K.V. ANIL MITHRA & ANR.

v.

SREE SANKARACHARYA UNIVERSITY OF SANSKRIT & ANR.

(Civil Appeal No(s). 9067 of 2014)

OCTOBER 27, 2021

[AJAY RASTOGI AND ABHAY S. OKA, JJ.]

Industrial Disputes Act, 1947 – ss.25F, 25B – Termination – Retrenchment– Violation of s.25F–Respondent-University regularized appellants-workmen serving on daily wage basis in non-teaching staff category – Objections raised w.r.t the manner of regularization– De-regularised and terminated – Order of de-regularisation upheld by Division Bench of High Court, question of non-observance of the provisions of 1947 Act left open – Dispute raised by appellants – Industrial Tribunal held termination to be in violation of s.25F, award passed– Set aside by Single Judge – Order confirmed by Division Bench – On appeal, held: Nature of employment and the manner in which the workman has been employed is not significant while invoking the mandatory compliance of s.25F – In a case where the workman has been in continuous service for more than 240 days in the preceding 12 months before the alleged date of terminationas contemplated u/s.25B, the employer is under an obligation to comply with the twin conditions u/Clauses (a) and (b) of s.25F– In the present case, the appellants served from the year 1993-1997, their services were terminated in sequel to order dtd.24.03.97– Appointments were made on daily wage basis under the orders of the Vice Chancellor, the competent/appointing authority– Merely because the appointments were not in accordance with the procedure prescribed under the Ordinance would not disentitle the appellants from claiming protection under provisions of the 1947 Act– Termination of the appellants was in violation of s.25F – Impugned judgment set aside– Award modified– Sree Sankaracharya University of Sanskrit Ordinance, 1993.

Industrial Disputes Act, 1947 –ss.2(g), (j), (k), (s), (oo) – Held: Every termination for any reason whatsoever provided it does not fall in any of the exception clause of s.2(oo), is a retrenchment.

A *Industrial Disputes Act, 1947 – Scheme of the Act – Discussed.*

Industrial Disputes Act, 1947– s.25F – Non-observance of mandatory requirement of – Appropriate relief workman is entitled for – Discussed.

B **Partly allowing the appeals, the Court**

HELD: 1.1 The termination which was given effect to by the 1st respondent was a retrenchment as defined under Section 2(oo), Industrial Disputes Act, 1947. The term 'retrenchment' leaves no manner of doubt that the termination of the workman for any reason whatsoever, otherwise than as punishment inflicted C **by way of disciplinary action are being termed as retrenchment with certain exceptions and it is not dependent upon the nature of employment and the procedure pursuant to which the workman has entered into service. In continuation thereof, the condition precedent for retrenchment has been defined under Section 25F** D **of the Act 1947 which postulates that workman employed in any industry who has been in continuous service for not less than one year can be retrenched by the employer after clauses (a) and (b) of Section 25F have been complied with and both the clauses (a) and (b) of Section 25F have been held by this Court to be mandatory and its non-observance is held to be *void ab initio* bad** E **and what is being the continuous service has been defined under Section 25B of the Act 1947. The scheme of the Act 1947 contemplates that the workman employed even as a daily wager or in any capacity, if has worked for more than 240 days in the preceding 12 months from the alleged date of termination and if** F **the employer wants to terminate the services of such a workman, his services could be terminated after due compliance of the twin clauses (a) and (b) of Section 25F of the Act 1947 and to its non-observance held the termination to be *void ab initio* bad. [Para 20, 22 and 23][307-F-G; 308-E-G; 310-C-D]**

G **1.2 The salient fact which has to be considered is whether the employee who has been retrenched is a workman under Section 2(s) and is employed in an industry defined under Section 2(j) and who has been in continuous service for more than one year can be retrenched provided the employer complies with the**

