

(2022) 09 DEL CK 0141

In the Delhi High Court

Case No : Civil Writ Petition No. 4822 Of 2014

Management Of Guru Gobind Singh Indraprastha University	APPELLANT
Vs	
Lokesh Kumar & Anr	RESPONDENT

Date of Decision : 06-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2(oo), 2(oo)(bb), 25B(2), 25F, 25F(1),
25F(a), 25F(b), 25G

Citation : (2022) 09 DEL CK 0141

Hon'ble Judges : Dinesh Kumar Sharma, J

Bench : Single Bench

Advocate : Ravi Sikri, Jasbir Bidhuri, Abhishek, Jawahar Raja, Meghna De, L. Gangmei, Archit Krishna, Varsha Sharma

Final Decision : Disposed Of

Judgement

Dinesh Kumar Sharma, J

FACTS

1. Present writ petition has been filed challenging the impugned Award dated 13.05.2014 in LIR/D No.1009/2011 titled Sh. Lokesh Kumar & Anr. Vs. Guru Govind Singh Indraprastha University, whereby, the learned Labour Court, inter alia, held the termination to be illegal and ordered that the respondents/workmen are entitled to reinstatement in service from the date of their termination, but on daily wage basis as they were at the time of their termination, with full back wages and other consequential benefits.

2. The facts in brief are that the respondents/workmen had filed statement of claims against the petitioner/management for a direction to the petitioner/management to reinstate them back in service with full back wages and continuity in service and other consequential benefits. The respondents/workmen had alleged that they had joined the petitioner/management as Peon-cum-

Cleaner with effect from 23.05.2008 in the Examination Division at Kashmere Gate, Delhi and had a clean service record. It was alleged that they were initially taken into the job on a sanction of 89 days and were given fresh sanction after showing one day break on papers though they remained physically in service continuously. The services of the respondents/workmen were terminated on 31.10.2010 without assigning any reason. The petitioner/management had neither issued a memo nor a chargesheet to them before terminating their services. The respondents/workmen initially sent a demand notice dated 11.02.2011 to the petitioner/management which remained unresponded. The respondents/workmen pleaded that they remained unemployed since the date of their termination and that they did not get any job despite best efforts.

3. The petitioner/management contested the claim of the respondents/workmen on the ground that the respondents/workmen were appointed only for a fixed period subject to the condition that their job was purely temporary and they shall have no right to continue after the stipulated time and both the workmen agreed to the same. The petitioner/management pleaded that the respondents/workmen were daily wagers and were appointed on contract basis.

4. On the basis of the pleading of the parties, the learned Labour Court framed the following issues:-

"1. Whether the workmen had performed continuous duty with the management from 23.5.2008 to 31.10.2008? OPW

2. Whether the workmen were engaged by the management on daily wages basis and they had performed duty with a break of two days after every 89 days, if so to what effect? OPW

3. Whether services of the workmen have been illegally terminated by the management or whether the case of the workmen is covered u/s 2 (oo)(bb) of the Industrial Disputes Act, 1947?

Onus on parties

4. Relief"

5. The respondents/workmen examined themselves as WW1 and WW2. On behalf of petitioner/management, Sh. Kapil Sharma – Section Officer was examined as MW1. Learned Labour Court on issue Nos.1 and 2 inter alia held that the respondents/workmen had continuously worked with the petitioner/management from 23.05.2008 to 31.10.2010 without any actual break of 2 days though, on papers, they were shown to have been given a break of 2 days after every 89 days and separate work orders were issued to them after every 89 days. It was inter alia held that this practice of issuing work orders for 89 days would clearly amount to unfair labour practice when the respondents/workmen had been working continuously till the date of their actual termination which was done by the management only with the intent to wriggle out of the rigors of Section 25-F of the I.D. Act (hereinafter referred to as 'I.D. Act, 1947'). It was

further inter alia held that the work for which the respondents/workmen were engaged cannot be said to be a work of temporary nature as examinations were held on a continuous basis every year and as such the job for which the respondents/workmen were appointed was of a perennial nature. Learned Labour Court rejected the contentions of the petitioner/management that the provisions of Section 2 (oo)(bb) of the I.D. Act, 1947 are attracted to the facts of the present case on the ground that the petitioner/management had issued appointment letters from time to time for limited period only to exclude itself from complying with the rigors of Section 25 F of the I.D. Act, 1947.

