
(2008) 08 RAJ CK 0074
In the Rajasthan High Court

J.K. Industries Ltd.

APPELLANT

Vs

Judge, Labour Court and Another

RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

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

Citation : (2009) 1 RLW 404 : (2009) 3 SLR 261

Hon'ble Judges : N.P. Gupta, J; Manak Mohta, J

Bench : Division Bench

Judgement

N.P. Gupta, J.—This appeal has been filed by the unsuccessful employer, seeking to assail the judgment of the learned Single Judge dated 10.1.2008, dismissing the writ petition, whereby the appellant had challenged the award of the learned Labour Court, Udaipur dated 17.9.1992, whereby respondent No. 2, hereafter referred to as the workman, was ordered to be reinstated, by finding his termination to be violative of the provisions of Section 25F of the Industrial Disputes Act, and also held the workman entitled to 50% of the basic pay and allowance, to be paid within 3 months, failing which the amount will carry interest @ 12%, and also directing, that for the purpose of future service, promotion, and other benefits, the workman shall be treated to be in continuous service, and also awarded Rs. 500/- as litigation expenses.

2. The necessary facts, as appearing from award, produced as Annexure "N" are, that vide order dt. 6.7.1990 the reference was made by the appropriate Government to the Labour Court, for deciding the question, as to whether the termination of the workman Vinod Kumar resident of Udaipur is valid and proper, and if not, what relief the workman is entitled to?

3. On receipt of the reference, the workman filed the claim alleging inter alia, that he was initially appointed by the employer in 1975, and appointed in "A" Division Dual Extruder, as Mill Man, and was being paid Rs. 1100/- per month. He continued to serve regularly till 3.7.1985, from which date he fell ill, and got treated in E.S.I. Hospital, wherefrom he was advised bed rest from 4.7.1985 to

20.7.1985. Accordingly, the workman applied for leave with medical certificate. After completion of leave, on 21.7.1985, when he reported on duty, he was not allowed to join the duty, i.e. he was not taken back. Of course, leave for the said period from 4.7.1985 to 20.7.1985 was sanctioned. The case of the workman further is, that even thereafter he regularly went on meeting the officers of the Personnel Department, but he was not even allowed to enter the factory premises, and on meeting outside, he was regularly assured to be taken back. It was also contended that no disciplinary enquiry was conducted against him, nor any charge was framed, and no notice, or one month's pay, was given to him, the employer did not publish any seniority list, and persons junior to him are still serving. Thus it was claimed, that his termination is bad, and he was required to be treated to be in continuous service, and was required to be reinstated, with all consequential benefits.

4. The employer contested the claim, by pleading inter alia, that the workman was appointed since 17.11.1976, on the post of Mill Man, and did work till termination, but during this period he never served satisfactorily. It was pleaded, that he was not appointed on monthly basis, but he was appointed on basic salary of Rs. 26.62 per day, apart from other allowances, like D.A., Conveyance, House rent etc., which was payable for the days he actually works. The employer pleaded, that earlier, on account of unauthorised absence, the services were terminated on 20.2.1982. However, before the Conciliation Officer compromise was arrived at on 10.10.1982, and pursuant thereto, he was taken back on job, but the workman did not improve. Then, in para-2 of the reply, details of his absence during the period of service have been given, and that does show, that after 10.10.1982 also, in 1983 he remained unauthorisedly absent for 88 days, while in 1984 his absence was as high as 129 days, and in 1985 even till 20.7.1985 unauthorised absence was at a level of 117 days. It was also pleaded, that the workman discharged duties last on 26.6.1985, and thereafter applied for medical leave, and casual leave for two days, sent medical upto 19.7.1985, and application for leave was sent on 20.7.1985, and even thereafter, without any Information, or getting the leave sanctioned, he remained absent. Then it is pleaded, that it was on 22.7.1985, that workman sent application for leave in prescribed proforma, enclosing therewith an application dt. 8.7.1985, and medical certificate for sickness of the workman from 4.7.1985 to 19.7.1985 was sent. The certificate is from Kamla Nehru Hospital, Kankroli, and the signature and seal of medical officer E.S.I. Hospital is only to forward. Thus, it does not show that the workman took treatment in E.S.I. Hospital. However, this application was accepted on 22.7.1985 itself. Then, the allegation about workman meeting the officers of the Personnel Department, inside or outside factory premises, was denied, Likewise, allegation of giving any assurance was also denied, and it was pleaded, that after remaining unauthorisedly absent, he .kept silent for two years, and it was for the first time in August, 1988, that he submitted an application before the Assistant Regional Labour Commissioner, and with view to fill up the, long gap, workman has leveled false allegations. The

