

**(1986) 01 KAR CK 0039**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 4985/84**

Mukunda

APPELLANT

Vs

Managing Director, K.S.R.T.C.

RESPONDENT

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**Date of Decision :** 06-01-1986

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 2 (p), 2 F, 25 B (1), 25 B (2)

**Citation :** (1986) ILR (Kar) 769 : (1986) 1 LLJ 470

**Hon'ble Judges :** P.P. Bopanna, J

**Bench :** Single Bench

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## Judgement

1. These petitions are disposed of by a common order since a common question of law arises for consideration in all petitions.

2. The petitioners are badli conductors working under the first respondent-Corporation and their services had been terminated by the Corporation on the ground that their work was found to be unsatisfactory and therefore they were unsuitable for the post of conductors. It is an undeniable fact in all these cases that the Corporation did not hold an enquiry into the alleged unsuitability of their services from the point of view of their utilisation but merely issued a memo stating that they were found unsuitable for the post for which they were utilised as Badli. One such order reads as under :

"KSRTC, Mysore Division : MYSORE.

No. KST. MYS. EST. R. 518/83, dated 25/27th May, 1983.

Read : No. KST. MYS. EST. R. 805 dated 13th May, 1981 enlisting Shri H. V. Mukunda, as a Badli Conductor, Depot I.

Shri H. V. Mukunda, was utilised as a Badli conductor, on badli basis under clear terms and conditions stipulated in the order cited above stating that the competent authority (the undersigned) will discontinue from utilisation as Badli as and when found unsuitable during the discharge of his services as Badli.

During the period of utilisation as Badli his services were found to be unsatisfactory. He is, therefore, found not suitable for the post for which he was utilised as Badli.

Hence his name is "REMOVED" from the Badli list with immediate effect.

His particulars are given below :-

1) Date of enlistment as Badli and Unit

13th May, 1981.

Mysore Dn.

2) P. F. Account No. A 34860 Sd/- Divisional Controller, Mysore Division, (Competent Authority)."

3. The petitioner's grievance is that though they had worked for more than 180 days in terms of the settlement between the parties entered into under S. 2(p) of the Industrial Disputes Act, 1947 (for short the Act) read with S. 18(1) of the Act, the Corporation could not have terminated their services without complying with the provisions of S. 25F of the Act. That is to say, the Corporation should have paid them the retrenchment compensation as required under S. 25F before effecting the termination of their service on the ground of their unsuitability. The fact whether the services of a workman could be terminated on the ground of unsuitability without holding an enquiry is no more res integra in the light of the decision of the Supreme Court in Mohan Lal Vs. Management of Bharat Electronics Ltd., In that case the services of a probationer were terminated on the ground that he was not suitable for the post to which he was appointed. Such termination was made without holding the necessary enquiry in regard to his alleged unsuitability. The Supreme Court has ruled that such termination also comes within the scope of S. 2(oo) of the Act. So, the questions that arises in these cases lie in a very narrow compass. Firstly, whether a badli workman could be treated as a probationer or a temporary workman and whether his services could be terminated on the ground of unsuitability without holding an enquiry ? The Regulations prescribed by the Corporation in this regard would make it appear that the badli workmen stand on a different footing from the other regular workmen or temporary workmen and their service conditions are regulated by the Karnataka State Road Transport Corporation (Cadre & Recruitment) Regulations, 1968.

4. Secondly, whether those Regulations will have to make way for the provisions of S. 25J of the Act if it is held that these badli workmen are workmen within the meaning of S. 2(s) of the Act. Thirdly, if the termination of their services attract S. 2(oo), how should the Corporation reckon the period of 240 days continuous service for the purpose of S. 25B of the Act.

5. Though an attempt was made by the learned Counsel for the Corporation to take these badli workmen outside the purview of Chapter V of the Act, in my

view, the Act itself is a sure indication of the fact that these workmen are also workmen within the meaning of S. 2(s) of the Act and therefore the provisions of Chapter V-A of the Act would be applicable to them if they complain of retrenchment in violation of the provisions of S. 25F read with S. 2(oo) of the Act. The provisions of S. 25C of the Act give a definite indication that the badli workmen are also workmen covered by the provisions of Chapter V-A. The first paragraph of S. 25C reads as under :

"Whenever a workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent. of the basic wages and dearness allowance that would have been payable to him had he not been so laid off."

The Explanation to S. 25C reads as under :

"Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the master rolls of the establishment, but shall cease to be regarded as such for the purposes of this Section, if he has completed one year of continuous service in the establishment."

On the plain language of the Explanation to S. 25C a badli workman if he has completed one year of continuous service in the service of the Corporation would become entitled to lay-off compensation under S. 25C. Therefore it could not have been the intendment of the legislature to exclude the same benefit to the Badli workman under S. 25F if he had complied with the provisions of S. 25B of the Act. Hence, it is futile to contend that Mohanlal's case (supra) is not applicable to these workmen. If the terms of the settlement are taken into account and which indubitably cover the badli workman, he shall be deemed to have been in continuous service if he has worked for a period of 180 days : These terms are :

"4 I(a) All the Badli and local candidates, who have put in 180 days of uninterrupted continuous service and who are in the Badli list or in temporary appointment on the date of signing of this Truce Agreement will be absorbed in service subject to the availability of the permanent posts.

Note : The meaning of "Continuous Service" shall be as defined in S. 25B of the Industrial Disputes Act 1947.

