

(2015) 06 GUJ CK 0036

In the Gujarat High Court

Case No : Special Civil Application No. 11769 of 2012

Chief Manager

APPELLANT

Vs

Anil Popatlal Ghelani and Others

RESPONDENT

Date of Decision : 24-06-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 25-F, 25-G

Citation : (2016) LabIC 891 : (2015) 3 LLJ 462 : (2015) 3 LLN 136

Hon'ble Judges : S.G. Shah, J

Bench : Single Bench

Advocate : K.D. Gandhi, Advocate for Nanavati Associates, for the Appellant;
Dharitri Pancholi for H.L. Patel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.G. Shah, J.—Rule. Ms. Pancholi, Ld. Advocate waives service of rule for the respondents.

2. The petitioner herein is a bank which has challenged the award dated 28/9/2011 rendered by the Central Government Industrial Tribunal-cum- Labour Court of Ahmedabad [hereinafter referred to as "the Tribunal"] in Reference No. CGITA of 1232 of 2004. By such impugned award, the Tribunal has directed the bank to reinstate the present respondent No. 1 with continuity in service and to pay 50% back wages and to actively consider his case for absorption as Sepoy within 3 months from the date of receipt of such award with a condition that failing to comply with such direction, 50% back wages shall carry interest @ 9% p.a.

3. The petitioner has also challenged the demand notice dated 31/7/2012 issued by the Assistant Labour Commissioner [C], Adipur, Kutch and also prayed to stay implementation and execution of such award and demand notice.

4. By order dated 3/10/2012 this Court [Coram : Abhilasha Kumari, J.] has after recording the submission made by the petitioner, granted interim relief and

thereby stayed the implementation, execution and operation of the impugned award and notice, which is in force till date.

5. Heard learned senior counsel Mr. KD Gandhi for Nanavati Associates and learned advocate Ms. Pancholi for HL Patel Advocates for the respondent No. 1.

6. The factual details can be summarized thus :

"6.1 The respondent No. 1 herein was selected for the post of Temporary Badli Sepoy and was issued Memorandum of Empanelment dated 24/11/1987 and thereby appointed as such vide Inter-Office Memorandum dated 24/6/1998. It is the case of the petitioner bank that such appointment is governed by Inter Office Memorandum dated 31/12/1980 wherein clause 2 [iii] provides that Badli Sepoy on approved panel, who have not completed 240 days of Badli in service in a block of 12 months or a calendar year as on 1/2/1988, are to be continued on the panels and to be engaged on need basis in leave vacancies only.

6.2 It seems that the respondent No. 1 was terminated from the service of the petitioner bank by an oral order dated 11/10/2002 and, therefore, respondent No. 1 has filed a complaint dated 21/11/2002 before the Assistant Labour Commissioner [Central], Adipur, who has referred the matter for conciliation. However, when conciliation proceedings could not result into any fruitful outcome in favour of the respondent, it was referred for adjudication to the Tribunal by an order dated 10/9/2003. The Tribunal has after proper adjudication, passed the impugned award."

7. The sum and substance of the argument advanced by the petitioner bank is to the effect that since respondent No. 1 is Badli Kamdar, he is not entitled to any relief under the Industrial Disputes Act [for short "the Act"] and since his appointment is pursuant to particular regulation of the bank, which does not permit to continue the services of such Badli Kamdars or to absorb them as a regular Sepoy, the impugned award needs to be quashed and set aside. It is further submitted that the Tribunal has traveled beyond the scope of the reference and out of its jurisdiction, inasmuch as though the issue referred for adjudication to the Tribunal is limited to decide that whether the action of the management of the Bank of India, Rajkot to deny appointment to the respondent is justified or legal and if illegal, then what relief the workman is entitled for and since when? Thereby it is submitted that the reference is only regarding denial of appointment to the workman and, therefore, at-least direction to consider the case for absorption is certainly unwarranted and without jurisdiction. So far as denial of appointment is concerned, it is submitted that since the workman respondent was not in regular appointment of the bank, he is not entitled for continuous job as he was called upon as a Badli Sepoy only when regular Sepoy is not available. Thereby, it is contended that when respondent is not regular employee, he is not entitled to permanent or regular employment and to that extent even reference to the Tribunal was not justified.