case of the employer further is, that according to Clause 24(e) of the Standing Orders, it is deemed that the workman abandoned services, Apart from the fact that he remains absent unauthorisedly, which is established from the charge sheets served earlier, and the apologies submitted by him. It was contended, that it was not necessary to initiate departmental proceedings. It was also pleaded, that the charge sheet was sent to the workman on 30.9.1985 on the permanent address available on service record, but it returned un-served, which shows, that the workman had changed his address without information. Likewise it was contended, that looking to the earlier departmental proceedings, the service record of the workman was so bad, that it was not necessary to hold departmental enquiry over again, and he was discharged in accordance with Clause 24 (e) of the Standing Orders, as he had abandoned the service. The allegation about his reporting on duty was denied. Applicability of Section 25F was also denied. It was pleaded that in accordance with the service contract dt. 27.8.1977, the workman had been discharged, which does not amount to retrenchment, within the meaning of Section 2(oo)(bb). It was also pleaded, that according to Conditions No. 8 and 12 of the appointment order, read with Standing Order 24(e), if workman voluntarily absented for six days or more, it will be deemed that he has abandoned the job. It was alternatively pleaded, that if the Tribunal feels, that enquiry was required to be conducted against the workman, then the employer is ready to hold departmental enquiry against him.

5. During trial workman filed his own affidavit, while on behalf of employer, affidavit of Bhupendra Narain Sharma was filed. In documentary evidence, case history, letter dt. 3.2.87, sent to the workman to collect his account being Annexure M-1 was filed. Then, the letter dt. 12.7.1986, intimating the workman about his deeming to have abandoned service, on account of the regular absence, being Annexure M-2 was filed. Likewise letter dt. 30.9.1985 has been produced as Annexure M-3, informing about he being habitual absentee from 21.7.1985. Then, apology letter for his remaining absent from 21.5.1985 to 12.6.1985 has been produced as Annexure M-4, and charge-sheet dt. 5.6.1985 for his absence from 21.5.85 has been produced as Annexure M-5, Warning letter dt. 30.3.1986 has been produced as Annexure M-6, and the apology letter in response to Annexure M-6 has been filed as Annexure M-7. Likewise apology letters for remaining absent in 1984 have also been produced as Annexure M-8, M-12, M-22, M-23, M-25, M-31, M-38 etc. The workman has produced copy of the leave application, copy of medical certificate, letter of Employees State Insurance, and failure report.

6. Learned Tribunal discussed the evidence, and found, that absence upto 21.7.1985 was with duly sanctioned leave, and his name was wrongly removed from the roll, and that, from the totality of circumstances, there is no doubt, that his name was removed from the roll, treating it absence from 4.7.1985 to 20.7.1985, illegally, otherwise there was no reason for the management, not to take action under Standing Order 24(e) without any delay, since July 1985 itself. Even in letter Annex. M-2, workman was not called upon to submit explanation.

It was considered, that mere absence is not that serious a matter, and even in the past, on the workman remaining absent, every time the employer gave charge sheet only, and never passed termination order, and on one occasion when such order was passed, he was taken back on duty. Thus arriving at the conclusion of abandonment of service, without giving opportunity to the workman to explain, cannot be said to be justified. Thus, the order Annexure M-2 was found to be invalid. Then it was considered, that the workman has initiated proceedings to assail the termination at belated stage, and no satisfactory explanation has been given for that, and therefore, he was not found entitled to be awarded entire back wages. Thus, the learned Labour Court passed the award as above.

