

(2013) 09 AHC CK 0261

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24331 of 1999

Chairman, Town Area and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Citation : (2013) 11 ADJ 197 : (2014) 1 ESC 150

Hon'ble Judges : Sabhajeet Yadav, J

Bench : Single Bench

Advocate : A.N. Tripath and Arvind Srivastava, for the Appellant; Brajesh Shukla, G.K. Singh, H.K. Yadav, N.L. Pandey, Smt. Shusma Yadav and Yatindra Dubey, for the Respondent

Judgement

Sabhajeet Yadav, J.—Heard Sri Arvind Srivastava, learned counsel for the petitioner and Sri G.K. Singh, learned Senior counsel assisted by Sri Brajesh Shukla for respondent-workman. By this petition, the petitioner i.e. Town Area Committee, Talbehat, District Lalitpur has challenged the award dated 2.3.1998 passed by Labour Court Ist Uttar Pradesh Kanpur in Adjudication Case No. 122 of 1993 which was between Chairman, Nagar Kshetra Samiti Talbehat, Lalitpur and Sri Brijesh Kumar Batta S/o Bhagwat Narain Batta-workman. By seeking amendment in the writ petition the petitioner has also challenged the order dated 28.5.1993 passed by Deputy Labour Commissioner, Jhansi whereby the industrial dispute was referred under the provisions of U.P. Industrial Disputes Act, 1947 to the Labour Court, Kanpur to the effect that as to whether the termination of services of workman Brijesh Kumar Batta as clerk w.e.f. 1.8.1992 was justified, legal or not? If not, for which relief the workman was entitled to? Before the Labour Court the workman respondent No. 3 in his written statement had stated that he was working as clerk in the establishment of the petitioner w.e.f. 20.8.1989 and was deputed to work in Library. He was paid a sum of Rs. 20/- per day as remuneration on monthly basis. It was stated that even after one year when the wage of the workman was not enhanced he demanded for enhancement of wages but instead of redressing his grievances his payment was

stopped from September, 1991 so that he may leave the employment. He was further stopped to sign Staff Attendance register and ultimately w.e.f. 1.8.1992 he was prevented from entering into the establishment of the petitioner and his services stood terminated w.e.f. 1.8.1992 whereas contrary to it, the petitioner in its written statement had stated that the respondent-workman was engaged as daily wage clerk w.e.f. 20.8.1989 at a rate of Rs. 20/- per day but ultimately he had unconditionally resigned from service on 31.7.1992 and also stated that he had taken loan of Rs. 20,000/- from Punjab National Bank for generating self employment and had no interest in service of the petitioner. It was also stated that the Chairman, Town Area Committee had accepted the resignation of workman on same day, as a result of which the relationship of employer and employee between Town Area Committee and workman respondent No. 3 had been broken. It was also stated that the services of workman respondent No. 3 had never been terminated by the employer and there existed no industrial dispute between the petitioner and the workman-respondent No. 3. It was also stated that any competent Union of the labour had never raised any dispute about the matter and further stated that the Deputy Labour Commissioner, Jhansi had no jurisdiction to make reference of industrial dispute.

2. After exchange of pleadings between the parties they have also adduced oral evidence before the Labour Court. After having gone through the pleadings of the parties and material evidence adduced by them, the Labour Court has come to the conclusion that the services of the workman-respondent No. 3 have been illegally terminated w.e.f. 1.8.1992 by way of retrenchment without any justification under law, as such directed the respondent-workman to be reinstated in service forthwith w.e.f. 1.8.1992 with continuity of service and other consequential benefits of service alongwith 50% back wage from the date of illegal termination of his services till the date of award i.e. for the period he was out of employment on account of illegal termination of his services.

3. Learned counsel for the petitioner has submitted that the aforesaid award passed by Labour Court is bad in law inter alia on the grounds that Deputy Labour Commissioner, Jhansi had no jurisdiction to make reference of industrial dispute under the provisions of U.P. Industrial Disputes Act, 1947 to the Labour Court, therefore, on that count the reference is bad in law and Labour Court could not decide the same. Second submission of learned counsel for the petitioner is that Town Area Committee, Talbehat District Lalitpur is not an industry, therefore, there existed no industrial dispute between the parties and accordingly reference made by Deputy Labour Commissioner, Jhansi vide order dated 28.5.1993 is bad in law and not sustainable. Third submission of learned counsel for the petitioner is that since the workman-respondent No. 3 has resigned from service on 31.7.1992 and his services were not terminated on 1.8.1992, therefore, there existed no industrial dispute between the parties, as such reference was also bad on that count and Labour Court had no jurisdiction to decide the same and lastly learned counsel for the petitioner has submitted that since the workman-respondent was appointed on daily wage basis without

advertisement and without any regular process of selection under the rules of recruitment and his appointment was de-horse the rules of recruitment, therefore, under circumstances the Labour Court could not direct the reinstatement of workman-respondent No. 3 with continuity of service alongwith 50% back wage during the period he was out of employment on account of his alleged termination from service even if termination of his services were found to be illegal. At the most in such situation only some lump some amount of compensation could be awarded by the Labour Court in lieu of his reinstatement in service. In support of his submissions learned counsel for the petitioner has cited several authority which shall be referred hereinafter at relevant places.

4. Contrary to it, Sri G.K. Singh, learned senior counsel appearing for workman-respondent No. 3 has tried to justify the impugned award passed by Labour Court and cited several authority in support of his contention, which shall be referred hereinafter at relevant places.

5. So far as first submission of learned counsel for petitioner that Deputy Labour Commissioner, Jhansi had no jurisdiction to refer the industrial dispute to the Labour Court is concerned, it is to be noted that under the provisions of Section 4-K of U.P. Industrial Disputes Act, 1947 the State Government is empowered to make reference of industrial dispute to a Labour Court or to a Tribunal which reads as under:

4-K. Reference of disputes to Labour Court or Tribunal--Where the State Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Labour Court if the matter of industrial dispute is one of those contained in the First Schedule, or to a Tribunal if the matter of dispute is one contained in the First Schedule or the Second Schedule for adjudication:

Provided that where the dispute relates to any matter specified in the Second Schedule and is not likely to affect more than one hundred workmen, the State Government may, if it so thinks fit, make the reference to a Labour Court.

6. Section 11-A of the U.P. Industrial Disputes Act, 1947 deals with delegation of powers wherein the State Government is empowered to delegate its power exercisable by it under the Act or Rules made thereunder to such officer or authority Subordinate to State Government as may be specified in the Notification. The provisions relating to delegation of powers contained in Section 11-A of the Act are extracted as under:

11-A. Delegation of powers.--The State Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules made thereunder shall, in relation to such matters and subject to such conditions if any, as may be specified, in the direction, be exercisable also by such officer or authority subordinate to the State Government as may be specified in the notification.

