

(2017) 03 RAJ CK 0131
In the Rajasthan High Court
Case No : 1365 of 2013

**Ganesh Singh S/o Sh. Bhairu Singh Rawat Vs Director, Vardhaman
Mahaveer Open University, Regional Centre, Ajmer & Ors.**

Date of Decision : 25-03-2017

Acts Referred:

[Industrial Disputes Act, 1947](#), [Section 25F](#),
[Section 25G](#), [Section 25F\(a\)](#),
[Section 25F\(b\)](#), [Section 25H](#), [Section 1824-2-AAA](#)

Citation : (2017) 03 RAJ CK 0131

Hon'ble Judges : Mohammad Rafiq, Veerendr Singh Siradhana

Bench : DIVISION BENCH

Advocate : Sunil Samdaria, Anita Agarwal

Judgement

1. This matter has been placed before the Division Bench upon a reference made by learned Single Judge, who has differed with the view taken by another Single Bench of this Court in *Devendra Salolia Vs. State of Rajasthan*, 1990 (1) RLR 743. Learned Single Judge while making reference to the Larger Bench has formulated the following question to be answered:

"As to whether the wage payable in lieu of one month's notice under Section 25F(a) of the 1947 Act is the monthly wage actually paid or a monthly wage re-computed with reference to a broken down daily wage multiplied by a factor of 30 such that payment in lieu of monthly wage under Section 25F(a) of the 1947 Act is higher than the actual monthly wage paid to the workman immediately prior to his retrenchment?"

2. The foundational facts giving rise to the dispute are that the petitioner-workman Ganesh Singh was a muster roll employee with the respondent-university from 01.09.1991 to 31.01.1993. He was retrenched vide order dated 30.01.1993 w.e.f. 01.02.1993. The respondent-university in purported compliance of Section 25F of the Industrial Disputes Act, 1947 (for short "the Act") paid to the petitioner a sum of Rs. 974/- by demand draft dated 29.01.1993, which included amount of Rs. 634/- towards a month's wage in lieu

of notice period in compliance of Section 25F(a) of the Act and additional amount of Rs. 340/- towards 15 days wages, as compensation in compliance of Section 25F(b) of the Act. The petitioner approached the Government for making reference of industrial dispute under the Act to an industrial court. The government vide order dated 27.10.2004 refused to make reference on the ground of inordinate delay. The petitioner challenged that order by filing S.B. Civil Writ Petition No. 4076/2006, which was allowed vide order dated 15.07.2009 and Government's order dated 27.10.2004, declining to make reference, was quashed and set aside and the matter was remanded for reconsideration de-hors the delay. It was thereafter that the appropriate Government vide notification dated 29.10.2009 referred the dispute to the Industrial Tribunal, Ajmer

on the question of validity of retrenchment of the petitioner. Challenge to the order of retrenchment was based by the petitioner on various grounds including contravention of Sections 25F, 25G and 25H of the Act. The Industrial Tribunal vide its award dated 11.12.2012 answered the reference in negative and dismissed the claim of the petitioner. The aforementioned award has been challenged by the petitioner by way of present writ petition.

3. Case of the petitioner, as set up in the memo of writ petition as well as in the claim petition before the Industrial Tribunal is that his services could have been retrenched only after making compliance of Section 25F of the Act, i.e. (a) the workman has been given one month's notice in writing, indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice and (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months. The petitioner was being paid wages @ Rs. 22.65 per day. Even then the respondents paid to the petitioner a sum of Rs. 974/-, which also included a sum of Rs. 340/- towards 15 days average pay, i.e. $\text{Rs. } 22.65 \times 15 = \text{Rs. } 339.75$ or 340. After deducting this amount, the petitioner ought to have been paid one month's wages, i.e. $\text{Rs. } 22.65 \times 30 = \text{Rs. } 679.50$ or 680. Total amount payable to the petitioner in compliance of Sections 25F(a) and (b) of the Act would thus be Rs. 1,020/- whereas he has been paid only a sum of Rs. 974/-. The requisite payable amount thus fell short by Rs. 46/-.

