

(2013) 05 DEL CK 0222

In the Delhi High Court

Case No : Writ Petition (C) 6360 of 2008

Directorate of Adult Education

APPELLANT

Vs

Birender Kumar and Others

RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 41, 48A

Industrial Disputes Act, 1947 — Section 10, 17B, 2(j), 22, 25F

Citation : (2013) 200 DLT 769

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Reeta Kaul, for the Appellant; Varun Prasad, for the Respondent

Judgement

Vipin Sanghi, J.

C.M. Application No. 2853/2013

This application has been preferred by Respondent no. 3, Sh. Kuldeep Singh, for grant of wages u/s 17B of the Industrial Disputes Act, 1947 (Act for short), since the impugned award dated 24.03.2008 directs reinstatement of the respondent into service, which has been stayed by this Court vide order dated 01.09.2008. It is pertinent to note, than an earlier application bearing C.M. no. 6427/2009 u/s 17B of the Act was dismissed as not pressed vide order dated 26.08.2011 after the petitioner in its reply to the 17B application submitted that the respondents were gainfully employed. In respect of respondent no. 3, the petitioner had submitted that he was farming in his native village.

In the present application moved only on behalf of respondent no. 3, it is submitted that due to acute financial hardship, after passing of the award dated 24.03.2008, the respondent engaged in agricultural activity only to help his family members and that no real income was being generated from such activity. It is submitted that the agricultural produce of rice and wheat was used to feed the respondent and his family and that agricultural activity by itself is not gainful

employment.

The respondent would have had to undertake some activity to meet the basic needs of sustenance. Carrying out of small and menial jobs by a retrenched workman to keep his body and soul together cannot be a grounds to deny him of his statutory right to claim wages u/s 17B, which is intended for the workman to meet his basic needs. The petitioner has not brought any evidence on record to show that the income accrued to the respondent from such farming was equivalent to adequate wages.

Accordingly, this application is allowed. However, taking note of the fact that the respondent has not pursued the application u/s 17B seriously, it being dismissed as not pressed on an earlier occasion, I am not inclined to grant this application from the date of award. Wages at the rate at which they were last drawn shall be paid to the respondent from date of application, till date.

Application stands disposed of.

W.P. (C) 6360/2008

1. The petitioner management has preferred the present writ petition under Article 226 of the Constitution of India to assail the Industrial award dated 24.03.2008 passed in ID No. 3/2006, by the Central Government Industrial Tribunal-cum-Labour Court-II (CGIT). The CGIT, by the impugned award has held that the termination of the services of the three respondent workmen, with effect from 17.09.2002, was neither just nor fair and legal. The respondent workmen have been held to be entitled to reinstatement and regularisation with 25% back wages. The first submission of learned counsel for petitioner is that the petitioner is not an industry within the meaning of Section 2(j) of the Act. Learned counsel for petitioner submits that every department of the Government is not an industry. In support of this argument, she places reliance on Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others, . She submits that the petitioner is a subordinate office under the direct control of Department of School Education & Literacy, Ministry of Human Resource Development, Government of India, which functions as a National Resource Centre for Adult education programmes.

2. Learned counsel for petitioner submits that the petitioner directorate is entrusted with the task of developing model teaching and learning materials and harnessing all kinds of media for furtherance of the objectives of the National Literacy Mission and it consists of mainly nine specialised units, being:

- a) Advertising & Publicity
- b) Monitoring, Research & Evaluation
- c) State Resource Centres
- d) Jan Shikshan Sansthan

- e) Publication
- f) Training
- g) Rajbhasha Hindi
- h) Library
- i) Administration & Accounts

3. The respondent workmen were serving in the Administrative Department of the petitioner directorate as peons on daily wages. It is further submitted that the petitioner does not render any direct services and it does not engage in the production of goods/services to satisfy human wants. It is contended that the function of the petitioner is to provide academic and technical resource support to the National Literacy Mission and, as such, its activities are not akin to an industry, but are in the nature of public welfare - which is a sovereign function. It is submitted that the petitioner is distinguishable from educational institutions which impart education and may be making profit, and are considered industry.

4. On the other hand, learned counsel for respondent submits that as per the judgment of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, , profit motive is an irrelevant consideration in determining whether an undertaking is an industry. It is submitted that the activities of the petitioner have to be construed by applying the dominant nature test as laid down in this judgment, which does not exempt welfare functions of the State from the sweep of the definition of the expression "Industry".