6. Learned Labour Court in the impugned Award has placed reliance upon the judgments of this Court in PWD vs Satya Pal in LPA No.116/2006, M/s. Director of Horticulture Vs. Shri Ram Sham & Anr., WP (C) No. 825 of 2003, the judgments of the Supreme Court in Haryana State FCCW Store Ltd. Vs Ram Niwas : AIR 2002 SC 2495 and Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and others, CD.J 2013 SC 765, the judgment of the Punjab & Haryana High Court in Bhikku Ram Vs. Presiding Officer Industrial Tribunal cum Labour Court: (1996) III LLJ 1126 P & H.

7. Learned Labour Court further inter alia held that admittedly no notice was given to the respondents/workmen prior to their termination and neither were they given any retrenchment benefits nor any compensation at the time of the termination of their services and therefore their termination was clearly violative of Section 25F of the ID Act. Learned Labour Court relying upon Deevali Gundu Surwase (supra) further inter alia held that the petitioner/management has failed to prove that the workman had been gainfully employed after his termination and therefore in case of unwrongful termination of service, the reinstatement with continuity of service and back wages is the normal rule. Aggrieved of this, the petitioner/management filed the present writ petition challenging the impugned order predominantly on the following grounds:-

(i) The appointment of respondents/workmen were for a fixed period on daily wage basis and the services of the respondents/workmen were terminated due to efflux of time and as such their appointment and termination is squarely covered within the definition of Section 2 (oo)(bb) of the I.D. Act, 1947 and thus not covered by Section 25F, I.D. Act, 1947

(ii) The learned Labour Court failed to appreciate the evidence led by the petitioner and has totally relied on the evidence led by the Respondents/workmen. The admissions made by the respondents/workmen in their cross-examination that they were appointed for a fixed period of time on daily wages and that they were fully aware that their appointment can be terminated at any time without assigning any reason and they shall have no right to seek continuation of their appointment was overlooked.

(iii) The learned Labour Court did not take into account the Attendance Register which clearly showed that the respondents/workmen did not work continuously

for more than 240 days and there was always a break in their service after 89 days. The services of the respondents/ workmen came to an end due to efflux of time on 31.10.2010 as the engagement of the respondents were not renewed.

(iv) Learned Labour Court failed to appreciate the fact that the respondents/ workmen were daily wagers having no right in the post and could not have claimed for a permanent post under the petitioner/management.

(v) The respondents/workmen cannot claim reinstatement as recruitment can only be done in terms of rules and regulations of the University. Learned Labour Court failed to appreciate the law laid down by the Apex Court in *Municipal Council, Samarala Vs. Raj Kumar* : (2006) 3 SCC 81, which lays down the principles of clause (oo)(bb) of Section 2 of the I.D. Act, 1947 which contains an exception. It is in two parts. The first part stipulates termination of services of the workman as a result of non-renewal of contract of employment or on its expiry, whereas the second part postulates termination of such contract of employment in terms of stipulation contained in that behalf. The petitioner/ management has submitted that the present case is covered under the first part of Section 2 (oo)(bb) of the I.D. Act, 1947 and as such is clearly covered within the four corners of the said Section and thus termination of services of the respondents / workmen will not fall within the definition of the term 'retrenchment'. Thus Section 25-F of the I.D. Act, 1947 could not have been attracted to the present facts and circumstances of the case.

8. The petitioner/management has also relied upon the judgments of the Supreme Court in *Kishore Chandra Samal vs. Orissa State Cashew Development Corporation Ltd., Dhenkanal*: (2006) 1 SCC 253, *Haryana State Agricultural Marketing Board vs. Subhash Chand & Anr.*: (2006) 2 SCC 794, *APSRTC & Ors. vs. G. Srinivas Reddy & Ors* (2006) 3 SCC 674, and *Himanshu Kumar Vldyarthi & Ors. vs. State of Bihar & Ors.*, (1997) 4 SCC 391 and the judgment of this Court in *Canara Bank Vs Presiding Officer & Anr* in WP (C) No.43 of 2000. It was stated that the learned Labour Court has erred in shifting the onus on the petitioner/management to prove that the respondents/workmen had not worked for 240 days prior to the termination of their services after the petitioner/ management invoked the provisions of Section 2 (oo)(bb) of the I.D. Act, 1947.

