

(2025) 12 KL CK 1920

In the High Court Of Kerala

Case No : Writ Petition (C) Nos.32084, 33809 Of 2006, 13062 Of 2007

Canara Bank Represented By Deputy General Manage

APPELLANT

Vs

C.Rajendran, Chettiparambil

RESPONDENT

Date of Decision : 02-12-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 2(bb), 2(oo) 2(s), 10, 10(1)(d), 11A, 25F, 25FF, 25FFF

Limitation Act, 1963 — Article 137

Citation : (2025) 12 KL CK 1920

Hon'ble Judges : M.A.Abdul Hakhim, J

Bench : Single Bench

Advocate : M.Gopikrishnan Nambiar, K.John Mathai, Joson Manavalan, Kuryan Thomas, Paulose C. Abraham, Raja Kannan, Jai Mohan, C.Anil Kumar, Bindhya Jose, A.K.Preetha

Final Decision : Dismissed

Judgement

M.A.Abdul Hakhim, J

1. Since common questions arise in these Writ Petitions, these Writ Petitions are disposed of by a common judgment.

2. W.P.(C) Nos.32084/2006 & 33809/2006 arise from the Award of the Central Industrial Tribunal cum Labour Court, Ernakulam, dated 31.08.2006 in I.D. No.24/2006. W.P.(C) No.32084/2006 is filed by the Management and W.P.(C) No.33809/2006 is filed by the Workman in the said I.D. W.P.(C) No.13062/2007 arises from the Award of the Central Industrial Tribunal cum Labour Court, Ernakulam, dated 07.12.2006 in I.D. No.42/2006. W.P.(C) No.13062/2007 is filed by the Management in the said I.D. The Workmen, C. Rajendran in I.D. No.24/2006 and A.K. Pankajakshan in I.D. No.42/2006 had been working as deposit collectors of the Management Bank at its Thrissur and Kodungallur branches, respectively.

3. In I.D. No.24/2006, the reference made by the Central Government under Section 10(1)(d) of the Industrial Disputes Act, 1947 (for short, 'ID Act'), for adjudication is whether non-renewal of contract amounts to denial of employment; whether the service of the Workman was terminated by the Management, and if terminated, whether the termination is legal or not, and if not, what are the reliefs the Workman is entitled to. In I.D. No.42/2006, the reference for adjudication is whether the action of the Management in terminating the services of the Workman, Deposit Collector, is legal and justifiable, and if not, what reliefs the Workman is entitled to.

4. In both the Industrial Disputes, the Industrial Tribunal found that the termination of the services of the Workmen is not legal. In I.D. No.24/2006, it is ordered that the Workman is entitled to the benefits under Section 25-F of the ID Act. In I.D. No.42/2006, it is ordered that the Workman is entitled to be reinstated with back wages on the basis of the average remuneration paid by way of commission in the year preceding his termination; that he is entitled to continuity of service and other benefits, if any, and that he is entitled to cost.

5. The Management filed the Writ Petition challenging the Awards passed by the Industrial Tribunal and to dismiss the claims of the Workmen. The Workman in I.D. No.24/2006 filed the Writ Petition challenging the Award to the extent to which it refused to order reinstatement of the Workman with back wages.

6. Parties are referred to in accordance with their status before the Industrial Tribunal for convenience.

7. I heard the learned Counsel for the Management in these Writ Petitions, Adv. Sri. Jai Mohan, the learned Counsel for the Workman in I.D. No.24/2006, Smt. Devika Mohan and the learned Counsel for the Workman in I.D. No.42/2006, Sri. Thomas P. Kuruvila.

