

(1998) 09 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 270 of 1998 and connected W.Ps.

Jagbir Singh and Others

APPELLANT

Vs

State of H.P. and Others
 Rakesh Kumar and Others Vs
Commissioner-cum-Deputy Commissioner, Baba Balak Nath
Temple Trust and Others

RESPONDENT

Date of Decision : 01-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10, 2, 25F

Citation : (1999) 2 LLJ 304 : (1999) 1 ShimLC 206

Hon'ble Judges : Lokeshwar Singh Panta, J; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Onkar Jairath, for the Appellant; Sanjay Karol, A.G. For Respondent No. 1 and K.D. Sood, for the Respondent

Final Decision : Allowed

Judgement

Kamlesh Sharma, J.—The above writ petitions are being disposed of by a common judgment as common questions of fact and law arise in all of them. It is not in dispute that the petitioners were engaged as daily waged workers on behalf of the Baba Balak Nath Temple Trust, Deotsidh, District Hamipur (hereinafter called "the Trust") and all of them with the exception of a few, had completed 240 days in a year before their disengagement orally, without giving any notice or compensation. The case set up by the petitioners is that their disengagement is retrenchment as defined under clause (oo) of Section 2 of the Industrial Disputes Act, 1947 (hereinafter called "the Act") but conditions precedent to it i.e. notice of one month and payment of compensation as provided u/s 25-F of the Act have not been followed, hence it is bad in law. As such, the petitioners have prayed for their reinstatement with all consequential benefits.

2. The Trust is included in the Schedule to the Religious Institutions and

Charitable Endowment Act, 1984 (hereinafter called the Act of 1984) and accordingly various provisions of the Act are applicable to it. It is an ancient temple having a large following. Lacs of devotees and pilgrims visit the Temple every year, particularly at the time of "Navratras" when Mela is also held. As per the Trust, it is not an industry as it is involved in religious and spiritual activities and the offerings of the Temple are used for development of temple and providing facilities for Pooja in the Temple as well as facilities for the stay of the devotees and no profit is made out of these activities. In the alternative the case of the Trust is that reference u/s 10 of the Act is an equally alternative efficacious and speedy remedy available to the petitioners, hence the writ petitions are not maintainable under Articles 226 and 227 of the Constitution. According to the Trust the writ petitions are not maintainable for another reason also that it is neither State nor Authority as envisaged under Article 12 of the Constitution. However, on merits the Trust has justified the disengagement of the petitioners on the ground that there is no work available with it and they will be reengaged as and when the work is available.

3. From these pleadings the following points arise for determination: -

1. Whether on the material on record it can be held that the Trust is an industry and the petitioners are its workmen, who will be governed by the provisions of the Industrial Disputes Act?

2. In case the petitioners are governed by the- provisions of the Industrial Disputes Act, whether the writ petitions are maintainable in view of remedy of reference available to them u/s 10 of the Industrial Disputes Act?

3. Whether the Trust is a State or Authority as envisaged under Article 12 of the Constitution and the writ petitions are maintainable against it to challenge the disengagement of its daily-waged employees even if they are not governed by the Industrial Disputes Act and the reliefs sought for by them can be granted in view of the stand of the Trust that it does not have any work available for the petitioners?

4. Before we advert to the material on record, we may refer to seven Judge Bench decision of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, wherein in the following paragraphs, the learned Judges have laid down the tests for deciding whether an establishment is an industry or not:-

"1140 "Industry" as defined in Section 2(j) and explained in Banerji (supra) D.N. Banerji v. P.R. Mukherjee and Ors. (1953 1 LLJ 195) has a wide import.

(a) 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.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II 141. Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in Banerji (supra) and in this judgment, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), although not trade or business, may still be "industry" provided the nature of the activity, viz., the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of "industry" undertakings, callings and services, adventures "analogous to the carrying on the trade or business". All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III 142. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or other sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) profession, (ii) clubs, (iii) educational institutions (iv) co-operatives, (v) research institutes (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of Section 2(j).

(b) A restricted category of professions, clubs, co-operative and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free

or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt-not other generosity, compassion, developmental passion or project.

IV 143. 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 *University of Delhi and Another Vs. Ram Nath*, or some departments are not productive of goods and services is isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the *Corporation of Nagpur Corporation of City of Nagpur v. Employees*, 1960 2 SCR 942 (supra) will be the 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) Constitution and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby".