Contentions of the petitioner/management

9. Learned senior counsel for the petitioner/management has submitted that the impugned award is liable to be set aside predominantly on the following four grounds:-

(i) the last appointment letter issued to the workman was for 19 days and therefore the workmen did not meet the 240 days threshold of Section 25B, I.D. Act, 1947.

(ii) Workmen were appointed for a fixed period on daily wages not exceeding 89 days.

(iii) Their services were terminated by efflux of time and therefore the present matter is covered under Section 2(oo)(bb) of the I.D. Act, 1947.

(iv) Labour Court's interpretation of Section 2(oo) (bb) of the I.D. Act, 1947 is contrary to the Supreme Court decisions.

10. Learned senior counsel for the petitioner has further submitted that the respondents/workmen has no right for regularization in terms of their appointment letter and their contract was bound to come to an end on the expiry of the stipulated period. The services of the respondents/workmen could be terminated without giving any notice. Learned senior counsel for the petitioner has submitted that there was always a break in their service after nearly 89 days till the final termination of the services of the respondents/management due to efflux of time on 31.10.2010. Learned senior counsel for the petitioner has further submitted that the respondents/workmen duly admitted in their cross-examination, the contents of the appointment letter and that their services could be terminated without issuing notice and without assigning any reason after expiry of 89 days. Learned senior counsel for the petitioner has further submitted that the order of the learned Labour court in granting reinstatement and full back wages to the respondents/workmen with consequential benefits is contrary to the decision of the Supreme Court in the matter of General Manager, Haryana Roadways vs. Rudhan Singh: (2005) 5 SCC 591.

11. Learned senior counsel for the petitioner has submitted that it is a settled proposition of law that even if the job of a daily wager is perennial in nature, it does not entitle the daily wager for reinstatement automatically. Reliance has been placed on the following cases to buttress the aforesaid contentions:

(i) BSNL vs. Bhurumal: (2014) 7 SCC 177 (para 33)

(ii) Ashok Kumar & Ors. vs. M/s. Hindustan Vegetable Oil Co.: 2017 SCC Online Del 9516 (Para 13, 14)

(iii) APSRTC & Ann vs. G. Srinivasan Reddy & Ors (2006) 3 SCC 674 (Para 10, 11)

Contentions of the respondents/workmen

12. Learned counsel for the respondents, at the outset, raised an objection as to the maintainability of the present writ petition in absence of any substantial questions of law.

13. Learned counsel for the respondents has submitted that the petitioner/management in order to invoke the jurisdiction of this Court must establish that there has been a jurisdictional error in the Award, or impropriety in the decision making process or error of law apparent on the face of the record. It has been submitted that there is no jurisdictional error committed by the learned Labour Court either in its adjudication on the issues of facts or law. It has been submitted that the law has not provided any appeal against the order passed by the learned Labour Court and this Court cannot substitute its judgment for that

of the learned labour Court. It was submitted that this Court in its writ jurisdiction cannot reappraise the evidence and come to a different conclusion. Learned counsel for the respondents has submitted that the learned Labour Court has complete jurisdiction and authority to grant relief of reinstatement and back wages.

14. Learned counsel for the respondents has further submitted that the present matter is not a case of regularization but of reinstatement. It has been submitted that the learned Labour Court has categorically held that the petitioner/management had committed unfair labour practice with an intent to wriggle out of the rigours of Section 25-F of the I.D. Act, 1947 by employing the respondents/workmen on consecutive 89 days contract. Learned counsel for the respondents submits that the learned Labour Court also returned a finding that the job for which the respondents/workmen were appointed is of perennial nature. Learned counsel for the respondents has submitted that the witness of the management has admitted in the cross-examination that both the workmen/respondents had worked for more than 240 days in all in the twelve months preceding 31.10.2010. Learned counsel for the respondents has further submitted that the provisions of Section 2 (oo) (bb) of the I.D. Act, 1947 are not applicable to the present facts and circumstances of the case. Learned counsel for the respondents has further submitted that it is settled law that the violation of Section 25F and 25G of the I.D. Act, 1947, makes the order of termination void ab initio, illegal and inoperative and therefore reinstatement with continuity of service with full back wages is the natural consequence of such an order being set aside. Learned counsel for the respondents has placed reliance upon the following judgments to buttress the aforesaid contentions:-