7. The learned Single Judge dismissed the writ petition, as noticed above. Learned Single Judge noticed the contention of the learned Counsel for the workman, that two documents of the employer dated 7.11.1985 and 15.2.1986 itself clearly speak, that workman was not taken on duty though he made his efforts to take him on duty, therefore, the question of applicability of Clause 24(e) of the Standing Orders does not arise, and the findings are based on admitted facts of the case, that the services of the workman were terminated in violation of provisions of Section 25-F of the Act. Even then, the workman has proved by oral and documentary evidence, that he was not taken on duty after expiry of sanctioned leave. Learned Single Judge found, that this writ petition was second one inasmuch as earlier writ petition was decided vide order dt. 26.8.93, which order was challenged before the Division Bench, and the Division Bench, vide judgment dt. 23.3.1994, set aside the order dt. 26.8.93, and the matter was remitted to the learned Single Judge, for decision of the writ petition on merits. It was also noticed, that on 24.10.2007, a proposal was made by the employer, that if the workman is ready to accept compensation, then the employer can consider such prayer, in lieu of his reinstatement, but the workman declined, on the ground of his having become overage. Examining the case on merits, the learned Single Judge found, that due to illness the respondent gave application for leave, which was duly sanctioned, the workman was not daily rated employee, but was a regular employee, and that, as appears from documentary evidence, that the employer refused to take the employee back on duty. Thus it was found, that the learned Labour Court rightly arrived at the conclusion about the matter, being not covered by Clause 24 (e) of the Standing Orders, and being a case of termination of service. Then it was found, that admittedly the employer is an industrial establishment to which provisions of the Act are applicable, and the termination of service being violative of provisions of Section 25-F(a)&(b), and being not a case of abandonment of service, no reason was found to interfere with the award of the learned Labour Court, being based on sufficient evidence, and the writ petition was dismissed.

8. When this matter came up for consideration for admission on 25.2.2008, the record of the Labour Court was requisitioned, and on receipt of the record when the matter came up on 2.4.2008, the learned Counsel for the parties were

directed to explore the possibilities of some amicable settlement. The matter thereafter went on being adjourned, and finally it was heard on 21.7.2008. Since the pleadings are already complete, and the record of the learned trial Court has already received, at the request of the learned Counsel for the parties, the matter was heard for final disposal at this stage itself.

9. Assailing the impugned judgment and the award it was contended by the learned Counsel for the appellant, in substance, that the learned Single Judge, and the learned Labour Court have erred in holding that after availing sickness leave workman reported on duty on 21.7.1985, and continued to do so, but he was not allowed to join. It was also contended, that notice for his absence was sent by registered post at the address given by him in the service record but was returned. Likewise, another intimation sent to him on 12.7.1986 also returned. Thus, it cannot be said, that the employer simply lied low, and sent Ex.M-2. Then, on 3.2.1987 another letter was sent to him to settle the account within seven days of the receipt of the communication, and this communication was also sent at the same address, which was received by the workman on 9.2.1987, and still the dispute was not raised till as late as in August, 1988. Regarding his attempts to report on duty, the Gate Registers have been produced by the employer, which shows that it was only on 7.11.1985 and 18.2.1986, that the workman had come, and on 7.11.1985 he had come at 3.55, and went out at ten past four, and the purpose of visit is described to be official. Then, on 18.2.1986 again, he came at 11 A.M., and returned that time itself, and is reported to have contacted Mr. Ajmera, This does show, that whenever workman came, he was allowed to make necessary entries, and there is nothing to show, that he ever appeared earlier. As such the findings of the learned Labour Court, and the learned Single Judge, are bad. Then, Standing. Order 24(e) was pressed into service with all vehemence at his command, and it was contended, that may be that in the past workman had remained absent for six weeks unauthorisedly, and in that situation also the matter was covered by said Clause 24(e), but Still he was reinstated, but the acts of continued benevolence on the part of the employer, were required to be stopped, at some time, and it did not confer any perennial right on the workman to so remain absent, despite clear provisions of Clause 24(e). Learned Counsel relied upon the judgment of the Hon''ble Supreme Court, in U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, wherein Hon''ble the Supreme Court has held, that illegal strike also amounts to abandonment of job, by holding, that illegal strike and legal strike are both "absent", but the absence in illegal strike is unauthorised absence, and legal strike is not, and that, merely because the action is punishable otherwise, does not mean, that the consequence of unauthorised absence is not available under the Certified Standing Orders, if it so specifically provides, and that, the submission, that Industrial Disputes Act provided for a penalty in respect of the workman, who may have gone on illegal strike, and therefore, there could be no termination of services on account of illegal strike, is unacceptable, as there is no proof, that the respondents were on