5. In the judgment of five-Judge Bench in *Banerji* (supra) referred to in *Bangalore Water Supply* (supra) the learned Judges have held in para 14:-

"..... Though the word "undertaking" in the definition of "industry" is wedged in between business and trade on the one hand and manufacture on the other, and though, therefore, it might mean only a business or trade undertaking, still it must be remembered that if that were so, there was no need to use the word separately from business or trade. The wider import is attracted even more clearly when we look at the latter part of the definition which refer to "calling, service, employment, or industrial occupation or avocation or workmen." "Undertaking" in the first part of the definition and "industrial occupation or avocation" in the second part obviously mean much more than what is ordinarily understood by trade or business. The definition was apparently intended to include within its scope what might not strictly be called a trade or business venture".

6. The judgment in *Bangalore Water Supply* (supra) continues to hold the field and the tests laid down-therein are being applied to hold whether a particular establishment/ undertaking is industry or not u/s 2(j) of the Act.

7. The Trust in its reply affidavit has admitted that since the Trust has been taken over and administered under the Act of 1984, the offerings have increased from Rs. 7,41,673.00 in the year 1983-84 to Rs. 2,77,24,552.64 in the year 1997 and construction activities at large scale have taken place. Some of the said activities are as stated in para 5 of the preliminary objections: -

1. Sarai No. 4 (construction of 2 storeys)
 2. Sarai No. 6 (construction of 3 storeys)
 3. Girdhari Block (construction of 1 storey)
 4. Satsang Hall (approximately two thousand travellers/pilgrims can stay)
 5. Sarai (construction of 3 storeys) Now Sarai No. 8
 6. Construction of counting hall.
 7. Construction of Sarai No. 2 has been started.
 8. Reconstruction of main gate.
 9. Widening of main path and roof above that.
 10. Metalling of 1 and half KM road up to Langar.
 11. Electrification from Shahtalai to Mandir.
 12. Approximately construction of 65 latrines and bath rooms.
 13. Construction of rain shelter on Shahtalai path and arrangement of water.
 14. Establishment of Museum Hall.
 15. Establishment of library in which religious books of about Rs.2 lacs have been kept.
 16. Establishment of drinking water house and juice bar without profit and loss.
 17. Construction of pucca stairs from Charanpaduka to lower bazaar.
 18. Reconstruction of rest house in the temple.
 19. Modernisation of pious water pond of Babaji.
 20. Construction of new kitchen near main Langar.
 21. Construction of second storey of Degree College.
 22. Construction of rain shelter at Degree College bus stand.
 23. Construction of building of science laboratory.
- Details of Development works yearwise. Year 1992
1. Construction of first and second floor of Sarai No. 6 in lower bazaar.

2. Construction of boundary wall at BBN Hospital site Chakmoh.
3. Construction of septic tank for Sarai No. 8
4. Construction of septic tank for Goat place.
5. Construction of Sarai No. 8 in upper bazaar.

Year 1993

1. Construction of Gate No. 2
2. Construction of cow-shed in temple complex.
3. Construction of canteen of Sarai No. 6 in lower bazaar.
4. Construction of R/wall at Charan Paduka.
5. Remaining work of shops in front of Sarai No. 2 in lower bazaar.
6. Construction of water tank near Langar.
7. Construction of store for gas cylinders near Langar.
8. Construction of shed for goats at Goat place.

Year 1994

1. Construction of Gate No. 2
2. Construction of cow-shed in temple complex..
3. Construction of canteen at Sarai No. 6 lower Bazaar.
4. Remaining work of goat place ground floor.
5. Construction of store for gas cylinders near Langar.
6. Construction of concrete path from Ludhiana Sarai to Bawa Ji Ki Pouri.
7. Development of park at Charan Paduka.
8. Remaining work of two rooms at BBN Hospital site Chakmoh.
9. Construction of retaining wall along road in upper bazaar.
10. Remaining work of plastering in Langar area.
11. Renovation of guest room in temple complex.
12. Construction of concrete path from bus stand in Shahtalai.
13. Roofing over steps from Gate No. 1 to Gate No. 2 in middle path.

Year 1995

1. Construction of canteen at Sarai No. 6 in lower bazaar.
2. Construction of concrete path from Deotsidh Bus Stand to Shahtalai road.

3. Remaining work of Sarai No.2 (ground floor)
4. Changing of roof of old kitchen and Lansar hall.
5. Construction of room for generator.
6. Modification of utensils washing area.
7. Providing shed over ladies Gufa Darshan area.
8. Construction of gate near canteen in upper bazaar.
9. Construction of water tank at mid way on Deotsidh to Shahtalai road.
10. Construction of Guest House (Phase-I) at Chakmoh.
11. Construction of steps of Science block and construction of retaining wall at BBN Degree College, Chakmoh.
12. Construction of BBN High School at Chakmoh.
13. Cutting and levelling of earth for construction of Bus Stand at Deotsidh.
14. Renovation of Ayurvedic Hospital at Chakmoh.
15. Construction of minor operation theatre.
16. Providing plinth protection and construction of shape drain for science block at BBN Degree Colleges, Chakmoh.
17. Construction of Dhuna at Charan Paduka.
18. Roofing in front of Canteen at Sarai No. 6 in lower Bazaar.
19. Construction of residence for Doctor.
20. Roofing over steps from Gate No. 1 to Gate No.2 in side paths.