15. State of Bombay & Ors. vs The Hospital Mazdoor Sabha 1960 AIR 610 (para 6); State Bank of India vs Shri N. Sundara Money, 1976 AIR 1111(Para 6); Hindustan Steel Pvt. Ltd. vs. Orissa (1976) 4 SCC 222 (para 1, 3, 5, 6); Hindustan Tin Works vs Employees of Hindustan Tin Works Pvt. Ltd. (1979) 2 SCC 80 (para 9, 11); Surender Kumar Verma vs CGIT (1980) 4 SCC 443 (para 6 & 13); Gammon India Ltd. vs. Niranjan Das (1984) 1 SCC 50 (para 3).

16. It has been submitted that this proposition has been followed by the Supreme Court in numerous cases namely Mohan Lal vs Bharat Electronics (1981) 3 SCC 225 (para 7, 8, 9, 10); Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors. (2013) 10 SCC 324; Devinder Singh vs Municipal Council Sanaur (2011) 6 SCC 584; Harjinder Singh vs Punjab State Warehousing (2010) 3 SCC 192 (para 13-14 & 23); Jasmer Singh vs. State of Haryana (2015) 4 SCC 458 (para 13); Raj Kumar Dixit vs. Vijay Kumar Gauri Shankar (2015) 9 SCC 345 (paras 15-18).

17. Learned counsel for the respondents submits that in BSNL vs. Bhurumal (supra), the Supreme Court after noting the 'recent trend' that relief by way of reinstatement with back wages is not automatic for daily wagers and instead monetary compensation should meet the end of justice, was pleased to add a

caveat that there may be cases where termination of a daily wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. The Apex Court further inter alia held that there may also be a situation that persons junior to him were regularised under some policy but the workman concerned was terminated. The Apex Court held that in such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. It was held that in such cases, the reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.

18. Learned counsel for the respondents/workmen has submitted that admittedly in the present case the management did not maintain a list of persons situated in the same position as the petitioner, hence there can be no question of the petitioner/management having applied the 'last come first go principle'.

Findings and Analysis

19. The Industrial Disputes Act, 1947 is a piece of beneficial legislation. The Industrial Disputes Act, 1947 has conferred wide powers and jurisdiction to the Labour Courts/Tribunals to make appropriate awards in determining the industrial disputes presented before it. In an Award passed by the Labour Courts/Tribunals, the adjudicator may impose new obligations on the management taking into account the theory of social justice in order to strike a balance and to secure peace and harmony between the employer and the workman. Reliance can be placed upon *Bharat Bank Ltd. vs. Employees of the Bharat Bank Ltd. Delhi*, AIR 1950 SC 188 and *Bidi, Bidi Leaves vs. The State of Bombay*, AIR 1962 SC 486.

20. It is also pertinent to mention that the law in its wisdom has not provided any appeal to be filed against an award. Thus the Labour Court/Tribunal is the final arbitrator of facts.

21. In the case of *Syed Yakoob vs. K.S. Radhakrishnan & Ors.*: AIR 1964 SC 477, it was inter alia held as under:-

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the

jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmed Ishaque*, *Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam*, and *Kaushalya Devi v. Bachittar Singh*).

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly rounded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors

which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

22. Thus in writ jurisdiction, the High Court can interfere with an Award of the Labour Court/Tribunal, if there is patent illegality or if the award rendered is contrary to law as a measure of ‘misplaced sympathy’ and was thus perverse. The writ Court exercises supervisory jurisdiction and it cannot constitute itself into an appellate Court. If the Tribunal under special legislation is empowered to decide jurisdictional facts, the High Court cannot readjudicate upon question of facts decided by such Tribunals.

23. It is a settled proposition that the award of the Labour Court can be set aside only if there is an error apparent on the face of the record. The Labour Court or the Industrial Tribunal is the final adjudicator of facts. It is obligatory on the writ court to record reasons if it intends reconsidering a finding of facts. The writ Courts time and again have been cautious not to enter into the realm of factual disputes and the findings given thereon.