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twin conditions provided under clauses (a) and (b) of Section 25F of the Act 1947 before the retrenchment is given effect to. The nature of employment and the manner in which the workman has been employed is not significant for consideration while invoking the mandatory compliance of Section 25F of the Act 1947. This can be noticed from the term 'retrenchment' as defined under Section 2(oo) which in unequivocal terms clearly postulates that termination of the service of a workman for any reason whatsoever provided it does not fall in any of the exception clause of Section 2(oo), every termination is a retrenchment and the employer is under an obligation to comply with the twin conditions of Section 25F of the Act 1947 before the retrenchment is given effect to. In every retrenchment, the employer is not under an obligation to comply with the twin conditions referred to under clauses (a) and (b) of Section 25F of the Act but in a case where the workman has been in continuous service for more than 240 days in the preceding 12 months before the alleged date of termination as contemplated under Section 25B, the employer is under an obligation to comply with the twin conditions referred to under clauses (a) and (b) of Section 25F of the Act 1947. Such non-observance has been termed to be *void ab initio* bad and consequence in the ordinary course has to follow by reinstatement with consequential benefits but it is not held to be automatic and what alternative relief the workman is entitled for on account of non-observance of mandatory requirement of Section 25F of the Act 1947 is open to be considered by the Tribunal/Courts in the facts and circumstances of each case. In the instant case, the appellants had served as a daily wager in non-teaching staff category from the year 1993-1997 and their services were terminated in sequel to the order dated 24th March, 1997 pursuant to which their services were de-regularized. [Paras 24, 25, 30, 31 and 34][310-F-H; 311-A; 316-C-E; 318-B]

Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others **1990 (3) SCC 682 : [1990] 3 SCR 111– followed.**

A *State Bank of India Vs. Shri N. Sundara Money* **1976 (1) SCC 822 : [1976] 3 SCR 160;** *L. Robert D'Souza Vs. Executive Engineer, Southern Railway and Another* **1982 (1) SCC 645 : [1982] 3 SCR 251;** *Bharat Sanchar Nigam Limited Vs. Bhurumal* **2014 (7) SCC 177 : [2013] (16) SCR 1023 – relied on.**

B **1.3 What has been observed by the Division Bench in its Judgment in the earlier round of litigation may not have any relevance so far as the question which has been examined by the Tribunal in answering the reference in affirmative terms regarding non-observance of Section 25F of the Act 1947 and its consequential effect. Appointments are made in the instant case on daily wage basis under the orders of the Vice Chancellor who is the competent/appointing authority and merely because their appointments are not in accordance with the procedure prescribed under the Ordinance would not disentitle them from claiming protection under provisions of the Act 1947. [Paras 35, 37] [318-C-D, H; 319-A]**

1.4 In the facts and circumstances of the instant cases and looking into the nature of service rendered by the appellants as daily wager for a short period, while upholding the termination of the appellants being in violation of Section 25F of the Act 1947, a lumpsum monetary compensation of Rs.2,50,000/- is awardedto each of the appellants-workmen in full and final satisfaction of the dispute in lieu of right to claim reinstatement with 50% back wages as awarded by the Tribunal. The impugned judgment of the High Court is set aside and the Award of the Industrial Tribunal is modified to the extent indicated. [Paras 42, 44] [319-H; 320-A-B, C]

R. Vishwanatha Pillai Vs. State of Kerala and Others **2004 (2) SCC 105 : [2004] (1) SCR 360;** *Rajasthan Tourism Development Corporation Ltd. And Another Vs. Intejam Ali Zafri* **2006 (6) SCC 275 : [2006] (3) Suppl. SCR 533***; Satluj Jal Vidyut Nigam Vs. Raj Kumar Rajinder Singh (Dead) through legal representatives and Others* **2019 (14) SCC 449 : [2018] 12 SCR 282;** *Punjab Urban Planning and Development Authority and Another Vs. Karamjit Singh* **2019 (16) SCC 782 : [2019] (5) SCR 864 – held inapplicable.**

Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. and Others **2006 (5) SCC 127 : [2006] (1) Suppl. SCR 681;** *District Development Officer and Another v. Satish Kantilal Amralia* **2018 (12) SCC 298 : [2017] (12) SCR 414 – referred to.**

Case Law Reference

[1976] 3 SCR 160	**relied on**	**Para 14**
[1982] 3 SCR 251	**relied on**	**Para 14**
[1990] 3 SCR 111	**followed**	**Para 14**
[2006] 1 Suppl. SCR 681	**referred to**	**Para 14**
[2004] 1 SCR 360	**held inapplicable**	**Para 17**
[2006] 3 Suppl. SCR 533	**held inapplicable**	**Para 17**
[2018] 12 SCR 282	**held inapplicable**	**Para 17**
2019] 5 SCR 864	**held inapplicable**	**Para 17**
[2013] 16 SCR 1023	**relied on**	**Para 32**
2017] 12 SCR 414	**referred to**	**Para 33**

CIVIL APPELLATE JURISDICTION: Civil Appeal No.9067 of 2014.