8. The learned Counsel for the Management contended that even though Article 137 of the Limitation Act, 1963, is not applicable to the Industrial Disputes, it is well settled that the Industrial Tribunal/Labour Court should not entertain stale claims. The Workmen were engaged by the Management only till the year 1994. The Industrial Dispute was raised only in the year 2002 and 2003 after a lapse of nearly 8 years. The Workmen did not offer any sufficient explanation for the delay in raising the Industrial Dispute. The long delay in raising the Industrial Dispute by itself caused prejudice to the Management. There was no employer-employee relationship between the Management and the Workmen. They were engaged as Deposit Collectors with remuneration as commission on the deposits for a particular Deposit Scheme by the name of Bala Kshema Deposit (BKD). They were known as Bala Kshema Deposit Agents. The relationship between the Management and the Workmen was that of a Principal - Agent relationship. There was absolutely no intention or contemplation either on the part of the Workmen or on the part of the Management that such engagement shall culminate in employment of the Workmen in the service of the Bank. Originally, the father of

the Workman in I.D. No.24/2006 had been working as a collection agent under the BKD Scheme. The said Workman used to help the father, and when his father became too ill, the said Workman was engaged as a Bala Kshema Deposit Agent as per the Agreement entered into between the said Workman and the Management. The duties of Bala Kshema Deposit Agent were specifically informed to the said Workman as per the Letter dated 30.10.1989 with effect from 01.04.1989. In the case of Workman in I.D. No.42/2006, he was initially engaged as Deposit Collector for the collection of Nitya Nidhi Deposit (NND) Scheme and BKD Deposits as per the Agreement dated 08.10.1977. Later, as per the Agreement dated 19.09.1991, the said Workman was authorised to act as Deposit Collector only for the BKD Scheme. During the year 1993 – 1994, the Management took a policy decision not to open any new account under the BKD Scheme with effect from 01.06.1994. The Management issued Circular No.109/1994 dated 19.04.1994, communicating the policy decision. However, accounts opened up to 31.05.1994 were continued till their due dates as per the terms and conditions of the BKD Scheme. On the maturity of the deposits existing as on the date of closure of the Scheme, no further agency work was available to the Workmen, and thereafter they ceased to be the agents of the Management, and the purpose of the contract entered into between the Management and the Workmen came to an end. The Workmen also understood the same, and hence the Workmen requested payment of the amount lying in his credit in the Bala Kshema Agents Contributory Welfare Fund introduced by the Bank and the same was paid. There was no denial of employment and there was no employer-employee relationship between the Management and the Workmen. The relationship between the Management and the Workmen was purely based on contract and was in the nature of Principal and Agent. They lost their work on the expiry of the contract consequent to the discontinuance of the Deposit Scheme with respect to which they were engaged. There was no termination of service at all. It is not retrenchment within the meaning of Section 2(oo) of the ID Act as the Exclusion Clause (bb) of Section 2(oo) is clearly applicable. Even though in one case, the reference includes a question whether there was termination of service or not, the same was not answered by the Tribunal. Since there was no retrenchment, Section 25-F of the ID Act is not applicable to the Workmen. The jurisdiction of the Tribunal is limited to the points specifically referred for its adjudication and to matters incidental thereto, but the Tribunal went beyond the terms of reference and even introduced its own case which were not pleaded by the Workmen. Learned Counsel cited the decisions of the Hon'ble Supreme Court in *Indian Banks Association v. Workmen of Syndicate Bank and Others* [(2001) 3 SCC 36], *Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Another* [(1999) 6 SCC 82], *Nedungadi Bank Ltd. v. K.P. Madhavankutty and Others* [(2000) 2 SCC 455], *Assistant Executive Engineer, Karnataka v. Shivalinga* [(2002) 10 SCC 167], *Assistant Engineer, CAD, Kota v. Dhan Kunwar* [(2006) 5 SCC 481], *U.P. State Road Transport Corporation v. Ram Singh and Another* [(2008) 17 SCC 627], *S.M. Nilajkar and Others v. Telecom District Manager, Karnataka* [(2003) 4 SCC