4. Case of the respondents-university, as set up in reply to writ petition as well as reply to claim petition before the Industrial Tribunal, is that petitioner-workman was paid due amount, towards one month's notice period and compensation of 15 days wages, by demand draft of a sum of Rs. 974/- dated 29.01.1993. The petitioner was being paid as per the voucher submitted before this Court monthly wages of Rs. 588.90, which is equal to wages of 26 days, without counting four sundays. The respondents have, however, paid to the petitioner a sum of Rs. 634/- in lieu of one month's wages, which is more than

what was being actually paid to him. Aside of that, the petitioner was also paid a sum of Rs. 340/- towards compensation as per Section 25F (b) of the Act on the basis of monthly wages for 26 days.

5. Mr. Sunil Samdaria, learned counsel for the petitioner argued that the learned Single Judge was not justified in doubting correctness of the earlier judgment of the Single Bench of this Court in Devendra Salolia(supra) on the basis of the judgment of the Supreme Court in Guru Jambheshwar University Through Registrar Vs. Dharam Pal (2007) 2 SCC 265. Aforesaid judgment of the Supreme Court, which has been made basis for making reference, is not applicable to the present case. Herein, termination/retrenchment was challenged on the ground of violation of provisions of Section 25F(a) of the Act whereas the Supreme Court in the case of Guru Jambheshwar University(supra) interpreted Section 25F(b) of the Act. The reference is, therefore, not competent and need not be answered. It is argued that learned Single Judge was bound by judgment of the Co-ordinate Bench of this Court in Devendra Salolia(supra), as the said judgment has occupied the filed for a quarter of century. On facts, it is submitted that the petitioner was appointed on daily wage basis @ Rs. 22.65 per day on 01.09.1991 and he served till 31.01.1993. His services were retrenched vide order dated 30.01.1993 w.e.f. 01.02.1993. Payment of Rs. 634/- was made towards the wages of notice period of one month in purported compliance of Section 25F(a) of the Act and further, amount of Rs. 340/- was paid to the petitioner as compensation in purported compliance of Section 25F(b) of the Act. Payment of notice period wages of Rs. 634 paid to the petitioner at the time of retrenchment, being short by Rs. 46/-, was not in conformity with Section 25F(a) of the Act. Therefore, retrenchment of the petitioner was liable to be declared illegal. This Court in Devendra Salolia(supra) categorically held that since the period of notice as contemplated by Section 25F(a) of the Act was 30 days, payment of retrenchment has to be computed on the basis of wages of 30 days and not less.

6. Shri Sunil Samdaria, learned counsel, therefore, submitted that the question which arises for determination by this Court is that whether retrenchment wages payable in lieu of one month's notice shall be calculated on the basis of 30 days or 26 days. This Court in Devendra Salolia(supra) after threadbare discussing provisions of Section 25F(a) of the Act, held that it has to be computed on the basis of wages of 30 days. There is no justification for deviating from that view. It is argued that as per Section 25F(a) of the Act, payment of notice pay is not the primary mode. Section 25F(a) of the Act clearly postulates that primarily, termination of a workman is to be effected only by giving him one month's notice in writing indicating the reasons of retrenchment, which means that termination would become operative only after expiry of period of one month notice. However, the law has given to the employer an alternative mode for terminating the service by giving wages for the period of notice so that in order to effect termination, employer is not constrained to wait for one month. When the employer/management has chosen to adopt alternative mode, i.e. by making

payment of wages for period of notice, it has to be in consonance with the period of notice, i.e. 30 days. Thus, on reasonable and harmonious construction/ interpretation of Section 25F(a) of the Act, period of notice has to be considered of not less than 30 days.

