

(1999) 04 DEL CK 0004
In the Delhi High Court
Case No : CW. No. 4130 of 1995

Delhi Consumer Coopt. Wholesale Store Ltd.	APPELLANT
Vs	
S.L.Thakural	RESPONDENT

Date of Decision : 21-04-1999

Acts Referred:

Citation : (1999) 4 AD 125 : (1999) 79 DLT 644 : (1999) 50 DRJ 79

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. D.N. Vohra, Advocat, for the Appellant; Mr. R.K. Saini, for the Respondent

Judgement

K. Ramamoorthy, J.—The petitioner, management, has challenged the award of the Labour Court dated 21.7.1995 by which the Labour Court had directed the reinstatement of the workman with full backwages. The question referred to the Labour Court, as mentioned in the award, is:-

"Whether termination of services of Shri S.L.Thukral is illegal and/or unjustified and if so, to what relief is he entitled?"

2. On the pleadings, the Labour Court framed following issues:-

"1. Whether Shri Virender Singh, Secretary (Labour), abused his powers in making the reference as alleged?

2. Whether Shri S.L.Thukral was a workman as defined in Section 2(S) of the I.D. Act?

3. Whether the reference was barred by virtue of provisions contained in the Delhi Shops & Establishment Act and this court had no jurisdiction to decide the reference?

4. Whether the workman was guilty of mis-conduct as alleged in para 9 of the W.S.?

5. Whether the termination of the workman was in accordance with the terms of contract and if so, its effect?

6. As in the terms of reference including the claim for back wages?"

3. The learned counsel for the management, Mr. D.N. Vohra, submitted that:

1. The reference was not made by the competent authority, namely, the Central Government. Therefore, the reference not being made by the competent authority, the award of the Labour Court is vitiated.

2. The workman concerned, Shri S.L. Thakural, is not a workman within the meaning of the definition of "workman" given u/s 2(S) of the Industrial Disputes Act, 1947.

3. The Labour Court should have ordered only compensation and should not have directed the reinstatement of the workman when there is loss of confidence in the workman.

4. Though Mr. D.N. Vohra, the learned counsel for the management, fairly submitted that the deficiency to the extent of Rs.991.25 has not been proved by the management. The learned counsel for the workman, Mr. R.K. Saini, submitted that the reference had been made by the competent authority and Shri S.L. Thakural is a workman within the meaning of the definition of "workman" given u/s 2(S) of the Industrial Disputes Act, 1947 and the award of the Labour Court dated 21.7.95 is in accordance with law.

5. Mr. D.N. Vohra, the learned counsel for the petitioner, referring upon the judgment of the Supreme Court in *Goa Sampling Employees' Association Vs. General Superintendence Co. of India Pvt. Ltd. and Others*, submitted that the appropriate Government u/s 10 of the Industrial Disputes Act, 1947 is the Central Government. Therefore, the National Capital Territory of Delhi had no jurisdiction to make the reference. The Supreme Court in that case held:

"The High Court clearly fell into an error when it observed that the inclusive definition of the expression 'State Government' does not necessarily enlarge the scope of the expression, but may occasionally point to the contrary. Let us assume it to be so without deciding it. But where the High Court fell into the error was when it held that the President representing the Central Government and the Administrator, and appointee of the President and subject to all orders of the President constitute two different governments for a Union Territory. The position, the power, the duties and functions of the Administrator in relation to the President have been over-looked. On a conspectus of the relevant provisions of the Constitution and the concept of State Government is foreign to the administration of Union Territory and Article 239 provides that every Union Territory is to be administered by the President. The President may act through an administrator appointed by him. Administrator is thus the delegate of the President. His position is wholly different from that of a Governor of a State. Administrator can differ with his Minister and he must then obtain the orders of

the President meaning thereby of the Central Government. Therefore, at any rate the administrator of Union Territory does not qualify for the description of a State Government is the "appropriate Government".

If the Central Government as the appropriate Government has made the reference, the High Court was clearly in error in quashing the reference."

6. Mr. D.N. Vohra, the learned counsel for the petitioner, referred to the judgment of this Court in "The Management of M/s. Patiala Iron Works Vs. Union of India & Others" 1975 Lab.I.C. 1265 = (1975) 1 Delhi 613, wherein a Full Bench of this Court had taken the view that:

"We have, Therefore, no hesitation in holding that the Lt. Governor or Delhi Administrator is a "State Government" within the meaning of Section 2(a)(ii) of the Industrial Disputes Act read with Section 3 and Section 3 of the General Clauses Act and that the reference by the Lt.Governor of Delhi is valid."