8. In support of such submission, the petitioner bank is relying upon

memorandum dated 24/11/1987 whereby the respondent No. 1 was offered employment as Badli Sepoy. Such memorandum is produced at Annexure-B, which certainly and in clear words specify that the respondent was selected on the panel of temporary Badli Sepoy at Rajkot Branch on daily basis without other remuneration and makes it clear that he is not entitled to any other benefit or leave except weekly holidays and that empanelment for Badli Sepoy is liable to be terminated at any time with or without notice and without any reason being assigned therefor. A notification dated 31/12/1980, referred hereinabove, which, according to petitioner, governs the service condition of the respondent is also produced on record at Annexure-C. Such notification refers head office circular regarding recruitment of subordinate staff through employment exchange. It is categorically provided under such notification that vacancies of the subordinate staff should be filled from candidates sponsored by the employment exchange authority, irrespective of whether such vacancy is temporary or permanent, part time or full time. So far as formation of new panel is concerned, the notification provides that the appointing authority should estimate the requirement of Badli Sepoy in such way that the empaneled Badli Sepoy could be absorbed in the bank's service in a year's time. It is further confirmed that the estimated vacancies of Badli Sepoy should be advised to the Regional Office to seek their approval and guidance as to total number of vacancies to be notified to the local employment exchange and their break-up in each reserved categories. Other procedure for selection of Badli Sepoy is also provided in the notification, but it is not disputed at present that the respondent No. 1 was already empaneled as Badli Sepoy since the year 1987 by following due procedure. Clause 10 of the notification provides that separate rosters are to be maintained in respect of recruitment of Sweepers, wherever necessary the appointing authority may also prepare separate panel of Badli Sweepers. However, there is no reference of Badli Sepoy for such arrangement and, therefore, there is reason to believe that there is no necessity to prepare separate panel of Badli Sepoy.

9. So far as services of the respondent No. 1 is concerned, the factual details have been brought on record before the Tribunal at exh. 5, copy of which is produced on record of this petition at page 45, wherein the respondent No. 1 has disclosed the number of days for which he has worked as Badli Sepoy with the petitioner bank. Such list is certainly surprising and confirming the unfair labour practice by the petitioner inasmuch as from the year 1990 till the year 2001 i.e., continuously for 12 years, the respondent No. 1 has served with the petitioner as Badli Sepoy for more than 240 days in each year and such number of days are between 241 to 338. The list also confirms that for the remaining period, between the year 1986 to 1989, the respondent has worked respectively for 154, 84, 110 and 185 days; whereas in the year 2002 he has worked for 107 days. It is undisputed that since October 2002 the petitioner has not allowed him to work as Badli Sepoy and, therefore, this litigation.

10. The defense of the petitioner bank before the Tribunal, which is in the form of written statement at exh. 10 before the Tribunal, copy of which is produced at

Annexure-F with the petition, is interesting, wherein the bank has contended that the respondent had never completed 240 days of work in any one branch of the bank and there is no master and servant relationship and, therefore, the respondent is not entitled to any relief. However, it is also stated that as and when any exigency arises, the bank will engage the respondent subject to his willingness and availability.

11. At Annexure-G, bank's office memorandum dated 24/2/1988 is produced, which deals with deployment of Badli Sepoys wherein it is stated that on the basis of the understanding reached after deliberations with the federation of Bank of India Staff Union, the employee to whom such memorandum is issued, is advised to follow instructions conveyed by such memorandum. It is not disputed that such memorandum is not disclosing the name of the respondent No. 1, but thereby it becomes clear that the petitioner has not issued such memorandum to the respondent and thereby failed to offer him an option of absorption as a regular Sepoy. Such memorandum confirms that if any Badli Sepoy has completed 240 days before the year 1988 and if there is a vacancy of regular Badli Sepoy, then such vacancy should be filled in by absorbing Badli Sepoy from the respective panels. Even if Badli Sepoy has not completed 240 days in a block of 12 months or in a calendar year and such process of absorption has to be completed by the employee before 30/6/1988. It is not disputed that at that point of time the respondent has already completed 240 days, but in absence of such offer, he could not get himself absorbed as a regular Badli Sepoy and thereafter he continued to serve as a Badli Sepoy for continuous 12 years, and worked for more than 240 days for such continuous 12 years.

