
(2004) 08 BOM CK 0114

In the Bombay High Court

Case No : Writ Petition No. 1029 of 2002

Mahindra and Mahindra Limited

APPELLANT

Vs

Sharad Laxman Dalvi and Others

RESPONDENT

Date of Decision : 23-08-2004

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 2A
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 21, 21(1)

Citation : (2005) 2 BomCR 302

Hon'ble Judges : Khandeparkar R.M.S., J

Bench : Single Bench

Advocate : C.U. Singh and S.R. Pandey, instructed by Haresh Mehta and Co, for the Appellant; K.S. Bapat, for the Respondent

Judgement

Khandeparkar R.M.S., J.—Heard the learned Advocates of the respective parties. Perused the records.

2. The petitioner challenges the order dated 6-2-2002 passed by the Industrial Court, Mumbai in Complaint (ULP) No. 1150 of 1988. By the impugned order the industrial Court has allowed the complaint filed by the respondent No. 1 against the petitioner and the respondent No. 1 against the petitioner and the respondent No. 2 and has declared that the petitioner has engaged in unfair labour practice under Items 6 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971, hereinafter called as the said Act, and has ordered the company to resist from continuing with the unfair labour practices and further to give status, privileges and all benefits attached to the post/grade of an assembler to the respondent No. 1 from the day he completed 240 days of continuous service from October, 1979 i.e. the status of permanency from July, 1980.

3. It was the grievance of the respondent No. 1 that even though he had joined the services of the petitioner since October, 1979 and employed as Mechanic-B,

he was given the designation as that of a Mazdoor and that too when he was holding the requisite qualification on having completed the ITI Diesel Mechanic Course and one year's apprenticeship experience in diesel mechanic trade in Scindia Shipping Corporation. It was his further case that he had worked in the Engine" Assembly department, and the other departments of the petitioner since he joined the petitioner-company. It was his further case that the petitioner used to give artificial breaks in service of the respondent No. 1 as well as some other workers with the intention to deprive them of the benefits and privileges of permanency. It was his case that he having joined the service to the years 1999, he has already completed 240 days in terms of the provision of Clause 4(c) of the Model Standing Orders, he ought to have been given the status and privileges of a permanent workman in the assemblers grade out the petitioner having denied the same, the petitioner has been engaged in unfair labour practices under Items 6 and 9 of Schedule IV of the said Act. The respondent No. 1 had further contended that the petitioner and the respondent No. 2 have entered into a settlement contrary to the provisions of the Model Standing Orders, particularly Clause 4(c) and thus has deprived the respondent No. 1 and some other workers from getting the benefits, status and privileges as that of a permanent workman which disclose adoption of unfair labour practices under Item 6 of Schedule IV of the said Act on the part of the petitioner. It is his further case that inspite of vacancies being available in the post of assemblers, they were filled in without considering the case of the respondent No. 1 and in collusion with the respondent No. 2-union. Though the respondent No. 1 had approached the Labour Commissioner by the complaint dated 2-5-1988, and the Labour Commissioner called the parties by his letter dated 07-6-1988, the petitioner by its letter dated 13-7-1988 refused to consider the claim of the respondent No. 1 regarding the Assembler's Grade and thereby engaged in unfair labour practice under Item 7 of Schedule IV of the said Act. On 27-7-1988 the respondent No. 1 received the petitioner's letter dated 18-7-1988 informing him about his promotion to the post of Assembler with effect from 1-5-1988 which was accepted by the respondent No. 1 without prejudice to his rights and the claim already made by him in that regard. It is his case that he is entitled to the post of Assembler with effect from July, 1980, on completion of 240 days of continuous service in the petitioner-company, which claim was rejected by the petitioner, thereby compelling the respondent No. 1 to accept the terms of employment contrary to the statutory provisions of the Model Standing Orders and thereby adopted unfair labour practice under Item 10 of Schedule IV of the said Act. However, in the course of the hearing of the complaint, the grievance of the respondent No. 1 was restricted to the dispute pertaining to the status, privileges and benefits attached to the post of assembler and the claim of permanency on completion of 240 days of continuous service in terms of Clause 4(c) of the Model Standing Orders in the post of Assembler.

