
(2019) 04 JH CK 0017

In the Jharkhand High Court

Case No : Writ Petition (L) No. 4309 Of 2018

Jharkhand Media Private Limited

APPELLANT

Vs

Sunil Singh

RESPONDENT

Date of Decision : 03-04-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 2A, 2ee, 2G, 2J, 2S, 3, 3(2), 10(1), 25B, 25, 25F
Working Journalists And other Newspaper Employees] (Conditions Of Service) And
Miscellaneous Provisions Act, 1955 — Section 2F, 3, 3(1), 3(2)
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 04 JH CK 0017

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Satish Bakshi, Raj Kr. Gupta

Final Decision : Dismissed

Judgement

1. This writ petition is under Article 226 of the Constitution of India wherein the award dated 06.02.2018 published and pronounced on 03.05.2018 by Labour Court, Ranchi in Reference Case No.03/2014 by which the respondent-workman has been held to be entitled for compensation of Rs.1.5 lakhs is under challenge.

2. The brief facts of the case as per the pleadings made in the writ petition is that the petitioner is a newspaper establishment where it publishes in Hindi a daily newspaper by the name of Sanmarg.

The respondent-workman has entered into service but he remained unauthorized absent by abandoning his services but he has filed an application on 25.04.2014 before the Labour Court, Ranchi alleging inter alia therein that he was appointed in Sanmarg Newspaper on a salary of Rs.15,000/- per month as assured to him which is contrary to the recommendation made by the Mazithia Commission but he has been paid lesser amount and as such is entitled to wages according to Mazithia Wage Board Recommendation, further it has been alleged that his

services was terminated without notice, charge-sheet and show cause whereupon he complaint to the Deputy Labour Commissioner who in turn has directed to move before the competent authority for redressal of his grievance, in pursuance thereof, he has filed petition before the Labour Court which was registered as Reference Case No.03/2014 treating to be an industrial dispute and vide order dated 01.07.2014 it has been admitted and the dispute has been decided partly in favour of the petitioner-management and partly in favour of the respondent-workman since the Labour Court has denied the reinstatement in favour of the respondent-workman, however, has passed order of compensation of Rs.1.5 lakhs which has been questioned by the petitioner-management in the present writ petition inter alia on the ground that the finding suffers from perversity.

The procedure as laid down under the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, 1947) has not been followed and without appreciating the factual aspect, more particularly, that it is a case of abandonment since the respondent-workman has left the service on getting other lucrative job in daily newspaper namely Dainik Jagran, therefore, it is not a case of retrenchment and no evidence has been led in this regard but without appreciating the aforesaid aspects of the matter, the order of compensation has been passed, therefore, the impugned award is not sustainable in the eye of law.

Learned counsel for the petitioner has relied upon two judgments of the Hon'ble Supreme Court rendered in the case of Vijay S. Sathaye vs. Indian Airlines Limited and Ors., reported in (2013) 10 SCC 253 and Manju Saxena vs. Union of India and Anr., reported in (2019) 2 SCC 628.

3. This Court has heard the learned counsel for the petitioner at length and after going across the pleadings made in the writ petition as also the findings recorded by the Labour Court has gathered therefrom that the respondent-workman has been engaged in services of the petitioner-management and has been appointed by virtue of an order issued in this regard on 21.05.2009 (Annexure-7) and from its perusal it is evident that he has been appointed as Reporter Ranchi edition of Sanmarg Hindi daily published by Sanmarg, Jharkhand Media Private Limited, Ranchi which was initially for the period of one year on contractual basis from 2nd of May, 2009 as per the terms and conditions detailed below which is being referred hereunder as:-

"Eastern India Leading Hindi News paper Sanmarg Jharkhand Media (P) Ltd.

SANMARH BHAWAN Harmu Bypass Road, Ranchi 834001 Jharkhand

Tel : 0651-2212677, 3242120, Fax 0651-221-2679

Email : Sanmargjharkhand@gmail.com # sanmargjharkhand@gmail.com

Advt. Tel/Fax : 0651-2212476, 3295101

Email : sanmargjharkhandadv@gmail.com #

sanmargjharkhandadvtdt@hotmail.com

Letter No.SAN/JH/09/100

Date:-21/05/2009

To,

Mr. Sunil Kumar Singh

North Railway Colony

House No.T-32, Chutia

.....to the discussions you have had with us, we are pleased to appoint you as a Reporter Ranchi edition of SANMARG Hindi daily, published by Sanmarg Jharkhand Media Private Limited, Ranchi. Your appointment shall be initially for one year on contractual basis from 2nd of may, 2009 as per the terms and conditions detailed below:-

1. You will perform such duties as may be assigned to you from time to time by the Management/Editor. You will have no objection to work in the night shift or extra hours whenever called upon to do so. If necessary, you may be transferred to any office of the company in equivalent position at the discretion of the management.