From the Judgment and Order dated 04.01.2010 of the High Court of Kerala at Ernakulam in W.A. No.2881 of 2009.

With

Civil appeal No. 9068 of 2014

R. Basant, Sr. Adv., M. T. George, Mrs. Susy Abrahm, Johns George, K. Rajeev, E. M. S. Anam, Advs. for the appearing parties.

The Judgment of the Court was delivered by

AJAY RASTOGI, J.

1. The instant appeals have been preferred against the judgment and order dated 4th January, 2010 setting aside the Award passed by the Industrial Tribunal dated 14th November, 2005 answering the reference in affirmative terms holding the termination of the appellants-workmen to be void being in violation of Section 25F of the Industrial Disputes

A Act, 1947(hereinafter being referred to as the "Act 1947") with a direction of treating the workmen deemed to be in service till their services are validly terminated with 50% back wages.

2. The brief facts culled out and relevant for the purpose are that the 1st respondent-University was established by an Ordinance viz. Sree B Sankaracharya University of Sanskrit Ordinance, 1993. The appointments of non-teaching staff in different categories, viz., Watchman, Attenders, Peons, Sweepers, Assistant Cooks, Assistant Matrons, Drivers, Helpers, Waiters, Gardeners, Clerical Assistants were made at different points of time on daily wage basis during the period 1993-1995 under the orders of the then Vice Chancellor.

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3. Their services came to be regularized by the 1st respondent giving them the status of regular employees by an order dated 7th May, 1996. It appears that as some objections were raised questioning the manner in which the regularisation had taken place, the 1st respondent by a later order dated 24th March, 1997 de-regularised the non-teaching D staff/employees and in consequence thereof, their services came to be terminated. So far as the order of de-regularisation passed by the 1st respondent dated 24th March, 1997 is concerned, it has attained finality after the Division Bench of the High Court of Kerala has upheld the order of de-regularisation dated 24th March, 1997 taking note of the E initial engagement as daily wager and the appointment being without going through the process of selection as prescribed under the scheme of University Ordinance recorded a finding that the order of de-regularisation passed by the authorities is valid and justified and left the question of non-observance of the provisions of the Act 1947 open to be examined in the appropriate proceedings known to law.

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4. It may be further noticed that the grievance of the teaching and non-teaching staff was jointly examined by the Division Bench of the High Court while deciding the writ appeal under its common impugned judgment dated 23rd March, 2000. Para 10 of the judgment of the Division Bench of the High Court dated 23rd March, 2000 relevant for the purpose G is reproduced as under:-

> 10. Other point raised related to non-observance of the requirements of the ID Act. As rightly observed by learned single Judge, same is not to be decided in Article 226 applications since appellants, if they are so advised and feel that they have a right H under the ID Act, can approach the forum. This position was

highlighted by apex Court in Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd.(AIR 1954 SC 1200) and Rajasthan State Road Transport Corpn. Vs. Krishna(JT 1005(4) SC 343).

5. The appellants raised an industrial dispute pursuant to which the appropriate Government made the reference order dated 8th April, 2003 for adjudication by the Industrial Tribunal as under:-

"Whether the de-regularization of regularized employees in the Annexure appended and their subsequent termination by the management of Sree Sankaracharya University of Sanskrit is legal and justifiable? If not what relief they are entitled to?"

6. It may be noticed that the nature of appointment as a daily wager was not the subject matter of reference and undisputedly, so far as the order of de-regularisation dated 24th March, 1997 is concerned, that was not open to be examined by the Tribunal pursuant to a reference made as it has attained finality by the judgment of the Division Bench of the High Court after recording a finding that the 1st respondent-University was justified in passing the order of de-regularisation of such employees who were appointed without going through the process of selection prescribed under the University Ordinance and were appointed on daily wage basis and such appointments could not have been regularised by the 1st respondent-University.

7. The limited question in terms of the reference open to be examined by the Tribunal was as to whether the termination which has been given effect to by the 1st respondent was legal and justified and if not, what relief the employee was entitled to.