12. Therefore, what is emphasized by the petitioner is to the effect that since the respondent has not worked in any particular branch for 240 days, now he is not entitled to be absorbed. So far as award of back wages is concerned, the petitioner is relying upon the admission by the respondent in his deposition that he is serving in a show-room of ready-made clothes and getting Rs. 800/- pm as salary. Though the respondent was not aware about the factual details of other Badli Sepoys, it is his case that some of the Badli Sepoys were absorbed and there is discrimination in his case by the petitioner bank.

13. So far as oral evidence before the Tribunal is concerned, except for some discrepancy or contradiction, I do not see any reason to discuss such oral evidence, when more or less the issue is based upon the concept and principles to be adopted by the petitioner in dealing with such employees.

14. The respondent No. 1 has filed his affidavit-in-reply with certain documents, which are interesting to refer and discuss here. It is not disputed that by affidavit-in-reply the respondent No. 1 has opposed the petition and supported the impugned award.

15. However, there is an interesting memorandum of the petitioner bank, which is dated 31/5/2002. It is for engaging Badli Sepoy. In that memorandum, the

Assistant General Manager of the bank has issued an office memorandum referring circular dated 27/4/2002 issued by the Zonal Office, whereby he advised the branch, wherein respondent No. 1 was engaged as a Badli Sepoy, that the Branch Manager of such Branch shall contact the Zonal Branch [Administration Department] for engaging any Badli Sepoy and not to engage respondent No. 1 without an authority letter from the Zonal office. It is specifically conveyed by the Assistant General Manager to the Branch Manager that Badli Sepoy would be deputed to your branch taking into consideration the requirement of other branches in the city as also to ensure that number of Badli days of Badli Sepoy does not exceed 240 days in a calendar year/block of 12 months. This is certainly nothing but unfair labour practice by the bank when Assistant General Manager of the bank conveys to all the Branch Managers not to deploy Badli Sepoy and to ensure that their deployment does not exceed 240 days in a calendar year or block of 12 months. This attitude and correspondence negative all other fair practice and rules and regulations, more particularly when there is practice to absorb the Badli Sepoy within a year, certainly if vacancies are there. So far as respondent No. 1 is concerned, the number of days for which he has worked for 16 years with the bank is undisputed inasmuch as the same has been confirmed by the bank's letter dated 22/1/2002, copy of which is proved and produced before the Tribunal and which is annexed as Annexure-II by the respondent with his affidavit-in-reply in the present petition. So far as salary and other financial benefits are concerned, the respondent has produced several pay slips at Annexure-III which confirms that he was getting more than Rs. 4,400/- pm from the bank. The respondent has also produced on record the pass-book to show that he was not earning more than that and that he has received the salary from the bank for the period for which he has worked as referred hereinabove. The respondent has also produced on record letter dated 10/10/2007 issued by the Central Public Information Officer of the petitioner bank disclosing the vacant position and details of posts of Sepoy in different branches of Rajkot Zone from 1/4/2003. Such letter specifically confirms that several Badli Sepoys were either promoted or retired or dismissed from the branches or offices of Rajkot Zone between the year 2003 till 2007 and when such list is showing as many as 36 employees with their names, dates and branches, it is clear and certain that the period during which the respondent No. 1 had served the bank, there were several vacancies and thereby it would be certainly possible for the petitioner bank to absorb the respondent pursuant to their own circular dated 24/2/1988. The respondent has also produced several documents showing the activity by the bank to fill up the vacancies of Safai Kamdar cum Peon to confirm that the bank should have taken such step, but at present since the petitioner was serving as a Badli Sepoy, details of such documents are not much relevant at present.

16. So far as plea regarding services of respondent being temporary is concerned, the respondent has relied upon the regulations of the bank wherein temporary employee is defined as "an employee who has been appointed for a

limited period of work which is of an essentially temporary nature or who is employed temporarily as an additional workman in connection with a temporary increase in work of permanent nature and includes an employee other than a permanent employee who is appointed in a temporary vacancy caused by the absence of a particular permanent employee." Therefore, though last clause of the definition attracts empanelment and employment of the respondent herein, it is contended that since the respondent was allowed to work for more than 240 days continuously for 12 years, it cannot be said that he was temporary employee and thereby not entitled to any benefit of the labour laws.