2. You shall be paid consolidated monthly emoluments of Rs.6000/- (Six Thousand only) including all.

3. On the basis of entries in your certificate, your date of birth has been admitted as 14/Jan/1965. The age of superannuation in this company is 60 years.

4. You will be eligible for leave as under.

(a) Privilege/Casual leave for 20 days in a calendar year.

(b) Ten days leave on medical grounds in a calendar year.

5. You will under no circumstances work in any other concern or with any other employer in any capacity while in the employment in this Company. You will not either during your employment with the company or after termination of this arrangement divulge or disclose to anyone any information or secret or contents of correspondence of document relating to the Company's business or any of its affairs.

6. That the copyright of any writing that you may do during the currency of this arrangement with the Company will best with the Company except for such books that you may publish under your own name and you undertake not to write for any other publication, not belonging to the Company, without prior written consent/permission of the Company, provided that the Company shall have the right to withdraw/cancel such permission at its sole discretion, without

any notice to him.

7. That in case of misconduct, disobedience, in sub-ordination any act subversive of discipline inefficiency, negligence or unsatisfactory work, attendance or conduct, continued ill health, inability to perform duties, this arrangement is liable to be terminated summarily without notice. That during the currency of this arrangement, one month notice on either side shall be required for termination of this arrangement. This Company, however, reserves the right to terminate this arrangement by paying your one month consolidated salary in lieu of notice.

8. That this arrangement can be terminated without notice or consolidated salary in the lieu of notice at the discretion of the Company if it is found that the particulars supplied by you either in your application or at the time of interview, are false or in case you violated an requirement of law in force, or lost confidence, or faith or the trust of the company, the decision of the company under this arrangement shall be binding and final.

In the event of any dispute relating to this arrangement, this cause of action shall be deemed to have arisen at Ranchi."

4. It is evident from the condition stipulated in the offer of appointment which is binding upon both the parties wherein as per the condition stipulated in condition No.7, it has contained therein that in case of misconduct, disobedience, in sub-ordination any act subversive of discipline, inefficiency, negligence or unsatisfactory work, attendance or conduct, continued ill health, inability to perform duties, the arrangement is liable to be terminated summarily without notice.

That during the currency of this arrangement, one month notice on either side shall be required for termination of this arrangement.

The Company, however, reserves the right to terminate this arrangement by paying your one month salary lieu of notice.

While the condition No.8 stipulates that the arrangement can be terminated without notice or consolidated salary in the lieu of notice at the discretion of the Company if it is found that the particulars supplied either in the application or at the time of interview, are false or in case violated an requirement of law in force, or lost confidence, or faith or trust of the Company, the decision of the Company under this agreement shall be binding and final and in the event of any dispute relating to this arrangement, the cause of action shall be deemed to have arisen at Ranchi.

It is thus evident from the condition stipulated under condition No.7 which speaks about the termination in case of misconduct, disobedience, in sub-ordination any act subversive of discipline, inefficiency, negligence or unsatisfactory work, attendance or conduct, continued ill health, inability to perform duties, the arrangement is liable to be terminated summarily without notice but during the currency of the arrangement, one month notice on either

side shall be required for termination or even by paying one month salary in lieu of notice. The requirement to be followed before dispensing with the service of the employee working therein.

5. The condition stipulated under condition No.8 is also partly applicable in the facts and circumstances of the case for the reason that the arrangement can be terminated under the aforesaid condition without notice or consolidated salary in lieu of notice if the declaration furnished by the petitioner will be found to be false but the case herein is of not furnishing the false declaration at the time of entering into the appointment through terms and conditions stipulated under condition No.7 will be applicable in the facts and circumstances of the case but the arrangement is to be terminated in case of any distrust or lost of confidence.

It is in the light of the condition stipulated in the offer of appointment, the factual aspect needs to be appreciated by going across the finding recorded by the Labour Court in the impugned award.