strike at all. Likewise it was also held, that the question as to whether the workman was called upon to return on duty amounting to compliance of the principles of natural justice is a question of fact. Learned Counsel then relied upon another judgment of the Hon"ble Supreme Court, in Chief Engineer (Construction) Vs. Keshava Rao (D) by LR., wherein after 1.11.1977 workman did not report on duty, and "did nothing till 4.4.79, to assert his right of reinstatement, which delay was found to be significant, and the stand of the employer, about workman having abandoned service, and on that count his name having been deleted from the muster roll, was found to be legal. Then reliance was placed on another judgment of the Hon"ble Supreme Court, in Seema Ghosh Vs. Tata Iron and Steel Company, to contend that where even the findings of fact, recorded by learned Labour-Court are perverse, or illegal, interference can be made in exercise of Article 226 jurisdiction, even by re-appreciating the evidence. Then, Single Bench judgment of this Court, in Vijay Singh Charan v. Management, Shri Swetamber Nakoda Parshwnath Tirth Mewa Nagar and Anr. reported in RLW 1999(1) Raj. 314, was relied upon, where absence without any cause for 75 days was held to be amounting to voluntary abandonment of service. Then the judgment of the Hon"ble the Supreme Court, in Punjab & Sind Bank and Ors. v. Sakattar Singh reported in (2001) 1 SCC 214 was also relied upon, wherein the employer had given notice, calling upon to report on duty within 30 days, and failure would entitle the management to come to the conclusion, that the employee has no intention of joining duty, rather a presumption will be drawn that the employee does not require the job anymore. Then, alternative suggestion was made by the learned Counsel for the appellant, that in case it is found that the termination was bad still, reinstatement is not required to be, and should not, be ordered, and equities should be appropriately settled. For that purpose reliance was placed on judgment of the Hon"ble Supreme Court, in J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, . Learned Counsel then relied upon Division Bench judgment of this Court, in D.B. SAW. No. 52/2006 Union of India v. Manohar, decided on 29.11.2006, wherein the employee was terminated on account of unauthorised absence, and finding dismissal to be illegal, this Court instead of reinstatement, awarded cash compensation of Rs. 2 lacks. Learned Counsel for the appellant submitted, that in this direction, on the instruction of his client, he has already offered, an all told cash compensation of Rs. 4 lacks to the workman.

10. On the other hand, learned Counsel for the respondent workman submitted, that the learned Tribunal has already awarded only 50% of the back wages. Learned Counsel relied upon constitutional Bench judgment of the Hon"ble Supreme Court, in Ramvallabh Tibrewalla Vs. Dwarkadas and Co., , wherein also, there was service regulation, providing for automatic termination of service in the event of over staying on leave, and it was found even in those circumstances, that removal without giving opportunity of showing cause was bad, and if it is done, the incumbent would be entitled to move against punishment, and on that count, reinstatement was upheld, and the matter was

sent back to the learned trial Court for determining the question, as to what back salary is due. Learned Counsel also relied upon yet another judgment of the Hon"ble Supreme Court, in D.K. Yadav Vs. J.M.A. Industries Ltd., , rendered by a bench comprised of three Hon"ble Judges. In that case also, Standing Orders provided for automatic loss of lien on the post, in case^of expiry of eight day"s absence from duty. In that case opportunity of hearing was not given to the employee, and enquiry was also not held, which was found to be violative of principles of natural justice, and the employee was reinstated with back wages. Then, Division Bench judgment of this Court, in Rajasthan State Electricity Board and Another Vs. Judge, Labour Court and Another, was relied upon, in which case, according to Regulation, on account of absence of more than 8 days, the employee was discharged, which was set aside, being violative of Section 25F, and reinstatement with back wages, as ordered by the Labour Court, was upheld. Then, reliance was also placed on yet another Division Bench judgment of this Court, in Rajasthan State Electricity Board Vs. The Judge Labour Court and Another, in which case again, the termination was on account of absence from duty, without providing opportunity of hearing, and without holding enquiry, was found to be bad, and the award of reinstatement with full back wages, passed by the Labour Court, was upheld. Learned Counsel also tried to canvass, that the workman had filed application on 8.1.1988, calling upon the employer to produce ail documents, and all the documents were called, but not produced, which if produced would have shown, that the workman had reported on duty on 21.7.1985, and since then he was regularly reporting on duty, but he was not allowed to join. Thus, an adverse inference was required to be drawn against the employer.