8. The Industrial Tribunal, after taking into consideration the material on record, returned a finding that the termination of the appellants from service is in violation of Section 25F of the Act 1947 and as a natural consequence held the workman employee to be deemed in service till their services are validly terminated with 50% back wages. The relevant para 9 of the Award is as under:-

9. If we go through the pleadings in the written statement, it can be seen that the service of the workmen which had started in various dates in the year 1993, 94,95 and 96 had been regularized by the university later through a proceedings dated 12.4.1996. From the date of commencement of their service to the date of de-regularization of their services, all of them were having

A continuous service. About one year after from 12.4.96, their services were terminated on the basis of decision of the syndicate of the university dated 23.3.97. Such a decision was as per the judgment of the Division Bench of the High Court in the earlier writ appeal judgment. Therefore, from these admitted facts, it can be seen that all these workmen were having continuous service B and they had more than 240 days of service to their credit service. The management does not have any case that the terminations effected on these workmen concerned in this dispute were in compliance with Section 25-F of the I.D. Act. On that sole ground it has to be declared that the terminations effected in the case of C workmen were in violation of Sec. 25-F of the I.D. Act. Therefore, they would deem to be in service till their services are validly terminated strictly in accordance with Industrial Disputes Act. In view of various decisions of the Supreme Court and the settled position laid thereon, the only relief which can be granted in this case is by way of declaration that the termination of all workmen D who had to their credit 240 days of continuous as explained in Sec. 25 were illegal. As a natural consequence, all of such workmen would deem to be in service till their services are validly terminated. Because of that they entitled for full back wages also in the ordinary course. However, such entitlement cannot be E treated as a matter of rule always. I think it will be appropriate, if all the workmen concerned are given 50% of the backwages.

9. The Award of the Tribunal dated 14th November, 2005 came to be challenged at the instance of the 1st respondent before the learned Single Judge of the High Court of Kerala. The learned Single Judge F without disturbing the finding of fact recorded by the Tribunal in its Award held that each of the workmen has completed more than 240 days of service in the preceding 12 months from the alleged date of termination and their services were terminated without observance of Section 25F of the Act 1947 but further proceeded on the premise that if the order of G appointment of the workmen was not valid and has not been made in terms of the procedure prescribed under the Ordinance, such irregular appointments are not entitled to seek protection of the Act 1947 and further observed that retrenchment referred to under Section 25F applies to properly employed persons who are in service and set aside the Award by a judgment dated 25th June, 2009. The relevant part is as under:-

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"In my view, before proceeding to consider eligibility for relief under Section 25F, the Tribunal should have considered whether appointment of employees terminated was properly made. The Syndicate of the University ordered termination only after finding that the employees who got appointment was through irregular ways. Section 25F does not apply to as case of termination of illegally appointed employees. On the other hand, retrenchment referred to in Section 25F applies to properly employed persons who were in service. So much so, the order passed by the Industrial Tribunal declaring the termination of the employees as illegal is only to be set aside and I do so. Consequently, the terminated employees are not entitled to compensation ordered by the Tribunal under Section 25F. During pendency of the W.P., some of the terminated employees were granted wages under Section 17B of the Industrial Disputes Act, under orders of this Court. Besides this, they are not entitled to any other relief. The W.P. is therefore allowed setting aside Ext. P14 award of the Industrial Tribunal."

10. That order of the learned Single Judge came to be confirmed by the Division Bench of the High Court on writ appeal being preferred at the instance of the present appellants under the impugned judgment dated 4th January, 2010.

11. Mr. M.T. George, learned counsel for the appellants submits that the finding of fact recorded by the Tribunal has been confirmed by the High Court under the impugned judgment and it can be safely noticed by this Court that the appellants were appointed on daily wage basis in non-teaching staff category. Indisputedly, their appointments were made without going through the process of selection as being contemplated under the University Ordinance but this is not the case of the respondents that either of the appellants had either misrepresented/misled or committed fraud or either of them is not eligible in seeking employment in non-teaching category and itis also not being disputed that each of them had been in continuous service of more than 240 days in the preceding 12 months from the alleged date of termination.

12. Learned counsel submits that admittedly there was a violation of Section 25F of the Act 1947. In consequence thereof, no error was committed by the Tribunal in passing an Award treating them to be deemed in service with 50% back wages unless validly terminated, obviously after compliance of the mandatory requirement as contemplated under clauses (a) and (b) of Section 25F of the Act 1947.

A 13. Learned counsel further submits that the finding which has been recorded by the learned Single Judge and confirmed by the Division Bench under the impugned judgment that if the appointments are not being made in accordance with the procedure prescribed by law, such employees are not entitled to seek protection of the Act 1947, is legally unsustainable in law as the nature of appointments is not a pre-condition B for compliance of Section 25F andscheme of the Act 1947contemplates that if the employee who is a workman under Section 2(s) has been retrenched as contemplated under Section 2(oo) and if was in continuous service for more than 240 days in the preceding 12 months from the alleged date of termination as contemplated under Section 25B of the C Act, the employer is under an obligation to comply with the mandatory requirement of clauses (a) and (b) of Section 25F, its non-observance as held by this Court, to be void ab initio bad with the consequential order of reinstatement with full back wages and open for the employer to pass a fresh order after due compliance in accordance with law.