4. While contesting the claim of the respondent No. 1, the petitioner raised the print of bar of limitation on the ground that the cause of action relevant to the

alleged unfair labour practices arose in July, 1980 while the complaint was filed on 7-10-1988 and, therefore, it was hopelessly barred by the law of limitation applicable to such complaint under the said Act. It was further case of the petitioner that there was no challenge to the settlement arrived at between the petitioner and the respondent No. 2-union which is a recognised union under the said Act and the terms of the settlement were binding on all the workers, including the respondent No. 1. Considering the same, according to the petitioner, there was no scope for any grievance regarding adoption of unfair labour practices on the part of the petitioner vis a vis the respondent No. 1 or for that purpose against any workman. It was the company's further case that the manufacture of the vehicles depend upon the demand therefore from the army as well as from overseas and the company is required to undertake production and for that purpose the petitioner is required to employ temporary workmen from time to time. It is the case of the petitioner that the peculiar nature of the army and the export orders has been recognised by the respondent -Union since the last 20 years and keeping in mind the said factor the settlements has been arrived at between the petitioner company and the respondent-Union in relation to the service conditions of the workmen. It is their further case that the permanent strength of the workmen was fixed on the basis of 50 vehicles per day in the past and as the production increased, the permanent strength was fixed on the basis of level of production of 60 vehicles per day in the year 1984. Besides, in the year 1982 the Engine Assembly unit was shifted from Kandivali plant to Igatpuri plant and this led to problem of surplus labour. According to the petitioner, the expansion of the plant in Mumbai was not possible and, therefore, the plant had to be shifted to Igatpuri. Consequent to the discussion with the respondent No. 2 union, a settlement was arrived at in April, 1982 which included the necessary provision for protection to temporary workmen by continuing them in the employment of the company in the available categories with normal breaks. The question of confirmation of the protected temporary workmen was discussed with the respondent union and a settlement dated 7-8-1984 was arrived at to the effect that the temporary employees on the roll as on 31 -10-1980 and who were not confirmed were to be confirmed with effect from 31-10-1984 and by this way about 385 temporary employees were benefited of the said scheme, while the balance were to be confirmed at the rate of 50 per month commencing from November, 1984 till the total number of 1062 was exhausted by way of confirmation. The said settlement was duly complied with by the petitioner company. From 1-11-1984 the respondent was classified as Mate (semi-skilled-B) and was continued in that category as per the said settlement dated 19-4-1988, and was paid with the wages as applicable to the job designation assigned to him. While denying the claim of the respondent No. 1 about completion of uninterrupted service of 240 days, it was sought to be contended by the petitioner that the provision of Clause 4(c) of the Model Standing Orders do not apply to the petitioner in relation to the respondent No. 1 in view" of various settlements arrived at and as well as the understanding arrived at between the parties and the certified Standing Orders applicable to the

parties.

5. The respondent No. 2 union also denied the claim of the respondent No. 1 and raised the plea of non-maintainability of the complaint on the ground that no complaint relating to unfair labour practices can be filed by an individual workman except through and by the recognised Union when such recognised Union exist. It was also contended that in view of the certified Standing Orders, there is no question of applicability of the Model Standing Orders to the parties. It was also sought to be contended that the respondent No. 1 never approached the Union for any of his grievance during his employment with the petitioner since 1979 till the date of filing of the complaint. It was the case of the respondent -Union that there was no discrimination done by the petitioner in relation to the respondent No. 1 vis-a-vis the five workmen who were confirmed in the post of Assemblers and there was no unfair labour practice adopted by the petitioner ins a vis the respondent No. 1.