24. In the case of *State of Haryana vs. Devi Dutt & Ors.*: (2006) 13 SCC 32, the Apex Court has inter alia held that the writ Court can interfere into the factual findings of fact only if (1) the Award is perverse; (2) the Labour Court has applied wrong legal principles; (3) the Labour Court has posed wrong questions; (4) the Labour Court has not taken into consideration the relevant facts; or (5) the Labour Court has arrived at findings on the basis of irrelevant facts or on extraneous consideration.

25. Thus, it is pivotal to examine the present Award on the basis of the settled legal propositions. The petitioner has assailed the impugned Award predominantly on the ground that the respondents/workmen were admittedly appointed on daily wages for a stipulated time and they were terminated due to efflux of time. The plea of the petitioner/management is that the terms and conditions in the appointment letter were very clear and the respondents/workmen were well aware of it.

26. The petitioner/management has also taken a plea that the present case falls within the definition of 2(oo)(bb) of the I.D. Act, 1947 and therefore, Section 25F of the I.D. Act, 1947 is not applicable to the present facts and circumstances.

27. In the case of *Hindustan Steel Pvt. Ltd. vs. The Presiding Officer, Labour Court, Orissa & Ors.*: (1976) 4 SCC 222, Section 2(oo)(bb) and Section 25F of the I.D. Act, 1947 came up for discussion. In that case also, the respondents/workmen were appointed for a period of 3 years, which was further extended. Thereafter the management chose not to renew the contract of service and without any order terminating their service, their services were put to an end. The Workmen/respondents raised an industrial dispute. The learned Labour Court

ordered for reinstatement with full back wages. The Apex court in this case *inter alia* held as under:-

"2. The main question in this appeal is whether the three respondents had been retrenched by their employer as found by the Labour Court. If these were cases of retrenchment, the order of reinstatement made by the Labour Court was obviously a valid order as, admittedly, the condition precedent to the retrenchment of workmen laid down in section 25F of the Industrial Disputes Act had not been satisfied. The contention raised on behalf of the appellant both here and in the High Court was that the services of the three respondents came to an end by efflux of time and that such termination of service did not fall within the definition of retrenchment in section 2(oo) of the Industrial Disputes Act. The Solicitor General appearing for the appellant frankly conceded that this appeal was covered by a recent decision of this Court, *State Bank of India v. N. Sundara Money*, and the decision was against the contention of the appellant. He however submitted that this decision which was rendered by a Bench of three Judges was in apparent conflict with an earlier decision of this Court, *Hariprasad Shivshankar Shukla v. A.D. Divikar*, which was by a larger Bench and that *Sundarn Money's* case therefore required reconsideration.

3. Retrenchment has, been defined in Section 2(oo) of the Industrial Disputes Act as follows:

"2. (oo). "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include--

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(c) termination of the service of a workman on the ground of continued ill-health;"

Analysing this definition in *State Bank of India vs. Sundarn Money*, (*supra*) this Court held:

'Termination..... for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is has the employee's service been terminated ? A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced.

..... an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order, one giving employment and the other ending or limiting it. A separate, subsequent determination is not

the sole magnetic pull of the provision. A pre-emptive provision to terminate is struck by the same vice as the post-appointment termination."

This decision, as conceded by the Solicitor General, goes against the contention of the appellant and is conclusive on the main question that arises for consideration in this appeal. It may also be noted that section 25F(a) which lays down that no workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer unless he has been given one month's notice or wages in lieu of such notice, has a proviso which says that "no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service". Clearly, the proviso would have been quite necessary if retrenchment as defined in Section 2(oo) was intended not to include termination of service by efflux of time in terms of an agreement between the parties. This is one more reason why it must be held that the Labour Court was right in taking the view that the respondents were retrenched contrary to the provisions of Section 25F."

