
(2006) 04 DEL CK 0170

In the Delhi High Court

Case No : Writ Petition (Civil) No. 14259 of 2004

Filmistan Exhibitors Ltd.

APPELLANT

Vs

N.C.T. and Others

RESPONDENT

Date of Decision : 26-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114
Industrial Disputes Act, 1947 — Section 25B, 25F
Payment of Gratuity Act, 1972 — Section 2, 4, 4(1), 7, 7(7)

Citation : (2006) 131 DLT 648 : (2006) 111 FLR 661 : (2007) 1 LLJ 50 : (2007) 2 SLJ 258

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : D.N. Vohra, for the Appellant; Sanjay Dua, for resp. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—By this writ petition the petitioner has impugned an order dated 4th September, 2001 passed by the Controller under the Payment of Gratuity Act, 1972 and the order dated 30th June, 2004 passed by the Appellate Authority confirming the same.

2. Shri Vijay Kumar Churiwala (Respondent No. 2 herein) filed a claim against Filmistan Exhibitors Ltd., petitioner before this Court under the Payment of Gratuity Act, 1972 alleging that he was employed with the petitioner since December, 1963 and he worked continuously till 30th October, 2000. He claimed that on this date, the petitioner refused duty to him and thereby his services were terminated after a continuous employment of nearly 37 years. As the petitioner refused to pay gratuity amount payable to the respondent no. 2 under the Payment of Gratuity Act, 1972, he served a notice dated 25th January, 2001 by registered post as well as under postal certificate. The petitioner did not deny the assertions made in the notice by any reply, yet failed to comply with the

notice demand.

In these circumstances, the respondent no. 2 claims to have sent an application for payment of the gratuity on 23rd February, 2001 which was also duly served upon the petitioner. There was no denial by any reply on behalf of the petitioner to this application as well.

As the petitioner failed to comply with the demand made by the respondent no. 2, the respondent filed an application u/s 7 of the Payment of Gratuity Act, 1972 before the Controlling Authority on 23rd March, 2001. The material averments in this application were to the following effect:

xxxx 2. Basis of claim Due to termination by employer after xxxx completing 37 years of service. 7. Post held by the Finance official assistant employee 8. Date of appointment December, 1963 of the employee(if known). 9. Date and cause of The workman was not allowed to termination of work w.e.f. 30.10.2000 without service of the assigning any reasonable employee. xxxx

3. In its reply, the petitioner now challenges the applicability of the Payment of Gratuity Act, 1972 alleging that less than 10 employees were engaged by the petitioner. No date of employment of the respondent no. 2 was mentioned. It was further claimed that as respondent no. 2 had abandoned his job, Therefore he was not entitled to payment of any gratuity.

4. After a detailed consideration of the pleadings and evidence lead by both parties, the Controlling Authority arrived at a conclusion that the respondent no. 2 was engaged from December, 1963; and that the services of respondent no. 2 were terminated from 29th June, 2000 at a last drawn salary of Rs. 3293/- Consequently, vide the order dated 4th September, 2002, the Controlling Authority allowed the application of the respondent no. 2 and held that he was entitled to a sum of Rs. 70,293/- with simple interest at the rate of 10% with effect from 29th May, 2000 till its realisation.

5. Aggrieved thereby, the petitioner assailed the order of the Controlling Authority by way of an appeal u/s 7(7) of the Payment of Gratuity Act, 1972 before the Appellate Authority. Vide an order dated 30th June, 2004 the appeal of the petitioner was dismissed after a detailed consideration of the documents, evidence and the judgment of the Controlling Authority.

6. Having heard the rival contentions, I find that the petitioner has challenged the order passed by the Controlling Authority and the Appellate Authority under the Payment of Gratuity Act, 1972 on pure questions of fact on which both the authorities have concurrently held against the petitioner. The petitioner has contended before this Court that there was no material on record before the authorities which established that the workman was in service for 10 years. It has further been contended that the petitioner had laid evidence by way of the attendance register which showed that the respondent no. 2 was unauthorisedly absent from duty with effect from 30th October, 2000 and the impugned orders

had failed to take into consideration this aspect. Mr. Vohra, learned Counsel for the petitioner has submitted that the date of appointment set up by the workman to be disbelieved as he had failed to produce any proof of his appointment by way of any letter of appointment. As per the petitioner, there was no material to prove that the respondent had rendered ten years of service which itself made the petitioner ineligible for grant of any gratuity.

