

(2008) 06 KL CK 0055
In the High Court Of Kerala
Case No : O.P. No. 4755 of 1999

Kerala Electrical and Allied Engg. Co. Ltd.	APPELLANT
Vs	
Leemns D'Cruze and Others	RESPONDENT

Date of Decision : 13-06-2008

Acts Referred:

Factories Act, 1948 — Section 46
Industrial Disputes Act, 1947 — Section 25F

Citation : (2008) 119 FLR 685 : (2008) 3 ILR (Ker) 10 : (2008) 2 KarLJ 673 :
(2008) 3 KLT 449 : (2009) 2 LLJ 94

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : K. Anand, for the Appellant; T.M. Mohammed Yousuff and Aysha Yousef, for the Respondent

Final Decision : Dismissed

Judgement

S. Siri Jagan, J.—Dissatisfied with the award of the Labour Court, Kollam, in I.D. No. 111 of 1995, both the management and the Union in that I.D. are challenging that award in these original petitions.

2. The issue referred for adjudication was:

Denial of employment to the following 16 workers engaged in the canteen at Kerala Electrical and Allied Engineering Company Limited, Kundara with effect from 1-6-1994.

1. Sri. Chandrasekharan Pillai 2. Sri. P. Mani 10. Sri. N. Somarajan 3. Sri. Vijayan R. 11. Sri. Jayakumar 4. Sri. Raju a. 12. Sri. Aji B. 5. Sri. Shaji P. 13. Sri. Satheesan 6. Sri. Ranjan P. 14. Sri. Suresh 7. Sri. Sasidharan Pillai 15. Sri. P. Bose and 8. Sri. Biju a. 16. Sri. V. Kishore. 9. Sri. Raju P.

3. The facts necessary for disposal of these two writ petitions may be summarised thus:

4. The management is a Government company employing more than 250 workers in their factory at Kundara. Since, as per Section 46 of the Factories Act, an occupier of a factory is statutorily bound to provide and maintain canteen facilities for the use of the workers, the company has been maintaining a canteen inside the factory for the use of the workers. This canteen was run by a contractor engaged by the management in accordance with an agreement entered into between the management and the contractor. The workers employed in the canteen raised a claim for treating them as regular employees of the management, which was rejected by the company on the ground that there is no employer-employee relationship between them. When the workers raised claim for regularisation they were denied permission to enter the factory premises denying them employment. The workers whose cause was espoused by their Union raised an industrial dispute, which was referred to and adjudicated by the Labour Court, Kollam which resulted in the impugned award, which is Exts.P3 in the management's original petition and Ext.P4 in the Union's original petition (the original petition filed by the management being the leading original petition, I shall refer to the award as Ext.P3 in this Judgment). In that award the Labour Court found that the workmen involved in the dispute are the regular employees of the company and not those of the contractor. It was also found that they were illegally denied employment. But the workers were not given full relief of reinstatement with backwages, but only those who has completed 240 days as on 31 -5-1994 as per their dates of entry in service entered in their E.S.I, cards were directed to be reinstated, that too, without backwages. The management is challenging the award as a whole and the Union is challenging that part of the award denying full relief of reinstatement with backwages.

5. The primary issue raised by the management is as to whether employees of a canteen run by a factory in compliance with its statutory obligation under the Factories Act, through a contractor, are the regular employees of the principal employer. Relying on the terms of the agreement executed by them with the contractor and various Supreme Court decisions on the subject in their favour, the learned Counsel for the management company would argue that the workmen engaged by the contractor are the workers of the contractor and there is no employer-employee relationship between the company and the workers involved. He would particularly refer to the decisions of the Supreme Court which held the workers of statutory canteen are workers of the establishment for the purpose of the Factories Act only and not ipso facto workmen of the establishment for other purposes like service benefits and therefore, simply because the canteen is run to satisfy the requirement of the Factories Act, the workers of the canteen engaged through a contractor cannot be deemed to be workers of the establishment. He would argue on the basis of other Supreme Court decisions that simply because the building, utensils, electricity, water and other infrastructure as well as the provisions and vegetables for cooking foods are supplied by the establishment, the workers engaged by the contractor to carry out the contract entered into as per an agreement executed between the

establishment and the contractor do not become workers of the establishment, but would remain as workers of the contractor for all purposes. He would point out that the period of contract is for one year and as per the terms of the agreement, the contractor is to bring his own employees for running the canteen and to take them back as and when the contract is terminated. According to him, as per Clause 18 of the agreement, the exclusive responsibility regarding the employees employed, by the contractor is on the contractor and the contract does not envisage any direct involvement of the establishment in the matter of appointment, payment of salary and other conditions of employment and statutory obligations of an employer in respect of the workers employed by the contractor. Therefore, according to the counsel, there is absolutely no element of employer-employee relationship between the establishment and the workers engaged by the contractor. He, therefore, argues for setting aside the award and holding that the workmen involved in the dispute are solely the workmen of the contractor with no responsibility on the part of the establishment in respect of them.