17. As against that, the petitioner is relying upon the conditions regarding procedure for termination of service and retrenchment procedure and compensation from the same regulation contending that it permits them to terminate services of the respondent and to retrench him. Though such conditions are there in their rule book, it becomes ineffective in case of the present petitioner considering the factual position discussed hereinabove wherein even at the cost of repetition, it is to be recollected that the bank has employed the respondent No. 1 as Badli Sepoy continuously for 16 years and out of 16 years, he has worked for more than 240 days for continuous 12 years. Moreover, there is a clear cut unfair labour practice by the petitioner bank in the form of office memorandum dated 31/5/2002 advising the Branch Managers by an officer of the rank of Assistant General Manager to ensure that Badli days of Badli Sepoy does not exceed 240 days in a calendar year or block of 12 months. In the background of such advice, now they plead that if any employee has not completed 240 days in a particular branch, then his case will not be considered for absorption irrespective of their memorandum dated 24/2/1988 and whereby it was decided that Badli Sepoy should be absorbed in service after a year, certainly if vacancy is available. Whereas the record proves that there were vacancies during the period for which respondent No. 1 has served as Badli Sepoy.

18. I have also perused the impugned judgment and award. Though it can be argued technically that the Labour Court has traveled beyond its jurisdiction in directing the bank to consider the case for absorption within 3 months, so far as main decision is concerned, I do not find any illegality or irregularity inasmuch as the Tribunal has considered the rival submissions in detail. If we peruse the oral evidence and the impugned award, it becomes clear that the Tribunal has relied upon the evidence of the bank wherein there is admission by its witness that in the year 2002 the respondent No. 1 was the only Badli Sepoy and he was used to discharge the duties of absentee of permanent such staff. The witness has also admitted that the respondent was appointed after selection in the interview as eligible candidate on sponsoring his name by employment exchange and after following rule and procedure of recruitment. He also admitted that the permanent post of Badli Sepoy is filled in from the approved list of Badli Sepoys and that Badli Sepoys were not being issued attendant card, pay slip, leave card by the bank, but bank is having such record. He also admits that the respondent

was deployed to various branches of the bank in Rajkot city itself and that attendance report is sent to Zonal Office. The Tribunal has observed that though the witness has stated on oath that the bank has produced seniority list, in fact no such list is produced on record and, therefore, adverse inference is required to be taken against the petitioner. The bank's witness has also admitted on oath before the Tribunal and the Tribunal has considered such fact that at least two Badli Sepoys namely, KB Rathod and HK Chauhan, who were working in the main branch, were absorbed in permanent post on completing 240 days in the bank. The witness has also admitted that the respondent No. 1 has completed 240 days in a calendar year.

19. The Tribunal has considered rival submissions and above admitted position. Therefore, after proper consideration of the issues on hand and after appreciation of available material on record, the Tribunal has rightly held as per the impugned award.

20. Therefore, though the factual details stated hereinabove makes it clear that there is no substance in the petition, before deciding it finally we have to deal with the citations referred by both the sides.

21. The petitioner bank is relying upon the following decisions. Though at first sight, it may seem to be in favour of the petitioner bank, scrutiny of the judgments has made it clear that practically none of the judgments supports the petitioner's case herein so as to modify, interfere or set aside the impugned judgment and award rendered by the Tribunal except to observe that so far as observation and direction regarding absorption of the employee are concerned, it is only to be done in accordance with rules and not because of such judicial pronouncement. However, as discussed hereinabove, the record shows that in fact there is an office memorandum of the petitioner bank long back in the year 1988 itself to absorb such Badli sepy on a vacant post. Therefore, also even if it can be argued that direction by the impugned judgment to absorb the workman on regular post, is without the term of reference, it can be treated as an advice or observation, but only because of such observation entire award cannot be nullified, when it is in accordance with law, facts and circumstances as well as available evidence before the Tribunal.

21.1 In the case of Bhogpur Co-op Sugar Mills Ltd. Vs. Harmesh Kumar, AIR 2007 SC 288 : (2006) 111 FLR 1202 : (2006) 11 SCALE 631 : (2006) 8 SCR 1021 Supp it is held that the Labour Court derives its jurisdiction from the terms in reference and it ought to have exercised its jurisdiction within four corners thereof and thereby the Labour Court is not required to go into the question as to whether the employer was bound to take the services of the employee in all subsequent seasons or not and thereby granting relief to the respondent under section 25-G; the perusal of the entire judgment makes it clear that factually the employee before the Hon'ble Supreme Court had never been in continuous service for 240 days during 12 months preceding his termination and it was not a disputed fact. Therefore, though ultimate judgment is in favour of the employer,

it would not help the present employer when present employee has certainly worked for more than 240 days and that too for continuous 12 years.