7. Thus, it is clear that the State Government is empowered to delegate its power exercisable by it under the Act or Rules to any officer or authority subordinate to it by notification in the Official Gazette with or without condition and by a Notification dated 29th August, 1990 published in U.P. Gazette, Extra, Part 4, the Governor of Uttar Pradesh in exercise of his power u/s 11-A of the Act has delegated the power exercisable by the State Government u/s 4-K of the said Act in relation to dispute regarding dismissal, retrenchment or termination of services of an individual workman, as contemplated u/s 2-A of the said Act, to be also exercisable by the officers mentioned in Column 2 of the Schedule within the area mentioned against their names in Column 3 of the Schedule given as under:

8. From perusal of aforesaid Schedule it is clear that at serial number 9 of the said Schedule the power of State Government u/s 4-K of the Industrial Disputes Act in respect of area of Districts Jhansi, Lalitpur, Banda, Hamirpur and Jalaun has been delegated to the Deputy Labour Commissioner, Jhansi. Therefore, there can be no scope for doubt to hold that the Deputy Labour Commissioner, Jhansi had jurisdiction to refer industrial dispute to the Labour Court, Kanpur in respect of industrial dispute arisen in district Lalitpur. Thus, the submission of the learned counsel for the petitioners that Deputy Labour Commissioner had no jurisdiction to refer the industrial dispute in question to the Labour Court, Kanpur, appears to be wholly contrary to law and has to be rejected.

9. Next submission of learned counsel for the petitioner that Town Area Committee in question is not an "industry" as defined u/s 2-K of U.P. Industrial Disputes Act, thus there existed no industrial dispute between the parties and reference of industrial dispute to the Labour Court is wholly misconceived and contrary to law, also appears to be misplaced and has to be rejected.

10. In the case of *The Corporation of the City of Nagpur Vs. Its Employees*, of the decision The Apex Court held that several departments of Nagpur Corporation were governed by the Industrial Disputes Act, such as Tax Department, Public Conveyance Department, Fire Brigade Department, Lighting Department, Water Works Department, City Engineer's Department, Enforcement (Encroachment) Department, Sewage Department, Health Department, Market Department, Public Gardens Department, Public Works Department, Assessment Department, Estates Department, Education Department, Printing Press Department, Building Department and General Administration Department.

11. Seven Judges Constitution Bench of The Apex Court in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, , has laid down various tests and guidelines for determining true meaning and import of term "industry" defined u/s 2(j) of the Industrial Disputes Act 1947 (Central Act). Relying upon the same and other decisions in *Parmanand Vs. Nagar Palika and Others*, , a Division Bench of the Apex Court while dealing with the meaning and import of Section 2-K of the U.P. Industrial Disputes Act, 1947 has held that Engineering

Department of Municipality is an industry and further held that inclusion of Municipalities in Constitution by itself would not change this position. The pertinent observation made by the Apex Court in para-5 of the said decision is extracted as under:

5.This Court held in *The Corporation of the City of Nagpur Vs. Its Employees*, , the activity of Municipal Corporation carried on in any of the departments except those dealing with assessment and levy of house tax, assessment and levy of octroi, removal of encroachment and removal and pulling down of dilapidated houses, prevention and control of food adulteration and maintenance of cattle pounds, to fall within the definition of "industry" as arising under the Industrial Disputes Act. This decision was reiterated in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, . It is further explained by this Court in *Samishta Dube Vs. City Board, Etawah and Another*, , with reference to municipalities in the State of U.P. In that view of the matter we do not think inclusion of the municipalities in the Constitution by itself would dilute the effect of the decisions referred to by us. Hence we do not think the High Court is justified in holding that Nagar Palika is not an industry for the purpose of the Act.

12. In view of aforesaid legal position stated by the Apex Court from time to time I have no hesitation to hold that the Town Area Committee Talbehath, District Lalitpur is an "industry" within the meaning of Section 2-K of U.P. Industrial Disputes Act, 1947. Accordingly, I further hold that the dispute in question referred by Deputy Labour Commissioner, Jhansi to the Labour Court, Kanpur squarely falls within the meaning of Industrial Dispute and there can be no jurisdictional error in referring the dispute in question to the Labour Court.

13. The submission of learned counsel for the petitioner that in respect of true meaning and import of the expression "Industry" defined under Industrial Disputes Act, the correctness of decision of Apex Court rendered in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, has been doubted by Apex Court in *Coir Board, Ernakulam, Cochin and Another Vs. Indira Devi P.S. and Others*, and further in case of *State of U.P. Vs. Jai Bir Singh*, and decision of the Apex Court rendered in *Bangalore Water Supply* case has been referred to the larger Bench, also does not make any difference for the reason that the learned counsel for the petitioner could not point out the final decision rendered by larger Constitution Bench of the Apex Court in respect of the aforesaid references, therefore, I have no hesitation to hold that earlier view taken by the Apex Court is still good law and cannot be held to be detracted by Apex Court itself by now. Accordingly, no different opinion can be given by this Court in this regard.

14. Next submission of learned counsel for the petitioner that since the workman-respondent No. 3 has resigned from service on 31.7.1992 and there was no termination of his service w.e.f. 1.8.1992, therefore, there existed no industrial dispute between the parties, as such reference was also bad on that count and

Labour Court had no jurisdiction to decide the same, also appears to be misplaced and has to be rejected for the reason that once the respondent-workman has alleged before the competent authority that his services were illegally terminated w.e.f. 1.8.1992 and thereupon an industrial dispute was referred to the concern Labour Court to that effect, in that eventuality, only course was open to the petitioner either to challenge the said reference of industrial dispute straightway before this Court or raise the aforesaid issue before Labour Court stating therein that instead of illegal termination/retranchment of services of respondent-workman w.e.f. 1.8.1992 he had virtually resigned from service w.e.f. 31.7.1992, but instead of challenging the aforesaid reference dated 28.5.1993 straightway before this Court the petitioner has participated in the reference proceeding before Labour Court and inspite of time granted at several occasions to the petitioner by the Labour Court neither any material has been produced before the Labour Court to show that workman-respondent No. 3 has resigned from service w.e.f. 31.7.1992 nor his original resignation letter has been produced before the Labour Court, as such ultimately finding no option the Labour Court was bound to draw inference against the petitioner-employer holding that the termination of service of respondent-workman was illegal and contrary to the provisions of law i.e. his retranchment from service was effectuated w.e.f. 1.8.1992 without complying with the provisions of U.P. Industrial Disputes Act as admittedly the workman-respondent had already worked for a period of more than 240 days within 12th Calendar month preceding to the date of his retranchment from service. In wake of these facts of the case, I do not find any illegality in the aforesaid approach of Labour Court.

15. However, it is no doubt true that the petitioner has tried to raise the aforesaid issue before this Court by seeking amendment in the writ petition whereby he has challenged the order of reference of industrial dispute dated 25.8.1993 and also tried to demonstrate before this Court that respondent-workman has resigned from service w.e.f. 31.7.1992 but in my opinion, it is not open for the petitioner to challenge the reference order alongwith the award of Labour Court first time after participating in the proceeding before the Labour Court on the basis of alleged resignation of respondent-workman dated 31.7.1992 particularly when inspite of time given to the petitioner at several occasions before the Labour Court the petitioner has failed to produce the original alleged resignation letter of respondent-workman dated 31.7.1992, therefore, I am not inclined to investigate the aforesaid factual matrix either by itself or by remanding the matter before Labour Court for deciding the question of genuineness of said resignation of the workman for the reason that termination of services of respondent-workman has been effected in the year 1992, since then a period of about 21 years have already passed and respondent-workman is running pillar to post for redressal of his grievances. The Labour Court has also made award on 2.3.1998 and since then a period of about 15 years have passed. Therefore, in this view of the matter, having regard to the facts and circumstances of the case, it would not be appropriate to remand the

matter before Labour Court for prolonging the issue for a further period of atleast 15 years for setting the issue at rest, therefore, in order to give quietus to the litigation and avoid further suffering of poor workman-respondent, I am not inclined to remand the matter before Labour Court for deciding the said issue afresh, accordingly view taken by the Labour Court in this regard is hereby affirmed by this Court.