Year 1996

1. Construction of Guest House (Phase-I) at Chakmoh.
2. Construction of steps of Science block and retaining wall at BBN Degree College, Chakmoh.
3. Construction of BBN High School at Chakmoh.
4. Cutting and levelling of earth for the Bus Stand at Deotsidh.
5. Roofing in front of Canteen at Sarai No. 6 in lower Bazaar.
6. Construction of Dhuna at Charan Paduka.
7. Construction of residence for Doctor.
8. Construction of shed at Pipal Tiyaala.
9. Construction of Hospital (PHC level) at Chakmoh

10. Construction of additional two rooms for model school at Chakmoh.

11. Construction of toilet block near cow-shed in temple complex.

In addition to the above the Trust is also running a free Ayurvedic dispensary, Degree College with U.G.C. Scale to the staff, a High School, Model School and a Sanskrit Vidyalaya.

Besides, 20 years master plan has been prepared and approved by a Committee constituted by the Divisional Commissioner Mandi, H.P. exercising the powers of the Financial Commissioner Trust under the H.P. Hindu Public Religious and Endowment Act, 1984 for the development of the Temple and for providing more and more facilities to the pilgrims visiting the Temple. In the said Master Plan, priorities have been fixed and in priority No. 1, the construction of the following works have been included.

1. Construction of Bus Stand at Deotsidh.

2. Construction of 25 beds Hospital at Chakmoh.

3. Construction of Multistoreyed Sarai at Deotsidh.

4. Construction of Toilet Blocks in and around the Temple complex.

It is submitted that the work on scheme Nos. 1,2 and 4 has been started. In respect of the work as mentioned at S. No. 3 formalities are being completed and the construction work shall be started in the very near future after the stay is vacated by the District Judge, Hamirpur.

It is further admitted in the same para:-

"That the petitioners were engaged purely on temporary daily wage basis keeping in view the need in the temple. Since the construction has been stayed and the main rush of people in Mela days from March to the end of April when the mela is on, there is no need of the petitioners for the work of temple. The temple has 121 regular employees and 35 daily-waged employees who are working since 1987, whose services are not being discontinued as per the requirements of the temple. It is the juniormost daily wager/labourer who has been working with breaks and intermittently like the petitioners have been disengaged from the service. Hence also the petitioners have no right to file the petition and are not entitled to the relief from this Hon''ble Court. The list of regular employees and daily waged employees working in the temple and Baba Balak Nath High School, Chakmoh, Baba Balak Nath Ayurvedic Dispensary, Baba Balak Nath College, Chakmoh, Baba Balak Nath Model School, Chakmoh and employees on deputation with the Baba Balak Nath Temple Trust are cumulatively attached as Annexure R-7..... the petitioners have been employed in the temple for better maintenance and preservation and protection of the temple properties. The temple is involved in religious and spiritual activities and the petitioners have been engaged to create and maintain congenial environment for the devotees and pilgrims who visit the temple".

8. Further in para 6 of the preliminary objections it is stated that in Civil Appeal No. 98 of 1993 titled Mahant Shiv Gir v. Commissioner, pending in the Court of District Judge, Hamirpur an order of status quo has been passed on January 23, 1996, as a result of which the construction work of Sarai has been stayed and it is not possible to allot work to the petitioners and other daily-waged employees, who were only engaged on temporary basis considering exigencies of work and need of the hour. In paragraph 4 of the reply on merits it is also stated that the Trust Administration has revised the pay scales of the regular employees and with the revision of pay scales an additional yearly liability to the extent of Rs. 16,54,800 has to be borne by the Trust, which has put serious strain on the developmental work of the Trust, as a result of which it was not possible for the Trust Administration to continue to engage the petitioners indefinitely. It is also submitted that with the passage of time casual labourers engaged on Muster Rolls for long period of time may start claiming regular appointment and regular pay scales from the Trust Administration. Denying that the petitioners are workmen and the Trust is an industry, and also that the provisions of the Act apply to them, it is also stated that neither notice nor compensation was required to be given as envisaged in Section 25-F of the Act. It is further submitted that, "the petitioners were engaged on miscellaneous work such as Reception, Langar, Bakra Sathal, Security, , Canteen according to availability of work from day to day especially during Navratras days when there is rush of pilgrims. During these days lakhs of people visit the temple daily and for providing better facility to them additional staff is required to cope with the increased work..... the petitioners were engaged as stop-gap arrangement only to cope with the additional work which had increased on account of Navratras Mela and not against the sanctioned posts for the temple. The petitioners were working over and above the sanctioned strength of the temple and as such the petitioners have no legal right to continue on the establishment of the Trust indefinitely the respondents apprised the petitioners before engaging them as casual labourers that their services could be terminated at any time without any notice and compensation or affording any opportunity of being heard as such the termination is not against the principles of natural justice. The petitioners have not been deprived of their livelihood as they were at liberty to work anywhere they like. There is no violation of any provisions of law as alleged."