6. The Industrial Court after hearing the parties and considering the materials placed before it, held that the certified Standing Orders do not disclose any clause regarding permanency of temporary workers. Hence the Model Standing Orders would prevail over the certified Standing Orders. The fact that the respondent No. 1 had put in service of uninterrupted nature is undisputed one and there is nothing to disclose the cessation of work even in the appointment letter or the termination order issued to the respondent No. 1 by the petitioner. It was further held that the company's own record shows that the respondent No. 1 had worked as Mazdoor, Mechanic-B and Assembler and the complaint is maintainable and it is not barred by limitation. The settlement between the company and the Union cannot prevent the workman from prosecuting his claim for enforcement of lawful provision of the Model Standing Orders. Referring to various reported decisions and considering the contentions of the parties, it is held by the industrial Court that the confirmation letter Exhibit-H shows that the respondent No. 1 was made permanent with effect from 1-10-1985. He had joined the services of the petitioner-company in October, 1979. During the period from October, 1979 to October, 1985 he worked there "in the Assembler Grade and did permanent work". It. was, therefore, held by the Industrial Court that the respondent No. 1 ought to have been given the status and benefits and privileges of a permanent workman in the Assembler's Grade since July, 1980 instead of October, 1985 and having not done so, there has been adoption of Unfair Labour Practice in terms of Item 9 of Schedule IV of the said Act and since he was denied those benefits with the object of depriving permanency in service, the company is guilty of unfair labour practices in terms of Items 6 and 9 of Schedule IV of the said Act and denial of benefits under Clause 4(c) of the Model Standing Orders amount to failure to implement the Award, settlement or agreement clause and, therefore, unfair labour practice under Item 9 of Schedule IV of the said Act.

7. The impugned order is sought to be challenged on various grounds. At the

outset, it was sought to be contended that the complaint was barred by the law of limitation and therefore ought to have been rejected in limine by the Industrial Court. The contention of the petitioner in that regard is that since the claim regarding permanency relates from the year 1980, no complaint could have been entertained in the year 1988. Undoubtedly, the complaint is required to be filed within 90 days from the occurrence of unfair labour practice, in terms of the provision contained in Section 28 of the said Act. However, it cannot be forgotten that the claim regarding permanency and denial thereof which gives rise to the cause of action for complaining about the adoption of unfair labour practices by the employer is a continuing cause of action and therefore merely because it has been filed beyond the period of 90 days, it cannot be said to be barred by the law of limitation. Being so, the grievance of the petitioner as regards the bar of limitation for the complaint in question is devoid of substance. I am fortified in this view by the decision of our High Court in the matter of Maharashtra State Financial Corporation Vs. Swift Industries and another, .

8. The second ground of challenge relates to non-maintainability of the complaint at the instance of individual workman and particularly in relation to Item 6 of schedule IV of the said Act. Drawing attention to Section 21 of the said Act, it was contended on behalf of the petitioner that the Section (1) clearly provides that in cases of unfair labour practices specified in Items 2 and 6 of Schedule IV of the said Act, no complaint can be entertained except through the recognised union and the proviso only permits to entertain the complaint when there exist no recognised Union or there is specific refusal on the part of the recognised Union to appear for the employee. In the case in hand, considering the fact that the respondent No. 1 directly approached the Industrial Court without approaching the recognised Union and it being apparent on the face of the record from the fact that the recognised Union itself was joined as respondent No. 2 in the complaint filed by the respondent No. 1. The provisions of law comprised u/s 21 disentitled the respondent No. 1 to file the complaint in relation to the alleged adoption of unfair labour practice by the petitioner under Item 6 of schedule IV of the said Act. Per Contra, the learned Advocate for the respondent No. 1 submitted that the very fact that the respondent-Union contest the complaint discloses refusal on the part of the Union to appear for the respondent No. 1 and/or to take up the case of the respondent No. 1 and therefore the case of the respondent No. 1 is clearly covered by the proviso to Section (1) of Section 21 and, therefore, it cannot be said that the complaint of the respondent No. 1 in the facts and circumstances of the case was not maintainable.

9. Undoubtedly, Sub-section (1) of Section 21 of the said Act provides that no employee in an undertaking to which the provisions of the Central Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceedings relating to unfair labour practices specified in Items 2 and 6 of Schedule IV of this Act except through the recognised Union. Undoubtedly, the grievance of the respondent No. 1 relates to failure on the part of the petitioner to grant the benefits of the provision of Clause 4(c) of the Model Standing Orders

which relates to the entitlement of permanency in case of completion of 240 days" continuous uninterrupted service by the workman and such failure would certainly be covered under Item 6 of Schedule IV of the said Act. Indeed, the impugned order also discloses that the main grievance of the respondent No. 1 was in relation to refusal on the part of the petitioner to give the status, privileges and benefits attached to the post of Assembler to the respondent No. 1 on his alleged completion of 240 days of continuous uninterrupted service in terms of Clause 4(c) of the Model Standing Orders. Undoubtedly, therefore, considering the provision of Sub-section (1) of Section 21 of the said Act, the grievance regarding adoption of Unfair Labour Practices under Item 6 will have to be agitated through recognised Union and obviously therefore the complaint in that regard will have to be filed by the recognised union. However, the proviso to Sub-section (1) reads thus :-