21.2 In the case of Institute of Rural Management v. NDDDB Employees Union reported in 2011 [3] GLR 2360 the Ld. Single Judge of this Court has relied upon the judgment rendered in the case of Bhogpur Cooperative Sugar Mills Ltd. [supra], but the factual scenario is altogether different inasmuch as in such reported case the Labour Court has in addition to extending benefits under the Act in favour of the employee, held that contract labour system employed in the establishment was sham and bogus. To that extent, there cannot be a dispute that if such issue is not referred to the Industrial or Labour Court, then such Court should not enter into the determination on such issue. However, it cannot be ignored that such judgment has already been challenged in Letters Patent Appeal No. 962/2014, which though was initially entertained, surprisingly the same has been summarily dismissed by judgment and order dated 20/1/2014 on technical ground and, therefore, the same is under challenge in S.L.P. [C] Nos. 10765 - 10766 of 2014, which are still pending before the Hon'ble Supreme Court. Therefore, at present the cited decision by the Ld. Single Judge cannot be considered as a settled legal position.

21.3 In the case of Bangalore Metropolitan Transport Corpn. Vs. T.V. Anandappa, (2009) 122 FLR 171 : (2009) 7 JT 62 : (2009) 3 LLJ 233 : (2009) 6 SCALE 199 : (2009) 17 SCC 473 : (2011) 1 SCC(L&S) 706 : (2009) 6 SCR 475 : (2009) 8 SLR 160 though wording in the head-note is attractive when it reads that Badli worker has no right under the Act and that Labour Court should not have adjudicated the dispute, scrutiny of this small judgment makes it clear that even though the employee in such reported case was Badli Conductor, he was not retrenched from the service, but a disciplinary inquiry was conducted against him with regard to his unauthorized absence from duty and his name was ordered to be removed from the list of Badli Conductor. Moreover, there was delay of about 4 years in challenging such order and though specific objection was raised before the Labour Court, the Labour Court has failed to consider the issue of delay and even the charges framed and proved against the workman about his unauthorized absence from duty for long period, have not been considered by the Labour Court while passing the award. Therefore, while allowing the appeal, the Hon'ble Supreme Court has specifically stated in a small order that in the peculiar facts of the case, there is no scope for inclusion of the name of the respondent in the list of Badli Conductor and there is no question of any continuity of service. Therefore, this judgment is based upon the peculiar facts of that case, whereby in fact name of the workman was removed from the list of Badli employee after conducting disciplinary inquiry for unauthorized absence from duty intermittently for a long period. Whereas in our case, though name of the respondent No. 1 is there in the list of Badli Sepoy and though there is an office memorandum to absorb such Badli Sepoy, as already recorded hereinabove, the petitioner has entered into unfair labour practice by issuing office memorandum dated 28/2/1988 conveying all the Branch Managers not to

employ any Badli Sepoy so as to allow them to complete 240 days in a year.

21.4 Prakash Cotton Mills Pvt. Ltd. Vs. Rashtriya Mills Mazdoor Sangh, AIR 1986 SC 1514 : (1986) 1 JT 18 : (1987) 1 LLJ 97 : (1986) 2 SCALE 118 : (1986) 3 SCC 588 : (1986) 3 SCR 419 though the case is again pertaining to Badli workman, it is altogether on a different footing, inasmuch as in such reported case the issue was regarding payment of compensation for the closure of the industrial unit. It is certain and clear that in our case there is neither the issue of payment for compensation nor the employer unit has closed its activities. Hence reported case will not help the petitioner.

