of cases. In the case of *Heinz India (P) Ltd. v. Union of India*[2], this Court, on the issue of the power of the High Court for judicial review under Article 226, held as under:

F "60. The power of judicial review is neither unqualified nor unlimited. It has its own limitations. The scope and extent of the power that is so very often invoked has been the subject-matter of several judicial pronouncements within and outside the country. When one talks of 'judicial review' G one is instantly reminded of the classic and oft quoted passage from Council of Civil Service Unions (CCSU) v. Minister for the Civil Service [1984] 3 All ER 935, where Lord Diplock summed up the permissible grounds of judicial review thus:

H 2. (2012) 5 SCC 443.

Judicial Review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.

By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the State is exercisable.

By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer or else there would be something badly wrong with our judicial system... ...

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

A Further, in the case of *Devinder Singh v. Municipal Council, Sanaur*[3], it was held that :

"22. .....A careful analysis thereof reveals that the High Court neither found any jurisdictional infirmity in the award
B of the Labour Court nor it came to the conclusion that the same was vitiated by an error of law apparent on the face of the record. Notwithstanding this, the High Court set aside the direction given by the Labour Court for reinstatement of the Appellant by assuming that his initial appointment/engagement was contrary to law and that it
C would not be in public interest to approve the award of reinstatement after long lapse of time. In our view, the approach adopted by the High Court in dealing with the award of the Labour Court was ex facie erroneous and contrary to the law laid down in Syed Yakoob v. K.S.
D Radhakrishnan AIR (1964) SC 477, Swaran Singh v. State of Punjab (1976) 2 SCC 868 P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar (2001) 2 SCC 54, Surya Dev Rai v. Ram Chander Rai (2003) 6 SCC 675 and Shalini Shyam v. Rajendra Shankar Path (2010) 8
E SCC 329.

23. In Syed Yakoob v. K.S. Radhakrishnan (supra), this Court identified the limitations of certiorari jurisdiction of the High Court under Article 226 of the Constitution in the
F following words:

The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of
G certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of

H 3. (2011) 6 SCC 584.

failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

A B C D E F G H

A In the second judgment - Swaran Singh v. State of Punjab (supra), this Court reiterated the limitations of certiorari jurisdiction indicated in Syed Yakoob v. Radhakrishnan (supra) and observed:

B In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases C the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their D jurisdiction causing grave miscarriage of justice."

17. The judgments mentioned above can be read with the judgment of this court in *Harjinder Singh's* case (supra), the relevant paragraph of which reads as under:

E "21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar F legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which G mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their

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dues. More than 41 years ago, Gajendragadkar, J. opined that:

"10. ... The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State."

(*State of Mysore v. Workers of Gold* Mines[13], AIR p. 928, para 10.)

18. A careful reading of the judgments reveals that the High Court can interfere with an Order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under Articles 226 and 227 of the Constitution amounts to exceeding its jurisdiction conferred upon it. Therefore, we accordingly answer the point No. 1 in favour of the appellant.

Answer to point No. 2

19. No plea was made by the respondent in its written statement filed before the Labour Court with regard to the provision of Section 2(oo)(bb) of the I.D. Act. Nonetheless, this legal ground without any factual foundation was pressed into operation before the Labour Court by the learned counsel for the respondent. The same has been addressed by the Labour Court by rejecting the said contention by assigning its own reasons. Before we record our finding on this contention, it is pertinent to mention the provision of Section 2 (oo) (bb) of the I.D. Act, which reads thus:

"2 (oo) "retrenchment" means the termination by the

A 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-

[(bb) termination of the service of the workman as a result
B of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under the stipulation in that behalf contained therein; or]"

20. It is argued by the learned counsel for the appellant that
C there is no provision in pari materia to this provision in the U.P. I.D. Act. Therefore, even if the service of the appellant is terminated on expiry of the contract period of service, it would fall within the definition of retrenchment under the U.P. I.D. Act for non compliance of the mandatory requirement under Section
D 6-N of the U.P. I.D. Act. The order of termination against the appellant is rendered void ab initio in law, therefore, the appellant is entitled to be reinstated with back wages and consequential benefits. In support of this contention, the learned counsel has aptly relied upon the decision of this Court in *U.P.*
E *State Sugar Corporation Ltd. v. Om Prakash Upadhyay*[4], with regard to the applicability of the provision of Section 2(oo) (bb) of the I.D. Act which was amended provision after the U.P. I.D. Act, the relevant paragraphs of which read as under:

