
(2015) 11 KAR CK 0101

In the Karnataka High Court

Case No : Writ Appeal Nos. 200017-200020/2015 (L-Ter.)

Alstom India Limited

APPELLANT

Vs

Sidram and Others

RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Industrial Disputes Act, 1947 — Section 2(1), 2(A), 2(k), 2(oo), 2(oo)(bb)

Citation : (2015) 11 KAR CK 0101

Hon'ble Judges : H. Billappa and K.N. Phaneendra, JJ.

Bench : Division Bench

Advocate : C.R. Sridharan, Sr. Counsel for Ashok S. Kinagi, Advocate, for the Appellant; P. Vilas Kumar Marthand Rao, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

H. Billappa, J.—These appeals by the appellant are directed against the order dated 7.1.2015 passed by the learned Single Judge in W.P. Nos. 86335-86338/2012.

2. By the impugned order, the learned single Judge has set aside the termination orders dated 27.8.2011 vide Annexures-F, F1, F2 and F3 to the writ petitions. Further, the appellant has been directed to reinstate and regularize the services of the respondents i.e., the writ petitioners with all consequential benefits.

3. Aggrieved by that, the appellant has filed these writ appeals.

4. Briefly stated the facts are:

"The appellant Company is dealing in manufacturing of power boilers and also Foundry. The appellant Company requires permanent Moulders to work in the Foundry. Therefore, the appellant company gave training to the respondents as Moulders for a period of three years. The respondents attended the apprenticeship training from 10.10.2000 to 9.10.2003. The respondents successfully completed their apprenticeship training. Thereafter, the appellant

Company assured the respondents to absorb them as permanent employees as Moulders in the Company. After the completion of the training, the respondents were appointed in the month of February/March 2004 and appointment orders were also issued. The respondents are qualified for the post of Moulders. They have obtained apprenticeship training from the appellant Company. They are medically fit to discharge their duties as Moulders. The appellant Company promised the respondents to appoint them as Moulders. But, it has appointed the respondents on a temporary basis only to extract the work of the respondents by depriving them of statutory benefits of regular appointment. The appellant has followed that practice by issuing appointment orders from time to time from February/March 2004 till their appointment was not renewed. The appellant had assured to regularize the respondents and prolonged the matter for a considerable time. The appellant company has regularized the services of similarly situated employees. The appellant Company has not followed the same practice in regularizing the respondents as regular employees of the company. The respondents were appointed as temporary employees only with an intention to deprive them of their legal rights. Therefore, the practice followed by the appellant Company is an unfair labour practice. The appellant Company issued successive appointment orders to create an artificial break in the service of the respondents. The respondents have been discharging their duties efficiently and to the satisfaction of the appellant company. The appellant company is guilty of exploiting the less bargaining capacity of the respondents. The respondents being poor, could not fight against the mighty management. The appellant has practiced unfair labour practice for several years. Therefore, the respondents have prayed for a direction to the appellant to regularize their service with all other consequential benefits and backwages."

5. The appellant has contended that the reference is not an industrial dispute as defined under section 2(k) of the I.D. act. The respondents have not formed an Union or supported by substantial number of workmen to come under the definition of section 2(k) of I.D. Act. Unless the cause is espoused by the Union operating in the establishment or body of workmen working in the establishment to support the cause of the workmen, the issue will not become an industrial dispute as contained in section 2(k) of the I.D. Act. The Government gets jurisdiction to refer the matter only if it is an industrial dispute. The Labour Court or the Industrial Tribunal gets jurisdiction to adjudicate the dispute only if it is an industrial dispute. The subject matter of reference has not attained the status of industrial dispute as it has not been espoused by the Union or supported by the body of workmen employed in the respondent-Company. Therefore, the reference is not maintainable. It is also contended that the claimants i.e., the respondents were taken for apprenticeship in the appellant-Company as per the provisions of the Apprentice Act 1961. Therefore, the provisions of Apprentice Act are applicable to the case of the respondents. The appellant-Company has engaged the respondents as apprentices in conformity with the provisions of Apprentice Act. The respondents have joined the apprenticeship training as

Moulders in the factory for a period of three years. After completion of apprenticeship training, there is no obligation on the part of the Company to offer employment to the respondents. After completion of apprenticeship training, the candidates are entitled to receive certificate in accordance with the provisions of the Apprentice Act. There are permanent workmen employed to carry out regular nature of work in the appellant- Company. In order to meet the temporary increase of work in the Foundry, the employees who had undergone apprenticeship training are engaged on temporary basis in order to meet the temporary exigencies of work. Accordingly, the respondents were appointed on temporary basis on a consolidated salary. The respondents were appointed only to meet the exigencies of work. The temporary appointments are permissible under law to meet the increase in work. The respondents were offered assignment for a specified period. The respondents have accepted terms of employment and joined the service. Clause 9-B of order of assignment states that if not terminated, the same would automatically gets terminated after the lapse of period of assignment. The ABL Staff Workers Union is recognized as sole bargaining agent in the memorandum held on 21.7.2007. All the settlements are undertaken with regard to the workmen and arrived after discussing with the sole bargaining agent. The said terms of settlement were applicable only to those who were appointed in the year 2001 and before. The settlement did not lay down absorption of temporary employees. Therefore, the respondents are not entitled to claim regularization based on the settlement held in the year 2007. It is, therefore, contended that the issue raised by the respondents is not an industrial dispute and there was no basis for reference. Therefore, the appellant has prayed for dismissal of the reference.

6. The reference reads as follows;

"1) Whether the Management of ALSTOM Projects India Limited, Shahabad, are justified in not regularizing the services of the claimants?

2) If so, what relief the claimants are entitled?"

7. The Labour Court has raised the following issues for consideration;

"1. Whether the workmen prove that they are permanent employees of the respondent?

2. Whether the workmen prove that they are entitled to be regularized?

3. What order?

Additional issue:

"1. Whether the second party is right in not regularizing services of the first party?"

8. Considering the material on record, the Labour Court by its order dated 10.7.2012 has rejected the reference.

9. Aggrieved by that, the respondents/claimants have preferred W.P. Nos. 86335 to 86338 of 2012. The learned Single Judge by order dated 7.1.2015 has allowed the writ petitions and set-aside the termination orders dated 27.8.2011 vide Annexures-"F", "F1", "F2" and "F3" to the writ petitions as illegal and has directed the appellant herein to reinstate and regularize the services of the respondents herein with all consequential benefits.