7. The petitioner has further contended that the onus of proving termination of service lay on the workman in view of the law laid down in *The Range Forest Officer Vs. S.T. Hadimani, Mukand Limited v. Mukand Staff & Officers Association* etc. It is urged by Mr. Vohra, learned Counsel for petitioner that the workman has miserably failed to discharge the onus of proving his termination. The plea set up by the workman deserved to be disbelieved as he stated in his cross examination that he did not want to join service with the petitioner. According to learned Counsel for the petitioner, termination can be effectuated only by written order and that the respondent no. 2 had failed to prove any termination of service by the petitioner. For this reason alone he was disentitled to award of any gratuity.

It is lastly submitted on behalf of the petitioner that an inference of termination should not be easily drawn and he drew support for his submission on the pronouncement reported at *Management of Ritz Theatre (P) Ltd. Vs. Its Workmen*,

8. Having heard learned Counsel for the parties and considered the available record, I find that the petitioner miserably failed to establish any of the pleas taken by it. On the other hand, apart from the respondent's deposition on oath in support of the contentions that he was engaged with the petitioner with effect from December, 1963, the workman placed on record the provident fund ledger register of the petitioner in his behalf which showed deductions from March, 1966. In this register, a balance of Rs. 72,000/- was stated to have been brought forward in the account of the petitioner.

9. Undoubtedly, all relevant records were in the power and possession of the petitioner. The petitioner could have displaced the facts brought out in this register by leading positive evidence and having produced the actual registers and the provident fund challans which would have demolished the case of the workman. No such records were placed before the authorities. On the contrary, the written statement filed by the petitioner management does not set out even an actual date of employment of the respondent no. 2. In the affidavit filed by way of evidence dated 20th February, 2002 sworn by Shri Nischal Tyagi, an accountant of the petitioner, it was stated on behalf of the petitioner that the respondent no. 2 was appointed on 1st February, 1975. When he was subjected to cross examination, this witness on behalf of the petitioner stated that respondent no. 2 was appointed in 1973.

This witness further stated that he had no knowledge that the respondent no. 2

was nominated as the petitioner's representative before the Motion Pictures Association since 1966 or on 31st October, 1970. Shri Tyagi, the witness on behalf of the petitioner admitted that all records relating to the provident fund deductions pertaining to the employees as well as the correspondence with the Motion Pictures Association and the entertainment office was in the power and possession of the petitioner. Suggestions were given to the witness that the workman was paid house rent allowance and conveyance allowance on cash vouchers every month. Even though cash books and ledgers of the management were available with it, no such records were produced or placed on record. The availability of the amount in the respondents account was brought on record in the evidence of the petitioner. The burden of proof Therefore shifted to the management to explain the entries and contents of these documents.

10. So far as termination is concerned, the witness stated that he was not employed with the petitioner on 30th October, 2000 and Therefore he could not state anything with regard thereto. It was specifically put to the witness that he had not produced the relevant records based whereon the affidavit by way of evidence had been filed.

11. I find that the petitioner had also set up a plea that the Payment of Gratuity Act, 1972 was not applicable to its establishment as it was employing less than ten employees. The witness on behalf of the management, in his cross examination stated that 25 to 26 employees are employed by the petitioner whereas in his affidavit, the witness has stated that the number of employees varies from 5 to 8.

12. It is settled law that irrespective of the onus of proof, a party in possession of the best evidence is bound to place the same before the court. In the instant case, the workman had challenged the case set up by the petitioner and had also clearly objected to its failure to produce the relevant records which were admittedly in its power and possession. The petitioner failed to produce the same and as such an adverse inference in terms of Section 114 illustration (g) of the Indian Evidence Act, 1872 and was liable to be drawn against it. In this behalf, I may appropriately refer to the pronouncement of the Apex Court reported in Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others,

13. In this behalf the law laid down by the Apex Court in Manager, R.B.I., Bangalore Vs. S. Mani and Others, is noteworthy. It was held by the Apex Court that it is only if the initial burden of proof, which was on the workman, was discharged to some extent, that a finding can be returned in respect of the defense of the management. Furthermore, a plea having been set up by the workman, the initial burden of proof was on the workman to show that he had been employed by the respondent bank in the claim capacity on the stated terms. The circumstances in which the court may draw an adverse inference against the management has been succinctly set down thus:

22, An adverse inference, Therefore, was drawn for non-production of the

attendance register alone, and not for non-production of the wage-slips. Reference to "other relevant documents" must be held to be vague as the appellant herein had not been called upon to produce any other documents for the said purpose.