7. Learned counsel referring to judgment of the Supreme Court in *Guru Jambheshwar University*(supra) submitted that observations made therein rather strengthen the case of the petitioner-workman that actual period of retrenchment notice in any case cannot be less than 30 days. Ordinarily, a month is understood to mean 30 days and it was clarified in para 18 of the Judgment that any deviation there from has to be statutorily prescribed. Learned counsel for the petitioner further argued that learned Single Judge was wholly unjustified in observing that no other grounds has been raised during the course of arguments whereas in the earlier part of the order, learned Single Judge himself has recorded finding that no fault can be found with the award passed by the Industrial Tribunal on account of violation of Section 25F(b) and on account of violation of Section 25-G and Section 25H of the Act. If the counsel for the petitioner had not raised any other ground than violation of Section 25F (a) of the Act, there was no occasion for the learned Single Judge to write the findings upon Section 25F(b), 25G and 25H of the Act.

8. Ms. Anita Agarwal, learned counsel for the respondents submitted that the petitioner was paid on monthly basis and his daily wage included the payment for 4 holidays(Sundays), which were paid holidays. The respondents placed on record vouchers to show that the petitioner was actually being paid on monthly basis @ Rs. 588.90. Even then the petitioner was paid a sum of Rs. 634/-, which is much more than the monthly wages actually paid to him, as per the Minimum Wages Act, 1948 and notification issued thereunder. It is contended that rate of wages of Rs. 22.65/- per day is calculated taking into consideration the work for 26 days and four non-working days in a month and the methodology as per the Minimum Wages Act of 1948 is adopted. As such payment of Rs. 679.50 i.e. 22.65×30 would be much more than the wages he was receiving, while working with the respondent university. It is submitted that even the petitionerworkman himself admitted before the Industrial Tribunal that he was paid salary for 26 days, which shows that he was being paid on a monthly basis.

9. Learned counsel for the respondents further argued that in *Guru Jambheshwar University*(supra), the Supreme Court has held that where the language of a provision of law was plain and clear and without any ambiguity, the rule of strict construction applies and provision has to be literally interpreted. Further, the judgment in the case of *Jeewanlal Ltd. & Others Vs. Appellate Authority Under The Payment of Gratuity Act and Others*, (1984) 4 SCC 356 was relied upon in *Shri Digvijay Woollen Mills Limited Vs. Shri Mahendra Prataprai Buch*, (1980) 4 SCC 106 where the Supreme Court held, in a different context though, that for calculating the gratuity payable, the legal requirement was to divide the average monthly wages by 26 and not by 30, as a worker ordinarily gets four weekly paid

holidays and has to work only on 26 days in a month. The wage paid over 26 days includes the wage for the four non working days and effectively a wage for 30 days i.e. a month for the purpose of Section 25F(a) of the Act. Such monthly wage payable in lieu of a month's notice under Section 25F(a) of the Act cannot be reckoned on the arithmetics adopted in case of Devendra Salolia(supra). Upholding that view would give rise to an anomalous situation where the pay for one month's notice would be more than the actual monthly wages being received by the workman.

10. We have given our anxious consideration to rival submissions and carefully perused the material on record.

11. We may at outset refer to the pleadings of the employer-university set up in reply to claim petition before the Industrial Tribunal as to what was the actual payment made by them to the petitioner in order to comply Section 25F(a) of the Act. In para 2 of the reply to statement of claim before the Industrial Tribunal, it was stated by the management that monthly wages of the petitioner was being paid @ Rs. 22/- per day. It was not elaborated further that whether monthly wages was being paid for 30 days or 26 days, but in that very para, it was further averred that a sum of Rs. 634/- was paid in lieu of one month's pay. In reply to writ petition, however, the respondents have stated that even while the petitioner was working with the respondents, he was being paid as per the vouchers submitted before this Court and a sum of Rs. 588.90, which is equal to pay of 26 days, without counting four sundays. In para 6 of the reply to writ petition, it was further stated that retrenchment compensation payable under Section 25F(b) of the Act is required to be computed on the basis of workman's monthly wages for 26 working days. In para 7 of the reply to writ petition, it was stated that even if Rs. 22.65 per day is taken as petitioner's wages, the calculation for 26 days comes to Rs. 588.90 and for 15 days it comes to Rs. 339.75, total of which comes to Rs. 928.65, as against which, a sum of Rs. 974/- was paid to the petitionerworkman. Thus, due compliance of both Sections 25F(a) and 25F(b) of the Act was made by the respondents.