10. Aggrieved by that, the appellant has preferred these writ appeals.

11. The learned counsel for the appellant contended that the impugned order passed by the learned Single Judge cannot be sustained in law. At the instance of the individuals, there can be no reference. He invited our attention to the provisions of sections 2A , 2(k) , 2(oo) and 2(oo)(bb) of the Industrial Disputes Act and submitted that the learned Single Judge has erred in interfering with the order passed by the Labour Court. The appointment was on contractual basis and termination does not amount to retrenchment. The services of the respondents are terminated automatically after the expiry of the stipulated period. The respondents have accepted terms and conditions and their appointment has come to an end by efflux of time. The respondents having accepted the temporary appointment cannot bargain. Further he submitted that the dispute does not fall within the definition of the Industrial dispute. There is no plea in the claim statement regarding unfair labour practice. The claim must be supported by the Union or substantial number of workmen. The reference relates to regularization of service. The affected workmen themselves cannot raise an industrial dispute. The cause must be espoused by the Union or substantial number of workmen. There was no industrial dispute at all. Therefore, the reference itself was bad in law. Further he submitted that the Tribunal should confine itself to the point of reference. The jurisdiction of the Tribunal does not extend beyond the terms of reference. The jurisdiction is confined to the reference. He also submitted that misplaced sympathy has no role to play in law. The reasoning of the learned Single Judge is perverse and cannot be sustained in law. Further he submitted that the learned Single Judge has not considered the Labour Court order. There is no plea regarding unfair labour practice. The workmen have not stepped into the witness-box. Section 33 of the Industrial Disputes Act is not attracted. He, therefore, submitted that the impugned order cannot be sustained in law. He placed reliance on the following decisions:

- "1. The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen,
2. State of Punjab Vs. The Gandhara Transport Company (P) Ltd. and Others,
3. The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another,
4. Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others,
5. P.M. Murugappa Mudaliar Rathina Mudaliar and Sons (By M. Muniswami,

Partner) Vs. Raju Mudaliar (P) and Others,

6. The Management of Majestic Theatre, Moga Vs. Workmen of The Majestic Theatre, Moga and Others-->

7. Shamsuddin Vs. State of Kerala and Others,

8. AIR 1966 Punjab & Haryana 354

9. Management of Hotel Samrat Vs. Government of NCT and Others,

10. Chittadi Estate Vs. Industrial Tribunal and Others,

11. Associated Cement Companies, Ltd. Vs. Central Government Industrial Tribunal and Others,

12. Khadi Gramodyog Bhawan Workers" Union Vs. E. Krishnamurthy, Industrial Tribunal and Another,

13. Sivasubrahmanyam (T.S.) and Another Vs. State of Madras (by Deputy Secretary to Government, Department of Industries, Labour and Co-operation) and Another,

14. Mahendra Singh Dhantwal Vs. Hindustan Motors Ltd. and Others,

15. National Engineering Industries Ltd. Vs. Hanuman,

16. Nand Kishore Sharma Vs. Judge, Industrial Tribunal and Others,

17. The Haryana State Agricultural Marketing Board Vs. Subhash Chand and Another,

18. 2007 AIR SCW 4769

19. Management of Kalpataru Vidya Samasthe (R) and Another Vs. S.B. Gupta and Another,

20. (2004) 8 SCC 164

21. Gangadhar Pillai Vs. Siemens Ltd.,

22. M.D., Karnataka Handloom Dev. Corpn. Ltd. Vs. Sri Mahadeva Laxman Raval,

23. The Workmen and Others Vs. Hindustan Lever Ltd.,

24. Syed Yakoob Vs. K.S. Radhakrishnan and Others,

25. Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Another,

26. Mukand Ltd. Vs. Mukand Staff and Officers" Association,

27. Senior Regional Manager, Hindustan Petroleum Corporation Limited, Secunderabad and Another Vs. Presiding Officer, Industrial Tribunal-I, Hyderabad and Another,

28. Surya Dev Rai Vs. Ram Chander Rai and Others,

29. Siemens Ltd. and Another Vs. Siemens Employees Union and Another,
30. (2015) 1 LLJ 513
31. (2007) 1 SCC 610
32. State Bank of Bikaner and Jaipur Vs. Om Prakash Sharma,
33. Hindustan Petroleum Corpn. Ltd. Vs. Ashok Ranghba Ambre,
34. 1979(3) SCC 371"

12. As against this, the learned counsel for the respondents 1 to 4 submitted that the impugned order does not call for interference. Under section 2(A) of the Industrial Disputes Act dismissal of an individual workman is also an industrial dispute. Under section 2(ra) , unfair labour practice means any practice specified in the V Schedule. Under section 25(T) and 25(U) of the Industrial Disputes Act, there is prohibition of unfair labour practice. The said provision has come into force w.e.f. 21.8.1984. Schedule V was inserted w.e.f. 21.8.1984. Item Nos. 9 and 10 are attracted to the present case. In the judgments relied upon by the learned counsel for the appellant, unfair our attention to section 2(oo) of the Industrial Disputes Act. Further he submitted that the wages of the petitioners was Rs. 8,124/- per month. Whereas the wages of the similarly situated permanent employees was Rs. 16,000/- per month. In KID No. 287/2001 and connected cases, similarly situated workmen have been directed to be regularized. Some others who were given training are continued in service. In the judgments cited by the learned counsel for the appellant, there is no discussion regarding Schedule V. The respondents never accepted the appointment on contractual basis. They themselves form a group. The dispute is an Industrial dispute. The reference by the Government is not challenged. The respondents were continued in service without any gap. Thereafter, the respondents were informed during the pendency of the proceedings that their service comes to an end on 30.8.2011. Under section 33 of the I.D. Act, service conditions cannot be changed during the pendency of the proceedings. Not continuing the respondents in service is void ab initio. It is in violation of section 33(2)(b) of the I.D. Act. He also submitted that there was a direction to consider the reference along with the IAs and it is violated. There is total non-application of mind by the Labour Court and retrenchment was not an issue before the Labour Court. Regularization of service was the issue before the Labour Court. There is foundation in the pleadings regarding unfair labour practice. Further he submitted that it is a clear case of exploiting the poor workmen. Similarly situated workmen have been regularized. None of them have completed ten years. Under section 2(k) of I.D. Act, if there are more than two workmen, it is an industrial dispute. The judgments cited by the learned counsel for the appellant do not relate to unfair labour practice. Further he submitted that there are no allegations of misconduct. The dispute is an industrial dispute. The respondents as a group of workmen can raise an industrial dispute. Further he submitted that section 2A was inserted in 1965 w.e.f. 1.12.1965. Section 25T

and 25U were introduced in the year 1984. The error committed by the Labour Court is apparent on the face of the record. Therefore, the learned Single Judge was justified in interfering with the order passed by the Labour Court. Therefore, the impugned order does not call for interference. Further he submitted that the decisions relied upon by the learned counsel for the appellant are not applicable to the facts of the present case. Therefore, the writ appeals may be dismissed. He placed reliance on the following decisions:

"1. Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another,

2. National Textile Workers" Union and Others Vs. P.R. Ramakrishnan and Others,

3. 1988 LAB IC 1585

4. KID 287/2001

5. Civil Appeal Nos. 3241-48/1981 and connected appeals

6. Sudarshan Rajpoot Vs. U.P. State Road Transport Corporation,

7. Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others,

8. Tamilnadu Terminated Full Time Temporary LIC Employees Association Vs. Life Insurance Corporation of India and Others

9. Civil Appeal No. 480(N) of 1973

10. Mary Teresa Morris Vs. Management of St. Anne's Educational Society,

11. Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), "

13. We have carefully considered the submissions made by the learned counsel for the parties.

14. The points that arise for our consideration are:

"1. Whether the dispute is an industrial dispute and the reference was proper?

2. Whether the respondents can raise industrial dispute?

3. Whether the respondents are entitled for regularization of their services?

4. Whether the impugned order calls for interference?"

15. Point Nos. 1 and 2 are considered together as they are interconnected.

16. The appellant contends that the dispute is not an industrial dispute and therefore, the reference was bad in law. At the instance of the individuals, there cannot be any reference. The appointment was on contractual basis and the termination does not amount to retrenchment. The services of the respondents are terminated automatically after the expiry of the stipulated period. The

respondents have accepted the terms and conditions of their service and it has come to an end by efflux of time. Having accepted the temporary appointment the respondents cannot bargain. The dispute does not fall within the definition of Industrial Dispute under section 2(k) of the I.D. Act.

17. The respondents contend that the dispute is an industrial dispute. It relates to unfair labour practice. The respondents never accepted the appointment on contractual basis. The respondents themselves form a group and they can raise an industrial dispute. The Government has rightly referred the dispute for adjudication. The respondents were given training for a period of three years as Moulders. Thereafter, they were appointed as temporary employees and continued for several years. It is an unfair labour practice. The other employees who are similarly situated are paid salary of Rs. 16,000/- per month, whereas the respondents were paid salary of Rs. 8,124/- per month. The respondents were in continuous service till 30.8.2011. Thereafter, they were not continued. Through letter dated 27.8.2011 the respondents were informed that their services have come to an end on 30.8.2011. The services of similarly situated workmen have been regularized. The dispute falls within the definition of industrial dispute. The respondents as a group of workmen can maintain the industrial dispute. The reference was proper.

18. Before considering the rival contentions, it is appropriate to refer to some of the relevant provisions of the Industrial Disputes Act.

19. Section 2(k) of the Industrial Disputes Act defines industrial dispute as follows:

"industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non²¹ employment or the terms of employment or with the conditions of labour, of any person;

20. Section 2(oo) of the Industrial Disputes Act defines the term "retrenchment" as follows:

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

"(a) voluntary retirement of the workman; or

(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

(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

(c) termination of the service of a workman on the ground of continued ill-health."

21. Section 2(ra) defines the term "unfair labour practice" as follows:

"unfair labour practice" means any of the practices specified in the Fifth Schedule; Item Nos. 9 and 10 of the V schedule provide as follows:

9. To show favouritism or partiality to one set of workers regardless of merit.

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."

22. The respondents contend that they were trained as moulders for a period 3 years. Thereafter, they were appointed as moulders during February-March 2004. They were paid wages of Rs. 8,124/- per month, whereas for the similar work the permanent employees are paid salary of Rs. 16,000/- per month. The respondents have been in continuous service till 30.8.2011. Thereafter, they were not continued. It is also contended that the services of similarly situated workmen have been regularized. Therefore, they are entitled for regularization. The dispute falls within the definition of industrial dispute. As a group of workmen the respondents 1 to 4 can raise an industrial dispute.

23. It is clear, section 2(k) of the I.D. Act defines the term "industrial dispute". It means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or nonemployment or the terms of employment or with the conditions of labour of any person. Therefore, the dispute between the employers and workmen connected with the employment or terms of employment or with the conditions of labour of any person is an industrial dispute. In this case, the dispute is between the employer and workmen in connection with the employment of the respondents 1 to 4 as Moulders.

24. According to the appellant, the employment was on contractual basis and after the expiry of the stipulated period, the services of the respondents 1 to 4 have come to an end. It does not amount to retrenchment. The termination clearly falls under 2(oo)(bb) which provides that the 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 contended that it does not amount to retrenchment. Therefore, the termination of the services of the respondents on the expiry of the stipulated period does not amount to retrenchment. The service has come to an end automatically after the expiry of stipulated period. Therefore, the respondents 1 to 4 cannot raise an industrial dispute.

25. The respondents contend that they were given training as Moulders for a period of three years. Thereafter, they were appointed as Moulders. They were

branded as temporary employees. They were paid wages of Rs. 8,124/- per month. For similar work the permanent employees are paid wages of Rs. 16,000/- per month. It is nothing but an unfair labour practice. It squarely falls under item Nos. 9 and 10 of Fifth Schedule of I.D. Act which provides that to show favouritism or partiality to one set of workers regardless of merit and to employ workmen as "badlis", casuals or temporaries and to continue them as such for years with the object of depriving them of their status and privileges of permanent workmen is an unfair labour practice. The respondents were employed as temporaries and continued for years with the object of depriving them of their status and privileges of permanent workmen. Therefore, it amounts to unfair labour practice which is an industrial dispute.

