

(2012) 03 GUJ CK 0014

In the Gujarat High Court

Case No : Special Civil Application No. 12301 of 2010

Purshottam Farmers Co-operative Cotton Ginning and
Processing

APPELLANT

Vs

Vasantbhai Bhulabhai Patel

RESPONDENT

Date of Decision : 06-03-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2013) 2 SCT 478

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Varun K. Patel, for the Appellant; A.K. Clerk, for the Respondent

Final Decision : Allowed

Judgement

K.M. Thaker, J.—Having regard to the submissions made by the learned advocates for the contesting parties and considering the facts and circumstances of the case, Rule. Mr. A.K. Clerk, learned advocate waives service of Notice of Rule on behalf of the respondent. With the consent of the learned advocate appearing for the contesting parties the petition is taken up for hearing and decision today. Heard Mr. K.M. Patel, learned Senior Counsel, with Mr. V.K. Patel, learned advocate for the petitioner and Mr. A.K. Clerk, learned advocate, for the respondent-workman.

2. The petitioner, a Cooperative Society, has challenged the award dated 16.01.2010 passed by the learned Labour Court, Surat in Reference (LCS) No. 45 of 1995 whereby the learned Labour Court has partly allowed the said reference and directed the petitioner-Society to reinstate the respondent-workman and to pay him back-wages at the rate of 50% of his wages. Aggrieved by the direction, the petitioner has preferred present petition.

3. The service of present respondent-workman was terminated with effect from 01.02.1995. Aggrieved by the said action of the petitioner-Society, the

respondent-workman raised industrial dispute. The appropriate Government passed order of reference dated 28.03.1995 and referred the dispute for adjudication by the learned Labour Court, Surat. The said order of reference culminated into Reference (LCS) No. 45 of 1995.

4. In the reference proceedings, the respondent-workman filed his statement of claim, alleging, inter-alia, that initially, he was appointed as Clerk on probation basis with effect from 05.11.1986 and with effect from 01.02.1987 the benefit of deduction of contribution towards provident fund was also extended in his favour. The respondent, further, alleged that subsequently, without any justification, he was illegally transferred in 1999, to the credit society of the employees of the petitioner-Cooperative Society and subsequently, with effect from 01.11.1992, the petitioner had appointed him as Clerk. The respondent-workman, accordingly, claimed that from 05.11.1986 to 06.12.1994, he worked with the petitioner-Society, and thereafter, when he started demanding his right and raised claim based on his rights, the service was illegally terminated with effect from 01.02.1995. On such assertion, the respondent claimed relief of reinstatement with consequential benefits.

4.1 The reference was resisted by the petitioner-Society by filing written statement filed its reply and denied the respondent's claim that he was working with the petitioner-Society since 1st November, 1992. The petitioner-Society claimed that the respondent was engaged as Seasonal Clerk in Olpad Branch with effect from 05.11.1986 wherein according to the respondent, he worked until 30th June, 1987 and thereafter, from 01.12.1987 to 13.06.1988, the respondent worked for 144 days, the petitioner-Society also claimed that subsequently, with effect from 01.08.1990 to 31.10.1992 the respondent worked in credit society of the employees of the petitioner-Society and then, he again started working with the petitioner-Society with effect from 01.11.1992. The petitioner-Society claimed that on 31.10.1992, the respondent had resigned from the service of the credit society. The petitioner-Society further claimed that the service of the respondent was not required and he was almost and additional/extra hand on the establishment of the petitioner-Society and that therefore, his service was terminated by way of retrenchment with effect from 18.02.1995. In such premise, the petitioner-Society claimed that the relief prayed for by the respondent should be rejected.

4.2 During the proceedings before the learned Labour Court, both sides produced documentary evidence and the petitioner-Society examined three persons as witnesses whereas the respondent, besides giving his own deposition (oral evidence) examined one more witness on his behalf.

4.3 Subsequently, after considering the evidence on record and submission by the contesting parties, the learned Labour Court came to the conclusion that the action of the petitioner-Society of terminating the service of the respondent was in breach of Sections 25F and that the service was terminated with effect from 01.02.1995. Having reached the conclusion the learned Labour Court considered

it appropriate to direct the respondent's reinstatement with continuity of service. However, having regard to the facts of the case and evidence available on record from the learned Labour Court dented 50% back-wages.

5. The learned Counsel for the petitioner cooperative society has raised below mentioned contentions against the impugned award dated 16.1.2110 passed by the labour court Surat in reference (LCS) Application No. 45 of 1995.

1. The findings recorded by the labour court are contrary to evidence on record or without any evidence to support the conclusions and that the findings and directions are unjustified and unwarranted.

2. The labour Court has erred in not appreciating that the service of the respondent was terminated by way of retrenchment and not by way of dismissal. The labour court also erred in holding that the respondent's service was terminated with effect from 1.2.1995.

3. The labour court has misconstrued oral as well as documentary evidence and has erred in holding that the respondent was appointed as a clerk and not as seasonal clerk.

4. The petitioner has also assailed the direction by the labour court awarding 50% back wages and the learned Senior Counsel contended that it was not probable that the respondent would have remained unemployed for long time.