What is submitted by Mr. D.N. Vohra, the learned counsel for the petitioner, is that the order of reference had not been made by Lt.Governor or in the name of Lt. Governor, but it had been made by the Secretary. Therefore, the order of reference was not made by the appropriate Government.

7. Mr. R.K. Saini, the learned counsel for the workman, referred to the decision of the Full Bench of this Court in "M/s. India Tourism Development Corporation, New Delhi Vs. Delhi Administration, Delhi & Others" 1982 (2) SLR 548. The question referred to the Full Bench was:

"Whether the President of India while administering the Union Territory of Delhi under Art. 239 of the Constitution could confer upon the Lt. Governor or Administrator of Delhi the powers and functions of the "State Government" within the meaning of and under the Industrial Disputes Act, 1947 is the moot question raised in C.W.Ps. 713 and 1472 of 1981. Another question raised is whether the delegation by the Central Government under S.39 of the said Act of the Powers of the "State Government" to the Secretary (Labour), Delhi Administration is ultra virus of its powers."

8. The full Bench had referred to the judgment in M/s. Patiala Iron's case. The Full Bench had dealt with the question of delegation and on that basis had given an opinion that by virtue of the delegation, the reference made on behalf of the NCT, would be the appropriate Government. The ratio laid down by the Full Bench in M/s.India Tourism's case is on all fours and would cover this point. Therefore, I have no difficulty in coming to the conclusion that the order of reference is made by the appropriate Government within the meaning of Section 10 of the Industrial Disputes Act, 1947.

9. The next question to be considered is whether the workman Shri S.L.Thakural is a workman within the meaning of Section 2(S) of the Industrial Disputes Act, 1947. The Labour Court framed the following issue:

"Whether Shri S.L.Thukral was a workman as defined in Section 2(S) of the I.D. Act?"

10. On the materials placed before it, the Labour Court in paras 10,11 and 12 of the award has given its finding that Shri S.L.Thakural is a workman within the meaning of Section 2(S) of the Industrial Disputes Act, 1947. Mr. D.N. Vohra, the learned counsel for the petitioner, submitted that having regard to the nature of work done by the aforesaid Shri S.L. Thakural, he could be characterised as sales promotion man, and, Therefore, he would fall outside the ambit of the definition of workman under the Industrial Disputes Act, 1947. Mr. D.N. Vohra, the learned counsel for the petitioner, referred to the judgment of the Supreme Court in H.R. Adyanthaya etc.etc. Vs. Sandoz (India) Ltd. etc.etc." 1995 1 LLJ 303.

11. It is a judgment by a Constitution Bench of the Supreme Court of India. The Supreme Court posed the question for decision in the following terms:-

"The question that falls for consideration in these matters is whether the 'medical-representatives', as they are commonly known, are workmen according to the definition of "workman" u/s 2(s) of the Industrial Disputes Act, 1947 [the 'ID Act']".

12. In paragraph 13 of the judgment, the Supreme Court observed:

"In *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, the dispute, among others, was whether the Sales Engineering Representative and District Sales Representatives employed in the company were workmen within the meaning of the ID Act. The dispute had arisen prior to October 28, 1967. The argument on behalf of the workmen was that the definition of the "workman" [which at the relevant time also included persons doing supervisory and technical work] was all-comprehensive and contemplated that all persons employed in an industry must necessarily fall in one or the other of the four classes mentioned in the main body of the definition, viz., those doing skilled or unskilled manual work, supervisory work, technical work or clerical work, and consequently the Court should proceed on the assumption that every person is a workman unless he fell under one of the four exceptions to the definition. The Court rejected this contention. The Court referred to its earlier decision in *May & Baker case* [supra] and pointed out that since duties of the employee there were not mainly manual or clerical the employee was not a workman. The Court also pointed out that although that decision was based on the definition as it stood then, when the words "supervisory" and "technical" did not occur there, in every employee of an industry was to be a workman except those mentioned in the four exceptions, the four classifications, viz., manual, supervisory, technical and clerical need not have been mentioned in the definition, and the workman could have been defined so as to include every person employed in an industry except where he was covered by one of the exceptions. The specification of the four types of work, according to the Court, was obviously intended to lay down that an