(b) The Badli and temporary employees who have put in 180 days of uninterrupted continuous service on the date of signing of this agreement and who cannot be absorbed for want of permanent vacancies, shall be kept in the Waiting List for future absorption.

(c) After drawing the list for absorption, the Badli Candidates not fulfilling the above conditions will be considered as non-existent.

(d) Badli and local candidates, who are going to be regularised in service as per above rules will be put on probation for a period of months from the date of regularisation. This regularisation will not affect in any way the pending default cases against them."

6. The Learned Counsel for the petitioners submitted that the calculation of 240 days under S. 25B(2) of the Act should be made by taking into consideration not only the days on which the workmen had actually worked but also the days on which they were granted holidays under the terms of the settlement between the parties. Alternatively, he contended that in the light of the decision of the Supreme Court in the Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, though the badli workman was not entitled to leave which the regular workman enjoyed in the service of the Corporation he was always willing to work on all the days he had reported for duty and therefore the Corporation should take into account not only the number of days on which he had worked but the days on which he had reported for work but not taken to work on account of the non-availability of work. According to him, a separate muster roll is maintained for the badli workers whenever they reported for work and depending on the availability of work either they were given employment on a particular day or asked to wait as standbys till a vacancy arose on that day for being appointed as badli conductors. So, the days on which they were made to wait in expectation of vacancies to arise should also be included for the purpose of computing 240 days. The case of the Corporation is that even assuming that badli workers are covered by the Act, their cases are not covered by the decision of the Supreme Court in American Express (*supra*) since that case deals with the case of temporary workmen and not badli workmen.

7. For a proper consideration of the competing contention of the parties, the meaning of the words "badli worker" as defined in the KSRTC (C & R) Regulations (for short the Regulations) should be understood first with reference to his employment under the Corporation, the settlement covering his service conditions and the provisions of the Motor Transport Workers Act, 1961 which regulates the condition of work of workmen employed by a motor transport undertaking. Under Regulation 16(1) of the Regulations a badli worker is a person employed on a day to day basis in any vacancy caused by the absence of an employee and who is paid for the number of days he has worked as such either daily or once in a month. Regulation 16(2) and (3) of the Regulations reads as under :

"A list of Badli workers shall be maintained in a Depot or Workshops. The appointment of a Badli worker shall be made from among those in the list of Badli workers who are present at the Depot/Workshops, preference being given to the person who arrives first at the place of duty. If for any reason a Badli

worker is not found suitable for the post, his name may be removed from the list of Badli workers."

"A Badli worker would be eligible for such day to day appointment as long as his name figures in the list of Badli workers."

A close examination of Regulation 16 discloses two significant aspect of conditions of service of the badli workers under the Corporation. They are employed on a day to day basis and such employment will continue as long as their names appear in the badli list. That means to say that the employment of badli workers under the Corporation is coterminous with the duration of the list of badli workers maintained by the Corporation. If the badli worker's name is found in the list for a period of two years then he is employed by the Corporation for a period of two years. If a badli worker's name is found in the badli workers' list for a period of 6 months then he is in the employment of the Corporation up to a period of six months. But his appointment as a conductor is dependent on the vacancy caused by a regular employee and therefore the word "appointment" which occurs in Regulation 16(2) should not be confused with the word "employment" in Regulation 1. I am stressing this particular fact because the word "employment" or the words "contract of employment" which take in a contract of service means not only the appointment of the workmen on a particular day or given number of days but something more than that. Once a relationship of employer and employee is established between the Corporation and the badli workman then there are certain terms in the contract of employment which the Court will have to take into consideration for the purpose of interpreting the provisions of S. 25B and 25F and other relevant provisions under Chapter V-A of the Act. That a badli workman under the Corporation is also similar to the badli workman under any other transport undertaking is made clear by the provisions of S. 2 and S. 3(h) of the Motor Transport Workers Act, 1961 (hereinafter referred to as the Transport Act). The Transport Act was enacted in the year 1961 with view to provide for the welfare of the motor transport workers and to regulate their conditions of work. This Act is applicable to KSRTC as it employs more than 5 transport workers. A motor transport worker is defined as follows :

"Motor transport worker" means person who is employed in a motor transport undertaking directly or through an agency, whether for wages or not, to work in a professional capacity on a transport vehicle or to attend to duties in connection with the arrival, departure, loading or unloading of such transport vehicle and includes a driver, conductor, cleaner, station staff, line checking staff, booking clerk, cash clerk, depot clerk, time keeper, watchman or attendant -."

This is a special definition which makes a departure from the ordinary word "workman" as defined under the Act or under the Industrial Employment (Standing Orders) Act or any other labour legislation on the statute book. This special definition of the words "motor transport worker" is on account of the fact that the workmen employed in the motor transport undertaking have to cope up

with several uncertainties relating to the business of motor transport undertaking because the motor transport undertaking is a public utility service under S. 2(n) of the Act and these public utility services must always have in reserve a certain number of employees to meet the exigencies of public requirements and public demands. That is the reason under S. 2(h) of the Transport Act a person who is employed otherwise than for wages also becomes a worker. Dealing with the nature of work of these badli workers employed in motor transport undertaking, in *Ghatge and Patil Concern's Employees' Union Vs. Ghatge and Patil (Transports) Private Ltd. and Another, Hidayatullah, J.* as he then was, speaking for the Court observed as follows :

"The word "employed" in the definition of "Motor Transport Worker" is not used in the sense of using the services of a person but rather in the sense of keeping a person in one's service. The definition is, of course, made wide to take in all persons working in a professional capacity in an undertaking for running its affairs in any capacity and not only persons employed on wages. The word wage has the meaning given to the word in the Payment of Wages Act and takes in all paid employees and also persons who are employed in a professional capacity although not in receipt of wages....."