6. The case of the respondent-workman is that he had joined his services in the year 2009 on assurance being given of payment of Rs.15,000/- per month which is contrary to the recommendation made by the Mazithia Commission but it has been paid only Rs.6000/- and therefore, there is less payment for which he has approached before the Labour Court and on expiry of the statutory period as stipulated under Section 2-A of the Industrial Disputes Act, 1947, appropriate application was made before the Labour Court which has been treated to be a reference.

Further case of the respondent-workman is that he has dispensed with the services without following the condition stipulated in the terms and conditions of the offer of appointment as laid down under condition No.7 of the offer of appointment as referred hereinabove, therefore, the same is breach of the terms and conditions of the offer of appointment.

7. While on the other hand, the case of the petitioner management is that the respondent-workman has never been assured for remuneration of amount of Rs.15,000/- rather the remuneration which has been agreed upon it between the parties, the same has been paid but he after getting a job which is better than the present one, has abandoned his services and got appointment in the daily newspaper namely, Dainik Jagran and as such it is not the case of retrenchment rather the respondent-workman on his own has left out the services, hence, it is the case of abandonment, therefore, there is no violation of any terms and conditions of the offer of appointment.

Learned counsel for the petitioner-management has raised issue of irregularity committed by the Labour Court, more particularly, the applicability of The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as the Act, 1955) which is not applicable for adjudicating the instant dispute under the provisions of the Act, 1947.

8. This Court in order to adjudicate upon the issue deem it fit and proper to first consider the applicability of the provision of the Act, 1955 vis-a-viz the applicability of the Act, 1947.

9. The purpose of enactment of The Working Journalists Act, 1955 and the Working Journalists and other Newspaper Employees etc., Act, 1955 have been discussed by the Hon'ble Apex Court in the case of Express Newspaper Ltd. vs. Union of India, reported in AIR 1958 Supreme Court 578 wherein it has been discussed that on 23rd September, 1952, the Government of India appointed Press Commission under the Chairmanship of Hon'ble Justice Mr. C.S. Rajadhyaksha.

The said commission submitted its report inter alia observing that the working journalist would not be considered as workman under the Industrial Disputes Act, 1947 as it then stood.

Almost immediately, after the report of the Press Commission, the Parliament passed the Working Journalists (Industrial Disputes) Act, 1955 (1 of 1955) which received assent of the President on March 12, 1955. It was an Act to apply the Industrial Disputes Act, 1947 to working journalists.

The expression "Working Journalists" was defined by the said Act and in view of the provision of Section 3, Industrial Disputes Act, 1947 was applied to the working journalists and thereafter again The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 was passed.

Section 2-G of the said Act read as under:-

"all words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947 (14 of 1947), shall have the meanings respectively assigned to them in that Act."

Section 3 of the said Act (45 of 1955) is directly relevant which reads hereunder as:-

"3. Act 14 of 1947 to apply to working journalists.--(1) The provisions of the Industrial Disputes Act, 1947 (14 of 1947), as in force for the time being, shall, subject to the modification specified in sub-section (2), apply to, or in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of this Act.

(2) Section 2-F of the aforesaid Act, in its application to working journalist, shall be construed as if in clause (a) thereof, for the period of notice referred to therein in relation to the retrenchment of a workman, the following periods of notice in relation to the retrenchment of a working journalist had been substituted, namely:-

(a) six months, in the case of an editor, and

(b) three months, in the case of any other working journalist."

It is clear that the provision of Industrial Disputes Act, 1947, as in force for the time being are applicable to working journalists, save and except, the modifications specified in sub-Section (2) of Section 3 of the said Act.

The issue pertaining as to whether the sub-editor of newspaper was working as defined in Section 2-F of the Act 45 of 1955 and by virtue of Section 3(1) of that Act it has been held by Hon'ble Apex Court in the case of Behar Journals Limited vs. Ali Hasan, reported in AIR 1959 Patna 431 holding therein that he was a workman within the meaning of Industrial Disputes Act.

In paragraph-3 of the aforesaid judgment, it has been observed that a sub-editor of newspaper was not merely a working journalists but was also a workman within the meaning of Industrial Disputes Act.