6. On the other hand, the counsel for the Union, relying on some Supreme Court decisions in their favour, would argue that being a statutory canteen the workers engaged in the canteen, though through a contractor, are direct employees of the establishment, and the contractor is bought in for namesake as a camouflage, only to defeat the legitimate rights of the employees of the canteen. He would point out that despite the change in the contractor, the very same workers are employed without change and the entire infrastructure including building, utensils, kitchen machines, electricity, water etc. and the entire provisions and vegetables required for preparation of the food articles are also supplied by the company. His further contention is that the items of food to be prepared for the day and their prices are also decided by a committee formed by the company with their employees as members and the contractor has no discretion in the matter. According to him, the only work left with the contractor under the arrangement is to supervise the cooking of the food and serving of the same to the employees of the company and nothing else. The wages of the workers are paid by the company to the contractor who only distributes the same to the workers, contends the counsel. He relies on a Supreme Court decision in which with less inputs than the above the Supreme Court has held that similarly placed workers engaged through a contractor are workers of the principal employer. He would therefore, support the award to the extent of holding that the workers are regular workmen of the company. But he would submit that after holding in their favour as regards employer-employee relationship and denial of employment, the Labour Court went wrong in denying full relief of reinstatement with backwages by bringing in the concept of retrenchment and requirement of 240 days' continuous service, which were not the issues referred for adjudication.

7. The parties referred to the following Supreme Court decisions: State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others, , Haldia Refinery Canteen Employees Union and Others Vs. Indian Oil

Corporation Ltd. and Others, , Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others, , Canteen Mazdoor Sabha v. Metallurgical and Engineering Consultants (India) Ltd. and Ors. (2007) 7 SCC 710, State Bank of India and Others Vs. State Bank of India Canteen Employees" Union (Bengal Circle) and Others, , M.M.R. Khan and others etc. Vs. Union of India and others, etc., , Parimal Chandra Raha v. LIC of India AIR 1995 SC 1666 and Hari Shankar Sarma v. Artificial Limbs Manufacturing Corporation 2002 Lab I.C. 131.

8. It is true that there are decisions of the Supreme Court on the question as to whether employees employed in a canteen maintained by a principal employer through a contractor to fulfill the obligations under a statute are employees of the principal employer and entitled to regularisation, both in favour of the principal employer and the workers, some of which have been cited by both sides before me. But the Supreme Court itself had ultimately held thus in the decisions of State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others, , thus:

32. We have referred to the aforesaid decisions in order to show that in each of the aforementioned cases the industrial adjudicator was required to apply the relevant tests laid down by this Court in the fact situation obtained therein. Most of the cases referred to hereinbefore were considered by this Court in the peculiar facts and circumstances obtaining therein and, thus, it is even not proper for the industrial adjudicator to apply the ratio of one decision to the exclusion of other without considering the facts and circumstances involved therein. The law, however, does not appear to be settled as to whether even in a case where the employer is required to run and maintain a canteen in terms of the provisions of the statute, the employees of the canteen would automatically be held to be the workers of the principal employer for all intent and purport and not for the purpose of the Factories Act alone. We however, are not concerned with the said question in this matter and refrain ourselves from making any observation in respect thereof.

(Emphasis supplied)

Relying on that decision, a Division Bench of this Court had after referring to all the Supreme Court decisions now cited before me, in Hindusthan Newsprint Industrial Canteen Workers Union Vs. Hindusthan Newsprint Ltd., observed that the law on the point is still unsettled. Thereafter, in that decision the Division Bench held thus:

...But we are of the opinion that for deciding the case essentially we have to come to certain findings on facts, such as whether the contract entered into between the principal employer and the contractor is a bona fide or a sham transaction, whether the terms of the contract would amount to in fact absolute control on the part of the principal employer in the running of the canteen, whether the principal employer had any role in the recruitment of the employees, whether the principal employer had control over the employer of the canteen,

etc. etc....