5. Learned Counsel for Respondent also places reliance on the decision in Chief Conservator of Forests and another, Vs. Jagannath Maruti Kondhare, etc. etc., to submit that the functions of the petitioner are not sovereign in nature. In the aforesaid case, it was the stand of the appellant that the Pachgaon Parwati Scheme run for preservation of forests and environment had to be regarded as part of the inalienable functions of the State, because the said work could not have been undertaken by a private individual or entity. This argument of the appellant was repelled by the Court. The Court observed that the scheme was intended to fulfill the recreational and educational aspirations of the people and such work could well be undertaken by an agency which is not required to be an instrumentality of the State. On these considerations, the appellant was held to be an industry. The Court relying on the decision in Bangalore Water Supply (supra) observed as follows--

7. As per the Bangalore Water-Supply case sovereign functions "strictly understood" alone qualify for exemption; and not the welfare activities or economic adventures undertaken by the Government. This is not all. A rider has been added that even in the departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to be an industry. As to which activities of the Government could be called sovereign functions strictly understood, has not been

spelt out in the aforesaid case.

6. Relying on the aforesaid decision in Chief Conservator (supra), learned counsel for respondent submits that the respondents are not teachers, but workmen - who are employed in the administrative department and, in any event, the units/ departments of the petitioner are severable in nature. The administrative department is liable to be treated as an industry as it satisfies the decisive test of employer-employee relationship as laid down in Bangalore Water Supply (supra). In furtherance of this submission, learned counsel for respondent also places reliance on Samishta Dube Vs. City Board, Etawah and Another, , wherein it was held that the administration department of the Municipal Board would be an industry, as approved in Bangalore Water Supply (supra).

7. Learned counsel for respondent also places reliance on a judgment of this court in Management of Horticulture Department of Delhi Adm. Vs. Trilok Chand and Another, wherein the observations of this Court in respect of the decision in Himanshu Kumar Vidyarthi (supra) cited by the petitioner were as follows:-

22. Notwithstanding the aforesaid position in law Mr. Anil Grover, learned counsel appearing on behalf of the petitioner argued that respondent is not to be treated as workman and is not entitled to the benefit of the provisions of Section 25-F of the Act and in support of his submission he tried to draw sustenance from another judgment of Supreme Court in the case of Himanshu Kumar Vidyarthi and others Vs. State of Bihar and others reported in..... In this case, decided by a Division Bench, no doubt certain observations were made by the Supreme Court which give the impression that temporary working of daily wages... would not be considered to be retrenched under the Act. However, a close look would show that the case was mainly decided on the ground that the concerned department namely, Cooperative Training Institute, deogarh was not to be treated as "industry" within the meaning of Section 2(j) of the Act and further in this case Supreme Court did not take into consideration the earlier case decided by it holding to the contrary and as noticed above. Not only this even in the following subsequent judgments, Supreme Court has taken the view that provision of Section 25-F would be applicable even in a case of daily rated workman. These cases are:

1. Rattan Singh v. Union of India, (1997) 11 SCC 396 .

2. M.C.D. Vs. Praveen Kumar Jain and Others, .

3. Samishta Dube Vs. City Board, Etawah and Another, .

23. In view of the aforesaid restatement of law as recent as in 1999 as well, I respectfully follow the same in preference to the view expressed in the case of Himanshu Kumar Vidyarthi and others Vs. State of Bihar and others (supra). Accordingly, this point is also decided against the petitioner.

8. Learned counsel for respondent further relies on the judgment in Ramkishan Vs. Samrat Ashok Technical Institute, , wherein the court observed that the

amended definition of "industry", which sought to exclude educational institutions from the purview of industry had not yet been brought into force.

9. At this stage, I find it relevant to produce the definition of industry as it presently stands, in Section 2(j) of the Act. The same reads as follows:

2(j) "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

10. A perusal of the functions of the petitioner shows that the basic objective of the petitioner establishment is to provide support for the National Literacy Mission. To undertake the same, apart from developing guidelines for teaching - learning materials, the petitioner also monitors the progress and status of literacy campaigns and collaborates and coordinates with State Resource Centers by giving priority to the States where the literacy rate is below the national average. The petitioner is also responsible for planning, monitoring and evaluating the capacity building of all resource centers. (See website of Directorate of Adult Education)

11. In addition to this, the petitioner also harnesses all kinds of media for furtherance of the objectives of the National Literacy Mission. The petitioner also provides financial assistance to select organizations known as "Voluntary Agencies" for undertaking projects on eradication of illiteracy. Applications for undertaking these projects are invited by issuing advertisements in newspapers and the projects and budgets submitted by the Voluntary Agencies are examined by the Grant-in-Aid Committees of the petitioner before approval.