12. Learned Single Judge has in upholding the argument of the management has relied on Annexures 2 to 6 filed by the petitioner. It is admitted fact that his wages for each of the months of September, October and November, 1992 were Rs.

586.90 and that he in the statement made before the Industrial Tribunal admitted that he was paid wages for 26 days in a month. Therefore, he was not a daily wager, held the learned Single Judge.

13. Learned Single Judge has thus sought to differ with the view taken by the Single Bench of this Court in Devendra Salolia(supra) on the assumption that the petitioner-workman was being paid on monthly basis and not on daily wages basis, which would be evident from the following observations:

"The monthly wage of a workman is a question of fact, i.e. dependent upon

direct evidence on record not on discovery by an arithmetical exercise. The evidence on record in the case at hands, before the Tribunal as also before this court as set out in annexures 2,3,4,5 and 6 to the writ petition shows that the petitioner, as a muster-roll employee, was being paid Rs.588.90 each month. I find no force in the contention of counsel for the petitioner that even though the petitioner was being paid a monthly wage of Rs.588.90, yet the payment of wage in lieu of one month's notice would entitle him to a higher amount of Rs.679.50."

14. Learned Single Judge after discussing the judgment in the case of Devendra Salolia(supra) further observed thus:

"To my mind, where a monthly wage is paid to an employee, the amount so paid alone is to be reckoned for the purpose of payment of one month's notice pay under Section 25F(a) of the 1947 Act as rightly argued by the counsel for the respondent University. A contra interpretation based on arithmetic and unraveling a monthly wage, breaking it up into a daily wage to then recompute the monthly wage by a multiplier of 30 would lead to payment in lieu of a monthly wage under Section 25F(a) of the 1947 Act being more than the monthly wage paid during employment."

15. We have looked into Annexures 2 to 6, which persuaded the learned Single Judge to assume that the petitioner was being paid on monthly basis and not on daily wages basis and we find that the petitioner was actually working on muster roll on day to day basis and paid wages for 26 days in a month by excluding four holidays. It would, therefore, be not correct to say that his wages were being computed as if he was being paid on monthly basis and not on daily basis. Wage period of the petitioner was certainly daily basis. Although, it is another matter that agreed method of payment for the sake of mutual convenience of the parties was on monthly basis. Therefore, the management used to pay to the petitioner-workman wages for 26 days at one go on month to month basis. Merely because the petitioner was paid monthly wages, he did not cease to be daily wager.

16. We may in this behalf take advantage of the observations made by the Madras High Court, as to wage period vis-a-vis intervals at which wages are paid/received as per mutual convenience of the management/workman, in Management of India Hume Pipe Co. Ltd. Vs. K. Palaniswami and Another, AIR 1968 Mad 52. The Madras High Court in that case was dealing with a case where the dispute arose with reference to the application of definition in Section 2(aaa) of the Act, "average pay", as meaning the average of the wages payable to workman. Relying on its earlier Division Bench judgment in T.S.T. Co., Ltd. Vs. perumal Naidu, AIR 1958 Mad 25 and Madras High Court observed as under:

"5. T.S.T. Co., Ltd. v. Perumal Naidu, AIR 1958 Mad 25, a decision of the Bench consisting of Rajagopalan and Rajagopala Aiyangar JJ. is

relevant, as showing that the learned Judges came to the conclusion that where a remuneration was calculated on the basis of wage periods extending over a month, such remuneration did not cease to be wages under the Payment of

Wages Act 1936, merely because the wage period was one month, and not a lesser period. The point which is helpful here is that the learned Judges thought that the concept of "wage period" logically implied some period of time, on the basis of which, or in determine relation to which, the remuneration was specified. Our attention has been drawn to Section 4(1) of the Payment of Wages Act 4 of 1936, and we find that the periods "in respect of which such wages shall be payable" are to be the "wage periods" specified in that section. Our attention has also been drawn to the Minimum Wages Act 11 of 1948 and to Section 3(3)(b), which refers to minimum wages which may be fixed "by the hour, by the day or by any larger wage period".