That being so, it is more a question of fact than a question of law and has to be decided as such. In fact in Petrochemicals Corporation's case (supra) and Haldia Refinery's case (supra), after holding that workmen of statutory canteen under the Factories Act are workmen of the establishment for the purposes of that Act alone and for other purposes, the Supreme Court went on to undertake the exercise of finding out whether on the evidence before the Court, the Court come to the conclusion that the employees concerned therein were in fact employees of the establishment. In the former case, the Supreme Court on the evidence available in the case came to the finding that the workmen are the employees of the establishment and in the latter that they were not. Therefore, I have to undertake that exercise in this case also.

9. As in those cases, in this case also, admittedly the canteen is one provided and maintained by the company in compliance with its obligation u/s 46 of the Factories Act in so far the factory is employing more than 250 employees:

10. One of the tests adopted by the Supreme Court itself in some of the decisions on the subject as to whether the contract between the principal employer and the contractor is a bona fide or sham contract is to ascertain as to whether the principal employer and the contractor had taken registration under the Contract Labour (Regulation & Abolition) Act, 1970. Unfortunately, in this case evidence does not appear to have been led by either side in that direction. There is not even any evidence as to how many workmen were actually employed in the canteen. Since the union had espoused the cause of only 16 workmen it cannot now be decided as to whether there were other workmen also actually working in the canteen. It is also not known as to whether the company was engaging other contract workmen in the factory apart from those in the canteen. Therefore there is no clear evidence as to whether the company was employing twenty or more contract workmen in the factory so as to attract the requirement of registration under the Contract Labour (Registration & Abolition) Act. But in paragraph 12 of the written statement of the management before the labour court it is stated that the company has other contract workers apart from those doing the canteen work, without mentioning the number. So also the agreement between the company and the contractor in this case stipulates that the contractor shall employ 18 workmen each everyday in the canteen and the number should not exceed or should not be below that at any cost. Therefore, if the company is engaging two more contract workers in the factory in addition to the 18 workmen in the canteen, they are liable to take out registration under the said Act.

11. Now let me look at the contract itself, a sample of which for the year 2007-08 was made available to me for perusal by the counsel for the company. As per Clauses 1 and 4 of the agreement the agreement is for a period of one year. Clauses 2, 3, 6, 7, 8, 10, 11, 12, 13, 15, 16, 17, 26, 27, 28, 29, 30, 31, 32, 33, 35 and 30 relate to the work to be done by the contractor under the

agreement which read thus:

2. The licence is for cooking and serving vegetarian food items specified in the Annexure attached hereto as per schedule of timings specified therein.

3. The monthly expense of Rs. 33,450/- (Rupees Thirtythree thousand Four hundred and fifty only) by the licensee for employing workers to cook and serve the food items in the Canteen will be paid on the 3rd working day of each month. No enhancement in the above rate will be allowed during the period of this licence.

xxxx xxxx xxxx 6. The licensee will cook and serve only vegetarian dishes.

7. The food supply will have to be made to all the employees of the Company including permanent and temporary staff and workers, Trainees and Apprentices as per the schedule of time.

8. Normally, food will be served only to those employees mentioned in Clause 7 above. "Outsiders connected with the business of the company other than company guests will be served meals in the canteen on production of a cash receipt of Rs. 15/- obtained from the Finance Department of the Company".

xxxx xxxx xxxx 10. The licensee shall not serve food items more than the quantity prescribed by the Management from time to time. The licensee shall not allow food items served in the Canteen to be taken outside. Food items bought from outside shall not be permitted inside the canteen.

11. The Company will give Canteen building with furniture, electric fittings for lighting, fan, water connection, cooking vessels and utensils for serving food, free of cost. Any damage caused to the above stems willfully or by negligence, shall be compensated by the licensee.

12. The licensee will prepare the items and supply the same in the Canteen, Office and Factory at the appointed timings as per the time schedule as Annexure-1.

13. The licensee must keep the canteen building, floor walls, kitchen, work area, roofs, furniture, serving utensils and cooking vessels etc., always clean and in good hygienic condition every day. The ground 20" wide, surrounding the canteen building will also be kept neat and tidy by the licensee at this own cost.

xxxx xxxx xxxx 15. Rice, Oil, Vegetables and other Provisions supplied by the Company for the preparation of food items shall be made use of to the maximum by the licensee and any waste of the same shall not be caused. The Company reserves the right to inspect the Canteen including the Kitchen as and when required. The recommendations of the Canteen Committee are binding on the Licensee.