8. In the light of the provisions, namely, Regulation 16 of the Regulations, S. 25C of the Act and S. 2(h) and (m) of the Transport Act, the employment of the badli workmen is under a contract of service and not a contract for service. The Corporation has also no doubt about this legal position since it is not the case of the Corporation that these workmen are employed under a contract for service though such a plea was available to them since Regulation 16 does not in terms say that these workmen cannot seek employment elsewhere so long their names are in the list of badli workers. If that be so, what are the incidents of a contract of service between the Corporation and its badli workers. In *Stevenson Jordan and Harrison, Ltd. v. Macdonald and Evans* 1952 (1) The Times Law Reports 101 Lord Denning sought to produce a definition that reflects the modern concept of the contract of service. He said :

"..... One feature which seems to run through the instance is that, under a contract of service, a man is employed as part of the business, and his work is done as an integral part of the business; whereas, under a contract for service, his work, although done for the business, is not integrated into it but is only accessory to it."

If it is a contract of service what are the obligations of the employer to the workmen and vice versa ? One of the obligations to the employer is to pay wages to the workmen for the days on which they worked. But could it be argued that the workman whose name is in the badli list and who appears before the Corporation gates on every working day or on other days and says that he is ready to work, has got a right to work ? Whether the employer is under an obligation to provide work to the workman when he is a regular worker admits of no doubt. If he cannot, the provisions of S. 25C come into play. In the case of

badli worker when his employment is not in doubt but his appointment is subject to vacancies in the regular posts the point may require consideration. The Explanation to S. 25C makes it clear that the badli workman is also entitled to lay-off compensation if he has completed one year of continuous service. That is to say, his right to work is recognised by the Act subject to the other provisions of the Act. That apart, the Directive Principles in Chapter IV of the Constitution give some indication on the obligation of the Corporation to provide work. These Directive Principles would be applicable to the Corporation also since it is an authority within the meaning of Art. 12 of the Constitution. The place of Directive Principles in our Constitution is brought out by the Supreme Court in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, Chief Justice Chandrachud, speaking for the Court, observed as under :

"The significance of the perception that Parts III and IV together constitute the core of commitment to social revolution and they, together are the conscience of the Constitution is to be traced to a deep understanding of the scheme of the Indian Constitution..... Parts III and IV are like two wheels of a chariot, one no less important than the other. You snap one and the other will lose its efficacy. They are like a twin formula for achieving the social revolution, which is the ideal which the visionary founders of the Constitution set before themselves. In other words, the Indian Constitution is founded on the bedrock of the balance between Parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution.

"..... We therefore put Part IV into our Constitution containing directive principles of State policy which specify the socialistic goal to be achieved..... Those rights are not an end in themselves but are the means to an end. The end is specified in Part IV. Therefore, the rights conferred by Part III are subject to reasonable restrictions and the Constitution provides that enforcement of some of them may, in stated uncommon circumstances, be suspended... .."

Article 41 of the Constitution reads as under :

"Right to work, to education and to public assistance in certain cases. - The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

The Directive Principles which guide and inform the Courts in the proper interpretation of social legislation should be kept in view while interpreting the provisions of the Act which is enacted for the benefit of the weaker sections of the society who are not economically independent. Unquestionably the Act is one such legislation which protects the interests of the workmen and as far as possible it imposes restrictions on the contractual rights of the employer under a

contract of employment with a view to see that the workman who is economically a weaker party to the contract is not put to undue hardship or made to suffer indignity by the onerous terms in the contract. The question whether a badli worker could claim a right to work when there are vacancies, does not admit of any doubt in view of the Constitutional mandate as enshrined in Chapter IV of the Constitution. It may be useful to refer to one decision of the Court of Appeal reported in *Langston - v. Auew* 1974 (1) A.E.R. 982 in this context. That was a case where the workman was put on suspension but was paid full wages during the period of suspension. He was put on suspension not for any misconduct but because the Trade Union did not want him to work with the other unionised workers. The union put pressure on the employer to see that his services were terminated because he did not become a member of that particular union. The employer with a view to maintain the harmonious relationship with the union did not terminate his services but preferred to put him on suspension and pay the full wages during the period of suspension. The workman complained. His complaint was that he had every right to work without being a member of the union; that he was not interested in becoming a member of the union and therefore he should be given work. The management having refused to give him work the workman approached the Industrial Court with a complaint that the management was treating him unfairly, that is, it was resorting to unfair labour practice by keeping him under suspension though he had every right to work and draw wages after the performance of the work allotted to him. The complaint was thrown out by the Industrial Court on the ground that the workman did not make out any cause of action against the management. But in the Court of Appeal, Lord Denning, whose views against concerted union activities in furtherance of an industrial dispute were not always sympathetic to the union, took the view that it was an arguable case. The plea of the management that there was no evidence of breach of contract as the workman had not been dismissed but only suspended from work and he was paid full wages was rejected by the Court of Appeal. Earlier, Asquith, J., in *Collier v. Sunday Referee Publishing Co. Ltd.* (1940 AER 234) had observed :

"It is true that a contract of employment does not necessarily, or perhaps normally, oblige the master to provide the servant with work. Provided I pay my cook her wages regularly, she cannot complain if I choose to take any or all of my meals out."