D 14. In support of his submissions, learned counsel placed reliance on the judgments of this Court in ***State Bank of India Vs. Shri N. Sundara Money***[1]***; L. Robert D'Souza Vs. Executive Engineer, Southern Railway and Another***[2]***; Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others***[3] ***and Nagar Mahapalika*** E ***(Now Municipal Corpn.) Vs. State of U.P. and Others***[4].

15. Per contra, Mr. R. Basant, learned senior counsel for the respondents, while supporting the finding recorded by the Division Bench of the High Court under the impugned judgment, submits that after the finding has been recorded by the Division Bench in the earlier round of F litigation holding such appointments being conceived in fraud and deceit are not entitled to seek protection of Section 25F by those employees whose appointments have been declared as void ab initio bad.

16. Learned counsel further submits that the term 'retrenchment' under Section 2(oo) although have been couched with the words "for G any reason whatsoever" but cannot be interpretated to protect those who secured entry by backdoor and whose appointments are vitiated by

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[1]1976(1) SCC 822
[2]1982(1) SCC 645
[3]1990(3) SCC 682
H [4]2006(5) SCC 127

fraud and deceit as being observed by the Division Bench of the High Court in the earlier round of litigation.

17. In support of his submission, learned counsel placed reliance on the judgments of this Court in ***R. Vishwanatha Pillai Vs. State of Kerala and Others***[5]***; Rajasthan Tourism Development Corporation Ltd. And Another Vs. Intejam Ali Zafri***[6] followed with recent judgments in ***Satluj Jal Vidyut Nigam Vs. Raj Kumar Rajinder Singh (Dead) through legal representatives and Others***[7] ***and Punjab Urban Planning and Development Authority and Another Vs. Karamjit Singh***[8].

18. In the alternative, learned counsel further submits that assuming that there was a violation of Section 25F of the Act 1947, still there cannot be an automatic reinstatement as being considered by this Court and each of the workmen had worked for a period 1993-1997 and they were de-regularised by an order dated 24th March 1997, they may be entitled for reasonable compensation in lieu of reinstatement looking to the period of service rendered by each of them and further submits that granting 50% backwages is grossly unfair as each of the workmen, during pendency of the litigation, under Section 17B has received his last pay drawn and a total sum of Rs. 36.68 lakhs has been paid to the contesting appellants-workmen and in the given circumstances, the finding recorded by the Division Bench does not call for any interference.

19. We have heard learned counsel for the parties and with their assistance perused the material available on record.

20. It is an admitted case of the parties that Act 1947 is applicable on the 1st respondent-University and they are under an obligation to comply with the provisions of the Act 1947. It is also admitted that the 1st respondent is the employer as defined under Section 2(g) and the dispute which was raised is an industrial dispute as defined under Section 2(k) and the present appellants are the workmen as defined under Section 2(s) and the termination which was given effect to by the 1st respondent was a retrenchment as defined under Section 2(oo) and it is not the case of the 1st respondent that their termination falls in any of the exceptions defined under Section 2(oo) of the Act 1947.

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[5]2004(2) SCC 105
[6]2006(6) SCC 275
[7]2019(14) SCC 449
[8]2019(16) SCC 782

A 21. Section 2(oo) relevant for the purpose is reproduced as under:-

(oo) "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—

B (a) voluntary retirement of the workman; or

(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

C [(bb) termination of the service of the workman as a result 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 a stipulation in that behalf contained therein; or]

D (c) termination of the service of a workman on the ground of continued ill-health;]

22. The term 'retrenchment' leaves no manner of doubt that the termination of the workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action are being termed E as retrenchment with certain exceptions and it is not dependent upon the nature of employment and the procedure pursuant to which the workman has entered into service. In continuation thereof, the condition precedent for retrenchment has been defined under Section 25F of the Act 1947 which postulates that workman employed in any industry who has been in continuous service for not less than one year can be retrenched by the F employer after clauses (a) and (b) of Section 25F have been complied with and both the clauses (a) and (b) of Section 25F have been held by this Court to be mandatory and its non-observance is held to be void ab initio bad and what is being the continuous service has been defined under Section 25B of the Act 1947. It may be relevant to quote Section G 25B and clause (a) and (b) of Section 25Fof the Act 1947 which are reproduced as under:-

25B. Definition of continuous service.- For the purposes of this Chapter

(1) a workman shall be said to be in continuous service for a H period if he is, for that period, in uninterrupted service, including

service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

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

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than— (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than— (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case. Explanation.— For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which— (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment; (ii) he has been on leave with full wages, earned in the previous years; (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and (iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.]

