
(2016) 08 GUJ CK 0025

In the Gujarat High Court

Case No : Special Civil Application No. 10153 of 2002

Natwarsinh Udaysinh Parmar

APPELLANT

Vs

District Development Officer

RESPONDENT

Date of Decision : 08-08-2016

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2016) 3 CLR 782 : (2017) LIC 342

Hon'ble Judges : J.B. Pardiwala, J.

Bench : Single Bench

Advocate : Mr. Mtm Hakim, Advocate, for the Petitioners No. 1; Mr. H.S. Munshaw, Advocate, for the Respondent No. 1 and 3

Final Decision : Disposed Off

Judgement

J.B. Pardiwala, J.(Oral)—By this writ-application under Article 226 of the Constitution of India, the writ-applicant, a retrenched Driver, has prayed for the following reliefs :

"(A) This Honourable Court be pleased to admit this petition and allow this petition and thereby be pleased to quash and set aside the action of the respondents in orally terminating the petitioner's services from 2.9.2002 as Peon in the respondent Department, having taken his services from 6.9.1984 without any break.

(B) This Honourable Court be pleased to direct the respondents to immediately appoint the petitioner on the post of Peon, on the regular establishment of the respondent Department.

(C) This Honourable Court be pleased to direct the respondents, in view of the fact that the petitioner had been discharging services as Peon since 6.9.1984 to regularise the services of the petitioner in pursuance of the established and implemented policies of the State.

(D) Pending admission hearing and final disposal of the present petition, this Honourable Court be pleased to direct the respondents to immediately and forthwith take the petitioner in service and continue the petitioner's services as Peon in the respondent Department as discharged by the petitioner since 6.9.1984.

(E) Be pleased to award costs all throughout.

(F) Be pleased to grant any other and further reliefs as deemed fit and proper in the interest of justice."

The case of the writ-applicant may be summarised as under :

The writ-applicant joined the services of the District Animal Husbandry Department, District Panchayat, Vadodara, as a daily wager in the year 1984.

It appears that he was serving as a Driver. He worked for almost 18 years. All of a sudden, one fine day, he was told that since there was no work for him, his services were terminated. Hence, this petition.

Mr. Hakim, the learned counsel appearing for the writapplicant, vehemently submitted that the termination of his client is arbitrary and illegal on the following counts :

- (i) that the order of termination was passed orally;
- (ii) that the termination could be termed as retrenchment within the meaning of Section 2(oo) without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act

In such circumstances, he prays that the respondents be directed to reinstate him in service with full back wages.

On the other hand, this writ-application has been vehemently opposed by Mr. Munshaw, the learned counsel appearing for the Panchayat. He has opposed this writapplication on the following grounds :

- (i) The writ applicant has an efficacious alternative remedy to go before the Labour Court under the provisions of the Industrial Disputes Act. There being an efficacious alternative remedy, this writ application may not be entertained.
- (ii) Being a daily wager, it was not necessary to pass an order of termination in writing assigning any reason.
- (iii) The termination of the writ-applicant cannot be termed as retrenchment under the provisions of the Industrial Disputes Act.

In such circumstances referred to above, Mr.Munshaw prays that there being no merit in this writ-application, the same may be rejected.

Mr. Munshaw has placed reliance on the following averments made in the affidavit-in-reply filed on behalf of the respondent no.3 :

"4. It is most respectfully stated that the petitioner herein was employed as a daily wager purely on temporary, adhoc and daily wage basis without following due procedure of the recruitment and his appointment is also not against the sanction post. It is submitted that Vadodara District Panchayat is providing a facility of Veterinary Mobile Unit and the petitioner herein is provided work as a daily wage Driver on the said mobile unit with effect from February, 2001, but as a heavy expenditure amounting to Rs.50,000/- is required to be incurred for various repairs and as the vehicle is not in a running condition, it is put in as "Non Use Vehicle" with effect from 15th August 2002. Respondent no.3 states that it has received a letter dated 16th August 2002 from the respondent no.2 intimating that the vehicle is not in the running condition and it requires repairs costing Rs.50,000/- and without availability of the grant the vehicle cannot be repaired and used and a copy of the said letter dated 16th August 2002 of the respondent no.2 is annexed herewith and marked as ANNEXURE ?A" to this reply. It is submitted that in view of this factual background, the petitioner who was working as a daily wage Driver on the said unit is not provided work after 15th August 2002 due to non-availability of the work and funds and, therefore, the averments and allegations raised against the respondents herein are totally far from truth. It is submitted that in future as and when the said mobile unit is got repaired and it is decided to use the said mobile unit for public service, the case of the petitioner will be considered for providing work as a daily wage Driver. Lastly, it is stated that there is only one post sanctioned for the dispensary and it is occupied by the regularly selected employee and, therefore, in absence of the work, the petitioner cannot be employed at any other work and it is clear that the petitioner is not terminated or retrenched unceremoniously without following due procedure of the recruitment."

2. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is, whether the respondents committed any error in terminating the services of the writ-applicant.

3. An order of termination of service passed orally is a highly arbitrary act on the part of the authorities. It is settled law that the right of livelihood is a fundamental right guaranteed under Article 21 of the Constitution of India. It is also settled law that in case the authorities passes an order affecting a person's civil right or right to livelihood, they have to act clearly and in a reasonable manner. The termination of the services of the employee by an oral order is a feudalistic approach and does not get sanctioned from our Constitution.

4. Even the services of the temporary Government servant may be dispensed with in accordance with the provisions of the Industrial Disputes Act, 1947.

5. There is evidence on record to indicate that the writ applicant was working past more than eighteen years with the department. An oral order or instructions passed by the authority terminating the services of an employee is arbitrary, unjust and improper act, and would be hit by Article 14 of the Constitution of

India. The procedure to terminate the service by an oral order or instructions cannot be approved under our Constitutional frame and such practise is highly objectionable and deprecated in the strongest of the words.

6. The authorities are expected to adopt the recourse while taking such action in accordance with law or statutory provisions. Even if there is statutory provision, it shall always be necessary for the authority to pass a written order instead of acting in an autocratic way.

7. Let me look into the decision of this Court rendered by a learned Single Judge in the case of Jayanti Chaudhary v. State of Gujarat [Special Civil Application No.8298 of 2000, decided on 15th January, 2016]. In the said case, the challenge was to the termination of the petitioner orally and also seeking benefits of the Government Resolution dated 17th October 1988. The learned Single Judge, after an exhaustive review of the case law, allowed the writ application and ordered reinstatement of the petitioner with continuity in service and all consequential benefits. The learned Single Judge also overruled the preliminary objection as regards the alternative remedy before the Labour Court. I may quote the observations made by the learned Single Judge as under:

"10 .The Court has heard learned counsels appearing for the parties and perused the documents on record. The few indisputable aspects emerging therefrom needs to be set out as under in light of the submissions of the learned counsels.

(i) The petitioner no.1 has claimed that he was appointed on 01.10.1989 i.e. not disputed by the respondents. Petitioner no.2 was appointed on 01.10.1988, which has been disputed by the respondents, as according to the respondents the petitioner no.2 was appointed on 01.11.1988.

(ii) The Government Resolution dated 17.10.1988 was promulgated and implemented in respect of the daily-wagers appointed prior thereto.

(iii) The documentary evidence coming forward on record in form of the documents on page nos.20, 23, 61 would indicate that the process of according benefits of Government Resolution dated 17.10.1988 had in fact been started at the end of the respondents.

In the aforesaid factual backdrop, question arises as to whether this Court should relegate the petitioners to seek redressal of the grievances in the alternative forum, as provided under the Industrial Disputes Act, 1947.

11. The Court has in fact noticed that the petitioners were appointed on the date mentioned by both the parties, which in any case, would not militate against the petitioners' contention of they being continuously performing their duties so as to attract the provisions of Industrial Disputes Act, 1947.

12. It is also not disputed that the petitioners had not completed 240 days, when the oral termination was being brought about, nor it is a case of the State respondent herein above, that the petitioners were required to be non-suited

only on the ground that they had worked for more than 240 days when their services came to be terminated. On the contrary, the respondents' affidavits are conspicuously silent on this aspect and the documentary evidence, which have been brought on record including the correspondents under which the process is established, have been initiated for according the benefit of Government Resolution dated 17.10.1988 to the petitioners. The petitioners have unequivocally established that they had been continuously working for more than 240 days prior to the oral termination so as to be entitled to receive the protection under the provision of Industrial Disputes Act, 1947, namely; the retrenchment process, the notice prior to the termination and the compensation in the form of retrenchment compensation before effecting the termination by way of retrenchment.