16. The Company reserves the right to impose fine on the licensee, if the food stuffs served are not keeping the standards in quality and quantity fixed as per

this agreement.

17. When the licensee's license is terminated as per Clause 4 above, he shall surrender the canteen and utensils etc. to the Company and the Company shall have right to enter the Canteen in the presence of witnesses, prepare an inventory of the materials in the premises and take over canteen and any loss sustained by the Company owing to fault of licensee shall be recovered from his Security Deposit. The Company shall have full discretion to decide whether the licensee proved untrustworthy of his conduct of his behaviour unsatisfactory.

xxxx xxxx xxxx 26. The licensee shall ensure that no adulteration is caused to food stuffs, snacks, meals, drinks etc. In the event of any such adulteration being detected, the licensee shall be solely responsible for all the consequences, including penal action.

27. If due to the laps of the licensee, the food is spoiled during the course of cooking, he shall immediately make alternate arrangements to serve food in time at his cost. If any loss is caused to the company due to the above lapse, the licensee shall compensate the company.

29. Proper registers regarding the number of meals, tea/black coffee, snacks etc. prepared and served shall be maintained separately by the licensee for verification.

30. The company will have the right to alter the timings or to fix additional timings for the supply of food items.

31. If it is noted that the canteen is being run badly and the direction given to improve are neglected, the company reserves the right to fine and recover the fine from the licensee's quoted monthly expense payable by the company.

32. The Licensee (Contractor) should employ 18 workers each and every day for the proper functioning of the canteen. It should not exceed and should not be below at any cost.

33. The Licensee (Contractor) should be present during the working time of the Canteen.

xxxx xxxx xxxx 35. The licensee should comply all the instructions, which will be issued from the company from time to time.

36. The licensee should submit the copy of wage sheets of the canteen workers at the end of every month without fail.

Clauses 18, 19, 20, 22, and 24 directly relate to employees to be employed by the contractor which read thus:

18. The licensee shall bring in his own employees for running the Canteen and he shall take them back as and when the licensee is terminated. The licensee is solely responsible for their employment and their service conditions. The Canteen employees will be engaged and paid by the licensee and they shall not be

considered as employees of the company. The company reserves the right to withdraw or refuse admission to any employee of the licensee at any time without notice or without assigning any reason whatsoever. The licensee will be responsible to the company for the good behaviour of his employees. The company will not be responsible for any dispute arising between the licensee and his employee.

19. All the statutory obligations such as minimum wages ESI & PF contribution, Income Tax etc. regarding the employees of the licensee shall be that of the licensee.

20. The licensee shall employ only healthy persons as his employees in the canteen. The company has the right to demand medical fitness certificate regarding the employees of the licensee, if required to. The suppliers should be neatly dressed.

xxxx xxxx xxxx 22. The licensee shall hold the company harmless and indemnified against all claims for damage (inclusive of legal costs in connection therewith) whether arising as a result of personal injury or death (irrespective of whether such a claim arises in accordance with the provisions of the Workmen's Compensation Act 1923 or any other statutes in force during the currency of this agreement or otherwise) or of any damage to any property by accident, negligence or otherwise arising out of and in the course of continuance of this agreement.

xxxx xxxx xxxx 24. The licensee and his employees will be bound by the rules and regulations of the company in the matter of discipline and cleanliness.

12. From the terms of the contract themselves the following facts emerge:

a) The contract is for cooking and serving vegetarian food to employees of the factory.

b) The entire infrastructure like building, furniture, utensils, electric fittings, fans, electricity and water and articles for preparation of the food, namely, rice oil, vegetables and other provisions are supplied by the company.

c) A monthly expense of Rs. 33,450/- is given for employing workers to cook and serve food items in the canteen, meaning thereby the same consists of the wages of the employees and perhaps his supervision charges, which are not separately mentioned.

d) The company can inspect the canteen including the kitchen as and when required.

e) The company has appointed a canteen committee whose recommendations are binding on the licensee.

f) The company can demand medical fitness of the employees of the canteen.

g) The licensee and the canteen employees are also bound by the rules and

regulations of the company in the matter of discipline and cleanliness.

h) The licensee has to maintain registers regarding number of meals, tea/back coffee, snacks etc. prepared and served, separately for verification.

i) The contractor cannot employ more than or less than 18 workers in the canteen every day.

j) The licensee should be present during the working time of the canteen.

k) The licensee is bound to submit copy of the wage sheets of the canteen workers to the company at the end of every month.