26. It was contended by the learned counsel for the appellant that at the instance of individual workmen, industrial dispute cannot be raised. It should be sponsored by the union or majority of the workmen. Reliance was placed on the following decisions:

"i) In the *The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen*, SC , the Hon"ble Supreme Court has held that the dispute of a single workman would become an industrial dispute when it is sponsored by a Union or by a considerable number of workmen; for it can be then be taken that it does affect them as a class. No hard and fast rule can be laid down as to the number of workmen whose association will convert an individual dispute into an industrial dispute. That must depend upon the facts of each case and the nature of the dispute.

ii) In *State of Punjab Vs. The Gandhara Transport Company (P) Ltd. and Others*, , the Hon"ble Supreme Court has observed as follows at para 11;

"The sponsoring by the 13 dismissed employees will have to be left out of consideration. If so, we are left with the position that the espousal of the dispute, in this case, was only by five out of sixty employees of the respondent Company. It cannot in the circumstances, be held that there has been an espousal of the dispute in this case by an appreciable body of the workmen of the respondent Company so as to make it an industrial dispute. The State Government will have jurisdiction to make a reference only if there is an industrial dispute. As there was no industrial dispute, the reference made by the State Government has been rightly held by the High Court to be incompetent."

iii) In *The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another*, , the Hon"ble Supreme Court has held,

"An individual dispute at the inception could not be converted into an industrial dispute by subsequent support."

iv) In *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, , the Hon"ble Supreme Court has held that a dispute between the employer and an individual workman does not constitute an industrial dispute

unless the cause of the workman is espoused by a body of workmen.

v) In *P.M. Murugappa Mudaliar Rathina Mudaliar and Sons (By M. Muniswami, Partner) Vs. Raju Mudaliar (P) and Others*, KARNATAKA , this Court has held that the dispute between individual workman and management can become industrial dispute when that dispute is sponsored by the union. When validity of reference relating to single workman is challenged on ground that what is referred is only individual dispute and not industrial dispute, it is for the workman to show that his cause has been sponsored by his union or by number of workmen of his class.

vi) In *The Management of Majestic Theatre, Moga Vs. Workmen of The Majestic Theatre, Moga and Others*--> , the Punjab and Haryana High Court has held that the workmen involved in the dispute cannot ordinarily set themselves up as supporters of each other and the fact remains that there was only one supporter from the establishment of workmen involved in the dispute. It is not sufficient to turn the dispute into an industrial dispute.

vii) In *Shamsuddin Vs. State of Kerala and Others*, , the Kerala High Court has held that the dispute is not an industrial dispute and therefore, it cannot not be referred to the Tribunal.

viii) In *Gondhara Transport Co. (Pvt) Ltd. Vs. State of Punjab and Others*, , the Punjab and Haryana High Court has held that to constitute an industrial dispute within the meaning of the Act, the cause of the affected workman must either be espoused by the Union of the employer's establishment or by a considerable number of members or appreciable section of that establishment. Employees who have been dismissed and whose cause is not in question cannot be taken into account for constituting an appreciable section of the Employer's of the establishment.

ix) In *Management of Hotel Samrat Vs. Government of NCT and Others*, , the Delhi High Court has held that unless the workman approaches the union to take up his cause or that the Union had taken cause of workman with Management it cannot be said that industrial dispute existed between the workman and the employer.

x) In *Chittadi Estate Vs. Industrial Tribunal and Others*, , the Kerala High Court has held that the dispute concerned is not an industrial dispute as defined under section 2(k) of the Industrial Dispute Act and therefore, the Labour Court had no jurisdiction to deal with it.

xi) In *Associated Cement Companies, Ltd. Vs. Central Government Industrial Tribunal and Others*, , the Patna High Court has held that a dispute which is not an Industrial dispute cannot be turned into an industrial dispute by merely making an order of reference.

xii) In *Khadi Gramodyog Bhawan Workers" Union Vs. E. Krishnamurthy, Industrial Tribunal and Another*, , the Punjab and Haryana High Court has held

that an individual dispute becomes an industrial dispute only if the cause of an individual worker has been espoused by the Union of which such worker was a member on the date of dismissal.

xiii) In *Sivasubrahmanyam (T.S.) and Another Vs. State of Madras* (by Deputy Secretary to Government, Department of Industries, Labour and Co-operation) and Another, , the Madras High Court has held that the dispute concerns an individual and it would not affect the workers as class and therefore, it cannot be said to be an industrial dispute.

xiv) In *Mahendra Singh Dhantwal Vs. Hindustan Motors Ltd. and Others*, , the Hon''ble Supreme Court has held that termination simpliciter or automatic termination of service under the conditions of service or under the standing orders is outside the scope of Section 33 of the Industrial Dispute Act.

xv) In *National Engineering Industries Ltd. Vs. Hanuman*, , the Hon''ble Supreme Court has held that where a workman's service terminates automatically under the standing order, Section 33 would not apply and also an application under Section 33-A would not be maintainable.

xvi) In *Nand Kishore Sharma Vs. Judge, Industrial Tribunal and Others*, , Rajasthan High Court has held that the termination was not on the ground of misconduct and therefore, application under section 33-A of the Industrial Dispute Act was rightly rejected.

xvii) In *The Haryana State Agricultural Marketing Board Vs. Subhash Chand and Another*, , the Hon''ble Supreme Court has held Employee Working only for 356 days and not for years, Schedule V would not apply. No legal right derived to continue in service and therefore, it does not amount to unfair labour practice.

xviii) In *Yamuna Shankar Sharma Vs. State of Rajasthan and Others*, , the Hon''ble Supreme Court has confirmed the conclusion of the High Court that appointment for a fixed period as stop gap arrangement, the claim for regularization is not tenable.

xix) In *Management of Kalpataru Vidya Samasthe (R) and Another Vs. S.B. Gupta and Another*, , the Hon''ble Supreme Court has held, where the appointment is contractual and by efflux of time, the appointment comes to an end, the person holding the post has no right to continue in the post.

xx) In *Regional Manager, SBI v. Raja Ram* reported in 2004) 8 SCC page 164, the Hon''ble Supreme Court has held, for the practice to amount to unfair labour practice it must be found that the workman had been retained on a casual or temporary basis with the object of depriving the workman of the status and privilege of a permanent workman. Otherwise item No. 10 of Schedule V of the Act would not apply.

xxi) In *Gangadhar Pillai Vs. Siemens Ltd.*, , the Hon''ble Supreme Court has held, only because an employee has been engaged as a casual or temporary

employee or that he had been employed for a number of years, the same by itself may not lead to the conclusion that such appointment had been made with the object of depriving the status and privilege of a permanent employee. It is necessary to consider the entire facts and circumstances of the case.

xxii) In *M.D., Karnataka Handloom Dev. Corpn. Ltd. Vs. Sri Mahadeva Laxman Raval*, , the Hon''ble Supreme Court has held, the respondent was engaged only on contract basis. It was only a seasonal work. Therefore, it cannot be said that the respondent was retrenched in view of sub-clause (bb) of section 2(oo) of the Act.