12. The aforementioned functions of the petitioner, in my view, qualify as functions in the nature of public welfare and not sovereign functions. In D.N. Banerji Vs. P.R. Mukherjee and Others, , the Constitution Bench of five Hon'ble Judges considered the question whether the Act was applicable to municipalities. Therefore, the issue that arose for consideration was whether the Municipality is an "industry" as defined in the Act in Section 2(j) of the Act.

13. The Supreme Court in this decision, inter alia, observed as follows:

12. Where a dispute arises in such an industry between the employees on the one side and the Central Government or the State or the local body on the other, it would be an industrial dispute undoubtedly. But where a dispute arises in connection with the discharge of the normal activities of Government or of a local body, it is argued for the appellant that the dispute cannot be regarded as an industrial dispute. The soundness of this contention falls to be examined.

13. ...There is nothing however to prevent a statute from giving the word "industry" and the words "industrial dispute" a wider and more comprehensive import in order to meet the requirements of rapid industrial progress and to bring about in the interests of industrial peace and economy, a fair and satisfactory adjustment of relations between employers and workmen in a

variety of fields of activity. It is obvious that the limited concept of what an industry meant in early times must now yield place to an enormously wider concept so as to take in various and varied forms of industry, so that disputes arising in connection with them might be settled quickly without much dislocation and disorganisation of the needs of society and in a manner more adapted to conciliation and settlement than a determination of the respective rights and liabilities according to strict legal procedure and principles. The conflicts between capital and labour have now to be determined more from the standpoint of status than of contract. Without such an approach, the numerous problems that now arise for solution in the shape of industrial disputes cannot be tackled satisfactorily, and this is why every civilised government has thought of the machinery of conciliation officers, Boards and Tribunals for the effective settlement of disputes.

14. It is therefore incumbent on us to ascertain what the statute means by "industry" and "industrial dispute", leaving aside the original meaning attributed to the words in a simpler state of society, when we had only one employer perhaps, doing a particular trade or carrying on a particular business with the help of his own tools, material and skill and employing a few workmen in the process of production or manufacture, and when such disputes that occurred did not go behind individual levels into acute fights between rival organisations of workmen and employers, and when large scale strikes and lock-outs throwing society into chaos and confusion were practically unknown. Legislation had to keep pace with the march of times and to provide for new situations. Social evolution is a process of constant growth, and the State cannot afford to stand still without taking adequate measures by means of legislation to solve large and momentous problems that arise in the industrial field from day to day almost.

19. A public utility service such as railways, telephones and the supply of power, light or water to the public may be carried on by private companies or business corporations. Even conservancy or sanitation may be so carried on, though after the introduction of local self-government this work has in almost every country been assigned as a duty to local bodies like our Municipalities or District Boards or Local Boards. A dispute in these services between employers and workmen is an industrial dispute, and the proviso to section 10 lays down that where such a dispute arises and a notice u/s 22 has been given, the appropriate Government shall make a reference under the sub-section. If the public utility service is carried on by a corporation like a Municipality which is the creature of a statute, and which functions under the limitations imposed by the statute, does it cease to be an industry for this reason? The only ground on which one could say that what would amount to the carrying on of an industry if it is done by a private person ceases to be so if the same work is carried on by a local body like a Municipality is that in the latter there is nothing like the investment of any capital or the existence of a profit earning motive as there generally is in a business. But neither the one nor the other seems a sine qua non or necessary element in the modern conception of industry.

26. Having regard to the definitions found in our Act, the aim or objective that the Legislature had in view and the nature, variety and range of disputes that occur between employers and employees. We are forced to the conclusion that the definitions in our Act include also disputes that might arise between municipalities and their employees in branches of work that can be said to be analogous to the carrying out of a trade or business. It is unnecessary to decide whether disputes arising in relation to purely administrative work fall within their ambit. After all, whether there is an industrial dispute at all is for the Government primarily to find out, for it is only then it has jurisdiction to refer. Moreover, it is not every case of an industrial dispute that the Government is bound to refer. They may refer some, but may not also. It is a question of expediency.