9. Neither in the writ petitions nor in the rejoinders (except CWP No.295/98 titled Parashotam Lal and Ors. v. Commissioner-cum-Dy. Commissioner, Baba Balak Nath Temple Trust and Ors. wherein as per the petitioners they were engaged in construction wing) the petitioners have mentioned that in which wing/ department/ Section of the Trust they were engaged and also the nature of work being performed by them during the course of their engagement on daily wage. But in the facts and circumstances stated in the replies-affidavits of the Trust we have no hesitation to hold, by applying the tests laid down in para 140 of Bangalore Water Supply (supra) that the Trust is an "industry" being

undertaking, which is engaged in (i) systematic activity, (ii) organised by Co-operation between employer and its employees (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes of devotees and pilgrims visiting the temple of the Trust by carrying on activities of construction, development and maintenance of the buildings and properties of the Trust including that of the Temple and the "Thedas" where the offerings are made, running of langar for the devotees and pilgrims, the running of canteen, maintenance of mini museum, library, school, colleges etc. etc. as stated in the reply-affidavit of the Trust. It is of no consequence that langar is being run free of any charge and canteen is being run on no profit no loss basis as absence of profit motives or gainful objectives in the activities of the undertaking is irrelevant. The true focus is functional and decisive test is nature of the activity with the special emphasis on the employer-employee relations having semblance to trade or business, which test is satisfied by the facts brought on record by the Trust to hold it "industry" as defined in Section 2(j) of the Act

10. No doubt, those activities of the Trust pertaining to "Pooja and Archana" in the temple of the Trust including material things or services geared to celestial bliss e. g making, on a large scale, "prasad" or food exclusively for offering to the Deity are spiritual or religious and those employees who are engaged in these activities are not workmen by definition and may not be governed by the provisions of the Act. The number of these employees must be nominal as compared to employees who are engaged in the production and/or distribution of goods and services calculated to satisfy human wants and wishes of devotees who visit the temple of the Trust. Therefore, by applying the dominant nature test as held in para 143(a) of Bangalore Water Supply (supra), the Trust is an Industry. It is not the case of the trust that the petitioners were engaged for such activities which are purely spiritual or religious, for which it must be having regular staff. Therefore, in answer to the first question we hold that the Trust is an "industry" and the petitioners being its daily wage workers are its workmen, who are governed by the provisions of the Industrial Disputes Act. We need not refer to the authorities cited by the learned Counsel for the parties wherein the religious trusts have been held either industry or not, as these are decided in the facts and circumstances on record of those cases.

11. After coming to the conclusion that the Trust is an "industry" where the petitioners were engaged as workmen and are governed by the Act, the next question is whether the writ petitions are maintainable in view of the remedy of reference available to the petitioners u/s 10 of the Act? In Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others, the workmen had challenged the notices before the High Court in a petition under Article 226 of the Constitution giving effect to the notification issued u/s 1(3) of the Employees' State Insurance Act, 1948, whereby certain provisions of the Act had come into force, the learned Judges of the Supreme Court affirmed the decision of the High Court that the matter could be appropriately raised in the form of dispute u/s 10 of the Act and observed: -

"The High Court has held that the question as to whether the notices and circulars issued by respondent No. 1 were invalid, could not be considered under Article 226 of the Constitution, that is a matter which can be appropriately raised in the form of a dispute by the appellants u/s 10 of the Industrial Disputes Act. It is true that the powers conferred on the High Courts under Article 226 are very wide, but it is not suggested by Mr. Chatterjee that even these powers can take in within their sweep industrial disputes of the kind which this contention seeks to raise."