F "3. On the application of the State Act or the Central Act to the case on hand, the High Court followed the Division Bench ruling in Jai Kishun v. U.P. Coop. Bank Ltd. and made it plain that the provision of Section 2 (oo)(bb) of the Central Industrial Dispuutes Act would not apply in respect of proceedings arising under the U.P. Industrial
G Disputes Act. The High Court also noticed the contrary view in this regard in the case of Pushpa Agarwal v. Regional Inspectress of Girls Schools, Meerut but held that in Jai Kishun case the relevant provisions had been duly

H 4. (2002) 10 SCC 89.

considered which are not taken note of in Pushpa Agarwal case and on that basis, it followed the decision in Jai Kishun case. It is this judgment that is brought in appeal before us in these proceedings.

.....

5. The law is settled that under the Central Act every case of retrenchment would not include a case of contractual termination which came to be introduced under the Central Act by amending Act 49 of 1984 which purports to exclude from the ambit of definition "retrenchment" inter alia: (i) termination of service of a workman as a result of the non-renewal of contract of employment between the employer and the workman concerned on its expiry, or (ii) termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. Such a case is not available under the U.P. Industrial Disputes Act. If the U.P. Industrial Disputes Act covers the present case then termination of the services of the respondent would certainly result in retrenchment while it is not so under the Central Industrial Disputes Act in view of the exceptional clauses referred to above. While the former situation results in retrenchment, the latter situation does not amount to retrenchment if the same case would arise under the State Industrial Disputes Act. Thus operation of the two enactments would bring to the forefront the obvious repugnancy between them. In such a case as to how the question is to be resolved needs to be considered in the present case.

6. Inasmuch as the enactments, both by the State and the Centre, are under the Concurrent List, we are urged to look to Article 254(2) of the Constitution of India. If we view from that angle, the U.P. Industrial Disputes Act also covers the same field as the Central Industrial Disputes Act. However, Section 2 (oo) (bb) is obviously a special provision

A enacted under in order to understand the meaning of "retrenchment" and that is the law made by Parliament subsequent to State enactment and naturally falls within the proviso to Article 254(2). If that is so, the Central Industrial Disputes Act. Therefore, we would have taken that view
B but for the special provisions in the Central Act which we will advert to hereinafter.

7. Section 1(2) of the Central Act provides that the Act 'extends to the whole of India' and this sub-section was substituted for the original sub- section (2) by the Industrial
C Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (36 of 1956) with effect from 29-8-1956. Under that Act, Section 31 (which came into force from 7-10-1956) has been introduced which reads as follows:

D '31.Act not to override State laws.- (1) If, immediately before the commencement of this Act, there is in force in any State any Provincial Act or State Act relating to the settlement or adjudication of disputes, the operation of such an Act in that State in relation to matters covered by that
E Act shall not be affected by the Industrial Disputes Act, 1947 as amended by this Act'.

Sub- section (1) of the said section makes it clear that the operation of the State Act will not be affected by the Central Act..."
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21. The learned counsel for the appellant therefore, rightly submitted that Section 2 (oo) (bb) of the I.D. Act will not be attracted in the present case and on the other hand, the provision of Section 6-N of the U.P. I.D. Act is required to be
G fulfilled mandatorily by the respondent to retrench the appellant from his service.

22. The learned senior counsel for the respondent has not brought in his argument to counter the above legal contention except contending that the provision of Section 2(oo) (bb) of
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the I.D. Act would be applicable to the fact situation of the case as the appellant has been in contract employment in the project. But, we are inclined to hold that s. 2 (oo) (bb) of the I.D. Act is not attracted in the present case on two grounds:

Firstly, in the light of the legal principle laid down by this Court in the case of U.P. State Sugar Corporation Ltd. (supra), the provisions of the U.P. I.D. Act remain unaffected by the provision of the I.D. Act because of the provision in s. 31 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956. Hence, s. 2 (oo) (bb) is not attracted in the present case.