27], Hariprasad Shivshanker Shukla and Another v. A.D. Divelkar and Others [1957 SCR 121], Municipal Council, Samrala v. Raj Kumar [(2006) 3 SCC 81], Pottery Mazdoor Panchayat v. Perfect Pottery Co. Ltd. and Another [(1979) 3 SCC 762], Executive Engineer, ZP Engg. Divn. and Another v. Digambara Rao and Others [(2004) 8 SCC 262], Shankar Chakravarti v. Britannia Biscuit Co. Ltd. and Another [(1979) 3 SCC 371], Municipal Committee, Tauru v. Harpal Singh and Another [(1998) 5 SCC 635], General Manager, Electrical Rengali Hydro Electric Project, Orissa and Others v. Giridhari Sahu and Others [(2019) 10 SCC 695], J.K. Synthetics Ltd. v. K.P. Agrawal and Another [(2007) 2 SCC 433], Talwara Cooperative Credit and Service Society Ltd. v. Sushil Kumar [(2008) 9 SCC 486], Jagbir Singh v. Haryana State Agriculture Marketing Board and Another [(2009) 15 SCC 327], and the decisions of this Court in Union of India and Others v. K.V. Baby and Another [(1999) 1 LLJ 1290] and Kerala State Electricity Board Ltd. v. The Kerala State Electricity Appellate Authority [2025:KER:65568] in support of his contentions.

9. The learned Counsel for the Workman in I.D. No.24/2006 contended that Article 137 of the Limitation Act is not applicable to the proceedings under the ID Act. A Reference under the ID Act could be dismissed as a stale claim only if the Management pleads and proves that the Management is prejudiced by the delay. There was no such pleading and proof from the side of the Management. The delay is well explained by the Workmen. It is well settled by the decision of the Hon'ble Supreme Court in Indian Banks Association (supra) that deposit collectors are Workmen within the meaning of Section 2(s) of the ID Act. The appointment of the said Workman was not for any definite period. Even though the Management contended that the Contract is for a definite period, no such Contract was produced. In the identical Agreement produced as Ext.P1 in the Writ Petition also, no time period is prescribed for the contract. Even if the Management had discontinued any deposit scheme, the Management could have employed the Workmen in other Deposit Schemes that are continued by the Bank. There was no expiry of the contract requiring renewal of the contract, and hence the Exclusion Clause (bb) of Section 2(oo) of the ID Act is not attracted. The termination of service of the Workman amounts to retrenchment within the meaning of Section 2(oo) of the ID Act. Since the retrenchment is illegal, the Tribunal ought to have ordered reinstatement with back wages. The learned Counsel cited the decision of the Hon'ble Supreme Court in M/s Hindustan Steel Ltd. v. Presiding Officer, Labour Court, Orissa and Others [(1976) 4 SCC 222] to the effect that retrenchment as defined under Section 2(oo) of the ID Act is intended not to include termination of service by efflux of time in terms of the agreement between the parties.

10. The learned Counsel for the Workman in I.D. No.42/2006 advanced arguments supporting the contentions of the learned Counsel for the Workman in I.D. No.24/2006. It is further contended that the Workman was waiting for the verdict in the Indian Banks Association (supra) to raise the dispute. The delay is well explained by the Workman. The Workman was appointed as Deposit

Collector for both the BKD and NND Schemes as per two separate Agreements dated 08.10.1977 produced as Exts.P1 and P2 in the Writ Petition. Ext.P3 dated 19.09.1991 was executed, superseding Ext.P1 Agreement with respect to the BKD scheme alone. It does not mean that the Ext.P2 Agreement with respect to the NND Scheme was discontinued. There was no evidence before the Tribunal that the NND Scheme was discontinued by the Management. Ext.P4 Circular would reveal that the Management has discontinued only the BKD Scheme. At any rate, the Management could have allowed the Workman to continue under the NND Scheme. The Management illegally terminated the service of the Workman. The Tribunal was fully justified in ordering the reinstatement of the Workman with back wages. The learned Counsel cited the decision of this Court in *State Bank of India, represented by its Assistant General Manager (HR) v. Controlling Authority and Others* [2024 SCC OnLine Ker 6458] to show that on discontinuance of a Deposit Scheme by the State Bank of India, the Deposit Collectors therein were offered appointment as peons. Learned Counsel cited the decision of this Court in *The Deputy General Manager, Canara Bank v. The General Secretary, All Kerala Bank's Deposit Collector's Association, Kozhikkode, and Another* [2016 SCC OnLine Ker 20274], in which the Indian Banks Association (*supra*) is followed.