13. In addition to that on the basis of the evidence on record the Labour Court came to the finding that the administration of the canteen is being carried through a mechanism called "Canteen Advisory Committee" and they fix the menu to be prepared and also the price of the food items to be served.

14. The Labour Court after noting the contentions of the union that Worker No. 10 joined as worker of the canteen in 1978, workers 1 to 3 in 1980, worker No. 7 in 1987, workers 5 & 13 in 1990, workers 4, 6, 11 and 14 in 1991, worker No. 15 in 1992 and workers 8, 9, and 16 in 1993, based on the E.S.I. Cards of 11 of them, held thus:

...Although the union claim that all the canteen workers are covered by the E.S.I. Scheme, they have produced the E.S.I. card of only 11 out of the above 16 workers. The date of entry of these 11 workers noted in their respective cards is different from the date of their respective entry sworn by the Secretary of the union. Both original E.S.I. Card and photo copies of the same (Except one) is available among the records. According to the E.S.I. cards (photo copies Exts. W1 series) Worker No. 10 entered canteen service on 18-8-89, worker No.3 and 4 entered the said service in 19-8-89, worker No.6 entered service on 9-11-89, worker No. 1 joined service on 1-12-90, worker No. 13 joined canteen service on 18-11-91, worker No.14 joined service on 10-3-93, worker No.5 joined service on 1-10-93, worker No. 16 joined service on 11-10-93 worker No.4 joined service on 18-10-93 and worker No. 15 joined service on 1-11-93. I feel that the entries in the E.S.I. cards as regard the date of entry in service of these 11 workers are more reliable than the oral evidence of the Secretary of the union and hence the entries deserve acceptance in preference to the oral evidence of WW1. Accepting that I hold that the dates of entering in service of the 11 workers mentioned above are as shown in their respective E.S.I. cards.

From the same it can be easily inferred that there was no practice of changing the workmen when the contractor changes and the new contractor continues to employ the workmen under the previous contractor since even as per the company the license is only for a period of one year and every year contractor changes. In other words, there was continuity of employment for the workers of the canteen despite change of contractor.

15. It is also admitted that in the Mamala (Kochi) unit of the company the workmen of the canteen engaged through contractors have been accepted as workers of the company itself, as per the award of the Industrial Tribunal, Alappuzha in I.D. No. 71/1989.

16. The counsel for the management, based on two separate decisions of the Supreme Court, would contend that it was held in one that the fact that the infrastructure belongs to the company and in the other the fact the raw materials for preparation of the food would not be grounds to hold that the company is the employer of the company. On the strength of Clauses 18 to 22 of the agreement with the contractor, he would argue that the entire responsibility regarding employees of the canteen is on the contractor and the evidence would not suggest that the employees of the canteen are employees of the company. The counsel for the company would argue that other than in the Mamala Unit in the other units the workers of the canteen have not been accepted as workmen of the Company.

17. In Indian Petrochemical Corporations case, (supra) which was quoted in Haldia Refinery's case (supra) after holding that employees, working in the canteen can be treated as the employees of the principal employer only for the purposes of the Factories Act, the Court went on to examine further as to whether on the basis of the evidence available on record the employees could be treated as employees of the principal employer for all/any other purpose. For this purpose the Court took into account the following factors:

- (a) The canteen has been there since the inception of the appellant's factory.
- (b) The workmen have been employed for long years and despite a change of contractors the workers have continued to be employed in the canteen.
- (c) The premises, furniture, fixture, fuel, electricity, utensils etc. have been provided for by the appellant.
- (d) The wages of the canteen workers have to be reimbursed by the appellant.
- (e) The supervision and control on the canteen is exercised by the appellant through its authorized officer, as can be seen from the various clauses of the contract between the appellant and the contractor.
- (f) The contractor is nothing but an agent or a manager of the appellant, who works completely under the supervision, control and directions of the appellant.
- (g) The workmen have the protection of continuous employment in the establishment.

After noting the above factors, the Court went on to hold thus:

26. Considering these factors cumulatively, in addition to the fact that the canteen in the establishment of the Management is a statutory canteen, we are of the opinion that in the instant case, the respondent workmen are in fact the

workmen of the appellant Management.