Secondly, the claim of the respondent that the appellant was a temporary worker is not acceptable to us. On perusal of facts, it is revealed that his service has been terminated several times and he was subsequently employed again till his service was finally terminated on 27.7.1998. His brief periods of contracts with the respondent have been from 28.12.1992 to 28.12. 1993 for the first time, from 3.4.1994 to 29.12.1994 for the second time, from 10.1.1995 to 5.1.1996 for the third time, from 16.1.1996 to 11.1.1997 for the fourth time, from 20.1.1997 to 21.1.1998 for the fifth time and from 27.1.1998 to 27.7.1998 for a final time at the end of which his service was terminated.

23. Very interestingly, the periods of service extends to close to 6 years save the artificial breaks made by the respondent with an oblique motive so as to retain the appellant as a temporary worker and deprive the appellant of his statutory right of permanent worker status. The aforesaid conduct of the respondent perpetuates 'unfair labour practice as defined under Section 2(ra) of the I.D. Act, which is not permissible in view of Sections 25T and 25U of the I.D. Act read with entry at Serial No. 10 in the Vth Schedule to the I.D. Act regarding unfair labour practices.

Section 2 (ra) reads thus:

A "unfair labour practice" means any of the practices mentioned in the Vth Schedule.

Further, Entry 10 of Vth Schedule reads as under:

"5. To discharge or dismiss workmen-

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....

(10). To employ workmen as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."

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24. The respondent, in order to mitigate its conduct towards the appellant has claimed that the appellant was appointed solely on contract basis, and his service has been terminated in the manner permissible under Section 2 (oo) (bb) of the I.D. Act. However, we shall not accept this contention of the respondent for the following reasons:-

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(i) Firstly, the respondent has not produced any material evidence on record before the Labour Court to prove that it meets all the required criteria under the Contract Labour (Regulation and Abolition) Act, 1970, to be eligible to employ employees on contractual basis which includes license number etc.

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(ii) Secondly, the respondent could not produce any material evidence on record before the Labour Court to show that the appellant was employed for any particular project(s) on the completion of which his service has been terminated through non-renewal of his contract of employment.

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25. Therefore, we deem it fit to construe that the appellant has rendered continuous service for six continuous years (save the artificially imposed break) as provided under Section 25B of the I.D. Act and can therefore be subjected to retrenchment

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only through the procedure mentioned in the I.D. Act or the state Act in pari materia.

26. Therefore, we answer the point No. 2 in favour of the appellant holding that the Labour Court was correct in holding that the action of the respondent/employer is a clear case of retrenchment of the appellant, which action requires to comply with the mandatory requirement of the provision of Section 6-N of the U.P. I.D. Act. Undisputedly, the same has not been complied with and therefore, the order of retrenchment has rendered void ab initio in law.

Answer to Point No.3

27. Having answered point No. 2 in favour of the appellant, we also answer the point No. 3 in his favour since we construe that the appellant is a worker of the respondent Company providing continuous service for 6 years except for the artificial breaks imposed upon him with an oblique motive by the respondent Company. We hold that the termination of service of the appellant amounts to "retrenchment" in the light of the principle laid down by three judge bench decision of this Court in *State Bank of India v. Shri N. Sundara Money*[5] and attracts the provision of S. 6-N of the U.P. I.D. Act. The case mentioned above illustrates the elements which constitute retrenchment. The relevant paragraphs read as under:

> "9. A break-down of Section 2(oo) unmistakably expands the semantics of retrenchment. 'Termination...for any reason whatsoever' are the keywords. 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

5. AIR 1976 SC 1111.

A 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 B devices, circumventing the armour of Section 25F and Section 2(00). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita but area covered by an expansive definition. It meats 'to end, conclude, cease'. In the present case the employment C ceased, concluded, ended on the expiration of nine days automatically maybe, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Section 25F(b) is inferable from the proviso to Section 25F(1). True, the section speaks of retrenchment by the employer and it is urged that some D act of volition by the employer to bring about the termination is essential to attract Section 25F and automatic extinguishment of service by effluxion of time cannot be sufficient. An English case R.V. Secretary of State (1973) 2 ALL E.R. 103; was relied on, where Lord E Denning, MR observed:

I think the word 'terminate' or 'termination' is by itself ambiguous. It can refer to either of two things-either to termination by notice or termination by effluxion of time It F is often used in that dual sense in landlord and tenant and in master and servant cases. But there are several indications in this paragraph to show that it refers here only to termination by notice.