11. I have considered the rival contentions.

12. In view of the decision of the Hon'ble Supreme Court in *Indian Banks Association (supra)*, it is well settled that the Deposit Collectors are Workmen within the meaning of Section 2(s) of the ID Act. It is held that the Deposit Collectors are not regular employees of the Bank; that they, nevertheless, are workers within the meaning of the term as defined in the Industrial Disputes Act; that there is clearly a relationship of master and servant between the Deposit Collectors and the Bank concerned.

13. The next question to be answered is whether the references are liable to be rejected on account of delay. In *Ajaib Singh (supra)*, the Hon'ble Supreme Court held that the provisions of Article 137 of the Schedule to Limitation Act, 1963, are not applicable to the proceedings under the ID Act and that the relief under the ID Act cannot be denied to the Workman merely on the ground of delay; that the plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence; that no reference to the labour court can be generally questioned on the ground of delay alone; that even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the Workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal; that the Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. In *Nedungadi Bank Ltd. (supra)*, the Hon'ble Supreme Court held that law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the ID Act;

that it is not that this power can be exercised at any point of time and to revive matters which had since been settled; that power is to be exercised reasonably and in a rational manner; that there appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the respondent from service; that at the time reference was made no industrial dispute existed or could be even said to have been apprehended; that a dispute which is stale could not be the subject matter of reference under Section 10 of the ID Act; and that as to when a dispute can be said to be stale would depend on the facts and circumstances of each case. In *Shivalinga* (supra), the Hon'ble Supreme Court restored the award of the Labour Court rejecting the reference on the ground of delay after reversing the judgment of the High Court setting aside the award, finding that the delay of 9 years would be fatal to the case; that the Labour Court noticed that it would be impossible to maintain records for such a long period and place them before the Labour Court and that a situation of that nature would render the claim to have become stale. In *Dhan Kunwar* (supra), the Hon'ble Supreme Court held that so far as delay in seeking the reference is concerned, no formula of universal application can be laid down. In *U.P. State Road Transport Corporation* (supra), the Hon'ble Supreme Court found that in several decisions it is held that while delay cannot by itself be sufficient reason to reject an industrial dispute, nevertheless the delay cannot be unreasonable; that the Labour Court should not have entertained the industrial dispute given the enormous delay; that the reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter; that the delay of 13 years is unreasonable and that the mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years.

14. In the cases at hand, there is delay of nearly 8 years in raising the dispute. There is no limitation period for the proceedings under the ID Act. Article 137 of the Limitation Act is not applicable. The question is whether the claim is a stale claim or not. The Management has not pleaded and proved any prejudice on account of the delay. The Management had no case that on account of the delay, it could not produce any evidence to substantiate its case. Hence, I find that the delay in raising the disputes is not fatal to the claim and does not make the claim stale. The Tribunal is fully justified in holding that the claims are not time-barred and stale. Of course, the period of delay is to be taken into consideration while moulding the reliefs, in case the termination is found illegal.

15. The next contention of the learned Counsel for the Management is that there was no termination of service and that before considering the question whether the termination is legal or not, the Tribunal ought to have considered the question of whether there was termination of service or not. In I.D. No.24/2006, one of the questions for reference is whether the service of the Workman was

terminated by the Management. It is true that the Tribunal did not consider this question. If the Tribunal failed to answer one of the questions referred, in normal case, the matter is liable to be remanded to the Tribunal for considering the said question. But considering the fact that the Industrial Disputes are of the years 2002-2003, I think it is better for this Court to consider whether such a question really arises in the matter for consideration. The question whether the service of the Workman was terminated by the Management is included in the reference of only one case. The contention of the learned Counsel for the Management is that there was no termination of service since their service came to an end on the expiry of the contract consequent to discontinuance of the Deposit Scheme. I am unable to accept the said contention. Even if the service of the Workman came to an end on account of expiry of the contract or by discontinuance of the Deposit Scheme in which the Workman was working, it amounts to termination of service. Once it is admitted or proved that the Workman was in the service of the Management before his discontinuance, whatever be the reason for his discontinuance, it is a termination of service. Hence, I am of the view that there is no need to remand the matter to the Tribunal for considering this question, as this question does not really arise for consideration and the Management is not in any way prejudiced on account of the non-consideration of the same.