employee was to be a workman only if he was employed to do work of one of those types. There may be employees who do not do any such work and hence would be out of the scope of the definition. The Court then gave an example of such workman who would be outside the definition of workman even if he did not fall in any of the exceptions. Coincidentally, the example given was that of a person employed in canvassing sales for an industry. According to the Court, he may not be required to do any paper work nor may he be required to have any technical knowledge. He may not be supervising the work of any other employees, nor would he be doing any skilled or unskilled manual work. Even if he is an employee of the industry, he would not be a workman because the work for which he is employed is not covered by the four types mentioned in the definition and not because he would be taken out of the definition being under one of the exceptions. The Court then referred to a case where employees are employed to do work of more than one of the types mentioned in the definition, and pointed out that in such cases the principle was wellsettled that a person must be held to be employed to do that work which is the main work he is required to do, even though he may be incidentally doing several types of work. Referring in this connection to the May & Baker case [supra], the Court pointed out that in that case, it was noticed that the employee's duties were mainly neither clerical nor manual although his duties did involve some clerical and manual work and hence he was held not to be a workman. The Court then referred to the nature of duties of Sales Engineering Representatives and the District Sales Representatives with who, among others, the Court was concerned there. With regard to the Sales Engineering Representative, the Court approved of the finding of the Tribunal that he was not employed on a supervisory work, but found fault with the Tribunal for not proceeding further to examine whether he was employed on any other work of such a type that he could be brought within the definition of workman. The Court then itself examined the said question. Since there was no suggestion at all that he was employed on clerical or manual work and all that was canvassed was that he was doing technical work, the Court found that the amount of technical work that he did was of ancillary nature to his chief duty of promoting sales and giving advice. The mere fact that he was required to have technical knowledge for such a purpose did not make his work technical. According to the Court the work of advising and removing complaints so as to promote sales remains outside the scope of technical work. Consequently, the Tribunal's finding that the Sales Engineering Representative was a workman was set aside. Referring to the District Sales Representatives, the Court held that they were not doing clerical work, and that they were not doing clerical work, and that they were principally employed for the purpose of promoting sales of the company. Their main work was canvassing and obtaining orders. In that connection, of course they had to carry on some correspondence, but that correspondence was incidental to the main work of pushing sales of the company. In connection with promotion of sales, they had to make dealers; extension or curtailment of credit facilities to agents, dealers and customers; investments of capital and revenue in the shape of facilities at

agent's premises or retail outlets; and selection of suitable sites for retail outlets; and selection of suitable sites for retail outlets to maximise sales and negotiations for terms of new sites. On these facts, the Court held that the work that they were doing was neither manual nor clerical nor technical nor supervisory, and further added that the work of canvassing and promoting sales could not be included in any of the said four classifications and the decision given by the Tribunal that they were not workman was valid."

13. The Supreme Court, in further expatiating on the point, proceeded to observe:

"In *S.K. Verma Vs. Mahesh Chandra and Another*, the dispute was whether Development Officers of the Life Insurance Corporation of India [LIC] were workmen. The dispute arose on account of the dismissal of the appellant Development Officer w.e.f. February 8, 1969. The Court noticed that the change in the definition of workman brought about by the Amending Act 36 of 1956 which, as stated above, added to the originally enacted definition, two more categories of employees, viz., those doing "supervisory" and "technical" work. The three Judge Bench of this Court did not refer to the earlier decisions in *May & Baker*, *WIMCO* and *Burmah Shell* cases [supra]. The Bench only referred to the decision of this Court in *The Workmen of Indian Standards Institution Vs. The Management of Indian Standards Institution*, where while considering whether ISI was an "industry" or not, it was held that since the ID Act was a legislation intended to bring about peace and harmony between management and labour in an "industry", the test must be so applied as to give the widest possible connotation to the term "industry" and, Therefore, a broad and liberal and not a rigid and doctrinaire approach should be adopted to determine whether a particular concern was industry or not. The Court, Therefore, held that to decide the question whether the Development Officers, in the LIC were workmen or not, it should adopt a pragmatic and not a pedantic approach and consider the broad question as to on which side of the line the workmen fell, viz., labour or management, and then to consider whether there were any good reasons for moving them over from one side to the other. The Court then noticed that the LIC Staff Regulations classified the staff into four categories, viz, [i] Officers, [ii] Development Officers, [iii] Supervisors and Clerical staff, and [iv] Subordinate staff. The Court pointed out that Development Officers were classified separately both from Officers on the one hand and Supervisors and Clerical Staff on the other and that they as well as Class III and Class IV staff other than Superintendents were placed on par inasmuch as their appointing and disciplinary authority was the Divisional Manager whereas that of Officers was Zonal Manager. The Court also referred to their scales of pay and pointed out that the appellation "Development Officer" was no more than a glorified designation. The Court then referred to the nature of duties of the Development Officers and pointed out that a Development Officer was to be a whole-time employee and that his operations were to be restricted to a defined area and that he was liable to be transferred. He had no authority whatsoever to bind the