xxiii) In *The Workmen and Others Vs. Hindustan Lever Ltd.*, , the Hon''ble Supreme Court has held, the Tribunal cannot travel beyond the pleadings and raise issues which the parties to the reference are precluded or prohibited from raising. Tribunal's jurisdiction is confined to the order of reference.

xxiv) In *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, , the Hon''ble Supreme Court has observed that writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals. The Court exercising writ jurisdiction cannot act as an appellate court. The finding of fact reached by the inferior court or Tribunal appreciating the evidence cannot be reopened or questioned in writ jurisdiction. A finding of fact based on no evidence would be regarded as error of law which can be corrected by writ of certiorari.

xxv) In *Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Another*, , the Hon''ble Supreme Court has observed as follows at para 10;

"The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability."

xxvi) In *Mukand Ltd. Vs. Mukand Staff and Officers' Association*, , the Hon''ble Supreme Court has observed that the Tribunal being a creature of the reference, cannot adjudicate matters not within the purview of the dispute actually referred to it by the order of reference.

xxvii) In *Senior Regional Manager, Hindustan Petroleum Corporation Limited, Secunderabad and Another Vs. Presiding Officer, Industrial Tribunal-I, Hyderabad and Another*, , the A.P. High Court has held, the Tribunal has exceeded its jurisdiction in declaring the workmen concerned are entitled to pay scale on par

with regular employees as that was not the term of reference.

xxviii) In *Surya Dev Rai Vs. Ram Chander Rai and Others*, , the Hon''ble Supreme Court has held, in a writ of certiorari the High Court may quash the proceedings of the Tribunal, authority or court but may not substitute its own findings or directives in lieu of the one given in the proceedings forming the subject matter of certiorari. High Court would be justified in refusing the writ of certiorari if no failure of justice has occasioned.

xxix) In *Siemens Ltd. and Another Vs. Siemens Employees Union and Another*, , the Hon''ble Supreme Court has observed that anyone who alleges unfair labour practice must plead it specifically and such allegations must be established properly before any forum can pronounce on the same. It is to be kept in mind that in the changed economic scenario, the concept of unfair labour practice is also required to be understood in the changed context.

xxx) In *Oshiar Prasad and Others Vs. The Employers in relation to Management of Sudamdih Coal Washery of BCCL* , the Hon''ble Supreme Court has held that the appropriate Government is empowered to make reference only when industrial dispute exists or is apprehended between the parties. Similarly, the Tribunal while answering the reference has to confine its inquiry to the questions referred and has no jurisdiction to travel beyond the questions or terms of reference.

xxxi) In *BHEL Ltd., v. Anil & Others* reported in (2007) 1 SCC Page 610, the Hon''ble Supreme Court has observed that there is a difference between an individual dispute which is deemed to be an industrial dispute under section 2-A of the said 1947 Act on the one hand and an industrial dispute espoused by the Union in terms of Section 2(1) of the said 1947 Act. An individual dispute which is deemed to be an industrial dispute under Section 2A concerns discharge, dismissal, retrenchment or termination whereas an industrial dispute under Section 2(1) covers a wider field. It includes even the question of status.

xxxii) In *State Bank of Bikaner and Jaipur Vs. Om Prakash Sharma*, , the Hon''ble Supreme Court has held the jurisdiction of the Labour Court emanates from the order of reference and does not extend beyond the terms of reference.

xxxiii) In *Hindustan Petroleum Corpn. Ltd. Vs. Ashok Ranghba Ambre*, , the Hon''ble Supreme Court has observed in industrial adjudication the order of termination was quashed as it was not in accordance with law. That did not mean that the workman had substantive right to hold the post. The High Court was wrong in directing the Corporation to make the petitioner permanent and extend all benefits.

xxxiv) In *Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. and Another*, , the Hon''ble Supreme Court has observed, if there is no pleading, even if there is evidence, it cannot be considered. The pleadings must be such as to give sufficient notice to the other party. If there is no pleading, there is no question of

proving something which is not pleaded."

27. From the above decisions, it is clear;

"(1) The dispute between individual workman and Management can become an industrial dispute only when it is sponsored by a union or considerable number of workmen.

(2) The workmen involved in the dispute cannot ordinarily set up themselves as supporters of each other.

(3) Termination simpliciter or automatic termination of service is outside the scope of section 33 of Industrial Disputes Act. Application under section 33-A is not maintainable.

(4) The employee appointed for a fixed period cannot claim regularization. The appointment on contractual basis comes to an end by efflux of time and the workman has no right to continue in the post.

(5) It is only when the employees are continued for years with artificial break with the object of depriving them the status and privileges of permanent workmen it amounts unfair labour practice.

(6) If the appointment was for a fixed term and bonafide and not to deprive the employee from claiming the benefit of permanent status, the termination of service falls under section 2(oo)(bb) of the Act.

(7) The Tribunal's/Courts jurisdiction is confined to the order of reference.

(8) The termination of service on contractual basis for a fixed period does not amount to retrenchment and it would fall under section 2(oo)(bb) of the I.D. Act.

(9) In a writ of certiorari error of law can be corrected. The proceedings cannot be quashed if there is no failure of justice.

(10) The person who alleges unfair labour practice must plead it specifically and prove it."

28. The learned counsel for the respondents relied upon the following decisions;

"i) In Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , the Hon"ble Supreme Court has observed as follows at para 90;

"Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of nineteenth century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample under foot the rights of the

weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14 . This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.

ii) In *National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others*, , the Hon'ble Supreme Court has observed as follows; In the light of changing socioeconomic concepts and values, today social scientists and thinkers regard a company as a living, vital and dynamic, social organism with firm and deep rooted affiliations with the rest of the community in which it functions. It would be wrong to look upon it as something belonging to the shareholders. It is true that the shareholders bring capital, but capital is not enough. It is only one of the factors which contribute to the production of national wealth. There is another equally, if not more, important factor of production and that is labour. Then there are the financial institutions and depositors, who provide the additional finance required for production and lastly, there are consumers and

the rest of the members of the community who are vitally interested in the product manufactured in the concern. Then how can it be said that the capital, which is only one of the factors of production, should be regarded as owner having an exclusive dominion over the concern, as if the concern belongs to it? A Company, according to the new social economic thinking, is a social institution having duties and responsibilities towards the community in which it functions.

iii) In *State Bank of India and Others v. Amal Kr. Sen and others* reported in 1988 Lab IC page 1585, the Calcutta High Court has held that social justice would require that balance should be tilted in favour of the employees.