16. Last submission of learned counsel for the petitioner that since the appointment of workman-respondent was made on daily basis without any advertisement and without any regular process of selection and his appointment was contrary to the rules of recruitment, therefore, even if his termination was found illegal and contrary to the provisions of law, in that eventuality in lieu of reinstatement of the workman-respondent alongwith 50% back wage from the date of his termination till the date of award, it was appropriate for the Labour Court to grant some amount of lump-sum compensation to the respondent-workman instead of his reinstatement in service, in my considered opinion, also appears to be misplaced and has to be rejected.

17. This question has engaged the attention of Apex Court from time to time since long back, therefore, it would be useful to refer some decisions of Apex Court where on finding of illegal retrenchment of workman the Labour Court has directed the reinstatement of workman in service with continuity of service in some cases, alongwith full back wages and 75% to 50% or less back wages and in some cases merely a lump-sum compensation in lieu of reinstatement was granted to the workman.

18. While repelling the arguments that even if the impugned retrenchment was unjustified, reinstatement should not have been ordered, Hon''ble Apex Court in *Swadesamitran Limited, Madras Vs. Their Workmen*, , observed as under:

Once it is found that retrenchment is unjustified and improper it is for the tribunal below to consider to what relief the retrenched workmen are entitled. Ordinarily, if a workman has been improperly and illegally retrenched he is entitled to claim reinstatement. The fact that in the meanwhile the employer has engaged other workmen would not necessarily defeat the claim for reinstatement of the retrenched workmen; nor can the fact that protracted litigation in regard to the dispute has inevitably meant delay, defeat such a claim for reinstatement. This Court has consistently held that in the case of wrongful dismissal, discharge or retrenchment, a claim for reinstatement cannot be defeated merely because time has lapsed or that the employer has engaged fresh hands (vide: *The Punjab National Bank Ltd. Vs. Its Workmen*, and *National Transport and General Co. Ltd. v. The Workmen*, Civil Appeal No. 312 of 1956, decided on January 22, 1957).

19. In *Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others*, , the Hon''ble Apex Court has considered the circumstances under which relief of reinstatement or the relief of compensation alone in lieu of reinstatement should be granted by the Labour Court and held that in cases of both termination of service and

dismissal, industrial adjudication is competent to grant relief, in the former case on the ground that the exercise of power was mala fide or colourable and in the latter case if it amount to victimisation or unfair labour practice or is in violation of the principles of natural justice or is otherwise not legal or justified. In such cases, a tribunal can award by way of relief to the concerned employee either reinstatement or compensation in lieu thereof. In case the termination of service is found to be illegal as a general rule: reinstatement is appropriate relief but as exceptions to the general rule of reinstatement there have been cases where reinstatement has not been considered as either desirable or expedient. The Apex Court further observed that the problem confronting industrial adjudication is to promote its two objectives, the security of employment and protection against wrongful discharge or dismissal on one hand and industrial peace and harmony on the other, both leading ultimately to the goal of maximum possible production. In paras 9 and 10 of the aforesaid decision the Apex Court observed as under:

9. In the earlier stages the question whether one or the other of the two reliefs should be granted was held to be a matter of discretion for the tribunal. (See AIR 1949 111 (Federal Court); *United Commercial Bank Ltd. Vs. Secretary, U.P. Bank Employees Union and Others*, . The view then was that to lay down a general rule of reinstatement being the remedy in such cases would itself fetter the discretion of the tribunal which has to act in the interests of industrial harmony and peace and that it might well be that in some cases imposition of the service of a workman on an unwilling employer might not be conducive to such harmony and peace. Later on, however, the earlier flexibility appears to have been abandoned and it was ruled that although no hard and fast rule could be laid down and the Tribunal would have to consider each case on its own merits and attempt to reconcile the conflicting interests of the employer and the employee, the employee being entitled to security of service and protection against wrongful dismissal, the normal rule in such cases should be reinstatement (see *The Punjab National Bank Ltd. Vs. Its Workmen*, . This conclusion was adhered to in some of the subsequent decisions. But in the case of *Punjab National Bank Ltd.* itself as also in other subsequent cases, the rule was qualified to mean that in unusual or exceptional cases where it is not expedient to grant the normal relief of reinstatement, the proper relief would be compensation and that that would meet the ends of justice. The problem confronting industrial adjudication is to promote its two objectives, the security of employment and protection against wrongful discharge or dismissal on one hand and industrial peace and harmony on the other, both leading ultimately to the goal of maximum possible production.

10. As exceptions to the general rule of reinstatement, there have been cases where reinstatement has not been considered as either desirable or expedient. These were the cases where there had been strained relations between the employer and the employee, where the post held by the aggrieved employee had been one of trust and confidence or where, though dismissal or discharge was

unsustainable owing to some infirmity in the impugned order, the employee was found to have been guilty of an activity subversive of or prejudicial to the interests of the industry. These cases are to be found in *Assam Oil Company Vs. Its Workmen*, , *Workmen of Charattar Gramodhar Sahakari Mandali Ltd. v. Charattar Gramodhar Sahakari Mandali Ltd.*, *Doomur Dulung Tea Estate v. Workmen*. These are, however, illustrative cases where an exception was made to the general rule. No hard and fast rule as to which circumstances would in a given case constitute an exception to the general rule can possibly be laid down as the Tribunal in each case, keeping the objectives of industrial adjudication in mind, must in a spirit of fairness and justice confront the question whether the circumstances of the case require that an exception should be made and compensation would meet the ends of justice.

20. Similar view has been taken by the Apex Court in *Ruby General Insurance Co. Ltd. Vs. Shri P.P. Chopra*, . In para 6 of the decision the Hon'ble Apex Court observed as under:

6. The normal rule is that in cases of invalid orders of dismissal industrial adjudication would direct reinstatement of a dismissed employee. Nevertheless, there would be cases where it would not be expedient to adopt such a course. Where, for instance, the office of the employer held the position of the secretary, a position of confidence and trust, and the employer had lost confidence in the concerned employee, reinstatement was held to be not fair to either party. (See *Assam Oil Company Vs. Its Workmen*, . Similarly, in *Management Utkal Machinery Ltd. Vs. Workmen*, Miss Shanti Patnaik, , the employee, held to have been wrongfully dismissed, was the Secretary to the General Manager of the appellant company. The management alleged, as has been done in the instant case, that she was appointed on probation for six months, that her work was found unsatisfactory and was, therefore, discharged in terms of the contract of service. The Tribunal did not accept the company's case and held that its order of discharge amounted to dismissal which was wrongful as no enquiry giving her the opportunity of being heard was held. But considering her employment as the Secretary, the Tribunal did not order reinstatement and instead directed the company to pay compensation equivalent to two years' salary. On a contention that the compensation was exorbitant, this Court, on appeal, reduced the amount of compensation to one year's salary on the ground that there were no special circumstances to warrant the award of two years' salary as compensation.....