13. The Court is of the view that the documentary evidence in form of the communications, which the respondents are annexed namely communications dated 01.07.2000, 21.07.2000 and 11.09.2000, indicating that the petitioners were called upon to collect the wages and the compensation itself would indicate that the Industrial Disputes Act provisions were not strictly complied with, as the date of termination has been clearly mentioned and the communication is subsequently dated. Meaning thereby, the conditions precedent for bringing about valid termination by way of retrenchment had remained to be fulfilled. In other words, it can well be said that the documentary evidences coming forward from the respondents' side well establishes that the respondents have by way of afterthought sent a communication to the petitioners so as to infuse some semblance of legality in their action of termination of services, which in fact was brought about without following any procedure of law, much less, procedure of Section 25-F of the Industrial Disputes Act and other provisions.

14. Against the factual backdrop of these findings, question arises as to whether any purpose would be served relegating the petitioners to the alternative remedy. The answer would be emphatic "No", as the relegating of the petitioners to alternative remedy is a self imposed restriction or modality, which in a given case may not warrant its adoption. On the contrary, the facts of the case speaks for themselves, so far as present case is concerned, which would persuade this Court not to adopt the path of relegating the petitioners to the alternative forum. Besides, the long time elapsed from the date of the termination and filing of the petition till the date when the matter is heard, is also being a relevant factor, in case, if the submission canvassed on behalf of the State is accepted, then it would add number of years to the realm of uncertainty, which has been fasten upon the petitioners, which would rather amounting to deny them the opportunity of seeking appropriate relief at appropriate stage and time. Thus, this also being a relevant factor in not relegating the petitioners to the alternative remedy under the Industrial Disputes Act. Therefore, the Court is not inclined to accept the submission canvassed on behalf of the respondents for non-suiting the petitioners on the ground of alternative remedy and proposes to embark upon the adjudication so far as all the aspects are concerned, at this

stage, in this petition.

15. The Court has already recorded herein above that the breach of Section 25-F is established beyond doubt, as the documents indicate that the subsequent action of proposing to pay the compensation and the notice pay would be of no avail in light of the judgment cited at the bar namely; in case of Devinder Singh v. Municipal Council, Sanaur, (supra) and in case of Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat (Haryana) (supra). From the case of Devinder Singh v. Municipal Council, Sanaur, (supra), paragraph nos.17 and 18 are reproduced as under;

Para-17: Section 25-F is couched in a negative form. It imposes a restriction on the employer's right to retrench a workman and lays down 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 until he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or he has been paid wages for the period of notice and he has also been paid, at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months and notice in the prescribed manner has been served upon the appropriate Government or the authority as may be specified by the appropriate Government by notification in the Official Gazette.

Para-18: This Court has repeatedly held that the provisions contained in Sections 25-F(a) and (b) are mandatory and termination of the service of a workman, which amounts to retrenchment within the meaning of Section 2(oo) without giving one month's notice or pay in lieu thereof and retrenchment compensation is null and void/illegal/inoperative.

Thus, the condition precedent for bringing about valid retrenchment being not fulfilled the termination by way of retrenchment would be of no consequence and the same is void ab initio. This brings the Court to consider the case of the petitioners so far as the other relief of 17.10.1988 resolution recommendations are concerned. The reliance is placed upon the decision of this Court passed in S.C.A. No.15670 of 2005 on 08.10.2014 as well as that of Division Bench passed in L.P.A. No.1381 of 2015 on 04.01.2016 and Supreme Court, to indicate that the petitioner even if presume to have been appointed a month or year after the date of the resolution, the same would be of no consequence as their case much more better than number of employees who have in fact been appointed after the year 1988 and who have granted benefits. This Court's observations as well as Division Bench's observations are set out herein below;

S.C.A. No.15670 of 2005

Para-11: The Court is of the considered view that the GR dated 17/10/1988 was no doubt containing reference to the future employment but the subsequent course of action and developments as it indicate that the Government continued employing daily wagers, temporary hands irrespective of those conditions which

gave rise to a situation where litigations came up and hence as Shri Pathak has pointed out clarificatory GR came to be issued and over all facts & circumstances of the case indicate that the benefits of GR dated 17/10/1988 were to be extended to all, else it would have meant to Government employing unfair labour practise which would have been highly depreciable.