Corporation in any way. His principal duty appeared to be to organise and develop the business of the Corporation in the area allotted to him, and for that purpose, to recruit active and reliable agents, to train them, to canvass new business and to render post-sale services to policy-holders. He was expected to assist and inspire the agents. Even so, he had not the authority either to appoint them or to take disciplinary action against them. He did not even supervise the work of the agents though he was required to train them and assist them. He was to be a friend, philosopher and guide of the agents working within his jurisdiction and no more. He was expected to "stimulate and excite" the agents to work while exercising no administrative control over them. The agents were not his subordinates. He had no subordinate staff working under him. The Court, Therefore, held that it was clear that the Development Officer could not by any stretch of imagination be said to be engaged in any administrative or managerial work and, Therefore, he was a workman within the meaning of the ID Act. Accordingly, the order of the Industrial Tribunal and the judgment of the High Court holding that he was not a workman was set aside. As has been pointed out above, this decision did not refer to the earlier three decisions in *May & Baker*, *WIMCO* and *Burmah Shell* cases [supra] and obviously proceeded on the basis that if an employee did not come within the four exceptions to the definition, he should be held to be a workman. This basis was in terms considered and rejected in *Burmah Shell* case [supra] by a coordinate Bench of three-Judges. Further no finding is given by the Court whether the Development Officer was doing clerical or technical work. He was admittedly not doing manual work. We may have, Therefore, to treat this decision as per incuriam.

Ved Prakash Gupta Vs. Delton Cable India (P) Ltd., was decided by the same three-Judge Bench which decided the *S.K. Verma* case [supra]. The question there was whether the Security Inspector at the gate of the factory was a workman within the meaning of the ID Act. The dispute had arisen on account of his dismissal from service on September 13, 1979. The Court referred to the nature of duties performed by the employee and found that a substantial part of the work of the employee consisted of looking after the security of the factory and its property by deputing the watchmen working under him to work at the factory gate or sending them to watch-tower or around the factory or to accompany visitors to the factory and making entries in the visitors' register and also making entries regarding the material entering in and going out of the premises of the factory. No written list of duties was given to the employee. The appellant was also doing other items of work such as signing identity cards of workmen, issuing some small items of stores like torch-cells to his subordinate watchmen and filling up application forms of the workmen and counter-signing them or recommending advances and loans or for promotion of his subordinates. He could not appoint or dismiss any workman or order any enquiry against any workman. He was working under the Security Officer and various other heads of departments of the management. He was also performing the duties of a chowkidar when one of the chowkidars left the place temporarily for taking tea

etc. He was also accompanying Accounts Branch people as a guard whenever they carried money. On these facts, the Court held that the substantial duty of the employee was that of a Security Inspector at the gate of the factory and it was neither managerial nor supervisory in nature in the sense in which those terms were understood in industrial law. The Court, Therefore, held that he was a workman under the ID Act. This decision also did not refer to the earlier decisions in May & Baker, WIMCO and Burmah Shell cases [supra]. What is further, the decision turned on the facts of the case."