It has further been held in the judgment rendered in the case of Management of Statesman Ltd. vs. Lieutenant Governor Delhi, reported in 1975 LIC 543 wherein it has been observed that the modification of the Industrial Disputes in its application to working journalist, shall indicate by sub-Section (2) of Section 3 and other provisions of the Act 45 of 1955 but subject to the modifications, the Industrial Disputes Act, 1947, applied mutatis mutandis to the working journalists.

10. So far as the factual aspect which has been urged by the petitioner, this Court after going across the condition stipulated in the offer of appointment and other material which has been brought on record by way of deposition, oral or documentary, has found that the Labour Court has considered the deposition of the management witness namely, MW-1-Anil Kumar, who has deposed that the respondent-workman has been appointed as Reporter vide order dated 02.05.2009 for a period of one year on contractual basis and his monthly salary was Rs.6000/- and the salary of Rs.15,000/- has never been fixed, he has received the amount of Rs.6000/- up to month of March, 2012 and from the month of April, 2012 onwards, he was being paid Rs.9,500/- through vouchers, copy of the aforesaid vouchers from the month of April, 2012 to June, 2014 has been filed containing therein the signature of the respondent-workman which has been marked as Exhibit.

In the cross-examination, he has said that the Management has never dispensed with the services of the respondent-workman rather he on his own has left the services.

On the basis of the said statement made by MW-1 and considering the copy of the vouchers, the Labour Court wherein two issues have been framed, issue No.1 pertains to maintainability of the dispute under the provision of Section 2-A, it has been answered in favour of the respondent-workman for the reason that the petitioner is working journalist in view of the appointment letter dated 21.05.2009 and since there is dispute regarding the illegal termination and

payment of services as per the entitlement, therefore, it will come under the fold of Section 2-A of the Act, 1947.

The Section 2-A of the Act, 1947 speaks about the provision where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute and further notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application directly to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of 45 days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of the Act, 1947 shall apply in relation of such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

11. It is the admission of the petitioner as would be evident from the statement made by him at paragraph No.6 of the writ petition that against the allegation of termination without notice, charge-sheet and show cause, a complaint was made by the respondent-workman to the Deputy Labour Commissioner, who has directed to make a complaint before the competent authority for redressal of his grievance. Thereafter, the application has been filed before the Labour Court vide Annexure-1 which has been treated to be an application under Section 2-A of the Act, 1947 and therefore, the Labour Court, by treating it a dispute, has entertained it and started the proceeding by issuing notice upon the petitioner management to defend his case, in pursuance thereto, show cause has been filed giving therein reply on merit and as such the finding which has been recorded by the Trial Court so far as it relates to maintainability of the application under Section 2-A cannot be said to suffer from illegality.

12. Mr. Satish Bakshi, learned counsel appearing for the petitioner has submitted that the Section 2-A is only applicable in case of dismissal or discharge but the respondent-workman has abandoned his services, therefore, it will not come under the fold of Section 2-A but this argument is not acceptable to this Court for the reason that whether it is a case of abandonment or retrenchment or otherwise termination of services, it needs adjudication and unless it will be examined by the adjudicator under the provision of the Act, 1947, it cannot be adjudicated, and therefore, by entertaining the application under Section 2-A to adjudicate as to whether it is a case of abandonment or retrenchment or otherwise the Labour Court has rightly entertained the aforesaid application.

13. The Labour Court has proceeded with the proceeding and came across the

fact that the respondent-workman subsequent to reinstatement from service which amount to retrenchment has got an appointment in other establishment, therefore, no order of retrenchment has been passed as also denied the remuneration as per the Mazithia Commission since no documentary evidence for payment of Rs.15,000/- has been filed by the workman and hence, the said claim has been held to be without any basis, therefore, the Labour Court is right in passing such order.

14. The only question which is to be looked into by this Court as to whether the Labour Court has committed error in passing the order of compensation.

15. It is the legal position regarding the applicability of the provision of the Act, 1947 vis-a-viz the provision of Section 25-F of the Act. Section 25-F of the Act, 1947 stipulates hereunder as:-

"25-F. No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(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;

(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; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

It is evident from the provision as contained under Section 25-F that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by the employer.

Underlying condition or applicability of provision of Section 25-F would be that the person claiming this protection must be :-

(a) one having the relation of employee with the employer;

(b) he must be a workman within the meaning of Section 2-S of the Act;

(c) the establishment in which he is employed must be an industry within the meaning of Section 2-J;

(d) he must have one year of continuous service as defined by Section 25-B under the employer.