23. It appears that the learned Tribunal considered the matter solely from the angle that the appellant had failed to prove its plea of abandonment of service by the respondents.

24. The question came up for consideration before this Court recently in *Siri Niwas* wherein it was held : (SCCp.198, para 15)

15. A court of law even in a case where provisions of the Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds.

25. Referring to the decision of this Court in *Indira Nehru Gandhi v. Raj Narain* this Court observed : (*Siri Niwas* case, SCC p. 199, para 19)

19. Furthermore a party in order to get benefit of the provisions contained in Section 114III(g) of the Evidence Act must place some evidence in support of his case. Here the respondent failed to do so.

26. In *Hariram* this Court observed : (SCC p. 250, para 11)

11. The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously.

27. As noticed hereinbefore, in this case also the respondents did not adduce any evidence whatsoever. Thus, in the facts and circumstances of the case, the Tribunal erred in drawing an adverse inference.

Burden of proof

28. The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service stating:

It is admitted case of the parties that all the first parties under the reference CRs Nos. 1 to 11 of 1992 have been appointed by the second party as ticca

mazdoors. As per the first parties, they had worked continuously from April 1980 to December 1982. But the second party had denied the above said claim of continuous service of the first parties on the ground that the first parties has not been appointed as regular workmen but they were working only as temporary part-time workers as ticca mazdoor and their services were required whenever necessity arose that too on the leave vacancies of regular employees. But as strongly contended by the counsel for the first party, since the second party had denied the above said claim of continuous period of service, it is for the second party to prove through the records available with them as the relevant records could be available only with the second party.

29. The Tribunal, Therefore, accepted that the appellant had denied the respondents' claim as regards their continuous service.

30. In Range Forest Officer v. S.T. Hadimani it was stated : (SCC p. 26, para 3)

3. ...In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year proceeding his termination. Filing of an affidavit is only his own statement in his favor and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside.

31. In Siri Niwas this Court held : (SCC pp. 197-198, para 13)

13. The provisions of the Evidence Act, 1872 per se are not applicable in an industrial adjudication. The general principles of it are, however, applicable. It is also imperative for the Industrial Tribunal to see that the principles of natural justice are complied with. The burden of proof was on the respondent workman herein to show that he had worked for 240 days in the preceding twelve months prior to his alleged retrenchment. In terms of Section 25-F of the Industrial Disputes Act, 1947, an order retrenching a workman would not be effective unless the conditions precedent Therefore are satisfied. Section 25-F postulates the following conditions to be fulfilled by an employer for effecting a valid retrenchment:

(i) one month's notice in writing indicting the reasons for retrenchment or wages in lieu thereof;

(ii) payment of compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

It was further observed : (SCC p. 198, para 14)

14. ... As noticed hereinbefore, the burden of proof was on the workman. From the award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25-B of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the appellant herein including the muster rolls. It is improbable that a person working in a local authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. He did not even examine any other witness in support of his case.

32. Yet again in Hariram it was opined : (SCC p. 250, para 10)

10. ... We cannot but bear in mind the fact that the initial burden of establishing the factum of their continuous work for 240 days in a year rests with the respondent applicants.

14. At this stage, it would be appropriate to examine the challenge made by the petitioner to the order of the Controlling Authority and the Appellate Authority on the ground that it failed to consider the attendance registers and the records of the petitioner, I find that the same are not trustworthy. The location of the respondent no. 2's name in the register has varied. While his name appears on the top in several places in the register, but inexplicably from July, 2004 his name is shown at the bottom of the register. This would suggest interpolation and an attempt to interpolate and to create evidence. In any case, these attendance registers which are not supported with any communication to the workman to the effect that he was unauthorisedly absent from duty or notice to him to join service, did not deserve any credence. The contention of the petitioner that the respondent failed to discharge the burden of proof on him with regard to his appointment.