21. In *The Management of Panitole Tea Estate Vs. The Workmen*, , the Hon'ble Apex Court held that the matter is within the judicial discretion of Labour Court or Tribunal, dealing with the industrial dispute, the general rule in absence of any special circumstances being of reinstatement. In exercise of this discretion, fairplay towards the employee on one hand and interest of employer, including considerations of discipline in the establishment, on the other, require to be duly safeguarded. This is necessary in the interest both of security of tenure of

employee and of smooth and harmonious working of the establishment. The past record of the employee, the nature of alleged conduct for which action was taken against him, the grounds on which the order of employer is set aside, the nature of duties performed by the employee concerned and the nature of industrial establishment are some of the broad relevant factors which require to be taken into consideration. Each case is to be decided on its own facts and no hard and fast rule can be laid down to cover generally all conceivable contingencies. The pertinent observations made by Apex Court in para-5 of the decision are as under:

5.....The question whether on setting aside the wrongful dismissal of a workman he should be reinstated or directed to be paid compensation is a matter within the judicial discretion of the Labour Court or the Tribunal, dealing with the industrial dispute, the general rule in the absence of any special circumstances being of reinstatement. In exercising this discretion, fairplay towards the employee on the one hand and interest of the employer, including considerations of discipline in the establishment, on the other, require to be duly safeguarded. This is necessary in the interest both of security of tenure of the employee and of smooth and harmonious working of the establishment. Legitimate interests of both of them have to be kept in view if the order is expected to promote the desired objective of industrial peace and maximum possible production. The past record of the employer, the nature of the alleged conduct for which action was taken against him, the grounds on which the order of the employer is set aside, the nature of the duties performed by the employee concerned and the nature of the industrial establishment are some of the broad relevant factors which require to be taken into consideration. The factors just stated are merely, illustrative and it is not possible to exhaustively enumerate them. Each case has to be decided on its own facts and no hard and fast rule can be laid down to cover generally all conceivable contingencies. Proper balance has to be maintained between the conflicting claims of the employer and the employee without jeopardising the larger interests of industrial peace and progress. In *Hindustan Steel Ltd.'s case* (supra), this Court substituted the order of reinstatement by an order of payment of compensation on the ground that the police report and the security officer's recommendation to the company showed that it was not desirable for reasons of security to reinstate the employee. In that case it was observed:

As exceptions to the general rule of reinstatement, there have been cases where reinstatement has not been considered as either desirable or expedient. These were the cases where there had been strained relations between the employer and the employee, where the post held by the aggrieved employee had been one of trust and confidence or where, though dismissal or discharge was unsustainable owing to some infirmity in the impugned order, the employee was found to have been guilty of an activity subversive of or prejudicial to the interests of the industry. These cases are to be found in *Assam Oil Company Vs. Its Workmen*, , *Ruby General Insurance Co. Ltd. Vs. Shri P.P. Chopra*, . These are, however, illustrative cases where an exception was made to the general rule. No

hard and fast rule as to which circumstances would in a given case constitute an exception to the general rule can possibly be laid down as the Tribunal in each case, keeping the objectives of industrial adjudication in mind, must in a spirit of fairness and justice confront the question whether the circumstances of the case require that an exception should be made and compensation would meet the ends of justice.

The general rule of reinstatement in the absence of special circumstances was also recognised in the case of *Workmen of Assam Match Co. Ltd. v. The Presiding Officer, Labour Court, Assam and another*, CAs 1970-71 of 1963 and has again been affirmed recently in *Tulsidas Paul Vs. The Second Labour Court, W.B. and Others*, . In *Messrs. Tulsidas Paul (supra)* it has been emphasised that no hard and fast rule as to which circumstances would establish an exception to the general rule could be laid down and the Tribunal must in each case decide the question in a spirit of fairness and justice in keeping with the objectives of industrial adjudication.

22. In *Tulsidas Paul Vs. The Second Labour Court, W.B. and Others*, , again the Hon"ble Apex Court held that though the normal rule in cases where dismissal or removal is unjustified, is reinstatement, industrial tribunals have discretion to award compensation to in exceptional or unusual circumstances where the tribunal considers reinstatement inexpedient or not desirable. In the said case on account of internal dispute amongst the members of seasonal workmen the employer had refused the work to two workmen out of difference to the wishes of the workers. It was held by the Labour Court that in given facts and circumstances of the case the action of employer in refusing work to those workmen amounted to dismissal and since the dismissal was not for any misconduct and was made without holding any inquiry, it was unjustified. In that view the Labour Court ordered reinstatement and directed payment of all back wages to the workmen. The matter was brought before the High Court and Hon"ble Single Judge of High Court favoured the compensation instead of reinstatement because reinstatement may result in further hostilities. In appeal before Division Bench it was held that the reinstatement is a matter within the domain of Labour Court's discretion and there can be no exception to general rule of reinstatement in given facts and circumstances of the aforesaid case and that in absence of any such specific contention, the Labour Court appeared to have thought that the dispute among the workers was a passing phase which would in course of time subside. No plea was made before it that reinstatement might result in disturbance of industrial peace, a plea if satisfactorily proved might have induced the Labour Court not to grant reinstatement. The Division Bench finally held that the question where wrongfully dismissed workmen should be reinstated or not being a matter of discretion of Labour Court if that Court had ordered reinstatement after considering all the material aspects placed before it, there would be no reason for interference with such exercise of discretion by the High Court. It, therefore, held that the Single Judge was not justified in quashing the order passed by the Labour Court. In given facts and circumstances of the

case the Hon''ble Apex Court affirmed the judgment of Division Bench of High Court.

23. In *Hindustan Steel Ltd. Vs. The Presiding Officer, Labour Court, Orissa and Others*, , three Judges Division Bench of Hon''ble Apex Court on finding that there was a contravention of the provisions of Section 25-F of the Industrial Disputes Act, affirmed the award of the Labour Court directing reinstatement with full back wages. In another case *Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others*, , Hon''ble Apex Court found that there was retrenchment without compliance with the prescribed conditions precedent. Therefore, their Lordships said that the retrenchment was invalid and the relief of reinstatement with full back wages was amply deserved.

24. In *Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others*, , notice for retrenchment was issued inter alia for non-availability of raw material to utilise the full installed capacity, power shedding limiting the working of the unit to 5 days a week and the mounting loss which were found to be factually incorrect. The real reason for issuing such a notice was held to be the annoyance felt by the management consequent upon the refusal of the workman to agree to the terms of settlement contained in the draft dated 5.4.1974. The Apex Court analysed the factual matrix obtaining in the said case to the effect that a sum of Rs. 2,80,000/- was required to be paid by way of back wages and an offer was made by way of settlement to pay 50% of the back wages. Thus having regard to the factual matrix obtaining in the said case directed for payment of 75% back wages and that too in two equal installments. However, while dealing with the issue as to whether full back wages or something less should be given to the workmen in para 9 and 11 of the decision the Hon''ble Apex Court observed as under:

9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The specter of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law''s proverbial delay has become stupefying. If after

such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavored to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept-away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.

11. In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular (see *Susannah Sharp v. Wakefield*, (1891) AC 173).

25. In *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, , the Apex Court has held that whether a workman or employee of a statutory authority should be reinstated in public employment with or without full back wages, is a question of fact depending on evidence to be

produced before the tribunal. If after the termination of his employment the workman/employee was gainfully employed elsewhere, that is one of the important factors to be considered in determining whether or not the reinstatement should be with full back wages and with continuity of employment.

26. In *Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another*, , it was held that normally in cases of unjustified termination of services, workmen are entitled to the relief of reinstatement with full back wages even if some occasional hardship is suffered by the employer. The Courts have discretion to deny the relief only where special impediment by way of awarding such relief is clearly shown. In the said case retrenchment was done in violation of Section 25-F of Industrial Disputes Act, on failure to qualify in test for permanent absorption in service, The aforesaid situation was not held as special circumstance so as to deny reinstatement with full back wages. In para-6 of the decision the Apex Court observed as under:

6..... Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The Court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.