These conditions are cumulative.

If any one of these conditions is lacking, the provisions of this Section will not be

appreciated.

16. Section 25-B speaks about the definition of continuous service which reads as under:-

"25-B. For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave of an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the party of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case."

If the provision of Section 25-B will be read together with Section 2-ee of the Act, 1947 it would be evident that if a person is a workman and worked for 240 days within a period of 12 calendar months preceding the period of retrenchment, it will be said to be continuous service, however, subject to some exception i.e., if interrupted due to sickness, authorized leave, an accident, a strike which is not illegal, a lock-out or cessation or work that is not due to any fault on the part of the workman shall be included in the continuous service.

17. Here in the instant case, it is not the case of petitioner-management that respondent-workman/journalist has not performed continuous service of 240 days rather the case has been tried to be make out a case of abandonment and as such it cannot be disputed by the petitioner-management regarding the fulfillment of condition by the respondent-workman of the ingredients stipulated under Section 25-B read with Section 25-F of the Act, 1947.

18. The Labour Court has tested the case of the petitioner-management as to

whether it is an abandonment or not and while discussing the same, it has been referred in the impugned award that if it is a case of abandonment, since abandonment signifies unauthorized absence, therefore the petitioner-management ought to have initiated disciplinary action by framing charge and constituted a domestic enquiry but having not done so and in absence thereof, it cannot be said to be a case of abandonment.

19. It is not in dispute so far as settled legal position is concerned that if the workman is restrained from discharging his duty by the management, it will amount to retrenchment and the same would come under the fold of Section 25-F of the Act, 1947.

20. This Court after taking into consideration the fact finding recorded by the Labour Court, more particularly, no action being taken by the petitioner-management in terms of the condition stipulated under condition No.7 of the offer of appointment which speaks to take penal action or termination after giving one month notice and salary in view thereof, has reached to the conclusion that it is not a case of abandonment.

The aforesaid finding is not having any infirmity for the reason that abandonment denotes the voluntarily relinquishment of service that can be by giving resignation whether accepted or not or any document to suggest that the employee is not inclined or interested to perform duty. In that situation, the petitioner management ought to have taken steps for terminating the arrangement on account of the condition stipulated in condition No.8 which contains the condition that in case of loss of confidence or faith or trust of the company, arrangement can be terminated but even though the petitioner has stopped discharging his duty no such steps has been taken for terminating the arrangement as per the condition stipulated in paragraph No.8 of the offer of appointment read with condition No.7 thereof.

21. Learned counsel for the petitioner has relied upon two judgments rendered by the Hon'ble Apex Court. One in the case of Vijay S. Sathaye (supra) and another case of Manju Saxena (supra) and as such the same needs to be dealt with before parting with the order.

In the judgment rendered in the case of Vijay S. Sathaye (supra), the factual aspect involved therein was of abandonment from service which has been treated to be abandonment in a situation when the employee has submitted his resignation and in that factual aspect, the Hon'ble Apex Court has been pleased to hold that after submitting the resignation, if employee failed to discharge his duty, even without acceptance of resignation in the beginning the absence can be said to be misconduct when absence is for a very long period which may amount abandonment of service and in that eventuality, the bonds of service come to an end and automatically without requiring any order to be passed by the employer.

It is not in dispute that every judgment is to be tested on the basis of the factual aspect involved therein.

In the case of Vijay S. Sathaye (supra) the factual aspect pertaining to unauthorized absence after submission of resignation by the employee and on account of long absence it has been treated to be voluntary abandonment but here it is not a case of absence for very long period but irrespective of period, the petitioner-management ought to have terminated the arrangement as per the terms and conditions and offer of appointment but having not done so, the petitioner-management cannot take aid of the judgment laid in the case of Vijay S. Sathaye (supra) by taking the plea that there is no requirement to pass order by employer since there is no chit of paper submitted by the petitioner in the shape of showing his wish that he is not inclined to discharge duty under the petitioner-management, therefore, in the facts and circumstances involved in the instant case, the judgment rendered in the case of Vijay S. Sathaye (supra) is not applicable.