15. So far as the plea of termination is concerned, respondent no. 2 stated that he was not assigned duty with effect from 30th October, 2000. The petitioner failed to prove that the workman was unauthorisedly absent from duty with effect from 30th June, 2000 which was a date set up by it. Not a single notice or communication was admittedly addressed by the petitioner to the workman requiring him to join duties.

16. The petitioner had set up a case of abandonment of service. So far as the principles governing abandonment are to be concerned, an inference of abandonment or relinquishment of service is not easily drawn. Surrounding circumstances would require to be examined. An intention to abandon service would be gathered from the period of absence, response to a notice calling upon the workman to resume duty. Such intention may be inferred from the acts and conduct of a party and the same is pure question of fact. The Apex Court had

occasion to examine what would constitute the expression "abandonment of service" and in its pronouncement reported at 1979 L I.C. 290 G.T. Lad v. Chemicals and Fibres India Limited held thus:

5. In the Act, we do not find any definition of the expression "abandonment of service". In the absence of any clue as to the meaning of the said expression, we have to depend on meaning assigned to it in the dictionary of English language. In the unabridged edition of the Random House Dictionary, the word "abandon" has been explained as meaning to leave completely and finally ; forsake utterly, to relinquish, renounce, to give up all concern in something". According to the Dictionary of English Law by Earl Jowitt (1959 edition) "abandonment" means "relinquishment of an interest or claim. According to Black's Law Dictionary "abandonment" when used in relation to an office means "voluntary relinquishment". It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties pertaining to the office must be with actual or imputed intention, on the part of the officer to abandon and relinquish the office. The intention may be inferred from the act and conduct of the party, and is a question of fact. Temporary absence is not ordinarily sufficient to constitute as "abandonment of office".

6. From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another, it was observed by this Court that under common law an inference that an employee has abandoned or relinquish service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf . Thus whether there has been a voluntary ; abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.

Re: Question no. 2: This takes us to the consideration of the second question, namely whether in the circumstances of the instant case, it could be said that the appellants had voluntarily abandoned the service of the Company. It may be recalled that the appellants had along with 229 other workmen gone on indefinite and peaceful strike (which ended on October 22, 1972) in response to the strike notice given by the union to the company to press its demand for reinstatement of its three dismissed leaders and had not only by their letters dated September 21, 1972 and September, 20, 1972 unequivocally intimated to the Company that they did not intend to abandon the service but had also returned the cheques sent to them by the Company on account of their leave salary, gratuity etc. The appellants' stand that the letter of the Company dated September 7, 1972 was received by them on September 20, 1972 and not earlier was never denied or

refuted by the Company in the correspondence that passed between the parties. Thus, there was nothing in the surrounding circumstances or the conduct of the appellants indicating or suggesting an intention on their part to abandon service which in view of the ratio of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, can be legitimately said to mean to detach, unfasten, undo or untie the binding knot or link which holds one to the office and the obligations and privileges that go with it. Their absence from duty was purely temporary and could by no stretch of imagination be construed as voluntary abandonment by them of the Company's service. In Express Newspapers (P) Ltd. Vs. Michael Mark and Another, which is on all fours with the present case, it was held that if the employees absent themselves from the work because of strike in enforcement of their demands, there can be no question of abandonment of employment by them. In the present case also the appellants' absence from duty was because of their peaceful strike to enforce their demand. Accordingly, we are of the view that there was no abandonment of service on the part of the appellants.