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

A has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(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 continuous service] or any
B part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

23. The scheme of the Act 1947 contemplates that the workman
C employed even as a daily wager or in any capacity, if has worked for more than 240 days in the preceding 12 months from the alleged date of termination and if the employer wants to terminate the services of such a workman, his services could be terminated after due compliance of the twin clauses (a) and (b) of Section 25F of the Act 1947 and to its
D non-observance held the termination to be void ab initio bad and so far as the consequential effect of non-observance of the provisions of Section 25F of the Act 1947, may lead to grant of relief of reinstatement with full back wages and continuity of service in favour of retrenched workman, the same would not mean that the relief would be granted automatically but the workman is entitled for appropriate relief for non-observance of
E the mandatory requirement of Section 25F of the Act, 1947 in the facts and circumstances of each case.

24. The salient fact which has to be considered is whether the employee who has been retrenched is a workman under Section 2(s) and is employed in an industry defined under Section 2(j) and who has
F been in continuous service for more than one year can be retrenched provided the employer complies with the twin conditions provided under clauses (a) and (b) of Section 25F of the Act 1947 before the retrenchment is given effect to. The nature of employment and the manner in which the workman has been employed is not significant for
G consideration while invoking the mandatory compliance of Section 25F of the Act 1947.

25. This can be noticed from the term 'retrenchment' as defined under Section 2(oo) which in unequivocal terms clearly postulates that termination of the service of a workman **for any reason whatsoever** provided it does not fall in any of the exception clause of Section 2(oo),
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every termination is a retrenchment and the employer is under an obligation to comply with the twin conditions of Section 25F of the Act 1947 before the retrenchment is given effect to obviously in reference to such termination where the workman has served for more than 240 days in the preceding 12 months from the alleged date of termination given effect to as defined under Section 25B of the Act.

26. This Court in ***State Bank of India***(supra) while examining the retrenchment of various nature of employments questioning the interpretation of Section 2(oo) of the Act held as under:-

> **8.** Without further ado, we reach the conclusion that if the workman swims into the harbour of Section 25-F, he cannot be retrenched without payment, *at the time of retrenchment*, compensation computed as prescribed therein read with Section 25-B(2). But, argues the appellant, all these obligations flow only out of retrenchment, not termination outside that species -of snapping employment. What, then, is retrenchment? The key to this vexed question is to be found in Section 2(*oo*) which reads thus:
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> 2. (*oo*) "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—
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> (*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;"
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> *For any reason whatsoever* — very wide and almost admitting of no exception. Still, the employer urges that when the order of appointment carries an automatic cessation of service, the period of employment works itself out by efflux of time, not by act of employer. Such cases are outside the concept of "retrenchment" and cannot entail the burdensome conditions of Section 25-F. Of course, that a one year and ten months "nine-days" employment, hedged is with an express condition of temporariness and automatic

A cessation, may look like being in a different street (if we may use a colloquialism) from telling a man off by retrenching him. To retrench is to cut down. You cannot 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. Section 2(*oo*) is
B the master of the situation and the Court cannot truncate its amplitude.

9. A breakdown of Section 2(*oo*) unmistakably expands the semantics of retrenchment. Termination ... for any reason whatsoever are the key words. Whatever the reason, every
C 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
D policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. Maybe, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25-F and Section 2(*oo*). Without speculating on
E possibilities, we may agree that "retrenchment" is no longer *terra incognita* but area covered by an expansive definition. It means "to end, conclude, cease". In the present case the employment ceased, concluded, ended on the expiration of one year ten months nine days — automatically may be, but cessation all the same.
F That to write into the order of appointment the date of termination confers no *moksha* from Section 25-F(*b*) is inferable from the proviso to Section 25-F(1) [*sic* 25-F (*a*)]. True, the section speaks of retrenchment *by the employer* and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25-F and automatic extinguishment of service
G by effluxion of time cannot be sufficient. An English case *R.* v. *Secretary of State*[3] was relied on, where Lord Denning, M.R. observed:

> "I think that the word 'terminate' or 'termination' is by itself ambiguous. It can refer to either of two things — either to
H termination by notice or to termination by effluxion of time. It

is often used in that dual sense in landlord and tenant and in master and servant cases. But there are several indications in this para to show that it refers here only to termination by notice."