11. In rejoinder learned Counsel for the appellant, relied upon the judgment of the Hon"ble Supreme Court, in Syndicate Bank Vs. The General Secretary, Syndicate Bank Stff Association and Another, In this case the employee absented from work for a period of 90 and more consecutive days. The Bank called him upon to report on duty, and to show cause for absence, failing which he would be deemed to have been voluntarily retired from the services of the Bank, for his continued absence. This notice was returned with the report of the postal authority that he refused to receive the same, which was not found to be service of notice, by the Tribunal. In those circumstances, the Hon"ble Supreme Court held, that the notice was sent on the correct address of delinquent, and it was received back with the postal endorsement "refused", and therefore, the notice was found to be given, and it was held, that it cannot be said, that the Bank did not allow him to join. It was contended, that in this case, wherein the action of this type was upheld, being in accordance with Clause 16 of the Bipartite Settlement, and the order of reinstatement was set aside. Then, learned Counsel also relied upon the judgment of the Hon"ble Supreme Court, in Haryana Land Reclamation and Development Corporation Ltd. Vs. Nirmal Kumar, , wherein it was held, that on the question of delay in seeking reference, no formula of universal application can be laid down, it would depend on facts of each

individual case.

12. At the closure of the arguments the learned Counsel for the workman submitted, that he has given offer to settle the dispute, on an all told compensation of Rs. 9 lacks, which was not accepted by the management.

13. We have considered the submissions, and have gone through the record, and the various judgments cited at the Bar.

14. To start with a combined look at Annex.E(M-3) and Annex.F (M-2) read with Annex. G (M-I) does show an entirely different picture of the situation, inasmuch as, as the things have come up, that according to the employer the workman absented since 21.7.1985, while according to the workman he remained on medical leave upto 20.7.1985, and thereafter on 21.7.1985 when he reported on duty he was not allowed to join duty. Admittedly leave for the period upto 20.7.1985 has duly been sanctioned. In this background a look at Annex. M-3, being letter dt. 30.9.1985, which was not delivered to the workman, also does show, that thereby the workman was communicated to have been absenting from duty since 21.7.1985 without permission. Then, his earlier absences were catalogued, earlier charge sheet was referred to, by mentioning that on written apology and assurance for not remaining absent unauthorisedly in future, he was let off. With this it was alleged, that still even after so many opportunities he has not improved in his habit of remaining absent without permission, and then, it was written as under:

Your above mentioned acts amount to misconduct under the provisions of the certified standing orders of the company.

Clause-28

Sub-Clause 8- Habitual absence without permission or bad time keeping.

Sub-Clause 17- Absence without permission exceeding 8 days or overstaying the sanctioned except when the overstay is due to dislocation of communication, it may be extended to 10 days.

You are, therefore, directed to explain in writing within 48 hours of receipt of this charge-sheet as to why disciplinary action should not be taken against you for the reasons stated above.

If you fail to submit your written explanation within the abovementioned stipulated period it will be deemed that you have no valid explanation to offer and action would be taken accordingly.

15. It is significant to note, that in this communication Ex. M-3, provisions of Clause 24(e) of the Standing Orders have not been resorted to, rather it purports to be charge sheet, containing a clause, that in case of failure to submit explanation, action shall be taken against him. Admittedly no departmental enquiry has been held against him, nor any other action has been taken against him, and it is practically after nine months thereafter, i.e. on 12.7.1986, that

Ex.M-2 was addressed, conveying that workman has been unauthorisedly absenting since 21.7.1985 without any information and sanction of leave, and conveying, that as per Clause 24(e) of the certified standing orders of the company it is deemed that you have left the services of the company of your own accord. It would suffice to say, that if Clause 24(e) was intended to be invoked in its true letter and spirit, the communication letter Annexure M-2, could and should have been addressed in July, 1985, or instead of addressing communication Annexure M-3. Thus, it is clear that the absence since 21.7.1985 was not treated by the employer itself to be amounting to abandonment of services, but was being treated as misconduct, entailing disciplinary action. Thus, it cannot be said, that the employer was justified in taking resort to Clause 24(e).

16. Then, even in Ex. M-1, the calculations made could not be reconciled by the learned Counsel for the appellant.

17. Regarding the workman reporting on duty, and having not been allowed to join the work, in our view, from a look at para-3 of the reply, submitted before the learned Labour Court, it is clear, that it was on 22.7.1985, that the workman appeared before the departmental officer, and submitted application for leave, and despite the application being not in a regular manner, it was accepted. One requires to comprehend, and understand, on the face of this pleading, that when the workman appeared personally on 22.7.1985, and submitted application for leave, along with medical certificate, which application accepted that very day, how can it be accepted, or even believed, that the workman did not report on duty. The story propounded in the reply is inherently inconsistent, Inasmuch as the story propounded is, that though the workman applied for leave upto 20.7.1985, but he never reported back on duty. Thus, the workman was alleged to be absenting unauthorisedly since 21.7.1985, and then in the other breathe, it is categorically pleaded, that true fact is, that it was on 22.7.1985 that the petitioner himself submitted the application for leave, duly filled in prescribed proforma, along with medical certificate to the departmental officer, who accepted the same, that very day.