28. Section 2(oo) (bb) of the I.D. Act, 1947 also came up for discussion before this Court in the Management of National Highways vs. Smt. Vinita, LPA 187/2020 dated 12.01.2021 wherein it was inter alia held as under:-

"21. Reference in this context may also be made to (A) State of Rajasthan v. Rameshwar Lal Gahlot (1996) 1 SCC 595; (B) Municipal Council, Samarala v. Raj Kumar (2006) 3 SCC 81; and, (C) Haryana State Agricultural Marketing Board Vs. Subhash Chand (2006) 2 SCC 794, in all of which though Section 2(oo)(bb) was invoked but in the facts of (A) where appointment was for a fixed period or till a regularly selected candidate assumed office; (B) where appointment was made without following the statutory provisions for appointment and for the period when one post was vacant and two other employees were on leave and public works were suffering; and, (C) where appointment was made during paddy season. Rather, in Rameshwar Lal Gahlot supra it was expressly held that if it is found that power under clause (bb) of Section 2(oo) was misused or vitiated by its mala fide exercise, the employer would not be entitled to invoke Section 2(oo)(bb).

29. The Supreme Court in the case of S.M. Nilajkar and Ors. vs. Telecom District Manager, Karnataka (2003) 4 SCC 27 inter alia held as under:-

"13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:-

- (i) that the workman was employed in a project or scheme of temporary duration;
- (ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and
- (iii) the employment came to an end simultaneously with the termination of the

scheme or project and consistently with the terms of the contract; and

(iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.

14. The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or upto to occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complaint that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the abovesaid ingredients so as to attract the applicability of sub-clause (bb) abovesaid. In the case at hand, the respondent-employer has failed in alleging and proving the ingredients of Sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want of proof attracting applicability of sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment."

30. The Constitutional Courts have time and again held that interpretation of the Statutes while considering welfare legislations have to be in accordance with the intent and purpose of the legislation.

31. The words "for any reason whatsoever" came up for discussion before the Supreme Court in the case of the State Bank of India vs. Shri N. Sundara Money, (1976) 1 SCC 822, wherein, the Supreme Court has held as under:-

"7. The leading case on this facet of law is The Hospital Mazdoor Sabha Gajendragadkar, J. (as he then was) observed:

Section 25F(b) provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until he has been paid at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months. Clauses (a) and (e) of the said section prescribe similar conditions but we are not concerned with them. On a plain reading of Section 25F(b) it is clear that the requirement prescribed by it is a condition precedent for the retrenchment of the work man. The section provides that no workman shall be retrenched until the condition in question has been satisfied. It is difficult to accede to the argument that when the section imposes in mandatory terms a condition precedent, non-compliance with the said condition would not render the impugned retrenchment

invalid failure to comply with the said provision renders the impugned orders invalid and inoperative.

8. Without further ado, we reach the conclusion that if the workman swims into the harbour of Section 25F, he cannot be retrenched without payment, at the time of retrenchment, compensation computed as prescribed therein read with Section. 25B(2). But, argues the appellant, all these obligations flow only out of retrenchment, not termination outside that species of snapping employment. What, then, is retrenchment? The key to this vexed question is to be found in Section 2(oo) which reads thus:

"2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(c) termination of the service of a workman on the ground of continued ill-health;

For any reason whatsoever – very wide and almost admitting of no exception. Still, the employer urges that when the order of appointment carries an automatic cessation of service, the period of employment works itself out by efflux of times, not by act of employer. Such cases are outside the concept of "retrenchment" and cannot entail the burdensome conditions of Section 25-F. Of course, that a one year and ten months "nine-days" employment, hedged is with an express condition of temporariness and automatic cessation, may look like being in a different street (if we may use a colloquialism) from telling a man off by retrenching him. To retrench is to cut down. You cannot retrench without trenching or cutting. But dictionaries are not dictators of statutory construction where the benignant mood of a law and, more emphatically, the definition clause furnish a different denotation. Section 2(oo) is the master of the situation and the Court cannot truncate its amplitude.

9. A break-down of Section 2(oo) unmistakably expands the semantics of retrenchment. 'Termination..... for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is, has the employee's service been terminated ? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master of the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25F and Section 2(oo).

Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita but area covered by an expansive definition. It means "to end, conclude, cease". In the present case the employment ceased, concluded, ended on the expiration of nine days automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Section 25F(b) is inferable from the proviso to Section 25F(1). [sic 25F(a)]. True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25F and automatic extinguishment of service by effluxion of time cannot be sufficient....."