16. The next contention of the learned Counsel for the Management is that the Tribunal wrongly fixed the burden on the Management to disprove that the Workmen did not work for a continuous period of 240 days in a year. Learned Counsel cited the decision in Shankar Chakravarti (supra) in support of his contention. The Hon'ble Supreme Court held that any party appearing before it must make a claim or demur the claim of the other side and when there is a burden upon it to prove or establish the fact so as to invite a decision in its favour, it has to lead the evidence; that Obligation to lead evidence to establish an allegation made by the party is on the party making the allegation; that the test would be who would fail if no evidence is led; that it must seek an opportunity to lead evidence and lead evidence; a contention to substantiate which evidence is necessary has to be pleaded; that if there is no pleading raising a contention there is no question of substantiating such a non-existing contention by evidence; that it is well-settled that allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because the other side has no notice of it and if entertained it would tantamount to granting an unfair advantage to the first mentioned party; that the rules of fair play demand that where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved; that if there is no pleading there is no question to proving something which is not pleaded and that it is very elementary. In the case at hand, there was ample evidence before the Tribunal that the Workmen had worked for more than one year. The contract dated 08.10.1977 in the case of the Workman in I.D. No.42/2006 and the Letter of appointment dated 30.10.1989 with effect from 01.04.1989 in the case of the

Workman in I.D. No.24/2006 are admitted by the Management. The specific contention of the Management is that they worked till the discontinuance of the Deposit Scheme in the year 1994. It is well settled that the strict rules of pleadings and evidence are not applicable to the proceedings before the Labour Court and Industrial Tribunal. Hence, contention regarding the burden of proof raised by the Counsel for the Management is unsustainable.

17. Then the next question to be considered is whether the termination of service of the Workmen amounts to retrenchment within the meaning of Section 2(oo) of the ID Act. As per Section 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, excluding those mentioned in Clauses (a) to (c) therein. The contention of the learned Counsel for the Management is that the case of the Workmen would come under the Exclusion Clause (bb) of Section 2(oo). Exclusion Clause (bb) covers 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.

18. In *M/s Hindustan Steel Ltd. (supra)* cited by the learned Counsel for the Workman in I.D. No.24/2006 is to the effect that retrenchment as defined under Section 2(oo) of the ID Act is intended not to include termination of service by efflux of time in terms of the agreement between the parties. But as rightly pointed out by the learned Counsel for the Management, the said decision was rendered before the insertion of the Exclusion Clause (bb) to Section 2(oo).

19. In *S.M. Nilajkar (supra)*, the Hon'ble Supreme Court explained the term retrenchment as follows:

"12. "Retrenchment" in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well settled that the Parliament has employed the expression "the termination by the employer of the service of a Workman for any reason whatsoever" while defining the term "retrenchment", which is suggestive of the legislative intent to assign the term 'retrenchment' a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term "retrenchment", and therefore, termination of service of a Workman so long as it is attributable to the act of the employer would fall within the meaning of "retrenchment" de hors the reason for termination. To be excepted from within the meaning of "retrenchment" the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of "retrenchment".

13. The termination of service of a Workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:

(i) that the Workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily - wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project;

(iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and

(iv) the Workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment."