18. In this background, a look at the application of the workman, filed before the learned Labour Court shows, that the workman demanded production of Time Register of January, 1985 to December, 1985, but the Copy of the Time Register of only two days has been produced, in view of the pleadings contained in para-3 of the reply, admittedly when the workman had appeared on 22.7.1985, and submitted application for leave, which was accepted that very day, entry about his visiting the factory must be there in the time register, on 22.7.1985, and if the Register of July, 1985 were to be produced, it would have definitely shown, that workman must have appeared on 21st also, and must be appearing thereafter, consistently.

19. While making the above discussion, we may clarify here itself, that we are not recording any finding, on the factual aspects of the matter, as is decided by the learned Labour Court, but have made a passing reference of the fact

situation, just to reinforce declining to interfere in the finding of fact, recorded by the learned Courts below, as the contention raised was, that if the findings are perverse, this Court can even re-appreciate the evidence, and interfere with the findings. It is only in order to deal with that limited contention that we have referred to these aspects, which show, that the findings cannot at all be said to be perverse, and are clearly, rather borne out from the record.

20. Thus, we do not find any ground to interfere with the findings recorded by the learned Courts below, about the termination of the workman being contrary to law.

21. The only question then remains is, as to whether the relief granted to the workman is required to be maintained, or interference should be made. Of course, the judgments cited by the learned Counsel for the workman do take a view, that reinstatement is a normal consequence of setting aside the termination. It is also true, that those judgments are the judgments rendered by Constitutional Bench, or the Bench presided by three Hon'ble Judges of the Hon'ble Supreme Court, but then, the fact does also remain, that the Constitution Bench judgment in Jai Shanker's case is of the year 1966, and much water has flown thereafter. It is a different story, that even earlier, the Hon'ble Supreme Court had taken the view, that in every case where termination has been found to be bad, reinstatement is not a rule of thumb, and did catalogue certain circumstances, wherein instead of ordering reinstatement, equities can be settled by awarding cash compensation, and those earlier judgments have not been considered in Jai Shanker's case: Coming to the recent judgments; Rolston John Vs. Central Government Industrial Tribunal-cum-Labour Court and others, is a case of employee overstaying of leave without proper explanation, finding the termination to be amounting to retrenchment, and that being violative of Section 25F, after considering various earlier judgments of the Hon'ble Supreme Court, it declined to give relief of reinstatement, and directed, that in full and final settlement of all the claims of the workman, and in lieu of reinstatement and consequential benefits, if any, the respondent shall pay to the appellant, a lump sum of Rs. 50,000/- within a period of six weeks," and on such payment, the matter shall stand concluded between the parties. Then, in Shiv Kumar and Others Vs. State of Haryana and Others, again, finding retrenchment to be not in accordance with law, being Section 25N read with Rule 76A of the Industrial Disputes Rules, 1957, the Hon'ble Supreme Court declined to grant relief of reinstatement, and directed that each of workmen be paid Rs. 10,000/-, in addition to compensation u/s 25F(b) of the Industrial Disputes Act, within a period of two months from the date of order, to settle the dues. In Wasim Beg Vs. State of Uttar Pradesh and Others, again, finding the termination in 1985 to be wrongful, and considering the attending circumstances, compensation of Rs. 2 lakhs was awarded, and it was observed, that it would be sufficient to meet the ends of justice. Then again, in Haryana Tourism Corporation Ltd. v. Fakir Chand reported in JT 2003 (2) (Supp) SC 424, the Hon'ble Supreme Court finding the termination to be bad, and reinstatement

having been ordered by the learned Labour Court and High Court, held, that ordering reinstatement at the distance of time would not be a just arid equitable solution, and employer was directed to pay compensation of Rs. 70,000/- to each of the workman, in lieu of reinstatement. In this case, the judgment was rendered by Hon''ble Mr. Justice K.G. Balakrishnan, as he then was, (presently Hon''ble the Chief Justice of India). Then, in State of M.P. and Others Vs. Arjunlal Rajak, again, finding the retrenchment of the workmen to be violative of the provisions of Section 25F, and referring to couple of earlier judgments, declining reinstatement, while allowing the appeal, monetary compensation was awarded to each of the workmen. In that case pursuant to the impugned order of the learned Labour Court, and the High Court, the workmen had been reinstatement, and they were allowed to be paid wages for period they have actually worked, in addition to compensation.