"Provided that, where there is no recognised union to appear, the employee may himself appear or act in any proceeding relating to any such unfair labour practice."

The contention of the learned Advocate for the respondent No. 1 that the reply filed by the Union discloses apathy on the part of the Union to take up the case of the respondent No. 1 cannot in every case be a justification to entitle a workman to file the complaint directly by himself/herself, as the reply by the Union is filed after the filing of the complaint. Undoubtedly, it would, however, disclose reluctance on the part of the Union to support the case of the workman. But apart from such reply, there has to be something on record to disclose that prior to filing of the complaint, the Union had refused to take up the case of the respondent No. 1. However, it is necessary that objection in this regard has to be raised by the opposite party at the earliest opportunity. It is so because the provision of law comprised u/s 21 does not relate to the jurisdiction of the Court but it relates to the right of the workman to agitate the grievance through representative body, while pursuing his individual cause, at the same time, in given situation. It is therefore necessary to resolve such issue at the earliest opportunity, so that the complainant can take appropriate steps to remedy the breach or lapse, if any, in the procedure. The fact remains that no such objection was raised by the petitioner in the proceedings before the Industrial Court. Undoubtedly, objection in that regard was raised by the respondent No. 2. However, same was subsequently given up as it appears from the conduct of the Union. In fact, till the recording of evidence of P.W. 1 on behalf of the workman, the Union did participate in the proceedings on behalf of the workman. The petitioner having not raised any such objection, and the respondent No. 2 though having raised such objection in the written statement, having not pursued the same in the course of the hearing, and as is apparent from the impugned order itself, and there being no grievance made by the respondent No. 2, even in the course of the hearing of this petition, the fact remains that there was no occasion for the petitioner to establish the case which it could have otherwise established having agitated the said issue in the manner required to be agitated by the

petitioner in the course of the proceedings. The question whether the recognised Union had refused to appear for the workman or had disclosed unwillingness to represent the case of the workman is a question of fact and unless it is disputed by the employer, there could hardly be any occasion for the employee to establish the same in a complaint filed by himself/herself having found that the Union is hesitant to take up his/her grievance in relation to refusal on the part of the employer to consider the case for permanency. Once the record nowhere disclose that the petitioner had raised such an issue in that regard which was sought to be raised by the respondent No. 1 in his written statement, there was no occasion for the Industrial Court to deal with the said issue and it is too late for the petitioner to agitate the said issue in writ petition without laying necessary factual foundation in that regard in the proceedings before the Industrial Court. On that count alone, the challenge to the impugned order on the ground of non-maintainability on the basis of the provision of law contained in Section 21 is to be rejected. As already observed above, the issue as to whether recognised Union is available to appear for whatever reason, it cannot be considered to be a pure question of law and it would depend upon the facts of each case and therefore it has to be properly agitated in the Court of facts and in the absence thereof cannot be made the ground of challenge in the writ petition. Besides, the records reveal that the respondent No. 2 assisted the respondent No. 1 in the course of recording of evidence which, in turn, discloses that even the respondent No. 2 gave up the objection which was sought to be raised in its written statement in relation to the right to represent u/s 21 of the said Act.