Commenting on this observation, the Court of Appeal in *Langston*" case (supra) observed :

"That was said 33 years ago. Things have altered much since then. We have repeatedly said in this Court that a man has a right to work, which the Courts will protect.... In these days an employer, when employing a skilled man, is bound to provide him with work. By which I mean that the man should be given the opportunity of doing his work when it is available and he is ready and willing to do it. A skilled man takes a pride in his work. He does not do it merely to earn

money. He does it so as to make his contribution to the well-being of all. He does it so as to keep himself busy, and not idle. To use his skill, and to improve it. To have the satisfaction which comes of a task well done."

This view of the Court of Appeal is reflected in Art. 41(2) of the Constitution of India and therefore this Court as noticed earlier should also take notice of the constitutional mandate while interpreting the provisions of Chapter V-A of the Act.

9. One more fact which requires to be noticed for a proper consideration of the meaning of the words "continuous service" is the meaning of the word "employed" under the Act. Under S. 2(s) of the Act workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward etc., etc. What is the meaning of the words employed in any industry. The very words "persons employed" came up for consideration before the Supreme Court under the provisions of the Andhra Pradesh (Telengana Area) Shops & Establishments Act in Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another, . The Supreme Court held as follows :

"The right to control the manner of work is not the exclusive test for determining the relationship of employer and employee. It is also to be considered as to who provides the equipment. It might be that little weight can nowadays be put upon the provisions of tools of minor character as opposed to plant and equipment on a large scale. But so far as tailoring is concerned, the fact that sewing machines on which the workers do the work generally belong to the employer is an important consideration for deciding that the relationship is that of master and servant.

The fact that the employees take up the work from other tailoring establishments and do that work in the shop in which they generally attend for work and that they are not obliged to work for the whole day do not militate against their being employees of the proprietor of the shop where they attend for work."

Though this decision was rendered by the Supreme Court on the provisions of the Andhra Pradesh (Telengana Area) Shops and Establishments Act, the test prescribed by the Supreme Court for determining the employer-employee relationship throws some light for determining the nature of employment of the petitioners in these Petitions. It is not the case of the Corporation that the petitioners on the days they were not given work for want of vacancies had worked elsewhere. It is not in dispute that the petitioners' names were found in the list of badli workers till their services were terminated. So, on this fact it is easy to come to the conclusion that the relationship of employer and employee existed between the Corporation and the petitioners till their names were removed from the list of badli conductors. The fact that on the days there was no work they were not given appointment orders does not bring to an end the relationship of employer and employee. This aspect of the case should be kept in view for a proper interpretation of the words "actually worked" as they appear in

S. 25B(2) of the Act.

10. The decision of this Court in Mahadev Textile Mills v. Industrial Tribunal & Another 1976 (1) K.L.J. 315 is of no assistance to the Corporation since S. 25B(1) and (2) did not come up for consideration in that case. What was considered by this Court was the nature of relief that could be granted to badli workmen in the event of an award in their favour in an industrial dispute touching the termination of their services.

11. The decision of this Court in Shankariah Vs. Karnataka State Road Transport Corporation, is not applicable to these cases since that decision was rendered by this Court after the amendment to S. 2(oo) of the Act, by Act 49/1984.

11A. The Learned Counsel for the Corporation invited my attention to the decision of this Court in K.V.R. Shetty Vs. Secretary to Government, Home Department and Others, I was a party to that decision. The validity of K.S.R.T.C. Regulations were challenged by the workman as being violative of Art. 14 of the Constitution on the ground that those regulations were not made applicable to badli workmen. The provisions of S. 25B of the Act did not come up for consideration in that case.

12. The principal contention of the Corporation is that this Court in Honnayya and Others Vs. Karnataka State Road Transport Corporation and Another, has held that under Regulation 16 there is no employer-employee relationship between the Corporation and the badli workman on the day the job is not assigned to him and therefore the workman should have actually worked for 240 days to claim the benefit of S. 25B(2) of the Act. The reasoning of this Court was based on the meaning of the words "continuous service" as defined under S. 25B(1) of the Act. What the Learned Judge observed in that case was that S. 25B(1) pre-supposes a continued existence of employer-employee relationship during the period in which the workman had not at all worked for one or the other reason set out in S. 25B(1). The Learned Judge further observed as under :

"I fail to appreciate how a workman who secured work against leave vacancies for those days stands covered by S. 25B(1) of the Act. It would be travesty of law to say that if a person is given work for one or for a few days in a year by an employer, either as leave substitute or to meet the extra work arising on any occasion, the rest of the days on which no work is given, amounts to "cessation of employment" within the meaning of S. 25B(1) and that the workman must be deemed to be in continuous service of such person. The following illustration would bring forth the fallacy of the construction of S. 25B(1) suggested for the petitioners. Take for instance that during the Dasara Festival, the Corporation is in need of more drivers and conductors as it is required to run more trips to meet the seasonal traffic and, therefore, some persons who are qualified to be drivers or conductors and whose names are in Badli list or not are given work for a period of about 10 days. According to the construction of S. 25B(1) by the petitioners, as for other 355 days in the year, it is the Corporation, who failed to

give the work and therefore cessation of work was for no fault of workman and, therefore, would constitute interruption within the meaning of S. 25B(1) of the Act. In such a case, in reality all that can be said is, the Corporation gave work for 10 days and not that the Corporation denied work for 355 days."