21.5 Hindustan Aeronautics Ltd. Vs. Dan Bahadur Singh and Others, AIR 2007 SC 2733 : (2008) 1 CompLJ 381 : (2007) 114 FLR 204 : (2007) 6 JT 320 : (2007) 3 LLJ 234 : (2007) 6 SCALE 415 : (2007) 6 SCC 207 : (2007) 2 SCC(L&S) 441 : (2007) 5 SCR 923 : (2007) AIRSCW 4933 : (2007) 4 Supreme 104 - though Hon"ble Supreme Court has said that completion of 240 days works does not confirm right of regularization, immediately it is confirmed and held by the Hon"ble Supreme Court that it certainly imposes obligations on the employer at the time of termination of services that if the workman has completed 240 days, his services cannot be terminated without following due process of law i.e., provisions of the Industrial Disputes Act. However, in the reported case, where the High Court has traveled beyond its jurisdiction in directing the employer to create the post and to pay regular salary, the Hon"ble Supreme Court has no option but to set aside such direction, but the Hon"ble Supreme Court has nowhere held that the workman is not entitled to the benefits under the Industrial Disputes Act even when he has worked for more than 240 days. The perusal of the entire judgment makes it clear that real dispute before the Hon"ble Supreme Court was altogether different i.e., whether there is parity amongst the employees working in industrial establishment of Government company and regular Government servants. However, so far as regularization of daily wagers is concerned, the Hon"ble Supreme Court has no option but to say that it can only be done in accordance with rules and not dehors the rules. It is certain that creation and abolition of posts and regularization are clearly executive functions and, therefore, direction issued by the High Court only for creation of posts and also payment of regular salary in absence of a post being available, was set aside by the Hon"ble Supreme Court. In any case, the Hon"ble Supreme Court has reconfirmed the requirement of the provisions of the Industrial Disputes Act in later part of para 12 after referring some citations, where it is categorically stated that employee working in an industrial establishment enjoys a limited kind of protection and though all other contingencies are recorded, at present we are concerned with one of them only i.e., retrenchment as provided under section 25-F. Thereby employee has protection, may be limited, against retrenchment made without following the provisions of section 25-F of the Act, which provides several conditions precedent to retrench the workman and provides that no workman employed in any industry, who has been in continuous service for not less than one year under an

employer, shall be retrenched by the employer without issuing one month's notice in writing or wages in lieu of notice.

Therefore, when employee in such reported case could not point out any statutory rule on the basis of his claim, the Hon'ble Supreme Court has no option but to allow the appeal of employer. Whereas in our case, as discussed hereinabove, there is an office memorandum to absorb such Badli Sepoy.

21.6 Taluka Development Officer v. Rameshchandra M Bhatt - reported in 2003 [3] GLH 417. This decision is somewhat of the same ratio as that of Hindustan Aeronautics Ltd. v. Dan Bahadur Singh [supra] that Industrial Tribunal cannot issue direction to regularize daily rated workman by creating post dehors statutory provisions of the Act. Therefore, no further discussion is required.

21.7 Gujarat Agricultural University Vs. Rudabhai Gigabhai and Others, (2010) 126 FLR 195 : (2009) 2 GLH 165 : (2009) 4 LLJ 213 . This decision is also on similar issue like Hindustan Aeronautics Ltd. [supra] where award of the Labour Court to treat the employee as permanent workman by confirming status of permanency was set aside. Therefore, no further discussion is required.

21.8 In D.G.M., Oil and Natural Gas Corpn. Ltd. and Another Vs. Lias Abdulrehman, AIR 2005 SC 660 : (2005) 3 ESC 424 : (2005) 104 FLR 300 : (2005) 11 JT 87 : (2005) 1 LLJ 554 : (2005) 139 PLR 473 : (2004) 10 SCALE 518 : (2005) 2 SCC 183 : (2005) SCC(L&S) 195 it is held that when employee has not worked for 240 days continuously, broken period cannot be taken into consideration for continuous employment. Moreover, employer has found that workman was not qualified as he has no requisite educational qualification and, therefore, the Hon'ble Supreme Court has held that such person is not entitled to benefits under the Act. When no such facts are on hand, there is no reason to deny the benefit to the present respondent.

21.9 In Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma, AIR 2005 SC 768 : (2005) 1 ESC 125 : (2005) 104 FLR 863 : (2005) 1 JT 336 : (2005) 2 LLJ 153 : (2005) 2 SCC 363 : (2005) SCC(L&S) 270 : (2005) 1 SCR 374 : (2005) 2 SLJ 261 though appeal of the employer was allowed by the Hon'ble Supreme Court, the factual details need to be gone into, which confirm that it was altogether a different story before the Hon'ble Supreme Court and, therefore, the Hon'ble Supreme Court has in fact made it clear that if the employer is desirous of initiating any departmental proceedings in terms of CAT's order, they can do so within 2 months and that proceedings should be completed within 3 months and entitlement of service benefits shall be decided in the departmental proceedings, without expressing any opinion on the merits of the case and question of entitlement of any service benefit because the employee was absconder and did not join the service for long time. In absence of any such fact in our case, there is no reason to deny the benefit to the present respondent which he is otherwise entitled.