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 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 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.

27. It was later followed in ***L. Robert D'Souza*** (supra) and held as under:-

25. Assuming we are not right in holding that the appellant had acquired the status of a temporary railway servant and that he continued to belong to the category of casual labour, would the termination of service in the circumstances mentioned by the Railway Administration constitute retrenchment under the Act?

26. Section 25-F of the Act provides that 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

A employer until the conditions set out in the Act are satisfied. The expression "workman" is defined as under:

> "2. In this Act, unless there is anything repugnant in the subject or context,—
>
> (*s*) "workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute, but does not include any such person—
>
> (*i*) who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; or
>
> (*ii*) who is employed in the police service or as an officer or other employee of a prison; or
>
> (*iii*) who is employed mainly in a managerial or administrative capacity; or
>
> (*iv*) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

27. There is no dispute that the appellant would be a workman within the meaning of the expression in Section 2 (*s*) of the Act. Further, it is incontrovertible that he has rendered continuous service for a period over 20 years. Therefore, the first condition of Section 25-F that appellant is a workman who has rendered service for not less than one year under the Railway Administration, an employer carrying on an industry, and that his service is terminated which for the reasons hereinbefore given would constitute retrenchment. It is immaterial that he is a daily-rated worker. He

is either doing manual or technical work and his salary was less than Rs 500 and the termination of his service does not fall in any of the excepted categories. Therefore, assuming that he was a daily-rated worker, once he has rendered continuous uninterrupted service for a period of one year or more, within the meaning of Section 25-F of the Act and his service is terminated for any reason whatsoever and the case does not fall in any of the excepted categories, notwithstanding the fact that Rule 2505 would be attracted, it would have to be read subject to the provisions of the Act. Accordingly the termination of service in this case would constitute retrenchment and for not complying with pro-conditions to valid retrenchment, the order of termination would be illegal and invalid.

28. Later, in ***Punjab Land Development and Reclamation Corporation Ltd., Chandigarh***(supra), the Constitution Bench of this Court examined the scope of the term 'Retrenchment" under Section 2(oo) of the Actin affirmative in paragraphs 14 and 82. The relevant paras are as under:-

14. The precise question to be decided, therefore, is whether on a proper construction of the definition of "retrenchment" in Section 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 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.

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

29. It leaves no manner of doubt that the nature of every termination of a kind, by the service of a workman, for any reason whatsoever, which the Legislature in its wisdom made a clarification in its intention to be known to the employer that such of the workman whose services, if

A to be terminated, will amount to retrenchment under Section 2(oo) of the Act except those expressly excluded in the section.

30. It is not open for us to examine the nature of employment offered to the workman and the manner he had served the employer is beyond the terms of reference made by the appropriate Government B dated 8th April, 2003 and the fact is that if the service of the workman has been terminated, it will be termed to be a retrenchment under Section 2(oo) of the Act provided it does not fall under any of those expressly excluded under the section. In every retrenchment, the employer is not under an obligation to comply with the twin conditions referred to under C clauses (a) and (b) of Section 25F of the Act but in a case where the workman has been in continuous service for more than 240 days in the preceding 12 months before the alleged date of termination as contemplated under Section 25B, the employer is under an obligation to comply with the twin conditions referred to under clauses (a) and (b) of Section 25F of the Act 1947.

D 31. The consistent view of this Court is that such non-observance has been termed to be void ab initio bad and consequence in the ordinary course has to follow by reinstatement with consequential benefits but it is not held to be automatic and what alternative relief the workman is entitled for on account of non-observance of mandatory requirement of E Section 25F of the Act 1947 is open to be considered by the Tribunal/ Courts in the facts and circumstances of each case.

32. What appropriate relief the workman may be entitled for regarding non-compliance of Section 25F of the Act 1947 has been considered by this Court in ***Bharat Sanchar Nigam Limited Vs. Bhurumal***[9]. The relevant paras are as under:-

F

> **33.** It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where G services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section

H [9]2014(7) SCC 177

25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see *State of Karnataka* v. *Umadevi (3)* [(2006) 4 SCC 1]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.