This Court found that the case of the workman came under the provisions of S. 25B(1). But as regards the case of the workmen under S. 25B(2) this Court observed as follows :

"As far as the scope of S. 25B(2) is concerned, there is no dispute. For attracting this clause, all that is necessary is the workman concerned must have worked under an employer for 240 days in a year. If he has worked, he stands governed by this clause irrespective of the nature of employment (See : *Hutchiah Vs. Karnataka State Road Transport Corporation, and Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another*, "

It could be seen from this decision that this Court was interpreting the word "cessation of work" in S. 25B(1) of the Act and was not concerned with the number of holidays to which a Badli workman was entitled to for the purpose of continuous service under S. 25B(2) of the Act. For the purpose of interpreting S. 25B(1) of the Act, this Court relied on the decision of the Supreme Court in *Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd.*, at 313-314. That decision was rendered by the Supreme Court in the year 1981 long before the Payment of Gratuity Act was amended by S. 4 of the Amendment Act XXVI of 1984. This fact was not brought to the notice of the Learned Judge when *Honnayya* (supra) was rendered following the decision of the Supreme Court in *Lalappa's* case (supra). Based on that decision this Court observed as follows :

"On the other hand, the judgment of the Supreme Court in *Lalappa v. Laxmi Vishnu Textile Mills* provides a complete answer to the point raised by the petitioners. In the above case, the Supreme Court was interpreting the meaning of the expression "continuous service" used in S. 2(c) of the Payment of Gratuity Act, which is in pari materia with S. 25B(1) of the Act and the explanation below it which is similar to S. 25B(2) of the Act. Repelling the contention that a person who had been employed as a substitute on a few days in a year in the place of an absentee workman should be deemed to be in continuous service under the main part of the Section on the ground that on the rest of the days there was cessation of the employment for no fault of the workman concerned, the Supreme Court stated thus : at page 313 and 314.

"The Report of the Badli Labour Enquiry Committee, Cotton Textile Industry, 1967, no doubt shows that the badli employees are an integral part of the textile industry and that they enjoy most of the benefits of the permanent employees; but there may not be any continuity of service as observed by this Court in the *Delhi Cloth and General Mills Co., Ltd. Vs. Workmen and Others etc.*, . The badli employees are nothing but substitutes. They are like "spare men" who are not "employed" while waiting for a job; *Conlon v. Glasgow*, 36 Scott L.R. 652,

Vallabhdas Kanji (P) Ltd., v. Esmail Koya 1978 Lab IC 809 (Kar) taking the view to the contrary does not appear to lay down a good law. Accordingly, we uphold the view that the badli employees are not covered by the substantive part of the definition of "continuous service" in S. 2(c), but came within Explanation 1 and therefore, are not entitled to payment of gratuity for the badli period, i.e., in respect of the years in which there was no work allotted to them due to their failure to report to duty."

"The interpretation of the aforesaid provision of the Payment of Gratuity Act applies on all fours to Ss. 25B(1) and (2) of the Act as the language of both the provisions is identical."

It should be noticed that Parliament having noticed the injustice caused to the workmen under the Payment of Gratuity Act by the pronouncement of the Supreme Court in Lalappa's case (supra) amended the definition of the words "continuous service" under S. 2A as introduced by S. 4 of the Payment of Gratuity (Second Amendment) Act, 1984. The amended provisions are found in S. 2A of the Gratuity Act and they read as :

"An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order imposing a punishment or penalty or treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act."

The statement of objects and reasons for the Amendment Act XXVI of 1984 (for short the Amendment Act) states as under :

"The Supreme Court had in its judgment in the case of Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd., held that in terms of the existing definition of "continuous service" in S. 2(c) of the Act, the permanent employees were not entitled to payment of gratuity for the years they remained absent without leave and had actually worked for less than 240 days in a year. It has been represented that the enforcement of this ruling resulted in denial of gratuity to a number of employees, whose short term absence had remained unregularized due to lack of appreciation of its significance for the purpose of working out their entitlement to gratuity. It is, therefore, now proposed to amend the definition of "continuous service" suitably and to specifically provide that a period of absence in respect of which no punishment or penalty has been imposed would not operate to interrupt the continuity of service for the purpose of payment of gratuity. It is also proposed to amplify the definition of "continuous service" to provide -

(a) that an employee working in an establishment which works for less than six

days in a week and who is not in uninterrupted service for one year, shall be deemed to be in continuous service for a period of one year if he had actually worked for 190 days in the preceding year; and

(b) that for determining the continuous period of six months for the purpose of payment of gratuity, an employee should have completed half the number of days of actual work which constitute "continuous service" for a whole year."

In the light of the provisions of S. 6 of the Amendment Act XXVI of 1984, the entire basis of the Judgment of the Supreme Court had been removed by legislation and therefore there was no binding precedent or obiter in this decision of the Supreme Court as S. 2(c) of the Gratuity Act had been amended suitably in the year 1984 with effect, from 11th February, 1981.