6. We think that there is an essential difference, between a period by which the wages are paid, and the intervals at which the actual payments are made. It is conceivable, for instance, that even in the case of an employee whose wage period is one month, and there is a determine wage on that basis, in actual practice, he is receiving the accumulated wages once every quarter. That may be a matter of mutual convenience, and, obviously, the "wage period", in its essential sense, can differ from the actual occasions of payments or the intervals separating them. This view of the implications of the definition in Section 2(aaa) of the Act can, we think, be justified, by bringing out the features inherent on the concept of "average pay" ." (Emphasis ours)

17. The Supreme Court in Shri Digvijay Woollen Mills Limited(supra) considered Section 4(2) of Payment of Gratuity Act, 1972 which required that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days" wages based on the rate of wages last drawn by the employee concerned. The Supreme Court approvingly quoted part of the judgment of the Gujarat High Court in Digvijay Woollen Mills case, which reads

as under:

"The employee is to be paid gratuity for every completed year of service and the only yardstick provided is that the rate of wages last drawn by an employee concerned shall be utilised and on that basis at the rate of fifteen days" wages for each year of service, the gratuity would be computed. In any factory it is well known that an employee never works and could never be permitted to work for all 30 days of the month. He gets 52 Sundays in a year as paid holidays and, therefore, the basic wages and dearness allowance are always fixed by taking into consideration this economic reality..... A worker gets full month"s wages not by remaining on duty for all the 30 days within a month but by remaining on work and doing duty for only 26 days. The other extra holidays may make some marginal variation into 26 working days, but all wage boards and wage fixing authorities or Tribunals in the country have always followed this pattern of fixation of wages by this method of 26 working days."

18. The Supreme Court in para 5 of the report concurred with the aforesaid view

of the Gujarat High Court in the following manner:

"5. The view expressed in the extract quoted above appears to be legitimate and reasonable. Ordinarily of course a month is understood to mean 30 days, but the manner of calculating gratuity payable under the Act to the employees who work for 26 days a month followed by the Gujarat High Court cannot be called perverse. It is not necessary to consider whether another view is possible. The High Court summarily dismissed the petition of the appellant in both the appeals before us and upheld the decision of the authorities under the Act. We are also not inclined to interfere with the decision of the High Court because it seems to us that the view taken by the authorities is not in any way unreasonable or perverse....."

19. Ratio of the aforesaid judgment was followed by the Supreme Court in *Jeewanlal Limited and Others*(supra) wherein sub-sections (2) and (3) of Section 4 of the Payment of Gratuity Act were interpreted, which was later considered and distinguished by the Supreme Court in *Guru Jambheshwar University*(Supra). Therein, the Supreme Court was dealing with an appeal filed by the University against the judgment of the Division Bench of High Court of Punjab and Haryana whereby writ petition filed by the appellant therein challenging award of the Labour Court was dismissed. The Labour Court in that case relied on the judgment of the Supreme Court in *Jeewanlal Ltd. and Others*(supra) and held that one day's average pay of the respondent would be Rs. 63.15 (Rs. 1642/26) and thus the compliance with Section 25F(b) required payment of Rs. $63.15 \times 15 \times 2 = \text{Rs. } 1894.50$. Therefore, retrenchment compensation of Rs. 1642 paid by the University to the respondent fell short of the amount, which was required to be paid under law, which rendered the retrenchment of the respondent as illegal. The question which required consideration of the Supreme Court was whether the Labour Court was correct in holding that one day's average pay of the respondent should be calculated by dividing his monthly salary of Rs. 1642 by 26 and then quotient so arrived at should be multiplied by $30(15 \times 2)$ as he had worked for two years and one month. The Supreme Court further observed that subsequent to decision of *Jeewanlal Ltd. & Others*(supra), an explanation has been added after second proviso to Section 4(2) of the Payment of Gratuity Act by Act 22 of 1987 which provided that in the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen. The Supreme Court in para 18 of the judgment in *Guru Jambheshwar University*(supra) held as under:

"18. By adding the explanation, the legislature has brought the statute in line with the principle laid down in the case of *Jeevanlal* (supra) and has given statutory recognition to the principle evolved viz. that in case of monthly rated employee the fifteen days' wages shall be calculated by dividing the monthly rate of wages by twenty six and multiplying the quotient by fifteen. But, no such amendment has been made in the Industrial Disputes Act. If the legislature

wanted that for the purposes of Section 25F(b) also the average pay had to be determined by dividing the monthly wages by twenty-six, a similar amendment could have been made. But the legislature has chosen not to do so. This is an additional reason for holding that the principle of "twenty-six working days" is not to be applied for determining the retrenchment compensation under Section 25F(b) of the Act." (Underlying ours)

20. The Supreme Court taking that view set aside order passed by the High Court as well as award of the Labour Court by observing that sub-section (2) of Section 4 of the Act provides for payment of gratuity at the rate of "fifteen days" wages" based on the rate of wages last drawn by the employee concerned for every completed year of service. The legislative intent is obvious. Had the legislature stopped with the words "fifteen days" wages" occurring in sub-section (2) of Section 4 of the Act, there was something to be said for the submission advanced by the learned counsel for the appellants based upon the decision of learned Single Judge of the Andhra Pradesh High Court in *Associated Cement Vs. Appellate Authority*, 1976 Lab IC 926, which was later approved by a Division Bench of that Court in *Swamy Vs. Controlling Authority*, 1978 Lab IC 1285. It was then observed by the Supreme Court that the legislature did not stop with the words "fifteen days" wages" in sub-section (2) of Section 4 of the Act. The words "fifteen days" wages" are preceded by the word "at the rate of" and qualified by the words "based on the rate of wages last drawn" by the employee concerned. The emphasis is not on what an employee would have earned in the course of fifteen days during the month when his employment was last terminated, but on the rate of fifteen days" wages for every completed year of service, based on the rate of wages last drawn by the employee concerned. The word "rate" appears twice in subsection (2) of Section 4 and it necessarily involves the concept of actual working days. In other words wages for notice period has to be equivalent to one month which cannot be in any case for a lesser period than 30 days, which being average of recomputation of any of the month.

21. Judgments of Madras High Court in *Management of Shadlow India Limited Vs. Presiding Officer, Principal Labour Court and Another*, (2000) IILJ208MAD; judgments of Bombay High Court in *DBH International Ltd. A Company Vs. Their Workmen, Represented by the....*, dated 09.03.2005 and *Trade-Wings Limited Vs. Prabhakar Dattaram Phodkar and...* dated 09.01.1992; *Bennett Coleman and Co. Ltd. Vs. Presiding Officer, Labour Court*, 2003 (2) BLJR 1379 relied on behalf of the respondents run contrary to ratio of the judgment of the Supreme Court in *Guru Jambheshwar University*(supra).