10. It is then sought to be contended that admittedly the Standing Orders applicable to the parties were certified in terms of the provisions of law on 2-9-1968. The Clause 4(c) was added to the Model Standing Orders by the Industrial Employment Amendment Rules, 1977 to be effective from 2-1-1978 i.e. much after the date of certification of the Standing Orders applicable to the parties. It is the contention of the Advocate for the petitioner that any provision incorporated in the Model Standing Orders by way of an amendment could be made applicable to the parties who are governed by the certified Standing Orders only on such amendment being specifically incorporated in the certified Standing Orders and certified by the Certifying Officer in that regard and not ipso facto. In other words, unless the certified Standing Orders are specifically amended by incorporating the amended provision in the Model Standing Orders in accordance with the provisions of law, it would not apply to the parties governed by the certified Standing Orders. Reliance is sought to be placed in that regard in the decision of the Division Bench of this Court in *May & Bakar Ltd. v. Shri Kishore Jaikishandas Icchaporia and Ors.*, reported in 1992(Supp.) Bom.C.R. 770 : 1991(II) C.L.R. 176 . On the other had, the learned Advocate appearing for the respondent No. 1 has submitted that considering the provision of Section 2-A of the Industrial Employment (Standing Orders) Act, 1946, as applicable to the State of Maharashtra and the decision of the Apex Court in *Bajaj Auto Ltd. v. Bhojane Gopinath D.*, reported in 2004(I) C.L.R. 502 , the law on the point of

applicability of the amended provisions in the Model Standing Orders to the parties governed by the certified Standing Orders is well-settled and, therefore, the contention sought to be raised on behalf of the petitioner in that regard should be rejected.

11. It is to be noted that the contention which is sought to be raised in the course of the arguments as regards non-applicability of the amended provision of the Model Standing Orders was never raised before the Industrial Court nor any issue in that regard was invited. In case any such issue was raised, the same could have been referred to the Labour Court in terms of Section 13-A of the said Act. On the contrary, the issue which was sought to be raised was to the effect that the parties were governed by the Certified Standing Orders and not by the Model Standing Orders, and secondly that the settlement arrived at would override the Model Standing Orders. The contention that the parties are governed by the certified Standing Orders and not by the Model Standing Orders is different from contending about the need for incorporation of the amended Model Standing Orders in the certified Standing Orders in as much as there can be no dispute on the point that when there are Certified Standing Orders the same would have precedence over the Model Standing Orders in relation to the subject covered by the certified Standing Orders vis-a-vis the corresponding subject dealt with under the Model Standing Orders but the same thing cannot be said about those subjects which are added to the Model Standing Orders after enforcement of the certified Standing Orders. Whether the settlement would override the Model Standing Orders is totally a different issue. The respondent No. 1 in its complaint has stated that "the complainant joined the employment of the respondent No. 1 company in October, 1979 and has completed the services of 240 days contemplated under Clause 4(c) of the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 in or around July, 1980. During this period of uninterrupted service of 240 days, the complainant had worked as an Assembler for the company. The company ought to have given the status, benefits and privileges of a permanent workman in Assembler's grade/scale to the complainant in or around July, 1980 instead of October, 1985. The Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 are statutory terms and conditions of the employment between the complainant-workman and the respondent-company and the breach thereof amounts to unfair labour practice under Item 9 of Schedule IV of the said Act." These pleadings found in para 3(c) of the complaint were sought to be answered by the petitioner-company in its written statement in para 15 thereof wherein it was stated thus: "With reference to paragraph 3(c) of the complaint, it is denied that the complainant completed uninterrupted service of 240 days as contemplated under Standing Order 4(c) of the Model Standing Orders in or about July, 1980. The company submits that the said Standing Orders have no application particularly in view of the various settlements and understandings arrived at between the company and the 2nd respondent Union. It is denied that the complainant was entitled to or that the

company ought to have given the status or benefit of privilege of a permanent workman in Assembler's grade/ scale in July, 1980. It is denied that the Model Standing Orders are statutory terms and conditions of employment between the complainant and the company. It is denied that Item 9 of Schedule IV of the Act is attracted for the reasons alleged or at all, It is submitted that the settlements arrived at in any event will over ride the Standing Orders and, in particular, Model Standing Orders. The company further submits that it has its own certified Standing Orders and the Model Standing Orders have no application. It is denied that the company has engaged in unfair labour practice under Item 6 of Schedule IV the Act as alleged or at all. "Apparently, the stand taken by the petitioner-company as regards the applicability of the Model Standing Orders was not in relation to the effect of the amendment brought about to the Model Standing Orders subsequent to the Standing Orders applicable to the parties were certified by the Certifying Officer under the said Act but it was merely to the effect that the certified Standing Orders would override the Model Standing Orders.