Re: Question No. 3 : Let us now advert to the last but the most crucial question, namely, whether the action of the Company in removing the names of the appellants from its rolls during the pendency of the proceedings before the Labour Court in respect of the industrial dispute on the presumption that they had abandoned Company's service constituted an alteration in the conditions of service applicable to them immediately before the commencement of the said proceedings which prejudicially affected them. Although the learned Counsel appearing on behalf of the respondent has taken us through the certified standing orders as applicable to the appellants, he has not been able to point out anything therein to indicate that the company could terminate the services of the appellants on the ground of abandonment of service because of their going on strike in enforcement of their demands. Thus, there being no provision in the certified standing orders by virtue of which the Company could have terminated the services of the appellants in the aforesaid circumstances, the impugned action on the part of the Company clearly amounted to a change in the conditions of service of the appellants during the admitted pendency of the industrial dispute before the Labour Court which adversely affected them and could not be countenanced. We are fortified in this view by the aforesaid decision of this Court in Express Newspapers (P) Limited v. Michael Mark where repelling an identical contention to the effect that the failure of the workmen to return to work by a notified date clearly implied abandonment of their employment, it was held that the management cannot by imposing a new term of employment unilaterally convert the absence of work into abandonment of employment. It was further held in that decision that if the strike was in fact illegal, the management could take disciplinary action against the employees under the standing orders and dismiss them. If that were done, the strikers would not have been entitled to any compensation under standing orders but that was not what the appellants purported to do and the respondents were, Therefore entitled to

relief.

17. In the instant case, undoubtedly the respondent no. 2 has stated that he worked with the petitioner till 29th October, 2000 and on 30th October, 2000 was refused duty and his services were terminated. He accepted the act of the termination of the petitioner and did not agitate the same. Because of his having rendered 37 years of continuous service, he claimed entitlement to gratuity by way of the notice dated 25th January, 2001 and an application dated 23rd February, 2001. The petitioner did not repudiate the claim of the workman and did not even contend that he was not entitled to the gratuity for the reason that his services were not terminated. It is only in his written statement before the Controlling Authority that a semblance of a defense to this effect was set up. For this reason, there is no reason to disbelieve the statement of the workman that he was not assigned duty and that the management intended to and had terminated his services with effect from 30th October, 2000.

18. It has been pointed by Mr. Sanjay Dua, learned Counsel appearing for respondent no. 2 that in the light of the material placed before the workman on record to the effect that he had rendered 37 years of satisfactory service, no weight deserves to be attached to his statement that he did not want to go back to his duties when such a suggestion was put to him only in the cross examination. It has been pointed out that the workman after rendering 37 years continuous service on the eve of his fruitful years of life was treated abominably and disrespectfully when he was denied permission to enter the premises of the petitioner. It has been urged that any workman with self respect would find such treatment humiliating and consequently the statement of the workman in answer to an isolated question when he was being cross examined in 2002 would not discredit his statement that his services were terminated by the management of denying duties to him. The petitioner did not address a single communication to the respondent requiring him to join duty. Examined against the treatment meted out to him by the petitioner, it cannot at all be held that such a submission at this stage indicates that it was the workman who abandoned service. In this view of the matter, and in the light of the principles laid down by the Supreme Court, the conclusion that there was termination of his service by the management is inescapable and inevitable.

19. I find that the definition of termination of service has been laid by the legislature in Section 2q of the Payment of Gratuity Act wherein it is defined thus:

2(q) "retirement" means termination of the service of an employee otherwise than on superannuation.

20. Section 4 of the statute provides that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service of not less than five years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or death. In *State of Punjab Vs. Labour Court Jullunder and Others*, , the Apex

Court has held that the definition of termination of service in Section 2q is framed in the wider terms and except for superannuation, any termination of service would amount to retirement for the purposes of Payment of Gratuity Act, 1972. In this judgment, the Apex Court laid out the applicable principles thus:

5. Having regard to the definition of "superannuation" in Section 2(r) of the Act, it is clear that the case is not one under Clause (a). Nor, admittedly, is it a case which falls under Clause (c). As regards Clause (b), it is not a case of registration. The only question is whether it can be regarded under Clause (b) as a case of retirement. The expression "retirement" has been defined by Section 2(q) to mean "termination" of the service of an employee otherwise than on superannuation." The definition is framed in the widest terms. Except for superannuation, any termination of service would amount to "retirement" for the purposes of the Act. Retrenchment is a termination of service. It is immaterial that the termination is occasioned by the need to discharge surplus labour. That retrenchment implies the discharge of surplus labour was explained in *Barsi Light Railway Co. Ltd. v. K.N. Joglekar* AIR 1957 SC 121. Nonetheless, it amounts to termination of service. We are of opinion that the retrenchment of the employee respondents falls within the scope of Section 4(1) of the Payment of Gratuity Act, and the employee respondents are Therefore entitled to gratuity under that provision.