14. Referring to the judgment in Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd. Bombay, the Supreme Court approved the ratio. The Supreme Court then referred to the judgment in Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others,

The Supreme Court observed:

Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others, was a case of a teacher in a school conducted by a private society. Her services were terminated on April, 25, 1975 which gave rise to the industrial dispute. Two questions raised were whether the school was an industry and whether the teacher was a workman under the ID Act. We are not concerned with the first question in this case. While answering the second question, the Court considered the meaning of the words "skilled or unskilled manual, supervisory, technical, or clerical work" in the definition of workman under the ID Act and held that if an employee is not a person engaged in doing work falling in any of the said categories, he would not be a workman at all even though he is employed in an industry. For this purpose, the Court relied on May & Baker case [supra] and further held that a teacher employed by educational institutions whether they are imparting primary, secondary graduate or post-graduate education, cannot be called a workman. Imparting of education which is the main function of a teacher cannot be considered as unskilled or skilled manual or supervisory or technical or clerical work. The clerical work a teacher does is only incidental to this principal work of teaching. The Court did not accept the suggestion that having regard to the object of the ID Act, all employees in an industry except those falling under the four exceptions to the definition should be treated as workmen. The Court held that to accept the said argument would render the words "to do any skilled or unskilled manual, supervisory, technical or clerical work" meaningless. The Court held that a liberal construction as suggested would have been possible only in the absence of the said words. The Court, Therefore, upheld the decision of the High Court that the appellant was not a workman though the school was an industry. It is thus obvious from this decision given as late as in 1988 that the Court reiterated the earlier decision in May & Baker case [supra] and insisted that before a person could qualify to be a workman within the meaning of the ID Act, he had to satisfy that he did work of any of the four types mentioned in the main body of the definition and that it was not enough that he did not fall within any of the four exceptions in the definition."

15. The Supreme Court had also noted the later decision in "T.P. Srivastava Vs. National Tobacco Co. of India Ltd. & Others" 1992 I LLJ 86. The Supreme Court summed the position in the following terms:

"The legal position that arises from the statutory provisions and from the aforesaid survey of the decisions may now be summarised as follows:

Till August 29, 1956 the definition of workman under the ID Act was confined to skilled and unskilled manual or clerical work and did not include the categories of persons who were employed to do "supervisory" and "technical" work. The said categories came to be included in the definition w.e.f. August 29, 1956 by virtue of the Amending Act 36 of 1956. It is, further, for the first time that by virtue of the Amending Act 46 of 1982, the categories of workmen employed to do "operational" work came to be included in the definition. What is more, it is by virtue of this Amendment that for the first time those doing non-manual unskilled and skilled work also came to be included in the definition with the result that the persons doing skilled and unskilled work, whether manual or otherwise, qualified to become, under the ID Act."

16. Referring to the type of work done by the person who is doing sale promotion work for an employer, the Supreme Court said:

"It was contended by Shri Sharma, appearing for the workmen, that the definition of workman under the ID act includes all employees except those covered by the four exceptions to the said definition. His second contention was that, in any case, the medical representatives perform duties of skilled and technical nature and, Therefore, they are workmen within the meaning of the said definition. We are afraid that both these contentions are untenable in the light of the position of law discussed above. The first contention was expressly negatived by two three-judge Benches in May & Baker and Burmah Shell cases [supra] as has been pointed out in detail above. As regards the second contention, it really consists of two sub-contentions. viz., that the medical representatives are engaged in "skilled" and "technical" work. As regards the word "skilled", we are of the view that the connotation of the said word in the context in which it is used, will not include the work of a sales promotion employee such as the medical representative in the present case. That would have to be construed ejusdem generis and thus construed, would mean skilled work whether manual or non-manual, which is of a genre of the other types of work mentioned in the definition. The work of promotion of sales of the product or services of the establishment is distinct from and independent of the types of work covered by the said definition. Hence the contention that the medical representatives were employed to do skilled work within the meaning of the said definition, has to be rejected. As regards the "technical" nature of their work, it has been expressly rejected by this Court in Burmah Shell case [supra]. Hence that contention has also to be rejected."

17. In paragraph 37 of the Judgment, the Supreme Court in clear terms posited:

"All the remains, Therefore, is C.A.No. 818 of 1992 where the dispute arose out of transfers of the employees concerned effected on February 16, 1988. The complaint was made to the Industrial Court under the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 [the "Maharashtra Act"]. There is no doubt that in view of Section 9(18) of the Maharashtra Act the definition of "workman" under that Act would be the same as under the ID Act will obviously not cover the sales promotion employee within the meaning of SPE Act. It was contended on behalf of the workmen that since the ID Act was amended by insertion of the words "skilled" and "operational" and the SPE Act was amended to make all sales promotion employees, irrespective of their wages, "workmen" w.e.f. May 7, 1987, it should be held that the definition of "workman" under the ID Act covered the sales promotion employees. Hence the Maharashtra Act was applicable to the medical representatives. Reliance was also placed on an observation of this Court in *Kasturi and Sons (Private) Ltd. Vs. N. Salivateeswaran and Another*, which is as follows (P.530):

"It is true that S.3 sub-s[1] of the Act provides for the application of the Industrial Disputes Act, 1947, to or in relation to working journalists subject to sub-s. [2]; but this provision is in substance intended to make working journalists workmen within the meaning of the main industrial Disputes Act."