27. In *Mohan Lal Vs. Management of Bharat Electronics Ltd.*, , it was held that in case of illegal termination of service, worker is deemed to be continuing in service and is entitled to reinstatement with full back wages. While dealing with the question whether grant of reinstatement or compensation in lieu thereof would be appropriate relief in the matter, in para-17 of the decision the Apex Court observed as under:

17.....If the termination of service is ab initio void and inoperative, there is no question of granting reinstatement because there is no cessation of service and a mere declaration follows that he continues to be in service with all consequential benefits. Undoubtedly, in some decisions of this Court such as *Ruby General*

Insurance Co. Ltd. Vs. Shri P.P. Chopra, and Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, , it was held that the Court before granting reinstatement must weigh all the facts and exercise discretion properly whether to grant reinstatement or to award compensation. But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service will all consequential benefits. No case is made out for departure from this normally accepted approach of the Courts in the field of social justice and we do not propose to depart in this case.

28. In J.N. Srivastava Vs. Union of India (UOI) and Another, , the Hon"ble Apex Court has held that where the workman had all along been ready and willing to work, the plea of "no work no pay" as prayed for should not be applied. In P.G.I. of M.E. and Research, Chandigarh Vs. Raj Kumar, of the decision Hon"ble Apex Court observed as under:

11. The learned counsel appearing for the respondents, however, placed strong reliance on a later decision of this Court in P.G.I. of M.E. & Research v. Vinod Krishan Sharma, wherein this Court directed payment of balance of 60% of the back wages to the respondent within a specified period of time. It may well be noted that the decision in Soma case has been noticed by this Court in Vinod Sharma case wherein this Court apropos the decision in Soma case observed:

A mere look at the said judgment shows that it was rendered in the peculiar facts and circumstances of the case. It is, therefore, obvious that the said decision which centered round its own facts cannot be a precedent in the present case which is based on its own facts.

We also record our concurrence with the observations made therein.

12. Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straitjacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. As regards the decision of this Court in Hindustan tin Works (P) Ltd. Be it noted that though broad guidelines, as regards payment of back wages, have been laid down by this Court but having regard to the peculiar facts of the matter, this Court directed payment of 75% back wages only.

29. Again in Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, , while taking note of Raj Kumar's case (supra) and Hindustan Tins Work's case (supra) Apex Court in para 16 of the decision has observed as under:

16. As already noted, there was no application of mind to the question of back wages by the Labour Court. There was no pleading or evidence whatsoever on the aspect whether the respondent was employed elsewhere during this long interregnum. Instead of remitting the matter to the Labour Court or the High

Court for fresh consideration at this distance of time, we feel that the issue relating to payment of back wages should be settled finally. On consideration of the entire matter in the light of the observations referred to supra in the matter of awarding back wages, we are of the view that in the context of the facts of this particular case including the vicissitudes of long-drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement.

30. In Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another, of the decision the Apex Court observed as under:

A law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration. It is not in dispute that Respondent 1 herein was appointed on an ad hoc basis; his services were terminated on the ground of a policy decision, as far back as on 24.1.1987. Respondent 1 had filed a written statement wherein he had not raised any plea that he had been sitting idle or had not obtained any other employment in the interregnum. The learned counsel for the appellant, in our opinion, is correct in submitting that a pleading to that effect in the written statement by the workman was necessary. Not only no such pleading was raised, even in his evidence, the workman did not say that he continued to remain unemployed. In the instant case, the respondent herein had been reinstated from 27.2.2001.

31. In General Manager, Haryana Roadways Vs. Rudhan Singh, , where the workman had worked for a short period which was less than a year and having regard to his educational qualification, etc. denied back wages although the termination of service was held to have been made in violation of Section 25-F of the Industrial Dispute Act, 1947. In para 8 of the said decision the Apex Court observed as under:

A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e.

from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.

32. In *Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma*, of the decision the Apex Court observed as under:

When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard.

33. In *U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey*, , in peculiar facts and circumstances of the case only 25% total back wage was held to be payable for a period w.e.f. 1.4.1987 to 26.3.1993. In para 63 of the aforesaid decision the Apex Court held as under:

63. The only question is whether the Respondent would be entitled to back wages from the date of his termination of service till the aforementioned date. The decision to close down the establishment by the State of Uttar Pradesh like other public sector organizations had been taken as far back on 17.11.1990 wherefore ago had been issued. It had further been averred, which has been noticed hereinbefore, that the said GO has substantially been implemented. In this view of the matter, we are of the opinion that interest of justice would be subserved if the back wages payable to the Respondent for the period 1.4.1987 to 26.3.1993 is confined to 25% of the total back wages payable during the said period.

34. In *Jaipur Development Authority Vs. Ram Sahai and Another*, . The respondent therein was appointed on daily wage basis from September, 1986 to June, 1987. His services were dispensed with w.e.f. 1st July, 1987. He raised an industrial dispute wherein an award was made on 22.3.1999 whereby Labour Court held that termination of services of the workman was not legal. He was directed to be reinstated in service with full back wage and continuity in service alongwith other benefits which he would have received while in continuous service. A writ petition was filed by appellant before the High Court of Rajasthan, which was dismissed. A letters patent appeal filed against the aforesaid order has also been dismissed by Division Bench of the said High Court. In appeal before Apex Court while concluding the judgment in para 28 of the decision the Apex Court held as under:

28. We would, therefore, proceed on the basis that there had been a violation of Sections 25-G and 25-H of the Act, but, the same by itself, in our opinion, would not mean that the Labour Court should have passed an award of reinstatement

with entire back wages. This Court time and again has held that the jurisdiction u/s 11-A must be exercised judiciously. The workman must be employed by State within the meaning of Article 12 of the Constitution of India, having regard to the doctrine of public employment. It is also required to recruit employees in terms of the provisions of the rules for recruitment framed by it. The respondent had not regularly served the appellant. The job was not of perennial nature. There was nothing to show that he, when his services were terminated any person who was junior to him in the same category, had been retained. His services were dispensed with as early as in 1987. It would not be proper to direct his reinstatement with back wages. We, therefore, are of the opinion that interest of justice would be subserved if instead and in place of reinstatement of his services, a sum of Rs. 75,000 is awarded to the respondent by way of compensation as has been done by this Court in number of its judgments. (See *State of Rajasthan v. Ghyan Chand*, (2006) 7 SCC 755).

35. In *U.P. State Road Transport Corporation Vs. Man Singh*, . The respondent therein was appointed w.e.f. 20.4.1974 on temporary basis. His services were terminated on 23.7.1975 by giving one month salary in lieu of notice. He raised an industrial dispute on 14.9.1986. In award, made by Labour Court on a finding that in retrenching the respondent the appellant failed to comply with the mandatory requirements of Section 25-F of Industrial Disputes Act, 1947, the Labour Court although set aside the order of termination of the services of respondent but granted back wages only from 1986. The High Court in the writ petition filed by appellant refused to interfere with the award of Labour Court. The Apex Court in peculiar facts and circumstances of the case instead of reinstatement of respondent together with back wage from 1986 directed the appellant to pay a sum of Rs. 50,000/- only to the respondent.