(Emphasis supplied)

14. In *Bangalore Water Supply* (supra), Justice Krishna Iyer, while commenting on the earlier decision in *D.N. Banerjee* (supra), observed:

34. At this stage, a close-up of the content and contours of the controversial words "analogous etc.", which have consumed considerable time of counsel, may be taken. To be fair to Banerji. with the path finding decision which conditioned and canalised and fertilised subsequent juristic-humanistic ideation, we must show fidelity to the terminological exactitude of the seminal expression used and search carefully for its import. The prescient words are branches of work that can be said to be analogous to the carrying out of a "trade or business". The same judgment has negated the necessity for profit-motive and included charity impliedly, has virtually equated private sector and public sector operations and has even perilously hinted at "professions" being "trade". In this perspective, the comprehensive reach of "analogous" activities must be measured. The similarity stressed relates to branches of work"; and more; the analogy with trade or business is in the "carrying out" of the economic adventure. So, the parity is in the modus operandi, in the working-not in the purpose of the project nor in the disposal of the proceeds but in the organisation of the venture, including the relations between the two limbs viz. labour and management. If the mutual relations, the method of employment and the process of co-operation in the carrying: out of the work bear close resemblance to the organization, method, remuneration, relationship of employer and employee and the like, then it is industry, otherwise not. This is the kernel of the decision. An activity oriented, not motive based, analysis.

(Emphasis supplied)

15. Therefore, the decisive test is not in whether the petitioner is undertaking these activities out of a sense of public welfare, but whether there exists a method of working that emerges from an organized venture between employers and employees. The petitioner, no doubt, does much good to the society by promoting adult education but the same cannot be done without a systematic

workforce engaged by the petitioner to meet its objectives. Public welfare activities are not exempt from coverage u/s 2(j) of the Act, in view of the dominant nature test elaborated upon in Para 131 of Bangalore Water Supply (supra) as follows:

131..... IV The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi Case or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur, will be true test. The whole undertaking will be "industry" although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, alone qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

(Emphasis supplied)

16. The only functions left outside the purview of industry are sovereign functions. No doubt, the role of the State in combating illiteracy and promoting education is deeply entrenched in the Directive principles of State Policy (see Article 41 of the Constitution), but the same cannot be considered as a regal or strictly sovereign function. As to what are sovereign functions, has been further examined in N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, , wherein the court considered what functions of the government are strictly sovereign and regal and held "One of the tests to determine if the legislative or executive function is sovereign in nature is whether the State is answerable for such actions in courts of law. For instance, acts such as defence of the country, raising armed forces and maintaining it, making peace or war, foreign affairs, power to acquire and retain territory, are functions which are indicative of external sovereignty and are political in nature. Therefore, they are not amenable to jurisdiction of ordinary civil court. No suit under CPC would lie in respect of it. The State is immune from being sued, as the jurisdiction of the courts in such matter is impliedly barred".

(Emphasis supplied)

17. Relying on the aforesaid judgment in *N. Nagendra Rao (supra)*, the Supreme Court in *Chief Conservator of Forests (supra)* repelled the argument that the constitutional duty imposed on the State by Article 48-A to preserve the environment was an inalienable function in as much, as, it could not be undertaken by a private entity. The Court observed that extending the concept of sovereign function to include all welfare activities of the State would be to erode the ratio laid down in *Bangalore Water Supply (supra)*. The Court held:

15. A perusal of the affidavit filed by the Chief Conservator of Forests on 5.12.1992, pursuant to our order of 6.11.1992 shows that the Pachgaon Parwati Scheme was framed as per the Government Resolution based on the policy decision taken in April 1976. The Scheme was to be initially for a period of 5 years and an area of about 245 hectares situated on a hill plateau on the southern outskirts and within easy access of Pune City was selected for creation of a park under bio-aesthetic development for the benefit of the urban population. It is further stated that the scheme was "primarily intended to fulfill bio-aesthetic, recreational and educational aspirations of the people which will have inestimable indirect benefit of producing enlightened generation of conservationists of nature inclusive of forests and wild life for the future". (Page 137) The affidavit goes on to state (at page 138) that the Pune Forest Division is also doing afforestation for soil/moisture conservation under various State level schemes as well as Employment Guarantee Schemes all of which are for a period of 5 years.