13. There is no more argument which goes against the contention of the Corporation in these Petitions. That is, a mere similarity in the definitions of "continuous service" in two different Acts does not mean that the Court should equate the meaning of one set of words occurring in one Act with similar words occurring in another Act. The reason is that the words "continuous service" in the Gratuity Act were incorporated keeping in view the object of the Act and the benefit sought to be conferred on the workmen under that Act. Gratuity is something paid to a workman for continuous, loyal and faithful service. That payment is made at the end of the expiry of the term of employment either after resignation (if he has put in qualifying period of service) or at the time of retirement fixed under the contract of employment. That payment is made for the benefit of the workman as retirement benefit. But payment under S. 25F of the Act is a compensation paid by the employer to the workman for the severance of the contract of employment even before the expiry of the full period of employment. Therefore, the meaning of the words, "continuous service" under the Act is not the same as the meaning of the words "continuous service" under the Gratuity Act. The word compensation means compensating the workman for the loss caused to him on the abrupt termination of his contract and that compensation will help him to eke out his livelihood till he secures employment elsewhere. The words "continuous service" and "and has actually worked" as they appear in S. 25B(2) of the Act should be liberally interpreted and not in the manner interpreted by the Supreme Court for the purpose of gratuity of Lalappa's case (supra). In the circumstances, it is not possible for the Corporation to contend that the petitioners' case is covered by the decision of this Court in Honnayya or Lalappa (supra).. One more reason why the decision in Honnayya is not applicable to this case is that the Supreme Court in American Express (supra) has taken the view that its interpretation of the provisions of the Gratuity Act and of the words "continuous service" in that Act is not applicable to the words "continuous service" under S. 25B(1) of the Act. In American Express (supra) the Supreme Court dealt with Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation,

"The leading authority on which reliance was placed by the Learned Counsel for the Management was *Lalappa Lingappa & Others v. Laxmi Vishnu Textile Mills Ltd.* (supra). We may straight away say that the present question whether Sundays and paid holidays should be taken into account for the purpose of reckoning the number of days on which an employee actually worked, never arose there. The claim was under the Payment of Gratuity Act. All permanent employees of the employer claimed that they were entitled to payment of gratuity for the entire period of their service, that is, in respect of every year during which they were in permanent employment irrespective of the fact whether they had actually worked for 240 days in a year or not. The question there was not how the 240 days were to be reckoned; the question was not whether Sundays and paid holidays were to be included in reckoning the number of days on which the workmen actually worked; but the question was whether a workman could be said to have been actually employed for 240 days by the mere fact that he was in service for the whole year whether or not he actually worked for 240 days. On the language employed in S. 2(c) of the Payment of Gratuity Act, the Court came to the conclusion that the expression "actually employed" occurring in Explanation I meant the same thing as the expression "actually worked" occurring in Explanation II and that as the workmen concerned had not actually worked for 240 days or more in the year they were not entitled to payment of gratuity for that year. They further question as to what was meant by the expression "actually worked" was not considered as apparently it did not arise for consideration. Therefore, the question whether Sundays and other paid holidays should be taken into account for the purpose of reckoning the total number of days on which the workmen could be said to have actually worked was not considered in that case. The other cases cited before us do not appear to have any bearing on the question at issue before us."

In view of this pronouncement of the Supreme Court, it is not possible for the Corporation to contend that these petitions are covered by the pronouncement of the Supreme Court in *Lalappa* (supra) which was followed by this Court in *Honnayya* (supra).

14. One more fact requires to be noticed in *Lalappa* (supra). In that case the Supreme Court denied the relief to the badli workmen under the Gratuity Act on the specific finding that these workmen were not in "continuous service" as defined in S. 2(c) of the Gratuity Act in the years in which there was no work allotted to them due "to their failure to report to duty." This fact namely that the badli workmen in that case had failed to report to duty when the work was available to them is of considerable significance for not applying the ruling of *Lalappa* (supra) to the facts of these cases. No doubt, the Supreme Court in *Lalappa* (supra) relied on the case of badli workers in *Laxmi Vishnu Textile Mills Ltd.*, but the badli workmen in textile mills stand on a different footing that the badli workmen employed in a motor transport undertaking and therefore the observations made by Supreme Court on the nature of employment of the badli workers in textile industry would not be applicable to the badli workers in

Transport Industry.

15. Mr. B. M. Chandrashekaraiah has relied on the ruling of the Supreme Court in Mohanlal's case (supra) for the interpretation of the words "continuous service". According to him, the mode of computation of 240 days u/s. 25B(2)(a)(ii) of the Act is explained in Mohanlal's case (supra). In para 15 of its Judgment, the Supreme Court has observed as follows : in Mohan Lal Vs. Management of Bharat Electronics Ltd.,

"The relevant date will be the date of termination of service, i.e., 19th October, 1974. Commencing from that date and counting backwards, admittedly he had rendered service for a period of 240 days within a period of 12 months and indisputably, therefore, his case falls within S. 25B(2)(a) and he shall be deemed to be in continuous service for a period of one year for the purpose of Chapter VA."

This observation is preceded by the following observations of the Supreme Court in Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen, which read as under :

"The position therefore is that during a period of employment for less than 11 calendar months these two persons worked for more than 240 days. In our opinion that would not satisfy the requirement of S. 25B. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than 12 calendar months and, next that during those 12 calendar months had worked for not less than 240 days. Where, as in the present case, the workman have not at all been employed for a period of 12 calendar months it becomes unnecessary to examine whether the actual days of work numbered 240 days or more. For, in any case, the requirement of S. 25B would not be satisfied by the mere fact of the number of working days being not less than 240 days." If S. 25B had not been amended, the interpretation which it received in the aforementioned case would be binding on us. However, S. 25B and S. 2(eee) have been the subject matter of amendment by the Industrial Disputes (Amendment) Act, 1964. Section 2(eee) deleted and S. 25B was amended, prior to its amendment by the 1964 Amendment Act, S. 25B read as under :

"For the purpose of S. 25C and 25F a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days, shall be deemed to have completed 1 year of continuous service in the industry."