Para-12: The Court is also of the view that the decision cited at the bar in case of State of Gujarat And Others v. PWD Employees Union And Others will have applicability to the facts & circumstances of the case and counsel of the petitioners submission qua some of the workmen were employed after GR dated 17/10/1988 would be of no avail as the judgment itself has answered that contention squarely.

L.P.A. No.1381 of 2015

Para-6: The Labour Court has directed for conferment of benefits by the impugned award as per the Govt. Resolution dated 17.10.1988. We do not find that the learned single Judge has committed any error in not interfering with the said award. Under the circumstances, no case is made out for interference. Hence, the appeal is dismissed.

In view thereof, the Court is of the view that the respondents have to grant benefits of 17.10.1988 resolution to the petitioners after taking into consideration their services.

16. The Court is, therefore, of the considered view that the termination being void ab initio, is required to be quashed and set aside and as a result thereof the order of reinstatement is required to be made. However, at this stage, the question arises as to whether the petitioners' claim of back wages would be just and proper, as the learned counsel for the petitioners Ms. Bhatt submitted that the back wages are required to be granted as a matter of course, as could be seen from the decision in case of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) And Others, reported in (2013) 10 Supreme Court Cases 324; and in case of Mackinnon Mackenzie & Company Ltd. v. Mackinnon Employees Union, reported in AIR 2015 Supreme Court 1373; the back wages in such a situation is a matter of course.

Learned AGP has contended that the back wages cannot be granted for asking in absence of any particular pleadings. There was no opportunity to the employer-respondents to produce evidence to show that the employees were gainfully employed besides the passage of time, would indicate that the employees-petitioners cannot be presumed to have been without any earnings for sustaining themselves and the family members.

The Court is of the considered view that the affidavits have been on the record to cover the contentions, so far as, the merits of the case are concerned. One of the petitioner had filed affidavit in the year 2014 to bring on record the clarificatory circular or resolution, which was submitted today itself by Ms. Bhatt, which was

permitted to be taken, as nothing really turned upon it so as to delay the hearing of the matter. But even on that affidavit also and the memo of the petition there exists no, even plain averments on oath, stating that they have not been gainfully employed. Though, at this stage, Ms. Bhatt, did inquire of one of the petitioner, who is present in the Court, who indicate that he was not gainfully employed. But that in itself was not found to be sufficient, as the bare statement if not coming forward on record when the final hearing started, would not be accepted to be taken on record, as it would deny opportunity to the otherside for bringing their evidence on record. At the same time, it is required to be noted that the pendency of the matter for 15 years, would indicate that the petitioners could not have remained idle without their efforts to earn their wages and their sustenance.

17. Therefore, the Court is inclined to accept the submission of learned AGP, so far as, back wages are concerned. In absence of any pleadings on affidavit or proper submission qua the petitioners remaining unemployed, the Court would not be in a position to order back wages. Hence, the back wages are not ordered.

18. In view of the aforesaid facts and circumstances, the petition is partly allowed. Rule is made absolute to the aforesaid extent.

19. The termination is declared to be null and void, which will have effect of reinstating the petitioners and continuing them with all consequential benefits, but back wages shall not be granted. The petitioners are to be reinstated forthwith and the continuity of service to be granted based thereupon. The benefits flowing from 17.10.1988 are to be worked out and accorded to the petitioners. The reinstatement be made within a week from the date of receipt of this order and the benefits be granted within two weeks therefrom."

8. Thus, having regard to the facts which are not in dispute and also considering the settled position of law, I hold that the oral termination of the writ-applicant was absolutely illegal. The termination is also void on account of the non-compliance of the provisions of Section 25-F of the Industrial Disputes Act.

In such circumstances, the last question that falls for my consideration is, what relief should be granted to the writ applicant.

So far as the issue of relief is concerned, let me look into the recent pronouncement of the Supreme Court in the case of B.S.N.L. v. Bhurumal, AIR 2014 SC 1188. I may quote the following observations contained in paragraphs 19 to 25 :

"19. The only question that survives for consideration is as to whether the relief of reinstatement with full back wages was rightly granted by the CGIT.