16. The aforesaid being the crux of the scheme to implement which some of the respondent were employed, we are of the view that the same cannot be regarded as a part of inalienable or inescapable function of the State for the reason that the scheme was intended even to fulfill the recreational and educational aspirations of the people. We are in no doubt that such a work could well be undertaken by an agency which is not required to be even an instrumentality of the State.

(Emphasis supplied)

18. Furthermore, in *Agricultural Produce Market Committee Vs. Shri Ashok Harikuni and Another Etc.,*, Supreme Court laid down-

32. So, sovereign function in the new sense may have very wide ramification but essentially sovereign functions are primary inalienable functions which only State could exercise. Thus, various functions of the State, may be ramifications of "sovereignty" but they all cannot be construed as primary inalienable functions. Broadly it is taxation, eminent domain and police power which covers its field. It may cover its legislative functions, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon. So, the dichotomy between sovereign and non-sovereign function could be found by finding which of the functions of the State could be undertaken by any private person or body. The one which could be undertaken cannot be sovereign

function. In a given case even in subject on which the State has the monopoly may also be non-sovereign in nature. Mere dealing in subject of monopoly of the State would not make any such enterprise sovereign in nature. Absence of profit making or mere quid pro would also not make such enterprise to be outside the ambit of "industry" as also in State of Bombay and Ors. case (Supra)."

(Emphasis supplied)

19. A reading of the above laid down propositions of law show that only activities akin to tax collection, legislation, policing etc have been considered outside the ambit of industry. This is so because the test to be applied is whether an activity undertaken by the government can, in fact, also be undertaken by a private entity as laid down in Agricultural Produce Market Committee (supra). The functions of the petitioner establishment though imposed by way of a Constitutional mandate of providing access to education for all, can also be undertaken by private entities who wish to undertake the cause of promoting education.

20. As laid down in Bangalore Water Supply (supra), for a department or undertaking to be considered as industry, it must fulfill the triple test which lays down "Where (i) systematic activity, (ii) organized by co-operation between employer and employee, (the direct and substantial element is chimerical)(iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale, prasad or food), prima facie, there is an "industry" in that enterprise."

21. The activities undertaken by the State are multifold in nature ranging from defence, to education, to preservation of environment, to relief work. However, if the aforesaid activities fulfill the triple test as aforementioned, the same have been held as non sovereign functions of the State. In Des Raj and Ors Vs. State of Punjab and Ors, , the irrigation department of the Punjab and Haryana government was held to be an industry. In General Manager, Telecom Vs. A. Srinivasa Rao and Others, , relying on the triple test laid down in Bangalore Water Supply (supra), the telecom department of the Union of India was held to be an industry. Even functions of the Municipal Department have been held to be akin to industry as laid down in Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and Another, , wherein construction of roads and repair work carried out by the Municipality was held to be an industry.

22. Therefore, I find no merit in the submission of the petitioner that it undertakes functions of a sovereign nature. Even otherwise, it is a settled position of law that within government departments, if there are units which are industries and the same are substantially severable, then the said units should be considered as industry within Section 2(j) of the Act. It cannot be accepted that the Administration Department of the petitioner where the respondents were employed is not an industry. The nature of employment of the respondents was

as Peons on daily wage basis, and not in relation to any sovereign work of the government. Therefore, in view of the aforesaid discussion, the petitioner clearly falls within the definition of industry as per Section 2(j) of the Act.

23. Having concluded that the petitioner is an industry, I proceed to adjudicate on the next issue raised. One of the issues that arose before the CGIT was whether the scheme formulated by the Govt. of India, Ministry of Personnel, PG and Pensions, Department of Personnel and Training vide office memorandum dated 10.09.1993 for grant of temporary status to the casual labourers - which came into effect from 01.09.1993, was a one-time scheme or an ongoing scheme.

24. The Supreme Court rendered its decision in *Union of India & Others v. Mohan Pal* in Civil Appeal No. 3168/2002 on 29.04.2002, holding that the said scheme was a one-time scheme, meaning thereby, that for grant of temporary status the casual labourers should have worked for atleast 240 days in a year (206 days in case of officers observing five days a week) as on 01.09.1993, to become entitled to the benefit of the said scheme. It was held that the said scheme was not an ongoing scheme, which would enable the casual labourers, who complete 240 working days, to become entitled to grant of temporary status - as and when they complete the 240 days of service.