12. Relying upon this judgment as well as in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, the Full Bench of Rajasthan High Court in *Bhanwarlal and Others Vs. Rajasthan State Road Transport Corporation and Others*, has laid down the following principles to judge whether in view of Section 10 of the Act the High Court should exercise extraordinary jurisdiction under Article 226 of the Constitution:-

"(i) If the right which is sought to be enforced is right created under the I.D. Act such as Chapter VA, then the remedy for its enforcement is either u/s 33-C or raising of an industrial dispute, as the case may be;

(ii) If the industrial dispute arises under the I.D. Act then normally, the remedy available to the suiter is to get an adjudication under the Act;

(iii) Further, in the above two categories of cases, if the Government refuses to make a reference either by not passing an order in a reasonable time, normally two months in individual cases and fifteen days notice in cases involving several employees together, or refuses to refer by an express order then, this Court can always interfere under Article 226 of the Constitution.

(iv) Again, in case the validity of any statutory provisions or rules, regulations having force of statute is challenged or any order is challenged on the ground of violation of constitutional provisions then the applicants can file a writ directly without insistence of reference.

(v) In all the above cases, in those of the particular cases, where involved disputed questions of fact arises for adjudication then this Court would not interfere under Article 226 of the Constitution, irrespective of the implications of bar of Section 10 of the Act being available or not".

13. Similar views are taken in Full Bench judgments of Patna High Court in *Dinesh Prasad and Others Vs. State of Bihar and Others*, and of Punjab and Haryana High Court in *Manohar Lal Vs. State of Punjab and Another*, But in Division Bench judgment of our High Court in *Tirath Raj HPSEB Ridge (E) Sub-Division and Ors. v. H.P, State Electricity Board and Ors.* 1989(4) SLR 360 the learned Judges have held in para 55:-

"The existence of an alternative remedy does not bar the jurisdiction of this Court under Article 226 of the Constitution. It is always a matter of discretion of the Court under Article 226 whether to relegate a party approaching it for

redress to an alternative remedy available to it or not. The legal position is not in doubt. The question is whether the circumstances of the present case justify an order now in the year 1989 that the petitioner should seek redress in industrial adjudication. We feel that it would not be fair to ask them to do so. The petition came before this Court in the Year 1989. It has remained pending for all these years for no fault of the petitioners. The matter had been taken to the Supreme Court also in connection with an interim order made by this Court in the month of May, 1988. Asking the petitioners now to approach industrial adjudication for redress and thus decline to go into the merits of the claim made by them in these proceedings, we feel, would not be a sound exercise of judicial discretion. Several decisions were brought to our notice on this aspect of the case. They do not lay down any rule of thumb that wherever an alternative remedy by way of industrial adjudication was available to the petitioners, the High Court should decline to go into the merits. The decisions only say that it is a matter of discretion, based on the facts and circumstances of a particular case, for the High Court whether it would go into the merits of the claim brought before it under Article 226 or direct the petitioner to seek redress by way of industrial adjudication".

The above referred to judgments in *Basant Kutnar Sarkar and Ors. v. The Eagle Rolling Mills Ltd. and Ors.* (supra); *The Premier Automobiles Ltd. v. Kamlakar Shantharam Wadke and Ors.* (supra) and *Bhanwarlal and Ors. etc, v. Rajasthan State Road Transport Corporation and Anr.* (supra), were also considered by the Division Bench. The judgment in *Tirath Raj* (supra) has been further followed by Division Bench of this Court in *Joginder Kumar Gautam v. The State Bank of India and another*, 1991 Shim. L.C.23.

14. Applying these principles to the cases in hand, we are of the view that it will not be fair and just to relegate the petitioners to seek reference u/s 10 of the Act in view of our findings that the Trust is an "industry" and the petitioners are "workmen" who are admittedly retrenched without giving notice and compensation as provided u/s 25-F of the Act. Had these facts been disputed, we would have not entertained their claim in exercise of extraordinary jurisdiction under Article 226 of the Constitution. Therefore, we hold in answer to points No. 2 that in the facts and circumstances on record these writ petitions are maintainable.

15. In view of our findings on points No. 1 and 2 we need not decide point No. 3. So far the stand of the Trust that it does not have any work available to continue engaging the petitioners is concerned, we are of the view that in such eventuality also, the Trust was required to retrench the petitioners by following the provisions of Section 25-F of the Act. In this view of the matter, the disengagement of the petitioners as daily wage workers, except those who have not completed 240 days, is not sustainable in law.

16. The result of above discussion is that there is merit in the writ petitions and these are allowed, and the disengagement of the petitioners as daily wage

workers by the Trust, except those who have not completed 240 days, is set aside, with the result the petitioners, except those who have not completed 240 days, continue to be in the employment of the Trust as daily wage workers with all consequential benefits till they are disengaged in accordance with law. There is no order as to costs.