iv) In KID.287/2001 and connected cases, the Labour Court has directed the appellant herein to reinstate the employees who are similarly situated.

v) In *Punjab Land Development and Reclamation Corporation Limited v. The Presiding Officer, Labour Court, Chandigarh*, Civil Appeal Nos. 3241-48/1981 and connected appeals, disposed of on 4.5.1990, the Hon''ble Supreme Court has held that it is only the ratio decidendi of a case which constitutes the binding precedent. It has to be ascertained by an analysis of the material facts of the case. When court acts in ignorance of its own decision, the decision is per incuriam.

vi) In *Sudarshan Rajpoot Vs. U.P. State Road Transport Corporation*, , the Hon''ble Supreme Court has held that extracting of work though of permanent nature continuously for more than three years, the alleged employment on contract basis is wholly impermissible. It amounts to an unfair labour practice as defined under Section 2(ra) of the I.D. Act read with sections 25-T and 25-U .

vii) In *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others*, , the Hon''ble Supreme Court has held that if the approval for order of dismissal is not granted under section 33(2)(b) of the Industrial Disputes Act, 1947, the order of discontinuance becomes ineffective. The workmen would be deemed to never have been dismissed or discharged and they would remain in service of the employer. No requirement for the workmen to make a complaint under section 33A .

viii) In *Tamilnadu Terminated Full Time Temporary LIC Employees Association Vs. Life Insurance Corporation of India and Others* , the Hon''ble Supreme Court has held that employing workmen as temporary employees against permanent post doing perennial nature of work and continuing them for number of years is a clear case of unfair labour practice under section 2(ra) of the Industrial Disputes Act.

ix) In Civil Appeal No. 480(N) of 1973 *Shankar Das v. Union of India & Others* disposed of on 12-3- 1985 the Hon''ble Supreme Court has directed reinstatement with full backwages from the date of dismissal until reinstatement.

x) In *Mary Teresa Morris Vs. Management of St. Anne's Educational Society*, , this Court has held that the Tribunal can always put the parties to the same

position that they were occupying if the impugned order was not passed.

xi) In *Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi)*, , the Hon"ble Supreme Court has held if 18 workmen are dismissed by an order passed on the same day, it would be unreasonable to hold that the workmen themselves do not form a group of workmen which would be justified in supporting the cause of one another. In dealing with this question, we ought not to forget the basic theory on which limitation has been introduced by this Court on the denotation of the words "Industrial dispute" as defined by Section 2(k) of the Act. The Tribunal was in error in rejecting the reference on the preliminary ground that the dispute referred to it was an individual dispute and not an Industrial dispute within the meaning of Section 2(k) ."

29. From the above decisions, it is clear;

"(1) The courts will not enforce and when called upon to do so, strike down an unfair and unreasonable clause in a contract entered into between the parties who are not equal in bargaining power. It applies to the situations in which the weaker party is in a position in which he can obtain goods or service or means of livelihood only upon the terms imposed by the stronger party.

(2) A company, according to the new social economic thinking is a social institution having duties and responsibilities towards the community in which it functions.

(3) Social justice requires that the balance should be titled in favour of the employees.

(4) The Labour Court has directed the appellant herein in KID No. 287/2001 to reinstate the employees who are similarly situated.

(5) It is only the ratio decidendi of the case which constitutes the binding precedent. It has to be ascertained by analysis of the material facts of the case. When Court acts in ignorance of its own decision, the decision is per incuriam.

(6) Extracting of work of permanent nature continuously for three years, the employment on contract basis is wholly impermissible. It amounts unfair labour practice as defined under Section 2(ra) of the I.D. Act r/w. Sections 25-T and 25-U .

(7) If the approval for an order of dismissal is not granted under Section 33(2) (b) of the I.D. Act, the order of discontinuance becomes ineffective. The workmen would be deemed to never have been dismissed or discharged and they would remain in service of the employer. No requirement for the workmen to make a complaint under Section 33A of the I.D. Act.

(8) Employing workmen as temporary employees against permanent post during perennial nature of work and continuing them for number of years is a clear case of unfair labour practice under section 2(ra) of the I.D. Act.

(9) It would be unreasonable to hold that the workmen themselves do not form a group of workmen which would be justified in supporting the cause of one another."

30. It is relevant to note, the respondents 1 to 4 were given training for a period of three years as moulders from 10.10.2000 to 9.10.2003. Thereafter, the respondents 1 to 4 were appointed as Moulders during February and March 2004. The appointment orders show that the appointment was for a definite period. But, without any break the respondents 1 to 4 have been continued in service from February/March 2004 till 30.8.2011. Thereafter, they have not been continued, that too, when the proceedings were pending before the Labour Court. Therefore, the respondents 1 to 4 contend that it is an unfair labour practice. Their work is of perennial nature. For similar work the permanent employees are paid wages of Rs. 16,000/- per month, but the respondents were paid wages of Rs. 8,124/- per month. The respondents have been in continuous service till 30.8.2011. Thereafter, they have not been continued during the pendency of the proceedings before the Labour Court.

31. The appellant contends that the respondents were appointed temporarily for a specific period. After the expiry of the said period, the services of the respondents have come to an end. Therefore, it does not amount to retrenchment and squarely falls under section 2(oo)(bb) of the I.D. Act. The dispute is not an industrial dispute. There is no unfair labour practice.

32. It is not in dispute that the respondents were trained as Moulders for a period of three years from 10.10.2000 to 9.10.2003. Thereafter, the respondents 1 to 4 have been appointed as Moulders during February and March 2004. Initially the respondents have been appointed for a specified period. Thereafter, the services of the respondents have been continued from time to time without any break till 30.8.2011. During the pendency of the proceedings before the Labour Court, the services of the respondents have not been continued. Through letters dated 27.8.2011 the respondents have been informed that their assignment as artisan moulders has come to an end on 30.8.2011 after the working hours. The respondents have questioned it by filing IAs. 1 to 4. The IAs have been rejected. Thereafter, the respondents have filed one more application i.e., I.A. No. 5. The parties have been directed to lead evidence on I.A. No. 5 and also main. It was challenged in W.P. Nos. 80149-152/2012. By order dated 19.6.2012, this court has directed the Labour Court to decide the reference along with the claim made in IAs. 1 to 5. It is observed that the discontinuance of the petitioners' service from August 2011 would not come in the way of reference being decided in accordance with law.

33. The Labour Court has rejected the reference holding that the appointment of the respondents falls within the purview of section 2(oo)(bb) of I.D. Act 1947. The respondents are not entitled for regularization of their service. The Management was justified in not regularizing the service of the respondents.