22. Judgment rendered by the Hon'ble Apex Court in the case of Manju Saxena (supra), the judgment has been rendered in the facts and circumstances involved therein to the effect that the appellant was appointed as a Lady Confidential Secretary by the HSBC Bank and promoted as a Senior Confidential Secretary to the Senior Manager in the Month of May, 2005. The post of Senior Confidential Secretary became redundant, as the officer to whom the appellant was appointed left the services of the of Bank and therefore, her services were utilized by giving her some other duties for the time being, till alternative job could be offered to her and thereafter the Manager had offered her four alternate jobs of (i) Business Development Officer, (ii) Customer Service Officer, (iii) Clearing Officer, and (iv) Banking Services Officer, but she declined to accept any of the job on the ground that such job were either temporary in nature or the claimant did not possess the experience or work knowledge to take upon such job, thereafter the Bank has issued a letter terminating the services of the employee on the ground that her current job has become redundant and even though the alternative job has been offered, she did not choose any of these posts and thereafter the Bank has terminated her services, which admittedly resulted into a dispute under the provision of Industrial Disputes Act, 1947 and in that factual backdrop, the Hon'ble Apex Court has been pleased to hold that it is not a case of retrenchment within the meaning of Section 25-F since the alternate job has been offered rather it is a case of abandonment.

It is evident from the definition of abandonment as has been referred at paragraph No.6.3 of the aforesaid judgment wherein reference of a judgment rendered by Hon'ble Apex Court in the case of Buckingham & Carnatic Co. Ltd vs. Venkatiah, reported in (1964) 4 SCR 265 wherein it was held that abandonment of service can be inferred from the existing facts and circumstances which proves that the employee intended to abandon the services but coming to the factual aspect of the instant case, the same is quite different to that of the factual aspect involved in the said case, and therefore, the said judgment is not applicable.

23. The petitioner has taken the ground that the petitioner since was gainfully employed, therefore, the order of compensation passed by the Labour Court is unwarranted.

The question of gainfully employed is not condition precedent for giving retrenchment compensation in view of the provision of Section 25-F is not there rather the condition for making the provision of Section 25-F applicable and in case of non-compliance, retrenchment compensation is to be paid is that one having the relationship of employee with the employer, he must be a workman within the meaning of Section 2-S of the Act, the establishment in which he is employed must be an industry within the meaning of Section 2-J, he must have one year of continuous service as defined by Section 25-B under the employer, meaning thereby, there is no stipulation that the gainful employment will come in the way of retrenchment compensation.

It needs to clarify here that although the Labour Court has not referred the provision of Section 25-F but since there is order of compensation and since the provision of Industrial Disputes Act, 1947 is applicable, therefore, the order of compensation in case of retrenchment is to be paid under the provision of Section 25-F, therefore, reference of the said provision has been made in this order.

24. The Labour Court since has come to the conclusive finding of a case of retrenchment, therefore, has passed order of compensation of Rs.1.5 lakhs so that the provision as contained in Section 25-F of the Act, 1947 be complied with.

It needs to refer herein that the earlier view of the Hon'ble Apex Court for passing order of reinstatement along with back wages in case of violation of the condition stipulated under Section 25-F of the Act, 1947, the same has been reversed in the case of Hari Nandan Prasad & Anr. vs. Employer I/R To Management of FCI, reported in AIR 2014 Supreme Court 1848 wherein the proposition has been laid down differing with the earlier proposition of automatic reinstatement in case of violation of Section 25-F of the Act, 1947 on the analogy and reasons that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Act, 1947, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him retrenchment compensation, since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization in pursuance to the judgment rendered by the Hon'ble Apex Court in the case of State of Karnataka vs. Uma Devi, reported in (2006) 4 SCC 1 that when he cannot claim regularization and when he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a

long gap would not serve any purpose.

In view of such legal position, the Labour Court since has passed order of compensation, therefore, the same cannot be said to suffer from infirmity.

25. It is not in dispute that the Act, 1947 or the Act, 1955 is beneficial legislation on hyper technicality the relief sought for by the workman is not to be rejected rather the spirit and intent of the Acts is to be seen by the adjudicator and according to the considered view of this Court, the Labour Court after going through the spirit and intent of the provision of Section 25 of the Act, 1947 has passed the order of compensation and as such cannot be said to suffer from infirmity.