36. In *Madhya Pradesh Administration Vs. Tribhuban*, . The respondent was appointed on temporary basis from time to time with breaks in service in an establishment in Delhi run by State of Madhya Pradesh. He worked for the period 13.12.1991 to 1.3.1994. After his services were terminated, an industrial dispute was raised. The Industrial Tribunal while holding that in terminating the services of respondent, the appellant had failed to comply with the statutory requirements of Section 25-F of the Industrial Disputes Act, awarded only retrenchment compensation alongwith notice pay together with interest @ 9% per annum. The validity of the said award was not questioned by the appellant. The respondent, however, filed a writ petition against the said award. A single Judge of High Court allowed the writ petition directing the reinstatement of the respondent with full back wages. An intra-Court appeal preferred against which was dismissed by Division Bench. Against which appellant preferred appeal before Supreme Court, which was partly allowed by the Apex Court.

37. In the said case, industrial Court exercised its discretionary jurisdiction u/s 11-A of Industrial Disputes Act and directed the payment of compensation without reinstatement to which respondent-workman was entitled had the

provisions of Section 25-F been complied with. The Apex Court found that the aforesaid relief should be treated to be sufficient to meet the ends of justice. The High Court's order directing reinstatement with full back wages was set aside and compensation of Rs. 75,000/- awarded instead thereof. While dealing with the changed view of Supreme Court in this regard certain factors were enumerated to be considered by the Courts. In para-6 of the aforesaid decision the Apex Court observed as under:

6. The question, however, which arises for consideration is as to whether in a situation of this nature, the learned Single Judge and consequently the Division Bench of the Delhi High Court should have directed reinstatement of the respondent with full back wages. Whereas at one point of time, such a relief used to be automatically granted, but keeping in view several other factors and in particular the doctrine of public employment and involvement of the public money, a change in the said trend is now found in the recent decisions of this Court. This Court in a large number of decisions in the matter of grant of relief of the kind distinguished between a daily wager who does not hold a post and a permanent employee. It may be that the definition of "workman" as contained in Section 2(s) of the Act is wide and takes within its embrace all categories of workmen specified therein, but the same would not mean that even for the purpose of grant of relief in an industrial dispute referred for adjudication, application of constitutional scheme of equality adumbrated under Articles 14 and 16 of the Constitution of India, in the light of a decision of a Constitution Bench of this Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, and other relevant factors pointed out by the Court in a catena of decisions shall not be taken into consideration.

38. In para 11 of the aforesaid judgment the Apex Court has noticed another relevant judgment rendered in *Uttaranchal Forest Development Corporation Vs. M.C. Joshi*, wherein Apex Court has held that relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration, one of them being as to whether such appointment had been made in terms of statutory rules. Delay in raising an industrial dispute is also a relevant fact. The Apex Court in the aforesaid decision observed as under:

Although according to the learned counsel appearing on behalf of the appellant the Labour Court and the High Court committed an error in arriving at a finding that in terminating the services of the respondent, the provisions of Section 6-N of the U.P. Industrial Disputes Act were contravened, we will proceed on the basis that the said finding is correct. The question, however, would be as to whether in a situation of this nature, relief of reinstatement in services should have been granted. It is now well-settled by reason of a catena of decisions of this Court that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration, one of them

being as to whether such an appointment had been made in terms of the statutory rules. Delay in raising an industrial dispute is also a relevant fact.

39. In Ghaziabad Development Authority and Another Vs. Ashok Kumar and Another, . The appellant local authority, for its various projects appoints daily wagers on ad hoc basis. The respondent was appointed by the authority on 1.4.1988 as an Amin. The case of appellant was that the respondent was appointed on a periodical basis depending on the order of sanction issued by the State of Uttar Pradesh from time to time. On the premise that the sanction for the said appointment was granted only upto 30.3.1990, the respondent was disengaged from services. The Labour Court in its award opined that respondent No. 1 had worked for more than 240 days in a year and the requirement of the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 had not been complied with. He is entitled to be reinstated in service with full back wages and directed for re-employment of respondent. Writ petition filed against the award was dismissed. Keeping in view the fact that respondent had worked merely for two years as daily wager, his appointment was in violation of Articles 14 and 16 of the Constitution without following the constitutional scheme and also statutory rules of recruitment the Apex Court has held that if the appellant is directed to pay a sum of Rs. 50,000/- to the respondent-workman, the justice would be done between the parties.

40. In Sita Ram and Others Vs. Moti Lal Nehru Farmers Training Institute, , the respondent is research institute and carries out its production under a deed of trust. It is a subsidiary to Indian Farmers Fertilizers Corporation. Its object is charitable. However, it is stated that respondent institute is also undertaking poultry farming, pisciculture, dairy farming, cow-shelter, plantation, bee-keeping works etc. These jobs are undertaken by way of various projects. Daily wagers are appointed for the said purpose. The employment of daily wagers is a need-based one. The appellants claimed to have been working with the respondent institute for a long time. Their services were not being taken from 28.12.1996. They raised an industrial dispute. The Labour Court found that condition precedent for terminating the services of the appellants, as envisaged u/s 6-N of the U.P. Industrial Disputes Act, 1947 had not been complied with, as such the said orders of termination of services were held to be bad in law. Therefore, the appellants were directed to be reinstated in service with 25 per cent of back wages by an award dated 12.4.2002. The respondent being aggrieved by said award filed writ petition before this Court, wherein the High Court set aside the award of Labour Court. Feeling aggrieved against which the appellants preferred appeal before Apex Court. By placing reliance upon earlier decisions the Apex Court has opined that payment of adequate amount of compensation in lieu of a direction to be reinstated in service, in cases of this nature, would sub serve the ends of justice and directed the payment of a sum of Rs. 1,00,000/- to each of the appellants instead of reinstatement in service.

41. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, .

The Apex Court held that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman had completed 240 days of work in a year preceding the date of termination, particularly, daily wages has not been found to be proper by the Apex Court, instead thereof compensation has been awarded. The Apex Court has drawn distinction between a daily wager who does not hold a post and a permanent employee. In the said case, it had been observed that while awarding compensation, the host of factors, inter alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances. Similar view has been again taken by the Apex Court in *Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others*, .

42. In *Ramesh Kumar Vs. State of Haryana*, , the appellant was appointed in December, 1991 as Mali on casual basis in Public Works Department, Haryana at the Chief Minister's residence. On 31.1.1993 his service was terminated without any notice or retrenchment compensation as provided under the Industrial Disputes Act. After knowing that the persons similarly appointed were either allowed to continue or regularised by the department the appellant sent a notice to the respondent. Since the department declined to accede to his request, the appellant raised industrial dispute. On consideration of material on record, the Labour Court by award dated 10.2.2003 has arrived at a conclusion that the workman has worked with the department for a period of more than 240 days within 12 calendar months preceding the date of termination i.e. 31.1.1993 and in view of non compliance with Section 25-F of the Industrial Disputes Act he is entitled to reinstatement. The Labour Court has also directed reinstatement with continuity of service with 50% back wages from the date of termination. Aggrieved by said award the State of Haryana filed writ petition before the High Court. By order dated 23.12.2008 the High Court set aside the award of Labour Court granting reinstatement and back wages, consequently allowed the writ petition. Questioning the said decision of High Court the workman has filed appeal before Supreme Court. While allowing the appeal of the workman and setting aside the order passed by the High Court in paras 15, 16 and 17 of the decision the Hon''ble Apex Court observed as under:

15. Though, it was contended that the initial appointment of the appellant was contrary to the recruitment rules and constitutional scheme of employment, admittedly, the said objection was not raised by the Department either before the Labour Court or before the High Court at the first instance. It was only for the first time that they raised the said issue before the High Court when the matter was remitted to it that too the same was raised only during the arguments. In such circumstances, the High Court ought not to have interfered with the factual finding rendered by the Labour Court and in view of the different treatment to other similarly placed workmen the Department ought not to have challenged the order of the Labour Court.