34. The Labour Court was required to consider the reference with reference to schedule V item Nos. 9 and 10 and section 2(ra) of the I.D. Act. But, it has not considered the reference with reference to unfair labour practice. It was contended by the learned counsel for the respondents that section 2(oo)(bb) cannot be used to exploit less bargaining capacity of the employee. In Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , the Hon"ble Supreme Court has observed at para 90 that the Courts will not enforce and will when called upon to do so, strike down an unfair and unreasonable contract or an unfair and unreasonable clause in a contract entered into between parties who are not equal in bargaining power. It is also observed that it will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party.

35. It was nobody's case that there is violation of Section 25F of the Act. The case of the respondents was that they have been appointed temporarily for the permanent work of moulders and the appellant has practiced unfair labour practice. The Labour Court has not considered the reference with reference to unfair labour practice. It has proceeded to hold that the appointment of the respondents falls under section 2(oo)(bb) of the I.D. Act. The respondents have contended that they have been appointed temporarily for the permanent work of moulders and their service needs to be regularized as the appellant has practiced unfair labour practice.

36. It was contended by the learned counsel for the appellants that the dispute is not an industrial dispute and industrial dispute needs to be raised by a Union or a group of workmen. The respondents themselves cannot raise an industrial dispute. Reliance was placed on the decision of the Hon"ble Supreme Court and High Courts.

37. In the The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen, SC , the Hon"ble Supreme Court has held that the dispute of a single workman would become an industrial dispute when it is sponsored by a Union or by a considerable number of workmen.

38. In P.M. Murugappa Mudaliar Rathina Mudaliar and Sons (By M. Muniswami, Partner) Vs. Raju Mudaliar (P) and Others, Karnataka , this Court has held that the dispute between individual workman and management can become industrial dispute when that dispute is sponsored by the Union.

39. In the The Management of Majestic Theatre, Moga Vs. Workmen of The Majestic Theatre, Moga and Others--> , the Punjab and Haryana High Court has held that the workmen involved in the dispute cannot ordinarily set up themselves as supporters of each other. There was only one supporter from the establishment of workmen involved in the dispute. It is not sufficient to turn the dispute into an industrial dispute.

40. In State of Punjab Vs. The Gandhara Transport Company (P) Ltd. and

Others, , the Hon"ble Supreme Court has observed as follows at para 11:

"11. The sponsoring by the 13 dismissed employees will have to be left out of consideration. If so, we are left with the position that the espousal of the dispute, in this case, was only by five out of sixty employees of the respondent company. It cannot in the circumstances, be held that there has been an espousal of the dispute in this case by an appreciable body of the workmen of the respondent company so as to make it an industrial dispute. The State Government will have jurisdiction to make a reference only if there is an industrial dispute. As there was no industrial dispute, the reference made by the State Government has been rightly held by the High Court to be incompetent."

Similar view is taken in other cases also which are referred to at para 25.

41. The learned counsel for the respondents placed reliance on the following decisions:

"i) In Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , the Hon"ble Supreme Court has observed at para 90 that the Courts will not enforce and will when called upon to do so, strike down an unfair and unreasonable contract or an unfair and unreasonable clause in a contract entered into between parties who are not equal in bargaining power. It is also observed that it will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party.

ii) In National Textile Workers" Union and Others Vs. P.R. Ramakrishnan and Others, , the Hon"ble Supreme Court has observed, a company according to the new social economic thinking is a social institution having duties and responsibilities towards the community in which it functions.

iii) In KID No. 287/2001 and connected cases, the Labour Court has directed the appellant herein to reinstate the employees who are similarly situated.

iv) In Sudarshan Rajpoot Vs. U.P. State Road Transport Corporation, , the Hon"ble Supreme Court has held that extracting of work though of permanent nature continuously for more than three years, the alleged employment on contract basis is wholly impermissible. It amounts to an unfair labour practice as defined under Section 2(ra) of the I.D. Act read with sections 25-T and 25-U .

v) In Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, , the Hon"ble Supreme Court has held that if the approval for order of dismissal is not granted under section 33(2)(b) of the Industrial Disputes Act, 1947, the order of discontinuance becomes ineffective. The workmen would be deemed to never have been dismissed or discharged and they would remain in service of the employer. No requirement for the workmen to make a complaint under section 33A .

vi) In Tamilnadu Terminated Full Time Temporary LIC Employees Association Vs.

Life Insurance Corporation of India and Others , the Hon"ble Supreme Court has held that employing workmen as temporary employees against permanent posts doing perennial nature of work and continuing them for number of years is a clear case of unfair labour practice under section 2(ra) of the Industrial Disputes Act, 1947.

vii) In Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), , the Hon"ble Supreme Court has held, if 18 workmen are dismissed by an order passed on the same day, it would be unreasonable to hold that the workmen themselves do not form a group of workmen which would be justified in supporting the cause of one another. In dealing with this question, we ought not to forget the basic theory on which limitation has been introduced by this Court on the denotation of the words "Industrial dispute" as defined by Section 2(k) of the Act. The Tribunal was in error in rejecting the reference on the preliminary ground that the dispute referred to it was an individual dispute and not an Industrial dispute within the meaning of Section 2(k) ."

42. It is clear from the decision of the Hon"ble Supreme Court reported in Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), , it would be unreasonable to hold that the workmen themselves do not form a group which would be justified in supporting the cause of one another. If nobody is there or if the employees are not the members of any Union and the other workmen or Union will not support their cause, it does not mean that the aggrieved workmen cannot raise a dispute themselves.

43. In the present case, the respondents were not supported by the Union. The Union has settled the matter with the appellant in respect of some employees. It has not shown any interest in respect of the respondents. In fact, in KID No. 287/2001 and connected cases, in similar circumstances, the Labour Court has directed reinstatement of the workmen. In the present case, the respondents have contended that their appointment is nothing but unfair labour practice. Item No. 10 of Schedule V of I.D. Act provides that temporary appointment to deprive the workmen benefits of the permanent employment amounts to unfair labour practice. In the present case, the respondents have been trained and appointed as Moulders. They were paid wages of Rs. 8124/- per month whereas the permanent employees are paid wages of Rs. 16,000/- per month for similar work. Therefore, the respondents have contended that their appointment is nothing but unfair labour practice and it needs to be regularized.