21.10 Karnataka State Road Transport Corporation and Another Vs. S.G.

Kotturappa and Another, AIR 2005 SC 1933 : (2005) 3 ESC 311 : (2005) 105 FLR 274 : (2005) 3 JT 20 : (2005) 2 LLJ 161 : (2005) 3 SCC 409 : (2005) SCC(L&S) 484 : (2005) 2 SCR 516 : (2005) 2 SLJ 208 . It is a case of misconduct by the Badli worker when it is specifically observed that there was repeated acts of misconduct by the employee during period of his service and some minor punishments were imposed and employer watched conduct of the employee for year and only on completion of period during which select list remained valid, terminated the service as not having been found satisfactory. Moreover, it was not a case where employee completed 240 days of the service as required by section 25-F of the Act and hence the Hon"ble Supreme Court has said that they did not acquire any legal right to continue in service and was not entitled to any protection under the Act. Unfortunately, this judgment has been relied upon in different context. Though the Hon"ble Supreme Court has held in favour of the employer considering that employee before it was Badli worker, it was mainly on the facts stated above and even thereafter, it is specifically observed by the Hon"ble Supreme Court that a dispute as regards purported wrongful termination of service by Badli worker can be raised only after such termination takes place in violation of mandatory provisions of the statute governing the services. Therefore, it becomes clear that when present respondent has worked for more than 16 years and out of which when he worked for more than 240 days for 12 years and when office memorandum of the petitioner provides for absorption of such Badli Sepoy, termination of his services can be considered as wrongful when it is without following the provisions of the Act.

22. The brief discussion of all above citations makes it clear that none of them has any direct impact on the present case, considering the peculiar facts, circumstances and evidence in each such reported case and for the reasons stated.

23. As against that, the respondent No. 1 is relying upon as many as 17 judgments, but when I determine in favour of the respondent No. 1 based upon the available record and as discussed hereinabove, I do not intend to discuss all these 17 judgments except to recollect the observations from some of them which are summarized after the list of cited cases of respondent No. 1.

"i Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers" Union and Its Workmen, AIR 1960 SC 1213 : (1960) 1 FLR 572 : (1960) 1 LLJ 497

ii Jasmer Singh v. State of Haryana rendered in Civil Appeal No. 346/2015 [arising out of S.L.P. [C] No. 1532 of 2014]

iii Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others, (2013) 6 ABR 304 : (2013) 10 AD 89 : (2013) 139 FLR 541 : (2013) LabIC 4249 : (2013) 4 LLN 417 : (2013) 11 SCALE 268 : (2013) 10 SCC 324 : (2013) 4 SCT 716

iv Rajeshbhai Jayantilal Zakhariya v. Child Development Programme Officer rendered in Civil Application No. 9729 of 2006 in S.C.A. No. 1376 of 2004 by this High Court

v Dholka Nagar Palika v. Dasrath Rabari rendered in Letters Patent Appeal No. 1756 of 2004 by this High Court

vi Mackinon Mackenzie and company Ltd. v. Mackinon Employees Union reported in 2015 [2] LLJ 151 [SC]

vii Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Ltd., AIR 2014 SC 2258 : (2014) AIRSCW 3157 : (2014) 6 JT 190 : (2014) 3 LLJ 478 : (2014) 6 SCALE 119

viii Sudarshan Rajpoot v. U.P. State Transport Company rendered in Civil Appeal No. 10353, 10354 of 2014 [SC]

ix B.S.N.L. Vs. Bhurumal, (2014) 2 ABR 235 : (2014) 1 AD 467 : AIR 2014 SC 1188 : (2014) 140 FLR 901 : (2013) 15 JT 611 : (2014) LabIC 1093 : (2014) 1 LLJ 260 : (2013) 15 SCALE 131 : (2014) 3 SCJ 195 : (2014) 3 SCT 49 : (2014) 1 SLJ 293

x Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415

xi Div. Manager, New India Assurance Co. Ltd. Vs. A. Sankaralingam, AIR 2009 SC 309 : (2008) 5 CTC 365 : (2008) 119 FLR 398 : (2008) 11 JT 128 : (2009) 1 LLJ 602 : (2009) 153 PLR 348 : (2008) 13 SCALE 292 : (2008) 10 SCC 698 : (2009) 1 SCC(L&S) 55 : (2009) 2 SLJ 1

xii Radha Raman Samanta v. Bank of India rendered in Civil Appeal No. 2063 of 2000 [SC]

xiii Durgapur Casual Workers Union v. Food Corporation of India rendered in Civil Appeal No. 10856 of 2014 [SC]

xiv Mahamad Safi Janmahmad Memon v. Bank of India rendered in Special Civil Application No. 3233 of 2000 by this High Court

xv D.K. Yadav Vs. J.M.A. Industries Ltd., (1993) 3 JT 617 : (1993) 2 LLJ 696 : (1993) 3 SCALE 39 : (1993) 3 SCC 259 : (1993) 3 SCR 930

xvi Bharat Bank Ltd., Delhi v. Employees of Bharat Bank Ltd., reported in 1950 Lawsuit [SC] 18

xvii Life Insurance Corporation of India v. D.J. Bhadur, Union of India reported in 1980 Lawsuit [SC] 453

xviii Steel Authority of India Ltd. v. Hindustan Steel Employees Union reported in 1997 Lawsuit [Cal.] 22

xix C.N. Malla Vs. State of Jammu and Kashmir and Others, AIR 2009 SC 2739 : (2009) 123 FLR 587 : (2009) 11 JT 1 : (2009) 4 LLJ 667 : (2009) 11 SCALE 581 : (2009) 9 SCC 597 : (2009) 2 SCC(L&S) 715 : (2009) 13 SCR 479 : (2009) 7 SLR 272 : (2009) AIRSCW 5459

24. In Bhuvneshkumar Dwivedi [supra] the Hon''ble Supreme Court has held that the Labour Court was correct in reinstating the Badli worker with full back wages by setting aside the order of termination, holding further that the High Court, on the other hand, has erred in converting the order of reinstatement in order of retrenchment with compensation and thereby, set aside the finding of the High Court holding that the workman is entitled for reinstatement with full back wages from the date of termination to the date of reinstatement and other consequential benefits which accrued.

24.1 In Durgapur Casual Workers Union [supra] the Hon''ble Supreme Court has held that when there was unfair trade practice, it was not open to the Division Bench of the High Court to interfere with the impugned award and thereby confirm the award and decision by the Ld. Single Judge of the High Court regarding absorption of 49 casual workmen.

24.2 Since I am in agreement with all above decisions, which are on different issues touching the submissions made by the petitioner to quash and set aside the impugned judgment and award, but confirming that it cannot be, I do not intend to discuss all the judgments in detail, more particularly when factual and other discussion hereinabove makes it clear that there is no substance in the petition so as to interfere with the impugned judgment and award.

24.3 However, amongst all above judgments, details of two judgments need to be recollected here for an obvious reason that in both such judgments, present petitioner i.e., Bank of India is one of the party and the dispute is almost similar in both such cases which we are dealing with at present. In the case of Radhe Raman Samanta [supra] the Hon''ble Supreme Court has held against the Bank of India itself that even Badli worker is entitled for absorption on a regular post and thereby confirmed the order passed by the Ld. Single Judge and reversing the order of the Division Bench, which is contrary to the settled legal position. The situation before us is almost similar to the facts and circumstances of such reported case and when it is against the same litigant, in fact such litigant deserves to be saddled with heavy costs.

24.4 Another similar decision is in the case of Mahamad Safi Janmahmad Memon [supra] wherein fortunately not only the issue but the factual details are also similar inasmuch as Mahamad Safi is also Badli Sepoy in Bank of India, but in different zone and when he has worked for almost 20 years in the bank, the High Court has confirmed the award of the Labour Court directing the bank to reinstate him and to regularize his services. This judgment also makes it clear that there must be heavy costs upon the petitioner in challenging the similar issue which is already decided against them and which is not challenged by them

before the higher authority.

25. In view of the above facts and circumstances, I do not see any substance in the petition and hence the same is dismissed. Rule is discharged.