Applying these observations to the facts of this case, Mr. Chandrashekaraiah contended that S. 25B(2)(a)(ii) of the Act makes it clear that the workmen should have actually worked for not less than 240 days. Section 25B(2)(a)(ii) reads as under :

"Definition of continuous service :- For the purposes of this Chapter, - (a) a workman shall be said to be in continuous service for a period if he is, for that

period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike, which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman :

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

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

(i) XXX XXX XXX

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

16. The words "actually worked" were considered by the Supreme Court in *American Express (supra)* and what the Supreme Court observed was that a literal construction of the words "actually worked" is not the true for the interpretation of S. 25B(2)(a)(ii). In that case, the workmen who were covered by the provisions of the Delhi Shops and Establishments Act, 1954, claimed compensation on the ground that they had put in 240 days of service during the period of 12 calendar months preceding the date of termination and their services were terminated without compliance with the provisions of S. 25F of the Act. The Supreme Court accepted their contention that they had actually worked for 240 days by including all the paid holidays to which they were entitled to under the provisions of Delhi Shops and Establishments Act. The Supreme Court negated the contention of the management on the interpretation of the words "actually worked" with the following observations : at p. 542 of *Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation*,

"Section 25F of the Industrial Disputes Act is plainly intended to give relief to retrenched workmen. The qualification for relief under S. 25F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in S. 25B of the Industrial Disputes Act. In the present case, the provision which is of relevance is S. 25B(2)(a)(ii) which to the extent that it concerns us, provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman, during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. The expression which we are required to construe is "actually worked under the employer". This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or pen but must necessarily comprehend all those days during which he was in the employment of the employer and for which he

had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Learned Counsel for the management would urge that only those days which are mentioned in the Explanation to S. 25B(2) should be taken into account for the purpose of calculating the number of days on which the workmen had actually worked though he had not so worked and not other days. We do not think that we are entitled to so constrain the construction of the expression "actually worked under the employer." The explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. If the expression "actually worked under the employer" is capable of comprehending the days during which the workman was in employment and was paid wages - and we see no impediment to so construct the expression - there is no reason why the expression should be limited by the explanation. To give it any other meaning then what we have done would bring the object of S. 25F very close to frustration. It is not necessary to give examples of how 25F may be frustrated as they are too obvious to be stated."

Mr. Chandrashekaraiah also maintained, placing reliance on the facts of the American Express (supra) was found in paragraph 2 of the Judgment of the Supreme Court, that the workman employed by the American Express Corporation was a temporary employee and he was employed as such with a number of short breaks up to 31st October, 1975 till his services were terminated and therefore the facts relating to a temporary workman would not be applicable to case of badli workers. But the Supreme Court in Management of Willcox Buckwell India Ltd. Vs. Jagannath and Others, while considering the scope of S. 25F has ruled :

"It is quite clear from the admission made in the written statement filed before the Industrial Tribunal and the evidence of Sri J. K. Nayar that these workmen were served with notices of termination of service, because there was not enough work for them, which apparently meant that they had become surplus so far as their services were concerned. The Tribunal came to the same conclusion and we have not been persuaded to take a different view in the matter. We may also refer to a decision of this Court in Employers in relation to Employers in Relation to Digwadih Colliery Vs. Their Workmen, , in which a badli workman had worked as employee for more than 240 days, etc. He was retrenched and the Court apparently proceeded on the basis that even a person who was working as badli was entitled to the benefit of the provisions relating to retrenchment if he fulfilled the requisite conditions. We can find no distinction between the case of a badli worker and that of a temporary employee."

The submission made before the Supreme Court by the Management was that the temporary workmen in that case had been employed for the purpose of doing a particular work and as soon as that work was finished, it was no longer necessary to keep them in employment and therefore it was legitimate for the management to terminate their employment by giving notice. The Supreme

Court rejected this contention.

17. Therefore, in the light of the enunciation of the law laid down by the Supreme Court on the construction of the words "actually worked under the employer", the facts in this case will have to be examined. The settlement between the parties entered into in the year 1978 throws considerable light on the service conditions of the badli workmen.

18. A careful reading of the settlement dated 16th February, 1978 brings out the express stipulations governing the contract of employment of badli workers and therefore it is not necessary for this Court to go into any implied terms of employment. The terms of the settlement make it clear that the benefits which accrue under the settlement would flow to all the employees irrespective of the federations or unions to which they belong (see page 2 of the settlement, para 3). Clause (4) deals with the badli and part time employees. Clause 4(b) provides that the badli and temporary employees who have put in 180 days of uninterrupted continuous service on the date of signing of this agreement and who cannot be absorbed for want of permanent vacancies, shall be kept in the waiting list for future absorption. Though the words used in clause 4(b) show that these workmen should put in 180 days of uninterrupted continuous service the words "continuous service" are understood by the parties in the manner defined in S. 25B of the Act as is clear from the note appended to clause 4(1)(a). Clause-5 deals with holidays under which the employees are entitled to eight paid holidays in a calendar year, viz., holidays on 15th August, 26th January and 2nd October being National holidays and five more holidays out of 23 holidays set out under sub-clause (b) of Clause 5 of the settlement. The workmen are further entitled to any other paid holidays so declared by the Corporation or by the Government of Karnataka as applicable to the employees of the Corporation. If these and the other provisions of the settlement are taken into account, it is clear that no distinction is made regarding the benefits conferred under the settlement as between the badli employees and the other regular employees. Therefore the badli workmen were also entitled to the holidays as provided for under Clause 5 of the settlement if they were in the list of badli workmen and were treated as such till the duration of the period of the settlement. The payment of wages to these badli workmen should also be taken into consideration for finding out whether they were entitled to other benefits under the settlement. It is not in dispute that these badli workmen are paid wages either on daily rates or on monthly rates if they are permitted to work continuously for a period of 26 days in a month. Accordingly Clause 23 of the settlement dated 10th January, 1958 had provided that employees engaged on daily wages would be paid 1/26th of the time scale of pay including dearness allowance and that any employee working 180 days including weekly offs and other holidays continuously will be brought on the time scale of pay. The implication of this clause is very clear. If the employee works for one day in a month he will be entitled to 1/26th of the time scale of pay on the assumption that he could have worked only for 26 days in a month and he will not be entitled