44. Before the Labour Commissioner and State Conciliation Officer a joint memo dated 13.7.2007 has been filed by the appellant and the Union. The appellant has agreed to absorb temporary employees deployed prior to 1996, between 1997 and 2000 and during 2001 as permanent employees and they are absorbed. Insofar as the respondents are concerned, the appellant contends that they are temporary employees and they are appointed on contractual basis and it has come to an end on 30.8.2011. Therefore, the services of the respondents

cannot be continued. This argument cannot be accepted, for the reason, it violates equal treatment. The case of the respondents squarely falls under Section 2(ra) r/w. Item No. 10 of Schedule V. The Hon''ble Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, has observed at para 90 that the Courts will not enforce and will when called upon to do so, strike down an unfair and unreasonable contract or an unfair and unreasonable clause in a contract entered into between parties who are not equal in bargaining power. It is also observed that it will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party.

45. In Sudarshan Rajpoot Vs. U.P. State Road Transport Corporation, , the Hon''ble Supreme Court has held that extracting of work though of permanent nature continuously for more than three years, the alleged employment on contract basis is wholly impermissible. It amounts to an unfair labour practice as defined under Section 2(ra) of the I.A. Act read with sections 25-T and 25-U .

46. In Tamilnadu Terminated Full Time Temporary LIC Employees Association Vs. Life Insurance Corporation of India and Others , the Hon''ble Supreme Court has held that employing workmen as temporary employees against permanent post doing perennial nature of work and continuing them for number of years is a clear case of unfair labour practice under section 2(ra) of the Industrial Disputes Act.

47. Therefore, it is clear, in the circumstances of the case, it cannot be said that the respondents as a group of workmen cannot raise an industrial dispute. They are seeking regularization of their service on the ground of unfair labour practice. The appointment of respondents squarely falls under Section 2(ra) r/w. Item No. 10 of Schedule V of the I.D. Act. It is an unfair labour practice. The respondents were continued in service for several years without any break. They were appointed during February/March 2004 and they continued in service till 30.8.2011. When the proceedings were pending before the Labour Court, the respondents have been informed through letter dated 27.8.2011 that their assignment comes to an end on 30.8.2011. The case of the respondents squarely falls under section 2(ra) r/w. item No. 10 of Schedule V of the I.D. Act. It is an unfair labour practice. Therefore, it cannot be said that the dispute is not an industrial dispute. In our considered view, the dispute is an industrial dispute and the reference was proper.

48. The Union has not supported the cause of the respondents. So also the workmen. When the Union and the other workmen have not supported the cause of the respondents, it cannot be said the respondents cannot raise an industrial dispute as a group of workmen. They can raise an industrial dispute. Point Nos. 1 and 2 answered accordingly.

49. Point No. 3:

"In the present case, the respondents being trained as moulders for three years were appointed as moulders during February/March 2004 initially for a specified period. Thereafter, the respondents have been continued in service without any break for several years till 30.8.2011. Thereafter, through letter dated 27.8.2011 the respondents have been informed that their assignment comes to an end on 30.8.2011 when the proceedings were pending before the Labour Court. The respondents have questioned it by filing IAs. 1 to 4. They have been rejected. Thereafter, the respondents have filed IA. No. 5. The Labour Court has directed to lead evidence on IA. No. 5 and also main. It was challenged in W.P. Nos. 80149- 152/2012. By order dated 19.6.2012, this Court has directed the Labour Court to decide the reference along with the claim made in IAs. 1 to 5. It is observed that the discontinuance of the petitioners' service from August 2011 would not come in the way of reference being decided in accordance with law."

50. The Labour Court has rejected the reference holding that the appointment of the respondents falls within the purview of section 2(oo)(bb) of the I.D. Act 1947. The respondents are not entitled for regularization of their service. The Management was justified in not regularizing the services of the respondents.

51. In KID. No. 287/2001 and connected cases, the Labour Court has directed the appellant herein to reinstate the workmen who are similarly situated.

52. In Sudarshan Rajpoot Vs. U.P. State Road Transport Corporation, , the Hon"ble Supreme Court has held that extracting of work though of permanent nature continuously for more than three years, the alleged employment on contract basis is wholly impermissible. It amounts to an unfair labour practice as defined under Section 2(ra) of the I.A. Act read with sections 25-T and 25-U .

53. In Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, , the Hon"ble Supreme Court has held that if the approval for order of dismissal is not granted under section 33(2)(b) of the Industrial Disputes Act, 1947, the order of discontinuance becomes ineffective. The workmen would be deemed to never have been dismissed or discharged and they would remain in service of the employer. No requirement for the workmen to make a complaint under section 33A .

54. In Tamilnadu Terminated Full Time Temporary LIC Employees Association Vs. Life Insurance Corporation of India and Others , the Hon"ble Supreme Court has held that employing workmen as temporary employees against permanent posts doing perennial nature of work and continuing them for number of years is a clear case of unfair labour practice under section 2(ra) of the Industrial Disputes Act, 1947.

55. Before the Labour Commissioner and State Conciliation Officer a joint memo dated 13.7.2007 has been filed by the appellant and the Union. The appellant has agreed to absorb temporary employees deployed prior to 1996, between 1997 and 2000 and during 2001 as permanent employees and they are absorbed.

56. In the present case, the appellant contends that the respondents are temporary employees and their service has come to an end on 30.8.2011. It cannot be accepted. The respondents have been continued in continuous service for several years from February/March 2004 till 30.8.2011 without any break. Similarly situated persons have been regularized. Therefore, the appellant cannot contend that the respondents are temporary employees and their services cannot be regularized. It is an unfair labour practice. Therefore, in view of the decisions of the Hon''ble Supreme Court referred to above and in the circumstances of this case the respondents are entitled for regularization. Point No. 3 answered, accordingly.

57. Point No. 4

The Labour Court has failed to consider the reference in proper perspective. It has not considered the reference with reference to unfair labour practice. The respondents were trained as moulders for a period of three years. Thereafter, they were appointed as moulders during February/March 2004. They have continued in service till 30.8.2011. When the proceedings were pending before the Labour Court the respondents have been informed that their service comes to an end on 30.8.2011. It is an unfair labour practice. Therefore, the learned Single Judge was justified in interfering with the order passed by the Labour Court. There is no merit in the contention that the learned Single Judge has exceeded or erred while exercising the jurisdiction. When the Labour Court has failed to consider the reference in proper perspective, the learned Single Judge was justified in interfering with the order passed the Labour Court. Therefore, the impugned order does not call for interference.

Accordingly, the writ appeals are dismissed.

I.A. No. 3/2015 does not survive for consideration and accordingly, it is disposed of.