21. This court in the pronouncement of the Division Bench reported in 2001 (58) DRJ 685 *Texmaci Limited v. Roshan Singh and Ors.* held that the Payment of Gratuity Act, 1972 is a welfare legislation from the aims and object of the Gratuity Act, it is clear that the legislature did not want that the gratuity amount should be withheld for any reason except for the reasons specifically incorporated in the Act. The courts have to translate the intention of the legislature.

22. I find that the impugned orders have held that the workman has rendered 37 years of continuous service and that his services were not terminated by the refusal to assign duties to him. The petitioner set up a case for abandonment which was disbelieved by the authorities.

23. In *State of Punjab Vs. Labour Court Jullunder and Others*, ., the court held that the expression "retirement" has been defined by Section 2q to amount termination of service of the employee otherwise than on superannuation. The definition is framed in the widest terms. Except for superannuation any termination of service would amount to retirement. After it was held that the retrenchment is a termination of service and that it is immaterial that the termination is occasioned by the leave to discharge surplus labour.

24. It is settled law that the jurisdiction of a writ court under Article 226 of the Constitution of India can be exercised only within well laid down parameters. In this behalf, the Apex Court has repeatedly discouraged examination of disputed questions of facts.

25. The parameters and scope of judicial review on issues of fact in industrial

awards have been circumscribed within narrow limits by judicial pronouncement. Noteworthy in this behalf are the observations of the Apex Court in AIR 2000 SC 1508 entitled *Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Anr.* in which it was held thus:

The learned single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a Judicial Officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly one taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned single Judge and in ordering restoration of the Award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken, the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, Therefore, open to the writ Judge was the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of re-assessing the evidence and arriving at findings of one's own, altogether giving a complete go-bye even to the facts specifically found by the Tribunal below.

26. In this context the law laid down by the Apex Court in *Sadhu Ram v. Delhi Transport Corporation* AIR 1984 SC 1967 observed:

Para 5... nor do we think that it was right for the High Court to interfere with the Award of the Industrial Tribunal under Article 226 on a mere technicality. Article 226 is a device to secure and advance justice and not otherwise. In the result, we allow the appeal, set-aside the judgment of the High Court and restore the Award of the Presiding Officer.

27. In *Harbans Lal Vs. Jagmohan Saran*, the court ruled:

Para 5 ... The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The Writ Petition before the High Court prayed for a Writ in the nature of certiorari, and it is well known that a Writ in the nature of certiorari may be issued only if the order of the inferior tribunal of subordinate court suffers from an error of jurisdiction, or from a breach of the principles of

natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach finding of fact contrary to those rendered by an inferior court or subordinate court. When a High Court proceeds to do so, it acts plainly in excess of its power.

28. In *Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others*, , the court further observed that:

Para 10. The object of enacting the enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to Tribunals for settlement is to bring about industrial peace. Whenever a reference is made by the Government to the Industrial Tribunal, it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases, an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the Awards made by the Industrial Tribunal instead of picking holes here and there in the Awards on rival points and ultimately frustrating the entire adjudication process before the Tribunals by striking down the Awards in hyper technical grounds. Unfortunately, the orders of the Single Judge and of the Division Bench have resulted in such frustration and have made the Award fruitless on an untenable basis.

29. In *Ramniklal N. Bhutta and another Vs. State of Maharashtra and others*, it was held by the Apex Court that it is not necessary for a writ to issue even upon the making of a legal ground by the petitioner if the larger interest of the public dictated otherwise.

30. It is well settled that even if there is a violation of law, this Court is not bound to interfere in discretionary jurisdiction under Article 226 of the Constitution, vide *Chandra Singh Vs. State of Rajasthan and Another*, and *Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others*, , etc.

31. In *Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another*, the Supreme Court observed:

The modern trend points to judicial restraint in reviewing administrative actions. Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. Even when defect is found in the decision making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, should the court interfere.

At any event, this is not a fit case for exercise of my discretion under Article 226

of the Constitution.

32. In view of all the above, the findings written in the orders dated 4th September, 2002 and 30th June, 2004 cannot be assailed on any legally tenable grounds.

The writ petition is wholly devoid of merits and is hereby dismissed.

The respondent no. 2 shall be entitled to costs of the present proceedings which are quantified at Rs. 10,000/-