25. In view of the aforesaid decision, learned counsel for the respondent fairly concedes that the said scheme could not be invoked to claim temporary status by the respondent, by virtue of the fact that they had rendered more than 240 days of service during the term of their engagement upto 17.09.2002.

26. By the impugned award, the CGIT has also directed reinstatement in service and regularisation of the respondent workman. Back wages of 25% have also been granted. The CGIT has, in my view, gone off on a complete tangent while granting the relief of regularization to the respondent workmen, even though, they were daily wagers engaged casually, i.e., without following recruitment rules and procedures. The decision of the Supreme Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, , has been noticed by the CGIT. However, the discussion undertaken by the CGIT regarding the said decision is meaningless in view of the decision of the Supreme Court in *U.P. Power Corporation Ltd. and Another Vs. Bijli Mazdoor Sangh and Others*, , holding that the law laid down in *Umadevi* (supra) applies with equal force to industrial adjudication

27. In view of the decision of the Supreme Court in *Umadevi* (supra), learned counsel for the respondent does not dispute the position that the respondents were not entitled to grant of regularisation of their service by the Tribunal. Learned counsel submits that the only correct direction would be to require the petitioner to consider the case of the respondent workmen for regularisation if, and when, they frame a scheme for the said purpose. Accordingly, the award, insofar as it grants regularization in service to the respondents, is set aside.

28. So far as the aspect of the respondents' retrenchment is concerned, it is

seen from the impugned award that there was really no issue raised with regard to the fact that the respondent workman had served for 240 days in the year prior to their disengagement. The CGIT has observed "It is admittedly proved that the workman had worked for 240 days in every year of their engagement almost for 8-10 years".

29. It is not the petitioner's case that the retrenchment of the respondents was done in accordance with section 25F of the Act. Since the respondents had worked for 8-10 years prior to their disengagement, in my view, reinstatement into service was justified and the award of compensation in lieu of reinstatement - in the facts of this case, would not have met the ends of justice.

30. The CGIT has also awarded 25% back wages. There is no basis disclosed as to on what basis the said compensation has been awarded. The award of back wages cannot be a bonanza for the workman as the purpose is only to compensate the workman, who has not served the management during the period of disengagement. The respondents were all young and able bodied at the time of their respective disengagement. It is not their case that they did not progress in life and raise their families. Even after the making of the award, the respondents have not seriously pursued their applications u/s 17-B of the Act. Their application - being CM. Appln. No. 6427/2009 u/s 17-B of the Act was dismissed as not pressed vide order dated 26.08.2011 - when the petitioner in reply to the said application pointed out that each one of them was gainfully employed receiving adequate remuneration. Pertinently, thereafter only one of them, i.e. Sh. Kuldeep Singh-respondent No. 3 has preferred a fresh application u/s 17-B of the Act on 25.02.2013, i.e., CM. Appln. No. 2853/2013. Therefore, I substitute the award of 25% back wages with lump sum compensation of Rs. 25,000/- to each of the respondents in lieu of back wages.

31. The writ petition is, accordingly, disposed of with the following direction:

(i) The award of regularization of the respondent - workmen's services is set aside.

(ii) The award of reinstatement of the respondents in service is upheld. The respondents shall report for duty at the place of their last engagement to the officer holding the same designation under whom they were last serving within ten days of this decision and their attendance shall be marked and work shall be taken from them as daily wager. The respondents shall be paid wages for the service that they may render henceforth equivalent to their contemporaries, who had been engaged with them in 1992 and 1994 respectively. The petitioner shall comply with Section 25-G and 25-H of the Act.

(iii) Each of the respondent workmen shall be entitled to lump sum compensation of Rs. 25,000/- in lieu of back wages to be paid to them within four weeks of this judgment.

(iv) The cases of the respondents shall be considered for regularization in terms

of the policy/scheme framed for the said purpose by the petitioner. For that purpose the respondents shall be treated as in continuous service as daily wagers from the date of their retrenchment and their seniority shall be computed accordingly from the dates of their initial engagement.

(v) Each of the respondents shall be entitled to Costs quantified at Rs. 10,000/-.

Petition stands disposed of in the above terms.