34. Thus in order to attract Section 2(o)(bb), it is necessary that the employment was made for a specific project or it is made as a stop gap arrangements for temporary duration. The employment made for a specific harvesting season may also fall in this category. However, such illustrations may only be illustrative and not exhaustive. Simply because employment is on daily-wage basis, will not bring within the purview of Section 2(o)(bb). This provision is basically an exception. To bring a case into an exception, there has to be exceptional circumstances. The Labour Court in the facts and circumstances has rightly concluded that the case does not fall within the purview of Section 2(o)(bb).

35. Learned Labour Court has minutely examined the evidence on record. There is nothing in the Award to suggest that there is any perversity in the award of the Labour Court. Learned Labour Court has considered the entire evidence on record and has not passed the Award on any material which was not available on record or extraneous. This Court is conscious of limits of jurisdiction of this Court. This Court cannot sit in appeal over the Award passed by the learned Labour Court. The petitioner/management has failed to point out any material so as to set aside the findings of the learned Labour Court on Issue Nos.1, 2 and 3.

36. Hence, the present writ petition challenging the findings of the Award qua the Issue Nos.1, 2 and 3 is dismissed and the Award of the learned Labour Court is upheld.

37. Now coming to the relief, the learned Labour Court in the relief has awarded reinstatement with full back wages and consequential benefits.

38. Leaned counsel for the respondents has strenuously argued that if the learned Labour Court has found that the petitioner/management has adopted unfair labour practices, therefore, reinstatement is the rule.

39. Learned senior counsel for the petitioner has argued that the latest legal trend is award of compensation in place of reinstatement. Learned senior counsel for the petitioner has submitted that in the case of BSNL vs. Man Singh: (2012) 1 SCC 558, the Apex Court held that when the termination is set aside because of violation of 25F of the ID Act, it is not necessary that the relief of reinstatement be given as a matter of right.

40. It was further submitted that in *Incharge Officer vs. Shankar Shetty*: (2010) 9 SCC 126, it was inter alia held that in those cases where the workman had worked on daily wage basis, and worked merely for a period of 240 days or 2-3 years and where the termination had taken place many years ago, the recent trend was to grant compensation in lieu of reinstatement.

41. In *Shankar Shetty (supra)*, the Apex Court reiterated the trend by referring to the various judgments and inter alia held as under:-

"2. Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short "the ID Act")? The course of the decisions of this Court in recent years has been uniform on the above question.

3. In *Jagbir Singh v. Haryana State Agriculture Mktg..Board*, delivering the judgment of this Court, one of us (R.M.Lodha,J.) noticed some of the recent decisions of this Court, namely, *U.P.State Brassware Corpn. Ltd. V. Uday Narain Pandey*, *Uttaranchal Forest Development Corpn. V. M.C. Joshi*, *State of M.P. v. Lalit Kumar Verma*, *M.P.Admn v.Tribhuban*, *Sita Ram v.Moti Lal Nehru Farmers Training Institute*[8], *Jaipur Development Authority v. Ramsahai*, *GDA v. Ashok Kumar and Mahboob Deepak v.Nagar Panchyat, Gajraula* and stated as follows: (*Jagbir Singh case*, SCC pp.330 & 335 paras 7 & 14).

"7. It is true that the earlier view of this Court articulated in many decision reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

* * *

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily-wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

4. *Jagbir Singh* has been applied very recently in *Telegraph Deptt. V. Santosh Kumar Seal*, wherein this Court stated: (SCC p.777, para 11)

"11. In view of the aforesaid legal position and the fact that the workmen were

engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice."

42. In BSNL vs. Bhurumal (supra), taking the trend further, the Supreme Court *inter alia* held as under:-

"31. In *Deptt. of Telecommunications v. Keshab Deb* the Court emphasized that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one months' pay in lieu of one month's notice and wages of 15 days of each completed year of service as envisaged under Section 25-F of the Industrial Disputes Act. He could not have been directed to be regularized in service or granted /given a temporary status. Such a scheme has been held to be unconstitutional by this Court in *A.Umarani v. Registrar, Coop.Societies and State of Karnataka v. Umadevi* .