22. Still recent judgment of Hon''ble the Supreme Court is Mahboob Deepak Vs. Nagar Panchayat Gajraula and Another, wherein, in para-6, it has been held as under:

Such termination of service, having regard to the fact that he had completed 240 days of work during a period of 12 months preceding the said date, required compliance of the provisions of Section 6N of the U.P. Industrial Disputes Act. An order of retrenchment passed in violation of the said provision although can be set aside but as has been noticed by this Court in a large number of decisions, an award of reinstatement should not, however, be automatically passed.

23. Of course, all the above judgments are judgments rendered by the Bench presided by two Hon''ble Judges, but then, they are consistent judgments of the Hon''ble Supreme Court, and this Court cannot altogether shut its eyes towards those judgments as well. It is needless to reiterate, that the law has to be interpreted from time to time, so as to keep pace with the prevailing national situations. It is well known, that during last decade time has substantially changed. The globalisation and liberalisation are writ large, at which time to follow the antique principles of interpretation taken, would be rather an utter travesty of law.

24. In the facts of the present case, from the details of the absences, given in the reply before the learned Labour Court, it is writ large, that even during 1979 to 1985, virtually, the workman remained more absent than what he had worked on duty, and every time he had been let off, probably bearing compassion, but then employer being industrial undertaking, it can ill-afford such unauthorised absence ad-infinitum, in the present competitive age, and bearing any continued compassion in favour of one workman, is to result into being hazardous to the entire establishment. The equities are to be settled, and the employer cannot be compelled to carry the burden of such an employee ad-infinitum, simply because for one reason or the other, termination made, way back in the year 1985 or 1986, is found to be bad.

25. In view of the above, in our view, it is imminently fit case, wherein the workman should not be allowed the relief of reinstatement.

26. Then question is, as to how much amount of compensation should be awarded. In this regard there are judgments .and judgments of the Hon''ble Supreme Court, and this Court, taking different views, and no straight jacket formula can be laid down, in the present case, the workman had been employed in 1976, and had been removed in 1985, and now we are in the year 2008. It is also to be remembered, that during the period the matter remained pending before this Court, the employer had been making payment u/s 17B. At the same time, the workman appears to be in the habit of remaining absent unauthorisedly. However, as noticed above, the employer has volunteered to pay compensation of Rs. 4 Lakhs, over and above all the amounts which have already been paid to the workman; while the learned Counsel for the workman had submitted, that his client is prepared to settle the matter for an all told compensation of Rs. 9 Lakhs, over and above the amounts that has already been paid.

27. In bur view, the amount offered by the employer is quite reasonable. However, bearing extravagant benevolence, we direct, that the workman be paid an all told compensation of Rs. 5 Lakhs by the employer, within a period of two months from today, beyond whatever amounts the employer had already paid to the workman so far, and on such payment being made, all claims of the workman involved in the present litigation should come to an end, for all times to come. And that if the amount as aforesaid is not paid within two months, the amount shall carry interest @ 9% per annum, after the said date, and the workman should be entitled to have this order enforced through Labour Court, by invoking appropriate provisions of Industrial Disputes Act.

28. Consequently, the appeal is allowed in part. The finding about the removal of the workman being not in accordance with law is upheld. However, the relief of reinstatement with 50% back wages, as granted by the learned Courts below is set aside, and instead, it is directed, that the employer shall pay an all told compensation of Rs. 5 Lakhs, beyond whatever amounts that have so far been paid by the employer, within a period of two months from today, and on such payment being made, all claims of the workman, involved in the present litigation, shall come to an end, for all times to come. It is, however clarified, that if the amount, as aforesaid, is not paid within two months, the amount shall carry interest @ 9% per annum, after the said date, and the workman would be entitled to have this order enforced through Labour Court, by invoking appropriate provisions of Industrial Disputes Act.

29. The parties shall bear their own costs of this appeal.