22. In fact, Calcutta High Court in *Parry's (Cal) Employees" Union Vs. Third Industrial Tribunal*, 2001(89) FLR 192 took similar view way back in 2000 when it sought to differ with the contrary view expressed by Bombay High Court in *Trade Wings Limited*(supra) and Madras High Court in *Management of Shadlow India Limited*(supra) and held that monthly wages should be divided by 26 even

for the purpose of compliance of Section 25F(b) of the Act and then it should be multiplied by 15. Therein, the Calcutta High Court held that in the

case of Jeewanlal Ltd. & Others(supra), the Supreme Court was dealing with a case of the manner of working out daily wages for the purpose of section 4(2) of the Payment of Gratuity Act and such calculation must be different from the calculations made with reference to Section 25F(b) read with Section 2-AAA(i) of the Act in view of difference of language. There has been subsequent amendment in Section 4(2) of the Payment of Gratuity Act by addition of explanation in the light of the observation of the Supreme Court, but no such explanation has been added to the Industrial Disputes Act. Thus, for the purpose of calculation of 15 days' wages, monthly wages are not required to be divided by 26 then multiplied by 15.

23. We may also usefully refer to the observations of the Apex Court in Workmen of the Bombay Port Trust Vs. Trustees of Port of Bombay and Another, AIR 1962 SC 481 wherein argument of the management, in the context of provisions of Section 13 of the Minimum Wages Act, 1948 and in particular, Rule 23 of the Minimum Wages(Central) Rules, 1960, which entitles a workman to a paid a weekly holiday, was that there has been constructive payment for the sundays by dividing component of the monthly scale of pay and allowances by 26 so that what a workman receives as daily wage is actually 1/26th of the wages for 30 days. The Supreme Court on consideration of aforesaid argument in para 14 of the judgment held as under:

"(14). This brings us to the employer's claim that there has been constructive payment for the Sundays during this period, viz., October 1953 to March 2, 1956. The argument is that the daily wage for these workmen was fixed by dividing all the components of the monthly scale of pay and allowances by 26 so that

what a workman receives as daily wage is really 1/26th of the wage for 30 days. Thus, it is said, the total receipts for the 26 days, if no separate payment is made for the rest days will be $26 \times 1/26$ of 30 days' wage, that is, 30 days' wage. The fallacy in this argument is that it ignores the essential fact that once the daily wage is fixed at a certain figure it no longer retains its character of being 1/26 of the monthly wage. However arrived at, the daily wage is a daily wage and it is wrong to regard it as a certain fraction of the monthly wage. When the Central Government in making these Minimum Wages Rules made this provision for payment on a holiday, it clearly intended that something in addition to what was being actually received for the six days of the week should be paid. This cannot be defeated by a statement that though in form six days wages were being paid, in fact and in substance, seven days wages were being paid. By no stretch of imagination can payment for six days be equated to payment for seven days." (Underlying ours)

24. In our opinion, on reasonable and harmonious construction/interpretation of

Section 25F(a), period of notice has to be considered of not less than 30 days and notice pay/wages in lieu of that period also has to be paid for complete 30 days and not for any lesser period. Even if combination of least and most number of days in a month is taken as the basis i.e. $28+29+30+31/4$ or $28+30+31/3$ or $29+30+31/3$, average of all these three combinations is either 30 days or close to 30 days. Thus, when period of notice for effecting termination cannot be less than 30 days, pay/wages for such notice period also can not be for any lesser period.

25. It must be, therefore, held that view taken by Coordinate Bench of this Court in Devendra Salolia(supra) that computation of one month as referred to Section 25F(a) of the Act should be made by multiplying daily wages by 30 and not by 26 days and not by dividing the monthly wage by 26 and then multiplying the quotient thereof by 30, which has held sway for last two and a half decade, is correct view.

26. In the light of view that we have taken, we answer the reference in the following terms:

"A workman sought to be retrenched has to be paid the notice pay with reference to Section 25F(a) for actual 30 days and not for a lesser period. One month's notice pay payable with reference to Section 25F(a) of the Act has to be computed on the basis of multiplication of daily wages by 30 days, which cannot be said to be higher than the actual monthly wages paid to the workman. Daily wage of the workman is not required to be multiplied by 26 days but should be multiplied by 30 days, for payment of notice pay in lieu of one month's notice as per Section 25F(a) of the Act."

27. Let this matter may now be listed before the Single Bench.