18. From the discussion hereinbefore of the evidence in the present case, it can be seen that in addition to the above factors there are several additional factors in favour of the employees. In fact the evidence as a whole would go to prove that the contractor was only a glorified supervisor of the company without any independent functions regarding the running of the canteen, engaged for the purposes of record and the company had absolute control over the entire affairs of the canteen including the workmen.

19. The counsel for the company would argue that since engagement of contract labour in the company has not been abolished under the Contract Labour (Regulation and Abolition) Act, the workers of the canteen cannot be treated as employees of the company. This contention was also taken note of and rejected in *Indian Petrochemicals*" case (supra) as follows, which was also noted in *Hajdia Refinery*"s case:

27. At this stage, it is necessary to note another argument of Mr. Andhyarujina that in view of the fact that there is no abolition of contract labour in the canteen of the appellant's establishment, it is open to the Management to manage its canteen through a contractor. Hence, he contends that by virtue of the contract entered into by the Management with the contractor, the respondent workmen cannot be treated as the employees of the Management. This argument would have had some substance if in reality the Management had engaged a contractor who was wholly independent of the Management, but we have come to the conclusion on facts that the contractor in the present case is engaged only for the purpose of record and for all purposes the workmen in this case are in fact the workmen of the Management. In the background of this finding, the last argument of Mr. Andhyarujina should also fail.

20. Therefore since more factors than what were available in *Indian Petrochemicals* case (supra) based on which the Supreme Court held that the workers are employees of the company in favour of the workmen have been proved in this case, I have no hesitation to hold that the employees of the canteen are employees of the company and not that of the contractor, although for the purpose of record an intermediate entity named, the contractor was brought in probably to escape from the statutory obligations in respect of those employees. As such, no interference is called for in respect of the finding of the Labour Court in that regard.

21. Now I shall advert to the reliefs available to the workmen and the contentions of the union in relation to the same. The findings of the Labour Court in this regard are as follows:

In view of my finding that the canteen workers are "deemed" workers of the company the action of the company from preventing them from entering the factory premises by refusing them entry pass amounts to retrenchment because any action on the part of the management which effectively puts an end to the

service of the workman without a positive order of termination amounts to retrenchment. In case of these Canteen workers who has been in the company retrenchment violating Section 25F of the Industrial Disputes Act would be illegal. Hence the company terminated their service without following the provisions in Section 25F. Hence their retrenchment is illegal. Among these 16 workers such of them who had completed continuous service of 240 days of service as on 31-5-1994 are therefore entitled to the re-instated in service. Now the question is regarding their service conditions. They will be entitled to minimum salary being paid by the company to the lowest grade employees. The company has also to prescribe appropriate service conditions for the canteen workers. They should be deemed to have become regular employees of the company on the date they raised their claim for confirmation first before the Labour Authorities. Among these 16 employees such of them who had not completed service of 240 days on 31-5-1994 shall not be entitled to reinstatement. They will not be entitled to any other relief also. For the purpose of fixing the date of commencement of service the date of commencement of service mentioned in the E.S.I. card has to be taken as guidance.

I am of opinion that this was a wrong approach. The issue referred was denial of employment only. The managements had no case that the workmen were retrenched. The finding is that the workmen were prevented from entering the factory premises by denying them entry pass. That is denial of employment pure and simple and no element of retrenchment is involved. Therefore the Labour Court went wrong in examining whether workmen had continuous service for the purpose of Section 25F of the Industrial Disputes Act. Once unjustified denial of employment is found the only relief called for is reinstatement. Therefore, I hold that all the workmen are entitled to reinstatement with continuity of service and all attendant benefits.

22. However, I am not inclined to grant full backwages. The company is a Government company running on heavy loss. There was uncertainty regarding the law on the subject. At one point of time it was in favour of the workmen, later it changed in favour of the establishment. Later on the Supreme Court themselves held that law is unsettled and it depends on facts and circumstances of each case. Further, it cannot be assumed that for all these years the workmen would have been without any alternate employment. Therefore, there is sufficient justification for denying a major portion of backwages to the workmen. Accordingly, I hold that the workmen would be entitled to only 25% backwages, that too only to those of the 16 workmen who are willing to be reinstated in service or those who have crossed the age of superannuation if there is one. The others who are not willing to be reinstated in service would not be entitled to any reliefs. Ext.P3 award would stand modified as above.

23. Accordingly, O.P. No. 4755 of 1999 is dismissed and O.P. No. 9076 of 1999 is allowed to the above extent.