12. Be it as it may, since the question sought to be raised is purely a question of law, it would be necessary to deal with the same. In fact, the answer to the point sought to be raised regarding non-applicability of the amended portion of the Model Standing Orders, particularly with reference to Clause 4(c) thereof, is to be found in the relevant provision of law itself i.e. in Section 2-A of the said Act of 1946. It reads thus :-

"2-A. Application of Model Standing Order in every industrial establishment: (1) Where this Act applies to an industrial establishment, the model standing order for every matter set out in the schedule applicable to such establishment shall apply to such establishment from such date as the State Government may by notification in the Official Gazette appoint in this behalf;

Provided that nothing in this section shall be deemed to affect any Standing Orders which are finally certified under this Act and have come into operation under this Act in respect of any industrial establishment before the date of the coming into force of the Industrial Employment (Standing Orders) (Bombay Amendment) Act, 1957.

2. Notwithstanding anything contained in the proviso to Sub-section (1) Model Standing Orders made in respect of additional matters included in the schedule after the coming into force of the Act referred to in that proviso (being additional matters relating to probationers or badlis or temporary or casual workmen) shall, unless such Model Standing Orders are in the opinion of Certifying Officer less advantageous to them than the corresponding standing orders applicable to them under the said proviso, also apply in relation to such date as the State Government may, by notification in the Official Gazette, appoint in this behalf.)"

13. What is relevant for the decision in the matter is Sub-section (2) of Section 2-A of the 1946 Act. The very opening words of the said sub-section provide that "Notwithstanding anything contained in the proviso to Sub-section (1)....."

Obviously it is in the nature of exception to the Rule comprised under the proviso to Sub-section (1.) of Section 2-A. While the proviso to Sub-section (1) excludes the applicability of the Model Standing Orders to the establishments to which the certified standing orders apply, the Sub-section (2) specifically makes the provisions of the model standing orders applicable even to such establishments. This is obvious from the above quoted non obstante clause in the said sub-section. Otherwise those words would be rendered meaningless. The extent to which the Model Standing Orders would apply and the subject in relation thereto are undoubtedly restricted to the additional matters included in the schedule after coming into force of the said Act, which apparently pertain to probationers or badlis or temporary or casual workmen. In other words, the provisions incorporated by way of amendment to the Model Standing Orders in relation to the probationers or badlis or temporary or casual workmen are not excluded from their applicability to the establishments to which the certified standing orders apply. This is apparent from the words in the said proviso which clearly refers to "additional matters included in the schedule after coming into force of the Act referred to in that proviso (being additional matters relating to probationers or badlis or temporary or casual workmen)". Undoubtedly, therefore such "additional matters" incorporated in the Model Standing Orders have to relate to "probationers or badlis or temporary or casual workmen" as specified in the said sub-section. The provision of law on the face of it therefore discloses the applicability of the same to all the establishments in certain cases enumerated therein, irrespective of the fact that such establishments are already having their certified Standing Orders.

14. Referring to the expression "unless such Model Standing Orders are in the opinion of Certifying Officer less advantageous to them than the corresponding Standing Orders applicable to them under the said proviso, it was sought to be argued on behalf of the petitioner that the applicability of the amended provision in the Model Standing Orders to the establishment to which the certified Standing Orders apply would depend upon certification in that regard by the Certifying Officer after ascertaining as to whether those amended provisions are less advantageous in comparison to the provisions in the certified Standing Orders. Needless to say that question of comparison could arise only in a case where the party approaches the concerned Certifying Officer for that purpose. However, it cannot be said that merely because none of the parties have approached the Certifying Officer in that regard and no issue in that regard is raised before such officer even after the amendment in relation to additional matters is brought about to the Model Standing Orders, it would postpone the applicability of such amendment in the Model Standing Orders, even though such amendment relates to specified matters under the said sub-section and that it would require certification by the Certifying Officer for applicability of the provisions in the amended Model Standing Orders in relation to additional matters. Any such construction of the said provision would virtually defeat the very purpose behind the said provision, besides being contrary to the plain meaning of the said

provision of law. When the provision of law itself is very clear about its applicability to all the establishments including those to which the certified Standing Orders apply, the question of interpreting the said provision and giving some artificial meaning to such provision does not arise at all, since it would be against the well-established principles of law in relation to interpretation of the statute. Under the guise of interpretation, the Court cannot assume the role of legislator.