20. The contention of the learned Counsel for the Management is that all the conditions laid down in Paragraph 13 above are satisfied in this case, and hence the termination of service of the Workmen engaged in the BKD Scheme is covered under Exclusion Clause (bb) and hence it will not amount to retrenchment within the meaning of Section 2(oo) of the ID Act. Learned Counsel further invited my attention to Paragraph 16 of the said decision in which the Hon'ble Supreme Court referred to its own decision in Hariprasad Shivshanker Shukla (supra) in which it is held that 'retrenchment' as defined in Section 2(oo) and as used in Section 25-F has no wider meaning than the ordinary accepted connotation of the word, that is, discharge of surplus labour or staff by the employer for any reason whatsoever otherwise than by way of punishment inflicted in disciplinary action; and that retrenchment was held to have no application where the services of all Workmen were terminated by the employer on a real and bona fide closure of business or on the business or undertaking being taken over by another employer. The Hon'ble Supreme Court held that the above-said view of the law taken by the Supreme Court resulted in promulgation of the Industrial Disputes (Amendment) Ordinance, 1957 with effect from 27.04.1957, later on replaced by an Act of Parliament (Act 18 of 1957) with effect from 06.06.1957 whereby Section 25-FF and Section 25-FFF were introduced in the body of the Industrial Disputes Act, 1957; that Section 25-FFF deals with closing down of undertakings; that the term 'undertaking' is not defined in the Act; that the relevant provisions use the term 'industry'; that undertaking is a concept narrower than industry; that an undertaking may be a part of the whole, that is, the industry; that it carries a restricted meaning; that with this amendment it is clear that closure of a project or scheme by the State Government would be covered by closing down of an undertaking within the meaning of Section 25-FFF; that the Workman would therefore be entitled to notice and compensation in accordance with the provisions of Section 25-F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned; that the undertaking having been closed on account of

unavoidable circumstances beyond the control of the employer, i.e., by its own force as it was designed and destined to have a limited life only, the compensation payable to the Workman under clause (b) of Section 25-F shall not exceed his average pay for three months. S.M. Nilajkar (supra) is followed in Municipal Council, Samrala (supra). The recitals in the Contracts executed by the Management and the Workmen do not show that the Deposit Scheme was for a temporary period. It shows that the contract shall remain in force until otherwise terminated by the Bank at its discretion. It does not state anything about the expiry of the scheme or consequent termination of employment. Since the expiry of the scheme and consequent loss of employment were not contemplated at the time of executing the contracts, there is no question of the Workmen being aware of such things. I am of the view that the aforesaid conditions laid down by the Hon'ble Supreme Court are not satisfied in the cases at hand to come under the Exclusion Clause (bb) of Section 2(oo) of the ID Act. In view of the aforesaid decision, closure of a deposit scheme by the Management would be covered by closing down of the undertaking within the meaning of Section 25-FFF and the Workmen is entitled to get notice and compensation under Section 25-F of the ID Act. Hence, the Workman in I.D. No.24/2006 is only entitled to get notice and compensation under Section 25-F of the ID Act since the BKD Scheme in which he was working was discontinued by the Management. He is not entitled to get reinstatement with back wages as, so far as he is concerned, discontinuance of BKD Scheme amounts to closure of undertaking. But in the case of the Workman in I.D. No.42/2006, he was originally working in two Deposit Schemes as per the separate Contracts dated 08.10.1977. Later, Contract dated 08.10.1977 with respect to BKD Scheme was substituted with the Contract dated 19.09.1991. The contention of the learned Counsel for the Management is that the execution of Contract dated 19.09.1991 only for the BKD Scheme would prove that Contract dated 08.10.1977 for the NND Scheme came to an end. I am unable to accept the said contention. Contract dated 08.10.1977 for NND Scheme does not provide any time period. There is nothing on record to prove that Contract dated 08.10.1977 for the NND Scheme was terminated by the Management. In such a case, it could only be inferred that the Workman in I.D. No.42/2006 was illegally denied work under NND Scheme. Even though the Management produced a Circular for the new NND Scheme it does not show that the existing NND Scheme is stopped. Denial of work was not on account of the stoppage of the Scheme. The Tribunal rightly ordered reinstatement. But while ordering back wages, the Tribunal failed to take into consideration the delay in raising the dispute by the Workman. The Tribunal should not have ordered back wages for the period covered by the delay in raising the Industrial Dispute by the Workman. In view of the aforesaid decisions of the Hon'ble Supreme Court discussed while considering the question of limitation, the period of delay has to be taken into consideration while moulding the reliefs to the Workman. The exact date from which the Workman was denied work is not there in evidence. It appears from the Circular dated 19.04.1994 discontinuing BKD Deposits that the Deposits opened up to 31.05.1994 would continue up to the maturity of the deposits. Even though the