16. In addition to the above infirmities, the appellant has also pointed out that one Gurbax Singh who was engaged subsequent to the appellant on casual basis has challenged his termination order, which was quashed by the Labour Court; interestingly the Department did not challenge the award of the Labour Court by filing writ petition. It was also highlighted by the appellant that on the basis of the award, Gurbax Singh was not only taken back in service but his services were regularized w.e.f. 1.7.2004.

17. We are conscious of the fact that an appointment on public post cannot be made in contravention of recruitment rules and constitutional scheme of employment. However, in view of the materials placed before the Labour Court and in this Court, we are satisfied that the said principle would not apply in the case on hand. As rightly pointed out, the appellant has not prayed for regularization but only for reinstatement with continuity of service for which he is legally entitled to.

43. In Harjinder Singh Vs. Punjab State Warehousing Corporation, . The appellant was employed in the services of Punjab State Warehousing Corporation (hereinafter described as "the Corporation") as work-charge motor mate with effect from 5.3.1986. After seven months, the Executive Engineer of the Corporation issued order dated 3.10.1986 whereby he appointed the appellant as work munshi in the pay-scale of Rs. 350-525 for a period of three months. The same officer issued another order dated 5.2.1987 and appointed the appellant as work munshi in the pay-scale of Rs. 400-600 for a period of three months. Though, the tenure specified in the second order ended on 4.5.1987, the appellant was continued in service till 5.7.1988 i.e. the date on which Managing Director of the Corporation issued one month's notice seeking to terminate his service by way of retrenchment. However, the implementation of that notice was stayed by the Punjab and Haryana High Court in a writ petition filed by appellant. The said writ petition was finally dismissed as withdrawn with liberty to the appellant to avail remedy under Industrial Disputes Act, 1947 (for short "the Act"). After two months the Managing Director of the Corporation issued notice dated 26.11.1992 for retrenchment of the appellant and 21 other workmen by giving them one month's pay and allowances in lieu of notice as per the requirement of Section 25-F(a) of the Act. Thereafter the appellant raised an industrial dispute which was referred by the Government of Punjab to the Labour Court. Before the Labour Court appellant pleaded that the action taken for termination of his service by way of retrenchment is contrary to the mandate of Section 25-F and 25-M of the Act and that there has been violation of the rule of last come first go inasmuch as persons junior to him were retained in service. In reply filed on behalf of Corporation it was pleaded that appellant's service was terminated by way of retrenchment because the projects on which he was employed had been completed. It was also pleaded that the impugned action was taken after complying with Section 25-F of the Act. However, it was not denied that persons junior to the appellant were retained in service.

44. The Labour Court having considered the pleadings of the parties and evidence on record, passed an award dated 15.12.1999 for reinstatement of the appellant with 50% back wages. The Labour Court held that even though the appellant was retrenched after complying with Section 25-F of the Act, the principle of equality enshrined in Section 25-G of the Act was violated and persons junior to the appellant were allowed to continue in service. The Corporation challenged the said award of the Labour Court mainly on the grounds that the dispute raised by appellant could not be treated as an industrial dispute because the termination of his service was covered by Section 2(oo)(bb) of the act; that the appellant was not a regular employee and he was not working against any sanctioned post; that the appellant had not worked for a period of 240 days and that there was no post against which he could be reinstated. The learned Single Judge rejected the plea that the termination of appellant's service is covered by Section 2(oo)(bb) by observing that from the evidence produced before the Labour Court, it was clearly established that the work against which the appellant was engaged was still continuing. The learned Single Judge also agreed with the Labour Court that the action taken by the Corporation was contrary to Section 25-G of the Act. He however, did not approve the award of reinstatement on the premise that initial appointment of the appellant was not in consonance with the statutory regulations and Articles 14 and 16 of the Constitution and accordingly, substituted the award of reinstatement with 50% back wages by directing that the appellant shall be paid a sum of Rs. 87,582/- by way of compensation. Feeling aggrieved against which the appellant preferred Appeal before Supreme Court.

45. In appeal, while setting aside the judgment of High Court and restoring the award of Labour Court in para 30 and 31 of the decision Hon"ble Mr. Justice G.S. Shinghvi observed as under:

30. Of late, there has been a visible shift in the Courts' approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalisation and liberalisation are fast becoming the *raison d'être* of the judicial process and an impression has been created that the constitutional Courts are no longer sympathetic towards the plight of industrial and unorganised workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman/employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The Courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood.

31. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the Courts must be compatible with the constitutional philosophy of which the directive principles of State policy constitute an integral part and justice due to the workman should not be denied by enter taking the specious and untenable grounds put forward by the employer - public or private.

46. While entirely agreeing with the views of Hon''ble Mr. Justice G.S. Singhvi by adding few words in the decision in paras 41, 42, 43, 46, 47, 48 and 49 of the said decision His Lordship Hon''ble Mr. Justice A.K. Ganguly, observed as under:

41. In view of such an authoritative pronouncement the definition of the State under Article 12 encompass the judiciary and in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , it was held that "judicial process" is also "State action", (SCC 877 1703 : AIR 1949 1717).

42. That being the legal position, under Article 38 of the Constitution, a duty is cast on the State, which includes the judiciary, to secure a social order for the promotion of the welfare of the people. Article 38(1) runs as follows:

38. State to secure a social order for the promotion of welfare of the people.--
(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

This is echoing the Preambular promise. Therefore, it is clearly the duty of the judiciary to promote a social order in which justice, economic and political, informs all the institutions of the national life. This was also made clear in Kesavananda Bharati by Mathew, J. at p. 1952, para 1728 and His Lordship held that the directive principles nevertheless are: (SCC p. 881, para 1714)

1714. . . .fundamental in the governance of the country and all the organs of the State, including the judiciary, are bound to enforce those directives. The fundamental rights themselves have no fixed content, most of them are mere empty vessels into which each generation must pour its content in the light of its experience.

43. In view of such clear enunciation of the legal principles, I am in clear agreement with Brother Singhvi, J. that this Court has a duty to interpret statutes with social welfare benefits in such a way as to further the statutory goal and not to frustrate it. In doing so this Court should make an effort to protect the rights of the weaker sections of the society in view of the clear constitutional mandate discussed above. Thus, social justice, the very signature tune of our Constitution and being deeply embedded in our constitutional ethos in a way is the arch of the Constitution which ensures rights of the common man to be interpreted in a meaningful way so that life can be lived with human dignity.

46. Therefore, the Judges of this Court are not mere phonographic recorders but are empirical social scientists and the interpreters of the social context in which they work. That is why it was said in *Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others*, , while interpreting the Land Reforms Act, that beneficial construction has to be given to welfare legislation.

47. Krishna Iyer, J. speaking for the Court, made it very clear (*S-Naganatha case*, SCC p. 467, para 1) that even though the Judges are "constitutional invigilators and statutory interpreters" they should also be responsive to Part IV of the Constitution being "one of the trinity of the nation's appointed instrumentalities in the transformation of the socio-economic order". The learned Judge made it very clear that when the Judges "decode social legislation", they "must be animated by a goal-oriented approach" and the learned Judge opined, and if I am say so, unerringly, that in this country "the judiciary is not a mere umpire, as some assume, but an activist catalyst in the constitutional scheme" (SCC p. 468, para 1).