33. It has been further followed in **District Development Officer and Another Vs. Satish Kantilal Amralia**[10].

34. In the instant case, the appellants had served as a daily wager in non-teaching staff category from the year 1993-1997 and their services were terminated in sequel to the order dated 24th March, 1997 pursuant to which their services were de-regularized and that has been upheld by the Division Bench of the High Court in writ appeal preferred at the instance of the appellants in the earlier round of litigation.

35. In the afore-stated facts, the High Court of Kerala in the earlier round of litigation made certain adverse observations with regard to the nature of appointment as a daily wager but still the alleged termination was left open to examine the effect of non-observance of the Act, 1947 in the appropriate proceedings. Thus, what has been observed by the Division Bench in its Judgment in the earlier round of litigation may not have any relevance so far as the question which has been examined by the Tribunal in answering the reference in affirmative terms regarding non-observance of Section 25F of the Act 1947 and its consequential effect.

36. At the same time, the finding which has been recorded by the learned Single Judge and confirmed by the Division Bench of the High Court in the impugned judgment that if the appointment has not been properly made after going through the process of selection as provided under the statutory rules/Ordinance, as the case may be, if such irregular appointments are being terminated, Section 25F will not apply to a case of termination of such appointed employees. The view expressed by the High Court in the impugned judgment, in our considered view, is unsustainablein law and is not in conformity with the scheme of the Act 1947 and deserves to be set aside.

37. The submission made by learned counsel for the respondents that after the finding has been recorded by the Division Bench of the High Court in the earlier round of litigation holding the seal of approval on the appointments of the appellants to an act which is conceived in fraud and delivered in deceit, are not entitled to claim benefit under Section 25F of the Act 1947. In our considered view, the submission is without substance for the reason that appointments are made in the instant case on daily wage basis under the orders of the Vice Chancellor

[10]2018(12) SCC 298

who is the competent/appointing authority and merely because their appointmentsare not in accordance with the procedure prescribed under the Ordinance would not disentitle them from claiming protection under provisions of the Act 1947.

38. The judgment in ***R. Vishwanatha Pillai***(supra) on which learned counsel for the respondents has placed reliance was a case where the incumbent sought an appointment as Scheduled Caste candidate. On complaint, it revealed that he was not a member of the Scheduled Caste category and in that reference, a finding was recorded that the appointment has been obtained by fraud. What will be the consequence, it does not have any application in the facts of the instant cases.

39. So far as the judgment in ***Rajasthan Tourism Development Corporation Ltd. and another***(supra) is concerned, it was a case where the workmen had not worked for 240 days in the calendar year which is the condition precedent for attracting the provisions of Section 25F of the Act 1947. In those circumstances, a passing reference has been made regarding non-observance of Section 25F of the Act 1947, which, in our view, may not be of any assistance to the respondents.

40. The next judgment relied upon in ***Satluj Jal Vidyut Nigam*** (supra)is the case of abolition of jagirs by virtue of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953. While examining the abolition of Jagirs under the Act, reference has been made of fraud and deceit which has no application in the facts of the instant case.

41. So far as the judgment in ***Punjab Urban Planning and Development Authority and Another***(supra) is concerned, it was a case where three years' service was required for seeking regularization of service in terms of circular issued by the authority under its policy dated 23rd January, 2001 and the incumbent had not completed three years of service for seeking regularization but due to some inadvertence, his name was included in the list of candidates who were regularized and after a show cause notice, his services were terminated. In that context, reference has been made which may not have any remote application on the facts of the case.

42. In the facts and circumstances of the instant cases and looking into the nature of service rendered by the appellants as daily wager for

A a short period,while upholding the termination of the appellants being in violation of Section 25F of the Act 1947, we consider it just and reasonable to award a lumpsum monetary compensation of Rs.2,50,000/- (Rupees two lakh fifty thousand) to each of the appellants-workmen in full and final satisfaction of the dispute in lieu of right to claim reinstatement with 50% back wages as awarded by the Tribunal.

B

43. The respondents shall pay the compensation as awarded by this Court to each of the appellants-workmen within a period of three months.

44. In view of the foregoing discussion, the appeals succeed and C are partly allowed. The impugned judgment of the High Court dated 4thJanuary, 2010 is hereby set aside and the Award of the Industrial Tribunal dated 14th November, 2005 is modified to the extent indicated above.

45. Pending application(s), if any, stand disposed of.

Divya Pandey Appeals partly allowed.