18. In the instant case, it is not disputed, as could be seen from the discussion by the Labour Court, that Shri S.L.Thakural was in charge of Sales Section and was entrusted with duty of a salesman.

19. The learned counsel for the petitioner, Mr. D.N. Vohra, referred to the judgment in *"May & Baker (India) Limited Vs. Their Workmen"* 20 FJR 147, which is referred to by the Supreme Court in the above referred *H.R.Adyanthaya's* case. The learned counsel for the petitioner, Mr. D.N. Vohra, relied upon the passage which is as under:-

"A "workman" was then defined as any person employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward. Therefore, doing manual or clerical work was necessary before a person a person could be called a workman. This definition came for consideration before Industrial Tribunals and it was consistently held that the designation of the employee was not of great moment and what was of importance was the nature of his duties. If the nature of the duties is manual or clerical then the person must be held to be a workman. On the other hand if manual or clerical work is only a small part of the duties of the person concerned and incidental to his main work which is not manual or clerical, then such a person would not be a workman. It has, Therefore, to be seen in each case from the nature of the duties whether a person employed is a workman or not, under the definition of that word as it existed before the amendment of 1956."

20. The learned counsel for the petitioner, Mr. D.N. Vohra, also referred to the judgment in *"Shri Jugal Kishore Mittal Vs. The Management of Sasta Sahitya*

Mandal & Others" 1987 1 LLJ 231, wherein this Court took the view that a person who is employed as a salesman would not be a workman within the meaning of Section 2(S) of the Industrial Disputes Act, 1947. This is not in consonance with the view taken by the Supreme Court in the case referred above. I am not able to accept the submission of Mr.D.N.Vohra, the learned counsel for the petitioner, that on the facts and circumstances of this S.L.Thakural would not be a workman within the meaning of Section 2(S) of the Industrial Disputes Act, 1947. I have no hesitation in upholding the view taken by the Labour Court that Shri S.L.Thakural is a workman within the meaning of the Section 2(S) of the Industrial Disputes Act, 1947.

21. This takes me to the point relating to the question whether the Labour Court was right in passing the order of reinstatement. As I had noticed above, Mr. D.N. Vohra, the learned counsel for the petitioner, submitted that in view of the charge leveled against Shri S.L. Thakural, workman, by the management with reference to deficiency of Rs.991.25, though it has not been proved, the management has lost confidence in the workman and the Labour Court should have applied its mind and should have considered the question whether granting compensation to the workman could be an appropriate relief.

22. The learned counsel for the petitioner, Mr. D.N. Vohra, referred to the judgment in "Syed Azam Hussaini Vs. The Andhra Bank Limited" 1995 (1) SLR 706. In that case, the appellant before the Supreme Court was appointed as a clerk on the 21st of March, 1970. He was put on probation for a period of six months. The period of probation was extended and before the expiry of extended period, the services of the appellant before the Supreme Court was terminated by order dated 2.1.71. The appellant filed an appeal u/s 41 of the Andhra Pradesh Shops and Commercial Establishments, 1966. The appellate authority held that the order of termination was illegal and the matter was taken up in appeal to the Labour Court. The Labour Court concurred with the view taken by the appellate authority. The respondent Bank before the Supreme Court filed a writ petition in the High Court of Andhra Pradesh. The learned Single Judge of the High Court dismissed the writ petition by order dated 29.2.75. There was a Letters Patent Appeal to the Division Bench. The Division Bench allowed the appeal setting aside the order of the learned Single Judge. The effect of that was that the order of termination stood upheld. The decision of the Division Bench was challenged by the appellant before the Supreme Court. The Supreme Court took the view that the Division Bench was not right in upholding the order of termination. Then the question arose, whether reinstatement could be ordered or the appellant should be satisfied with compensation. The Supreme Court had dealt with this in paragraph 13 of the Judgment which is as under:-