26. It is also in dispute that the jurisdiction conferred to this Court under Article 226 of the Constitution of India under which provision the representation has been filed to look into the finding of the Labour Court is very limited as has been held by the Hon'ble Apex Court in the case of Syed Yakoob Vrs. Radhakrishnan reported in A.I.R. 1964 477 Supreme Court wherein at paragraph no.7 their Lordships have been pleased to held as follows:-

"The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal Acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain

the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Ahmad Ishaque*, 1955-1 SCR 1104 : ((S) AIR 1955 SC 233); *Nagendra Nath v. Commr. Of Hills Division*, 1958 SCR 1240 : (AIR 1958 SC 398) and *Kaushalya Devi v. Bachittar Singh*, AIR 1960 SC 1168.

Reference in this regard may be made to the judgment rendered by the Hon'ble Supreme Court in the case of *Hari Vishnu Vs. Ahmad Ishaque and Ors.* reported in 1955 Supreme Court 233 wherein at Paragraph-21, which is quoted hereinbelow :-

"With regard to the character and scope of the writ of certiorari and the conditions under which it can be issued, the following propositions may be taken as established: (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Writ of certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to rehear the case on the evidence and substitute its own findings in certiorari."

In another judgment of Hon'ble Apex Court in the Case of *Sawarn Singh Vrs. State of Punjab* reported in (1976) 2 SCC 868 their Lordships while discussing the power of writ under Article 226 for issuance of writ of certiorari has been please to hold at paragraph nos.12 and 13 as under:

"12. Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the jurisdiction of the certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate Court. As was pointed out by this Court in *Syed Yakoob's case* (supra).

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted

on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice."

In another judgment rendered by Hon'ble Supreme Court in the case of Heinz India (P) Ltd. Vrs. State of U.P. Reported in (2012) 5 SCC 443 their Lordships have been pleased to hold at paragraph no.66 and 67 as under:-

"66. That the court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their agents as to matters within the province of either, and that the court does not supplant "the feel of the expert" by its own review, is also fairly well settled by the decisions of this Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a reasonable basis on evidence and whether such findings are consistent with the laws of the land.

67. In Dharangahara Chemical Works Ltd. v. State of Saurashtra this Court held that decision of a tribunal on a question of fact which it has jurisdiction to determine is not liable to be questioned in proceedings under Article 226 of the Constitution unless it is shown to be totally unsupported by any evidence. To the same effect is the view taken by this Court in Thansingh Nathmal case where this Court held that the High Court does not generally determine questions which require an elaborate examination of evidence to establish the right to enforce for which the writ is claimed."

In the case of Thansingh Vrs. Supdt. of Taxes reported in A.I.R. 1964 1419 Supreme Court, Hon'ble Supreme Court has been pleased to hold that the High Court does not jointly determine question which requires elaborate examination of evidence to establish the right to enforce for which the writ is claimed.

In another judgment rendered by Hon'ble Apex Court in the case of Pepsico India Holding (P) Ltd. Vrs. Krishna Kant Pandey reported in (2015) 4 SCC 270 their Lordships while discussing the scope of Article 226 and 227 of the Constitution of India in the matter of interference with the finding of the tribunal has been pleased to hold by placing reliance upon the judgment rendered in the case of Chandavarkar Sita Ratna Rao Vrs. Ashalata S. Guram reported in (1986) 4 SCC 447 at para 17 has held as under:-

"17. In case of finding of facts, the court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of this Court in Bathutmal Raichand Oswal V. Laxmibai R. Tarta where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. The High Court was not

competent to correct errors of facts by examining the evidence and reappreciating. Speaking for the Court, Bhagwati, J, as the learned Chief Justice then was, observed at page 1301 of the report as follows:

..... power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in *Dalmia Jain Airways v. Sukumar Mukherjee* to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

This statement of law was quoted with approval in the subsequent decision of this Court in *Nagendra Nath Bose V. Commr. Of Hills Division* and it was pointed out by Sinha, J., as he then was, speaking on behalf of the court in that case:

It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extent to quashing an impugned order on the ground of mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeking that the tribunal functions within the limits of its authority."

45. In the ratio laid down by the Hon'ble Apex Court in the judgment as referred hereinabove and taking into consideration the factual aspect and reason as recorded by the Labour Court, there is no perversity in the finding and if any interference would be made in the fact finding, the High Court in exercise of power under Article 226 of the Constitution of India would be said to exercise the power of an Appellate Authority, therefore, this Court is not inclined to interfere with the impugned award, accordingly the writ petitioner fails and is dismissed.