G Buckley L. J, concurred and said:

In my judgment the words are not capable of bearing that meaning. As counsel for the Secretary of State has pointed out, the verb 'terminate' can be used either transitively or intransitively. A contract may be said to terminate when it

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comes to an end by effluxion of time, or it may be said to be terminated when it is determined at notice or otherwise by some act of one of the parties. Here in my judgment the word 'terminated' is used in this passage in para 190 in the transitive sense, and it postulates some act by somebody which is to bring the appointment to an end, and is not applicable to a case in which the appointment comes to an end merely by effluxion of time

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 preemptive 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."

28. Section 6N of the U.P. I.D. Act which is in pari materia to s. 25N of the I.D. Act reads thus:

"[6-N. Condition 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 the

A date of 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

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

Evidently, the above said mandatory procedure has not C been followed in the present case. Further, it has been held by this Court in the case of Anoop Sharma v. Executive Engineer, Public Health Division No. 1 Panipat[6] as under:

"13..... no workman employed in any industry who has been in continuous service for not less than one year under D an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or E pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. This F Court has repeatedly held that Section 25F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity - State of Bombay v. Hospital Mazdoor Sabha AIR 1960 SC 610, Bombay Union of Journalists v. State of Bombay (1964) 6 SCR 22, G State Bank of India v. N. Sundara Money (1976) 1 SCC 822, Santosh Gupta v. State Bank of Patiala (1980) 3 SCC 340, Mohan Lal v. Management of M/s. Bharat Electronics Ltd. (1981) 3 SCC 225, L. Robert D'Souza v. Executive Engineer, Southern Railway (1982) 1 SCC 645,

H 6. (2010) 5 SCC 497

Surendra Kumar Verma v. Industrial Tribunal (1980) 4 SCC 443, Gammon India Ltd. v. Niranjan Das (1984) 1 SCC 509, Gurmail Singh v. State of Punjab (1991) 1 SCC 189 and Pramod Jha v. State of Bihar (2003) 4 SCC 619. This Court has used different expressions for describing the consequence of terminating a workman's service/ employment/ engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.

(Emphasis laid by this Court)

Therefore, in the light of the law provided in the I.D. Act and its state counterpart through the U.P. I.D. Act and also on the basis of the legal principle laid down by this Court, we hold that the termination of service of the appellant was illegal and void ab initio.

29. Therefore, the Labour Court was correct on factual evidence on record and legal principles laid down by this Court in catena of cases in holding that the appellant is entitled to reinstatement with all consequential benefits. Therefore, we set aside the Order of the High Court and uphold the order of the Labour Court by holding that the appellant is entitled to reinstatement in the respondent-Company.

30. On the issue of back wages to be awarded in favour of the appellant, it has been held by this Court in the case of

A *Shiv Nandan Mahto v. State of Bihar & Ors*[7]. that if a workman is kept out of service due to the fault or mistake of the establishment/ company he was working in, then the workman is entitled to full back wages for the period he was illegally kept out of service. The relevant paragraph of the judgment reads
B as under:

> "5. .... In fact, a perusal of the aforesaid short order passed by the Division Bench would clearly show that the High Court had not even acquainted itself with the fact that the Appellant was kept out of service due to a mistake. He was
C not kept out of service on account of suspension, as wrongly recorded by the High Court. The conclusion is, therefore, obvious that the Appellant could not have been denied the benefit of backwages on the ground that he had not worked for the period when he was illegally kept out
D of service. In our opinion, the Appellant was entitled to be paid full backwages for the period he was kept out of service."

31. Further, in General Manager, Haryana Roadways v.
E Rudhan Singh[8], the three Judge Bench of this Court considered the question whether back wages should be awarded to the workman in each and every case of illegal retrenchment. The relevant paragraph reads as under:

> "There is no rule of thumb that in every case where the
F Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or
G inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special

7. (2013) 11 SCC 626.

H 8. (2005) 5 SCC 591.

qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate.

Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year."

32. Subsequently, in the case of *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*[9] it was held by this Court as under:

"The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first

9. (2013) 10 SCC 324.

A instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to
B the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than
C to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

D .....

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time
E ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised.

F It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an
G advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent

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to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra)....."