20. The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In the case of BSNL v. Man Singh, this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that

relief of reinstatement be also given as a matter of right. In the case of *Incharge Officer and Anr. v. Shankar Shetty*, it was held that 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. In this judgment of *Shankar Shetty (supra)*, this trend was reiterated by referring to various judgments, as is clear from the following discussion.

"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.

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*, *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 and 335 paras 7 and 14 Paras 7 and 15 of AIR)

"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.

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."

Jagbir Singh has been applied very recently in *Telegraph Deptt. v. Santosh Kumar Seal*, wherein this Court stated: (SCC p.777, para 11 (para 8 of AIR)

"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."

21. In the case of *Telecom District Manager v. Keshab Deb* the Court emphasised that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one month's 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 regularised 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, Co-op. Societies and Secy., State of Karnataka v. Umadevi*.

22. 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. v. Ananta Saha* and *Metropolitan Transport Corporation v. V. Venkatesan*.

23. 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 mala fide and/or by way of victimization, unfair labour practise 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.

24. 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 nonpayment 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 regularisation (See : *State of Karnataka v. Uma Devi* (2006) 4 SCC 1 : (AIR 2006 SC 1806)). Thus when he cannot claim regularisation 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.

25. 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 practise 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 regularised 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."

While awarding the compensation, the host of factors, inter alia, the manner and method of appointment, nature of employment and length of service are relevant.

9. The Apex Court in many other decisions has taken the view that, even a casual or seasonal workman who has rendered continuous service for one year or more cannot be retrenched without complying with the requisites of Section 25(F). Reliance can be placed on *L. Robert D Souza v. Executive Engineer, Southern Railway* and another, 82(1999) DLT 958, *Ratan Singh v. Union of India*, (1997)11 SCC 396; 1982 LLR 2160 *Samistha Dubey v. City Board, Itawah*; (1998)8 SCC 460, *Municipal Corporation of Delhi v. Praveen Kumar*. It is settled law that the expression "termination of service for any reason whatsoever" in the definition of the expression "retrenchment" in Section 2(oo) of the Act covers every kind of termination of service except those not expressly included in Section 25-F or not expressly provided for by other provisions of the Act such as Sections 25-FF and 25-FFF. Therefore, even striking off the name of a workman from the rolls without anything more constitutes retrenchment within the meaning of the expression "retrenchment" in Section 2(oo). Thus, if termination of service of a workman is brought about for any reason whatsoever, it would be retrenchment except if the case falls within any of the excepted categories, i.e. (i) termination by way of punishment inflicted pursuant to disciplinary action; (ii) voluntary retirement of the workman; (iii) 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; (iv) or termination of the service on the ground of continued ill health. Once the case does not fall in any of the excepted categories, the termination of service even if it be according to automatic discharge from service under agreement would nonetheless be retrenchment within the meaning of expression in Section 2(oo). The Apex Court in the case of *S.M. Nilajkar v. Telecom District Manager*, (2003)4 SCC 27, had spelt out the cases where termination of services of a workman will not be retrenchment and engagement of a workman as a daily wagger does not by itself amount to putting the workman on notice that he has been engaged for a fixed period and after that he would not be entitled to continue. It was held at page 37 of *S.M. Nilajkar (supra)* 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;
- (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 above said 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 up to the occurrence of some event, and therefore, the workman ought to know that his employment was shortlived. 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 complain that by the act of the 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 above said ingredients so as to attract the applicability of sub-clause (bb) above said. In the case at hand, the respondent employer has failed in alleging and proving the ingredients of sub-clause (bb), as stated herein above. All that has been proved is that the appellants were engaged as casual workers or dailywagers 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."

10. I am of the view that the ends of justice would be met if the writ-applicant is paid Rs.1,50,000=00 (Rupees One Lac Fifty Thousand Only) by way of compensation in lieu of the reinstatement prayed for. The respondents are directed to pay the amount within a period of eight weeks from the date of receipt of the order, failing which, the same shall carry interest at the rate of 9% per annum.

11. With the above, this writ-application is disposed of. Direct service is permitted.