to the salary for 4 days in a month. But if he has worked 180 days continuously including weekly offs and other holidays he will be brought on the time scale of pay, that is, he will be entitled to the monthly wages and that will include the payment of wages on the holidays in a particular month on which he has not worked. If this clause regarding payment of daily wages to badli workmen is read with the supplemental settlement providing for eight paid holidays, it will be clear that badli workmen would also be entitled to eight paid holidays and that depends on the number of days they had worked in a month or in a year as the case may be. To take one example if a badli workman is taken to duty in the month of January in a permanent vacancy for a period of 15 days commencing from 20th January, 26th January being a national holiday, he would be entitled to a paid holiday on that date in terms of the settlement. That holiday cannot be denied to him all because he is a badli workman. Likewise, in the month of August if he is taken to duty for a period of 15 days commencing from the 1st August in a permanent vacancy he will be entitled to a paid holiday on the 15th August, that day being a national holiday. Further, he would be entitled to other holidays which may fall on other dates during that period. Therefore, the facts in these cases are similar to the facts in *American Express* though the workman therein was entitled to holidays as per the provisions of the Delhi Shops and Establishments Act. Additionally, under S. 19 of the Transport Act, a workman under the Corporation would be entitled to a day of rest in every period of seven days if there is a notification in the official gazette to that effect. If there is no notification he will be entitled to a holiday if he has worked for 10 days consecutively. If the Corporation is exempted from S. 19 of the Transport Act, the workman will be entitled to compensatory days of rest of equal number to the days of rest so lost (see S. 20 of the Transport Act). This is also made clear by Rules 27 and 28 of the Karnataka Motor Transport Workers Rules, 1964. It is not the case of the Corporation that the K.S.R.T.C. Regulations are saved by the proviso to S. 37 of the Transport Act in respect of days of rest. He may not be paid for that day but that day should be included for calculating 240 days. It is a holiday imposed on him for reasons of his health and physical fitness. Therefore, there is no good ground for not extending the principle enunciated by the Supreme Court in *American Express* (supra) to the facts of these cases for the purpose of calculating whether the workmen had completed 240 days of continuous service under S. 25B(2)(a)(ii) of the Act. For these reasons, the words "continuous service" with reference to the facts of these cases will include the number of holidays to which a badli workman would be entitled to and could have availed of. Consequently, each case will have to be examined on its merits for finding out whether the badli workman from the date of his entry into service as a badli till the date of termination of services under the impugned orders in each of the petitions had completed 240 days of continuous service after taking into consideration the entitlement of holidays and rest days to which he was entitled to under the terms of the settlement and the Transport Act. It therefore becomes necessary to go into the facts of each of these petitions.

For these reasons the badli workmen of the K.S.R.T.C., are covered by the provisions of Chapter V-A of the Act and they are entitled to claim retrenchment compensation if they satisfy the requirement of S. 25B(2)(a)(ii) of the Act. The Regulations relating to their appointment will have to make way for the provisions of Chapter V-A of the Act in view of the provisions of S. 25J of the Act. For the purpose of calculation of 240 days, the number of holidays to which they are entitled to under the settlement or which they could have availed of under the settlement including the days of rest and compensatory holidays will have to be reckoned.

19. In Writ Petition No. 4985/1984, the Corporation has taken the stand that the workman in this petition has worked only for 229 days. In Writ Petition No. 13040/1984, the petitioner has admittedly worked for 234 days. In Writ Petition No. 3164/1984 admittedly the petitioner has worked for 222 days. In Writ Petition No. 1923/1984 the petitioner, according to the Corporation, has worked for a period of 206 days. In Writ Petition No. 1286/1984 the petitioner herein has worked for a period of 187 days. Therefore, it is a matter for consideration whether the workmen would have worked for 240 days if the holidays under the settlement, compensatory holidays and rest days to which they were entitled to under the Transport Act would make up the deficit to qualify for retrenchment compensation as provided under S. 25(2)(a)(ii) of the Act. This is a matter to be enquired into by the Corporation after looking into the relevant records and therefore there shall be a direction to the Corporation to compute the period of 240 days in the light of the decision of this Court in these Petitions.

20. If there is any dispute on this point it is open to the petitioners to raise an industrial dispute accordance with law and have their rights adjudicated accordingly. If there is a dispute only on the question of backwages, it is open to the workmen to have it adjudicated under S. 33C(2) of the Act.