48. I am in entire agreement with the aforesaid view and I share the anxiety of my Lord Brother Singhvi, J. about a disturbing contrary trend which is discernible in recent times and which is sought to be justified in the name of globalisation and liberalisation of economy.

49. I am of the view that any attempt to dilute the constitutional imperatives in order to promote the so-called trends of "globalisation", may result in precarious consequences. Reports of suicidal deaths of farmers in thousands from all over the country alongwith escalation of terrorism throw dangerous signal.....

47. In *Devinder Singh Vs. Municipal Council, Sanaur*, , the appellant was engaged by the respondent with effect from 1.8.1994 for doing the work of clerical nature. He was paid consolidated salary of Rs. 1000/- per month. He continued in the service of the respondent till 29.9.1996. His service was discontinued with effect from 30.9.1996 without giving him notice and compensation as per the requirement of Section 25-F of the Act. The appellant challenged the termination of his service by raising an industrial dispute, which was referred to by the State Government to the Labour Court. In the statement of claim filed by him, the appellant pleaded that he had continuously worked in the employment of the respondent from 1.8.1994 to 29.9.1996; that his service was terminated without holding any enquiry and without giving him notice and compensation; and that persons junior to him were retained in service. In the written statement filed on behalf of the respondent, it was pleaded that the appellant was engaged on a contract basis and his service was terminated because the Director, Local Self-Government did not give approval to the resolution passed for engaging the appellant was sent to the Deputy Director for approval, but the same was returned with the remark that the approval may be obtained from the Director, Local Self-Government. Thereafter, the resolution was sent to the Director, Local Self-Government but no response was received from the authority concerned and, therefore, it became necessary to discontinue the service of the appellant.

After considering the pleadings of the parties and the evidence produced by them, the Labour Court passed an award for reinstatement of the appellant without back wages. The Labour Court held that the appellant had worked for more than 240 days in a calendar year preceding the termination of his service and that his service was terminated with effect from 30.9.1996 without complying with the mandatory provisions contained in Section 25-F of the Act. The Labour Court rejected the plea that the termination of the appellant's service is covered by Section 2(oo)(bb) of the Act by observing that no evidence was produced by the respondent to prove that it was a case of termination of service in accordance with the terms of the contract of employment. The Division Bench of the High Court entertained and allowed the writ petition filed by the respondent by relying upon the judgments of the Apex Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, ; *State of M.P. and Others Vs. Lalit Kumar Verma*, , *Uttaranchal Forest Development Corporation Vs. M.C. Joshi*, , *Madhya Pradesh Administration Vs. Tribhuban*, , *Mahboob Deepak Vs. Nagar Panchayat Gajraula and Another*, , and *Ghaziabad Development Authority and Another Vs. Ashok Kumar and Another*, . The Division Bench was of the view that the Labour Court should not have ordered reinstatement of the appellant because his appointment was contrary to the recruitment rules and Articles 14 and 16 of the Constitution and it would not be in public interest to sustain the award of reinstatement after a long lapse of time. Simultaneously, the Division Bench declared that the appellant shall be entitled to wages in terms of Section 17-B of the Act.

48. While interpreting the definition of workman contained in Section 2(s) of Industrial Disputes Act 1947 in paras-12 and 13 of the said decision the Apex Court observed that the source of employment, method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full-time and part-time employee or a person appointed on contract basis. There is nothing to indicate in Section 2(s) that only a person employed on a regular basis or a person employed for doing whole time job is a workman and one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

49. Further in para-14 of the said decision it has been held that whenever an employer challenges the maintainability of industrial dispute on the ground that employee is not a workman within the meaning of Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of "workman".

50. For ready reference the pertinent observations made by Apex Court in paras-13 and 14 of the aforesaid decision is quoted as under:

13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. It is apposite to observe that the definition of workman also does not make any distinction between full-time and part-time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on a regular basis or a person employed for doing whole-time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

14. Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of "workman".

51. In para-27 of the aforesaid decision the Apex Court observed "it is true that the engagement of appellant was not preceded by an advertisement and consideration of competing claims of other eligible persons but that exercise could not be undertaken by the respondent because of ban imposed by the State Government. It is surprising that the Division Bench of High Court did not notice this important facet of the employment of the appellant and decided the writ petition by assuming that his appointment was contrary to the recruitment rules and Articles 14 and 16 of the Constitution. We may also add that failure of Director, Local Self-Government, Punjab to convey his approval to the resolution of the respondent could not be made a ground for bringing an end to the engagement of appellant and that too without complying with the mandate of Sections 25-F(a) and (b)". Ultimately the appeal was allowed. The impugned order passed by High Court was set aside and award passed by Labour Court for reinstatement of appellant was restored. It was further directed that respondent shall reinstate the appellant within a period of four weeks from the date of decision and the appellant shall also be entitled to wages for the period between the date of award and the date of actual reinstatement.

52. In this case, it is to be stated that it is not in dispute that the workman-respondent was appointed as Clerk in the establishment of petitioner w.e.f. 20.8.1989 and was deputed to work in Library on remuneration @ Rs. 20/- per day on monthly basis and was working continuously on the said post till his alleged resignation on 31.7.1992 for a period of more than 240 days in 12 Calendar months preceding to the date of his retrenchment from service. It was

also not the case of petitioner that the work for which the respondent-workman was appointed was no longer in existence or there was no post or work for Clerk in Town Area Committee, Talbehath, Lalitpur for keeping the workman-respondent in service. As held earlier the Town Area Committee Talbehath, District Lalitpur is local body/authority and State within the meaning of Article 12 of the Constitution of India and having regard to the provisions of Article 41 of Constitution of India contained in Part-IV of the Constitution directing the State to make effective provision for securing the right to work within the limits of its economic capacity, in my considered opinion, the Town Area Committee was under obligation to ensure right to work to the respondent-workman within the limit of its economic capacity and services of respondent-workman could not be dispensed with under the pretext that he has allegedly resigned from service. The Labour Court has also held that the termination of services of respondent-workman was unjustified and contrary to the provisions of Industrial Disputes Act, therefore, in my opinion, view taken by Labour Court directing the petitioner to reinstate the respondent-workman with continuity of service alongwith 50% back wages admissible to his post cannot be held to be faulty and does not liable to be interfered by this Court.

53. In given facts and circumstances of the case, I further explain and clarify that the award passed by Labour Court that the petitioner will reinstate the workman-respondent with continuity of service alongwith 50% back wage admissible to the post of clerk on minimum pay-scale for the simple reason that the daily wage employees are entitled to get minimum pay-scale admissible to the post on which they are appointed and worked on daily wage basis from the date of termination of his services till the date of award passed by Labour Court alongwith his continuity of service in the capacity he was working at the time of his retrenchment but he will be further entitled to get all consequential benefits of services available under law on account of his continuity of service from the date of his appointment on daily wage basis till the date but from the date of award till the actual reinstatement in service he will be entitled to get full wage i.e. minimum pay-scale admissible on the post of clerk till the date of his reinstatement in service. In case under any provision of law he would be entitled for any other service benefit on account of continuity of his service in capacity of daily wage employee he will get the same. In case, the award of Labour Court has not yet been implemented by the petitioner on account of pendency of writ petition, the same shall be implemented with a period of one month from the date of production of certified copy of order of this Court to the petitioner. The arrears of salary as back wages shall be paid within another period of three months by the petitioner. With the aforesaid observation and direction, writ petition stands dismissed.