32. It was further submitted by the learned counsel for the appellant that likewise, even when reinstatement was ordered, it does not automatically follow full back wages should be directed to be paid to the workman. He drew our attention of this Court in the case of *Coal India Ltd. Vs. Ananta Saha and Metropolitan Transport Corpn. v. V.Venkatesan*.

33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See: *State of Karnataka vs. Uma Devi* (2006) 4 SCC 1). Thus when he cannot claim regularization and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation

and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose."

43. Learned counsel for the respondent has rightly invited the attention of this Court to the caveat added by the Supreme Court in *BSNL vs. Bhurumal* (supra), which is as under:-

"35. We would, however, like to add a caveat here. There may be cases where termination of a daily-wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied."

44. In the present case, there is no material on record that any worker junior to the respondents/workmen were retained at the cost of the respondents/workmen.

45. This Court in *Ashok Kumar vs. Hindustan Vegetable Oil Co.*: 2017 SCC Online Del 9516, noting the shift of trend inter alia held as under:

"13 Subsequently, however, the view of the Supreme Court has sharply swung from the theory of "reinstatement with back wages (in whole or in part)" to the theory of "lump sum compensation". This swing of judicial thought has been definitively captured in the following passages from the judgment in *Senior Superintendent Telegraph (Traffic) v Santosh Kumar Seal*, (2010) 6 SCC 773:

"9. In the last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate. (See *U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey* [(2006) 1 SCC 479 : 2006 SCC (L&S) 250] , *Uttaranchal Forest Development Corpn. v. M.C. Joshi* [(2007) 9 SCC 353 : (2007) 2 SCC (L&S) 813] , *State of M.P. v. Lalit Kumar Verma* [(2007) 1 SCC 575 : (2007) 1 SCC (L&S) 405] , *M.P. Admn. v. Tribhuban* [(2007) 9 SCC 748 : (2008) 1 SCC (L&S) 264] , *Sita Ram v. Moti Lal Nehru Farmers Training Institute* [(2008) 5 SCC 75 : (2008) 2 SCC (L&S) 71] , *Jaipur Development Authority v. Ramsahai* [(2006) 11 SCC 684 : (2007) 1 SCC (L&S) 518] , *GDA v. Ashok Kumar* [(2008) 4 SCC 261 : (2008) 1 SCC (L&S) 1016] and *Mahboob Deepak v. Nagar Panchayat, Gajraula* [(2008) 1 SCC 575 : (2008) 1 SCC (L&S) 239] .)

10. In a recent judgment authored by one of us (R.M. Lodha, J.) in *Jagbir Singh v. Haryana State Agriculture Mktg. Board* [(2009) 15 SCC 327 : (2010) 1 SCC

(L&S) 545] , the aforesaid decisions were noticed and it was stated: (SCC pp. 330 & 335, paras 7 & 14).

"7.It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

46. Thus, the latest trend being adopted by the Supreme Court in a catena of decisions is that even if the order of termination has been found to be illegal on account of non-payment of retrenchment compensation, it does not necessarily result in the reinstatement of workmen in service.

47. The Apex Court in a plethora of cases has directed compensation in lieu of reinstatement. Reliance is placed on Mahboob Deepak vs. Nagar Panchayat, Gjrault: (2008) 1 SCC 575, M.P. Admn. V. Tribhuban, (2008) 1 SCC (L&S) 264, Sita Ram vs. Moti Lal Nehru Farmers Training Institute: (2008) 5 SCC 75, GDA vs. Ashok Kumar: (2008) 4 SCC 261.

48. This Court in Jagbir Singh vs. Haryana State Agriculture Marketing Board: (2009) 15 SCC 327 held that while awarding compensation in lieu of reinstatement, a host of factors should be kept in mind and inter alia held as under:-

"16. While awarding compensation, the host of factors, inter- alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances....."

48. This Court considers that in view of the aforesaid discussion and the latest trend of the Supreme Court and the fact that respondents/workmen in the present case have worked only for a period from 23.05.2008 to 31.10.2010 and as admittedly they were appointed on daily wage basis, the reinstatement must give way to award of compensation.

49. Thus taking into account the manner and method of appointment, nature of employment and length of service, the respondents/workmen are awarded compensation in the sum of Rs.5 lakhs.

50. Accordingly, the present petition stands disposed of.