(Emphasis laid by this Court)

33. In the present case, the respondent has made a vague submission to the extent that:

> "the conduct of the workman throughout the proceedings before the High Court during 2002 to 2011 shows that he is continuously gainfully employed somewhere. Admittedly even in the counter affidavit in the said Writ Petition, it has not been stated that the workman was not employed"

Therefore, on the basis of the legal principle laid down by this Court in the Deepali Gundu Surwase case (supra), the submission of the respondent that the appellant did not aver in his plaint of not being employed, does not hold since the burden of proof that the appellant is gainfully employed post termination of his service is on the respondent. The claim of the respondent that the appellant is gainfully employed somewhere is vague and cannot be considered and accepted. Therefore, we hold that the appellant is entitled to full back wages from the date of termination of his service till the date of his reinstatement.

Answer to point No.4

34. The present case is a clear case of violation of the constitutional principles expressly mentioned in the text. Before we make our concluding findings and reasons, we wish to revisit the Harjinder Singh case (supra) which made some pertinent points as under:

> "22. In Y.A. Mamarde v. Authority under the Minimum Wages Act, this Court, while interpreting the provisions of the Minimum Wages Act, 1948, observed: (SCC pp. 109-10)

A "The anxiety on the part of the society for improving the general economic condition of some of its less favoured members appears to be in supersession of the old principle of absolute freedom of contract and the doctrine of laissez faire and in recognition of the new principles of
B social welfare and common good. Prior to our Constitution this principle was advocated by the movement for liberal employment in civilised countries and the Act which is a pre-Constitution measure was the offspring of that movement. Under our present Constitution the State is now
C expressly directed to endeavour to secure to all workers (whether agricultural, industrial or otherwise) not only bare physical subsistence but a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure. This directive principle of State policy being
D conducive to the general interest of the nation as a whole, merely lays down the foundation for appropriate social structure in which the labour will find its place of dignity, legitimately due to it in lieu of its contribution to the progress of national economic prosperity."

E 27. In 70s, 80s and early 90s, the courts repeatedly negated the doctrine of laissez faire and the theory of hire and fire. In his treatise: Democracy, Equality and Freedom, Justice Mathew wrote:

F "The original concept of employment was that of master and servant. It was therefore held that a court will not specifically enforce a contract of employment. The law has adhered to the age-old rule that an employer may dismiss the employee at will. Certainly, an employee can never
G expect to be completely free to do what he likes to do. He must face the prospect of discharge for failing or refusing to do his work in accordance with his employer's directions. Such control by the employer over the employee is fundamental to the employment relationship. But there are innumerable facets of the employee's life that have little
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or no relevance to the employment relationship and over which the employer should not be allowed to exercise control. It is no doubt difficult to draw a line between reasonable demands of an employer and those which are unreasonable as having no relation to the employment itself. The rule that an employer can arbitrarily discharge an employee with or without regard to the actuating motive is a rule settled beyond doubt. But the rule became settled at a time when the words 'master' and 'servant' were taken more literally than they are now and when, as in early Roman Law, the rights of the servant, like the rights of any other member of the household, were not his own, but those of his paterfamilias. The overtones of this ancient doctrine are discernible in the judicial opinion which rationalised the employer's absolute right to discharge the employee. Such a philosophy of the employer's dominion over his employee may have been in tune with the rustic simplicity of bygone days. But that philosophy is incompatible with these days of large, impersonal, corporate employers. The conditions have now vastly changed and it is difficult to regard the contract of employment with large-scale industries and government enterprises conducted by bodies which are created under special statutes as mere contract of personal service. Where large number of people are unemployed and it is extremely difficult to find employment, an employee who is discharged from service might have to remain without means of subsistence for a considerably long time and damages in the shape of wages for a certain period may not be an adequate compensation to the employee for non-employment. In other words, damages would be a poor substitute for reinstatement. The traditional rule has survived because of the sustenance it received from the law of contracts. From the contractual principle of mutuality of obligation, it was reasoned that if the employee can quit his job at will, then so too must the employer have the right

A B C D E F G H

A to terminate the relationship for any or no reason. And there are a number of cases in which even contracts for permanent employment i.e. for indefinite terms, have been held unenforceable on the ground that they lack mutuality of obligation. But these cases demonstrate that mutuality B is a high-sounding phrase of little use as an analytical tool and it would seem clear that mutuality of obligation is not an inexorable requirement and that lack of mutuality is simply, as many courts have come to recognise, an imperfect way of referring to the real obstacle to enforcing C any kind of contractual limitation on the employer's right of discharge i.e. lack of consideration. If there is anything in contract law which seems likely to advance the present inquiry, it is the growing tendency to protect individuals from contracts of adhesion from overreaching terms often found D in standard forms of contract used by large commercial establishments. Judicial disfavour of contracts of adhesion has been said to reflect the assumed need to protect the weaker contracting part against the harshness of the common law and the abuses of freedom of contract. The same philosophy seems to provide an appropriate answer E to the argument, which still seems to have some vitality, that the servant cannot complain, as he takes the employment on the terms which are offered to him."