Management contended that the service of the Workman was discontinued with effect from December 1993, there is no evidence for that. The Workman in I.D. No.24/2006 complained to the District Labour Officer, alleging denial of employment only on 21.07.2002. The Workman in I.D.No.42/2006 complained to the District Labour Officer, alleging denial of employment only on 05.12.2003. The Management is not in any way responsible for the delay caused by the Workmen in raising the dispute. The Workmen ought to have raised the dispute within a reasonable time. The Management could not be ordered to pay back wages for the period of delay in raising the Industrial Dispute caused by the Workmen. Hence, whichever be the date of denial of work, in case of unreasonable delay on the part of raising the dispute, the Management could be ordered to pay back wages only from the date of raising the dispute before the District Labour Officer.

21. The decision of the Hon'ble Supreme Court in J.K. Synthetics Ltd. (supra) is cited to substantiate the point that back wages are no longer considered to be an automatic or natural consequence of reinstatement. In the decision of the Hon'ble Supreme Court in Giridhari Sahu (supra) cited by the Counsel for the Management, the dictum is to the effect that the Labour Court or the Industrial Tribunal is the final court of facts, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal; that a finding of fact which is not supported by any evidence would be perverse and in fact would constitute an error of law enabling the writ court to interfere; and that if the overwhelming weight of the evidence does not support the finding, it would render the decision amendable to certiorari jurisdiction. In Municipal Committee, Tauru (supra), cited by the Counsel for the Management, the Hon'ble Supreme Court held that there is no substantial justice when the Court or Tribunal gives relief to a Workman which is on a basis that is totally contrary to the basis upon which he approached it, which, indeed, is the employer's case. Substantial justice must be done both to the employer and the employees. In Talwara Cooperative Credit and Service Society Ltd. (supra) cited by the Counsel for the Management, the Hon'ble Supreme Court held that the grant of a relief of reinstatement, it is trite, is not automatic; that grant of back wages is also not automatic; that the Industrial Courts while exercising their power under Section 11-A of the Industrial Disputes Act, 1947, are required to strike a balance in a situation of this nature; that for the said purpose, certain relevant factors, as for example, nature of service, the mode and manner of recruitment, viz., whether the appointment had been made in accordance with the statutory rules so far as a public sector undertaking is concerned, etc., should be taken into consideration. In Jagbir Singh (supra), the Hon'ble Supreme Court held that earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow; that however, in recent past, there

has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure; and that compensation instead of reinstatement has been held to meet the ends of justice. Referring to *Uttaranchal Forest Development Corpn. v. M. C. Joshi* [(2007) 9 SCC 353], it is further held that relief of reinstatement with full back wages were not being granted automatically only because it would be lawful to do so, and several factors have to be considered, a few of them being whether the appointment of the Workman had been made in terms of statutory rules and the delay in raising the industrial dispute. In view of these settled propositions of law, I find that there is perversity in the award of the Tribunal in I.D. No.42/2006 to the extent to which it granted back wages for the period from the date of denial of work to the date of complaint to the District Labour Officer. In order to strike a balance and ensure substantial justice between the parties, taking into account the totality of the facts and circumstances of the case, I am of the view that the order of reinstatement with back wages ordered by the Tribunal in I.D. No.42/2006 is liable to be modified with reinstatement with back wages from 05.12.2003 calculated on the basis of the average remuneration paid by way of commission to the Workman in the year preceding his termination.

22. Accordingly, W.P.(C) Nos.32084/2006 and 33809/2006 are dismissed, confirming the Award dated 31.08.2006 in I.D. No.24/2006. W.P.(C) No.13062/2007 is allowed in part modifying the Award dated 07.12.2006 in I.D. No.42/2006 by substituting the order of reinstatement with back wages calculated on the basis of the average remuneration paid by way of commission to the Workman in the year preceding his termination with reinstatement with back wages from 05.12.2003 calculated on the basis of the average remuneration paid by way of commission to the Workman in the year preceding his termination.