"There is one more hurdle in the path of the respondent-bank. It cannot be disputed that the appellant had completed 240 days of service since he had joined duty on April 6, 1970 and his services were terminated on January 2, 1971. The appellant was a "workman" for the purpose of Section 2(s) of the

Industrial Disputes Act, 1947 since he was employed in the 2 of the Industrial Disputes Act, 1947 since he was employed in the clerical grade with the respondent-bank which is an "industry" u/s 2(j) of the Industrial Disputes Act, 1947. The termination of appellants service was, Therefore, retrenchment u/s 2 (00) of the Industrial Disputes Act, 1947 and it could be done only in accordance with the provisions contained in Section 25-F of the Industrial Disputes Act, 1947. In Krishna District Co-operative Marketing Society Limited, Vijayawada Vs. N.V. Purnachandra Rao and Others, this Court has construed the provisions of Chapter V-A of the Industrial Disputes Act, 1947 and Sections 40 and 41 of the Act and has held that if the employees are "workmen" and the management is an "industry" as defined in the Industrial Disputes Act and the action taken by the management amounts to "retrenchment" then the rights and liabilities of the parties are governed by the provisions of Chapter V-A of the Industrial Disputes Act and the said rights and liabilities may be adjudicated upon and enforced in proceedings before the authorities under sub-sections (1) and (3) of Section 41 of the Act. In that case proceedings had been initiated in the form of appeal filed u/s 41 of the Act before the Authority and it was held that since the orders for termination of services of the employee amounted to retrenchment and had been passed without complying with Section 25-F of the Industrial Disputes Act, the order of the Authority setting aside the said orders of termination could be affirmed in view of Section 25-F and Section 25-G of the Industrial Disputes Act were complied with or not and to set side the orders of termination and to grant appropriate relief if it is found that there was non-compliance with Sections 25-F and 25-G of the Industrial Disputes Act. Applying the said decision to the facts of the present case it can be said that since the appellant was a workman and the respondent-bank is an Industry under the Industrial Disputes Act the action taken by the respondent-bank in terminating the services of the appellant amounts to "retrenchment" and since the appellant had worked continuously for more than 240 days such retrenchment could be done only in accordance with provisions of Section 25-F of the Industrial Disputes Act, 1947. The said provisions were admittedly not complied with because one month"s wages in lieu of notice were not paid at the time of such retrenchment on January 2, 1971 and were paid subsequently on January 5, 1971. The termination of the services of the appellant cannot, Therefore, be upheld as legal and valid."

23. I fail to see how this could be of any assistance to the petitioner in the instant case. It is well settled that the question of loss of confidence in the workman would not arise, when the Court is concerned with the point relating to reinstatement or compensation and the charge against the workman was not proved. Once charge against the workman is not proved, no question of loss of confidence would arise. This aspect has been dealt with by the Labour Court in paragraph 21 of the award. The same reads as under:-

"With a view to deny the relief of reinstatement to the workman concerned, learned AR of the employer has argued that it has lost confidence in the workman and Therefore relief of reinstatement could not be granted to him. The

plea of loss of confidence by the employer cannot be accepted as a matter of routine. This plea has to be specifically taken by the employer in the pleadings and it has to be proved by way of evidence. The failure of the employer to do so will..... him to impugn the order of reinstatement. In the case in hand the plea of loss of confidence has not been taken by the employer in its written statement. Further no evidence has been adduced by the employer in support of this plea. In view of this, the argument of LD. Ar of the employer deserves to be rejected.

Net result of the above discussion Therefore is the termination of the services of the workman concerned is illegal and is Therefore set aside. Workman is entitled to reinstatement with full backwages and reinstatement of service. It may be added that in case the workman has already attained the age of superannuation as per law applicable to the parties then the workman will not be entitled to reinstatement at this stage and will be entitled to back wages only up to the date of superannuation."

In law, the view taken by the Labour Court in the instant case cannot be challenged.

24. For the foregoing discussions, I have no hesitation in coming to the conclusion that the award of the Labour Court is absolutely correct in law and the petitioner has not made out any case for interference. Accordingly, the writ petition is dismissed.

25. There shall be no order as to costs.