15. The view that I am taking in the matter is clearly fortified from the decision of the Apex Court in the matter of Rohtak Hissar District Electricity Supply Co. Ltd. Vs. State of Uttar Pradesh and Others, wherein it was held thus :-

"Thus there can be no doubt that the Act contemplates that the standing orders must cover matters initially included in the schedule as well as matters which may be added to the schedule by the appropriate Government in exercise of the authority conferred on it by Section 15."

Obviously the Standing Orders should cover all the subjects enumerated in the schedule to the Act failing which the amended provisions in the Model Standing Orders would be attracted and apply to the parties. Any other view would be contrary to the mandate of the statutory provisions as well as the law laid down by the Apex Court in Rohtak and Hissar Districts Electric Supply's case (supra).

16. As regards the decision of the Division Bench in May & Bakar Limited (supra), it has no application to the matter in issue. The Division Bench was dealing with the provision of law comprised under Sub-section (1) of Section 2-A and not in relation to Sub-section (2) of Section 2-A. Even the proviso to subsection (1) was not attracted in the said case. There is a clear observation in that regard in the decision of the Division Bench which reads that :-

"The provisions of Sub-section (2) of Section 2-A apply only in relation to such Standing Orders as have been provided for in the proviso and, by reason of Sub-section (2), Model Standing Orders made in the schedule after the coming into force of the aforesaid amendment Act are applicable to the workmen of industrial establishments to which the proviso applies unless the Model Standing Orders are, in the opinion of the Certified Officer, less advantageous to the workmen than the certified Standing Orders applicable to them. We are not concerned here, admittedly, with industrial establishments that fall under the proviso. For our purpose only Sub-section (1) of Section 2-A is relevant."

17. In Bajaj Auto Limited's case (supra), the Apex Court held thus :-

"The State Legislature amended the title of the 1946 Act to provide Rules defining with sufficient precision certain conditions of employment in industrial establishments in the State of Maharashtra. It also amended Preamble of the 1946 Act as it was found expedient to provide for defining with sufficient precision certain conditions of employment in industrial establishments in the State of Maharashtra and certain other matters. By Section 2(1-a) the expression

amendments has been defined in relation to Model Standing Orders to mean any amendments proposed to such orders u/s 3 and includes any alterations, variations or additions proposed thereto. u/s 2(ee), as inserted by State amendment, the expression Model Standing Orders" was defined to mean Standing Orders prescribed by Rules framed u/s 15. Section 2-A(1) lays down that where the Act applies to an industrial establishment, the Model Standing Orders for every matter set out in the schedule applicable to such establishment shall apply to such establishment from such date as the State Government may by notification in the Official Gazette appoint in this behalf and the State Government has appointed 15-1-1959 to be the date for the purpose of the said sub-section. This shows that Model Standing Orders, prescribed by Bombay Industrial Employment (Standing Orders) Rules, 1959, framed u/s 15 by the Government of Maharashtra, ipso facto would be applicable with effect from 15-1-1959.

18. Considering the provisions of law and the facts of the case, therefore, the contention regarding non-applicability of the provision of Clause 4(c) to the parties sought to be raised on behalf of the petitioner is to be rejected.

19. It is then contended that it was not open to the Industrial Court to grant relief to the respondent No. 1 in derogation of the settlement arrived at between the petitioner and the recognised respondent-Union and that too in the absence of challenge to the said settlement. It was further submitted that the provisions of the Model Standing Orders cannot operate in derogation of the terms of settlement arrived at with the recognised Union and to the prejudice of the rights of the petitioner-company being acquired under the said settlement. Various decisions in that regard are sought to be relied upon. However, it is not necessary to refer to those decisions as the law on this point is well-settled and there can be hardly any quarrel on the proposition of law canvassed on behalf of the company in that regard. However, the said point which is sought to be raised does not arise at all in the facts of the case. According to the petitioner, the clauses of the settlement which are relevant for deciding the claim of the respondent No. 1 are Clause Nos. 7 and 8 of the settlement arrived at on 19-4-1988 and those clauses read thus :-

"7. Temporary workmen recruited in F-1982 and F-1983 will be taken in permanent employment on probation, based on their individual attendance/performance etc., at the rate of 25 per month, commencing from 1st May, 1988 during the tenure of this settlement and the remaining men in the temporary pool will be recruited as and when required.