(emphasis added)

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28. In Govt. Branch Press v. D.B. Belliappa, the employer invoked the theory of hire and fire by contending that the respondent's appointment was purely temporary and his service could be terminated at any time in accordance with G the terms and conditions of appointment which he had voluntarily accepted. While rejecting this plea as wholly misconceived, the Court observed: (SCC p. 486, para 25)

"25. ... It is borrowed from the archaic common law concept that employment was a matter between the

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master and servant only. In the first place, this rule in its original absolute form is not applicable to government servants. Secondly, even with regard to private employment, much of it has passed into the fossils of time. 'This rule held the field at the time when the master and servant were taken more literally than they are now and when, as in early Roman law, the rights of the servant, like the rights of any other member of the household, were not his own, but those of his paterfamilias.' The overtones of this ancient doctrine are discernible in the Anglo-American jurisprudence of the 18th century and the first half of the 20th century, which rationalised the employer's absolute right to discharge the employee. 'Such a philosophy', as pointed out by K.K. Mathew, J. (vide his treatise: Democracy, Equality and Freedom, p. 326), 'of the employer's dominion over his employee may have been in tune with the rustic simplicity of bygone days. But that philosophy is incompatible with these days of large, impersonal, corporate employers.' To bring it in tune with vastly changed and changing socio-economic conditions and mores of the day, much of this old, antiquated and unjust doctrine has been eroded by judicial decisions and legislation, particularly in its application to persons in public employment, to whom the constitutional protection of Articles 14, 15, 16 and 311 is available. The argument is therefore overruled."

29. The doctrine of laissez faire was again rejected in Glaxo Laboratories (I) Ltd. v. Presiding Officer, in the following words:

"12. In the days of laissez faire when industrial relation was governed by the harsh weighted law of hire and fire the management was the supreme master, the relationship being referable to contract between unequals and the action of the management treated almost sacrosanct. The developing notions of social justice and the expanding

A horizon of socio-economic justice necessitated statutory protection to the unequal partner in the industry, namely, those who invest blood and flesh against those who bring in capital. Moving from the days when whim of the employer was suprema lex, the Act took a modest step to
B compel by statute the employer to prescribe minimum conditions of service subject to which employment is given. The Act was enacted as its long title shows to require employers in industrial establishments to define with sufficient precision the conditions of employment under
C them and to make the said conditions known to workmen employed by them. The movement was from status to contract, the contract being not left to be negotiated by two unequal persons but statutorily imposed. If this socially beneficial Act was enacted for ameliorating the conditions
D of the weaker partner, conditions of service prescribed thereunder must receive such interpretation as to advance the intendment underlying the Act and defeat the mischief."

35. We therefore conclude and hold that the Labour Court was correct on legal and factual principles in reinstating the
E appellant along with full back wages after setting aside the order of termination. The High Court on the other hand, has erred by exceeding its jurisdiction under Article 227 of the Constitution of India in holding that the appellant has in fact, resigned by not joining his duty as a Badly worker and also
F awarding that retrenchment compensation to the tune of 1,00,000/- will do justice to the appellant without assigning reasons which is wholly unsustainable in law.

36. The learned counsel for the respondent had mentioned
G before this Court about a settlement between the parties in this matter after the judgment was reserved. Therefore, we have not taken into consideration such plea from the learned counsel of the respondent since it was taken up after the hearing was over. Also the documentary evidence on record produced by the parties required us to reject the subsequent plea made by the
H

respondent in this case. We therefore set aside the finding of the High Court in the impugned judgment and hold that the appellant is entitled to reinstatement with full back wages from the date of the termination of his service till the date of his reinstatement and other consequential benefits which accrue to him by virtue of his employment with the respondent company. The appeals are allowed, with no order as to costs. A B

Bibhuti Bhushan Bose Appeals allowed.