8. Permanent daily-dated workmen acting continuously in the same category for over 3 years as on the date of execution of this settlement will be placed in such higher category effective as of 1st May, 1988."

Plain reading of the above clauses would disclose that the temporary workmen recruited in the financial year 1982 and the financial year 1983 will be taken in

permanent employment in the manner specified in Clause 7 and permanent daily-rated workmen acting continuously in the same category for over three years on the date of execution of the settlement would be ordered to be placed in such higher category effective as of 1-5-1988. In terms of Clause 8 it is not in dispute that in the facts of the case in hand, that the respondent No. 1 is in employment of the petitioner since 1979. The finding of the Industrial Court on assessment of the evidence regarding completion of 240 days discloses that the said period was completed prior to 1-7-1980. Obviously, the workman is entitled for the benefit under Clause No. 8. In such circumstances, the question of he being temporary workmen recruited either in 1982 or 1983 goes not arise so as to consider his case under Clause 7. Once the respondent No. 1 had completed 240 days of service and in terms of Clause 4(c) of the Model Standing Orders he was entitled for necessary benefits thereunder, the question of applicability of Clause 7, which was arrived at in the year 1984 in relation to temporary workmen recruited in the year 1982 and 1983 does not arise. Being so, the question of considering whether the terms of the settlement override the provisions of the Model Standing Orders in relation to Clause 4(c) also does not arise in the case in hand.

20. It was also sought to be contended on behalf of the petitioner that the finding regarding completion of 240 days of service by the respondent No. 1 is contrary to the materials on record and therefore perverse. Perusal of the finding arrives at by the Industrial on assessment of the evidence discloses that the contention in this regard is totally devoid of substance. Undoubtedly, the finding that the complainant was in the category as Assembler does not find support from the materials, however, the evidence on record and the undisputed fact from the documentary evidence produced by the petitioner-company itself disclose that the respondent No. 1 had completed the said period in the post of Engine Mechanic-B. Exhibit-B which was annexed to the written statement of the petitioner and which was confirmed by the petitioner as well as by the respondent No. 1 in the course of the evidence itself disclose that the respondent No. 1 rendered continuous service in the said post from March, 1980 till April, 1982 and even prior to that from 1979, though intermittently he was designated as Mazdoor as well as Assembler. Once there is sufficient evidence on record to disclose completion of 240 days in the capacity as Mechanical Engineer unless it is disclosed to be totally perverse finding, or finding without any material on record, it is not permissible to assail any such finding or to invite reassessment of evidence in writ jurisdiction. Undoubtedly, as already observed above, there is no material to support the finding regarding the services having been rendered continuously in the post of Assembler. Nevertheless, as stated above, the evidence justifies the finding as regards the completion of the said period in the post of Engine Mechanic-B. In fact, it is not necessary to reassess the evidence and suffice to say that the finding is clearly borne out from the records and the entire cross-examination of the respondent No. 1 as well as the testimony of the witness on behalf of the petitioner duly establishes the same.

21. The fall out of the above discussion is that the petition partly succeeds to the

extent that the status, privileges and benefits which the respondent No. 1 is entitled in terms of the impugned order are in relation to the post/grade of Engine Mechanic-B with effect from July, 1980 onwards and as regards the designation as far as the Assembler is concerned which has been given to the respondent No. 1 with effect from 1-5-1988 needs no interference. The impugned judgment and order shall stand modified accordingly only in relation to the entitlement of benefits as Engine-Mechanic-B with effect from July, 1980 and Assembler from 1-5-1988. No other interference is called for in the impugned order. The Rule is made absolute accordingly with no order as to costs.

22. At this stage, the learned Advocate for the petitioner prays for continuation of the stay granted to the impugned order earlier. The said order of stay shall continue to remain in force for a period of twelve weeks from today.