Mr. Patel, learned Senior Counsel for the petitioner, contended that the respondent herein was the only person in his category in his department and that therefore, there was no question of any senior or junior workman in the said department other than the respondent, Mr. Patel, learned Senior Counsel, further submitted that though initially order dated 01.02.1995 was passed, subsequently the respondent, by order dated 18.02.1995, was treated in employment with effect from 01.02.1995 to 18.02.1995 and was also paid wages for the said period and he was actually retrenched by order dated 18.02.1995 and the retrenchment compensation and notice pay etc. payable to the respondent was forwarded at his residential address, however, the said payment was refused by the respondent.

5.1 Per contra, Mr. Clerk, learned advocate, who has appeared for the respondent-workman, submitted that the contention of the petitioner is wholly incorrect and misleading inasmuch as it was the petitioner who had transferred the service of the respondent to the credit society which actually is part of the establishment where the respondent was working and that therefore, it is not justified that the respondent had worked with the petitioner from 01.11.1992 to 18.02.1995 only. Mr. Clerk, learned advocate asserted that the respondent's service with the petitioner has been continuous with effect from 05.11.1986 until 01.02.1995 when he was terminated by way of retrenchment. Mr. Clerk, learned advocate submitted that the petitioner was not allowed w.e.f. 1.2.1995 to report for work and/or to work with the petitioner-Society, and that therefore, the

contention that the respondent's service came to be terminated with effect from 18.02.1995 is unjustified and is also contrary to record. Mr. Clerk, learned advocate, further contended that having terminated the respondent w.e.f. 1.2.1995 and having realized that the action was taken without complying any formalities required by law the petitioner passed the order dated 18.02.1995 which cannot be recognized in law. Mr. Clerk, learned advocate, referring to the said notice dated 18.02.1995, submitted that the said intimation refers to the resolution dated 27.01.1995 by virtue of which, the decision to terminate the respondent's service was taken, however, the resolution was not placed on record. Mr. Clerk, learned advocate, submitted that the termination of the respondent's service was effected illegally and any obligation imposed by law was not complied. He submitted that the award has no infirmity and may not be set-aside as prayed for by the petitioner.

6. It is noticed from the record that the petitioner society as well as the respondent workman did examine their respective witnesses and also placed on record several documents by way of documentary evidence and the court has recorded the details of the oral and documentary evidence of contesting parties in 5th paragraph on page 3 to 5 of the certified copy of the award placed on record of the petition (i.e. running page 22, 24 of the petition, the paragraph are not numbered in the copy of the award placed on record). It appears that besides his own deposition the respondent had examined Mr. R.R. Patel (exhibit 23) as his witness and he had also examined one Mr. B.T. Parekh (exhibit 70 and exhibit 72) as his another witness. On the other hand the petitioner society examined one Mr. R.U. Patel and Mr. V.I. Desai and Mr. R.D. Nair (exhibit 82, exhibit 83 and exhibit 85) as its witnesses.

7. It is also noticed from the record that the labour Court has held inter alia, that the petitioner society failed to prove that the respondent workman was performing duties and functions and work which were of seasonal in nature and that the respondent workman could prove that his service was terminated with effect from 1.2.1995 and that the petitioner society's claim that respondents was retrenched with effect from 18.2.1995 was not legal and correct or proper.

8. On perusal of the document dated 18.2.1995 it emerges that the said document purporting to be the order by which the petitioner, as per its claim, had terminated the respondent's service, seems to have been prepared as an afterthought after having discontinued/terminated the respondent's service before the date of the said document. On conjoint reading of the entire material, as the discussion to follow would demonstrate, it appears that the said document seems to have been prepared - as on afterthought - after having received the petitioner's notice dated 2nd February 1995 and with a view to post facto regularizing its action of having terminated the respondent without following any procedure prescribed by and known to law.

8.1 On one hand it is mentioned in the said communication dated 18.2.1995 that the respondent will be deemed to have been retrenched on and from the date on

which (meaning thereby that the date of receipt would be the effective date) the respondent receive the said communication dated 18.2.1995 whereas in the same communication it is also mentioned that the amount towards retrenchment compensation payable to the respondent is calculated considering respondent's service as continuous from 1.11.1992 until 18.2.1995 and that the compensation is forwarded along with the communication dated 18.2.1995 Thus, to claim, in the same communication, that the service will be deemed to have been terminated on and from the date on which the communication is received by the workman (i.e. the respondent) and then to simultaneously also claim in the same breath, that the compensation is calculated until 17/18.2.1995 is incongruous and also establishes that the entire exercise was carried out as an afterthought with a view to regularizing and correcting the action which was already taken and effected prior to the date of the said communication dated 18.2.1995 i.e. as on 1.2.1995 (as claimed by the respondent workman).

8.2 Furthermore on perusal of the second/office copy of the said communication dated 18.2.1995 (which is provided on record) it is noticed that the respondent workman had received the said communication (dated 18.2.1995) on 21.2.1995 whereas the compensation allegedly forwarded along with the said communication dated 18.2.1995 to the respondent workman is said to have been calculated until 17.2.1995 (or at the most until 18.2.1995) but not until 21.2.1995 (i.e. the date on which the communication was served on and received by the respondent, and as per the text of the said letter it would become effective when respondent received it), and yet in the said communication it is mentioned, and thereby the respondent is intimated, that his service shall be deemed to have been retrenched on the day the communication is received by him/served on him. Meaning thereby even according to the petitioner's own communication the respondent's service would stand retrenched only on and from 21.2.1995 and that therefore if the petitioner's case were to be believed then the compensation ought to have been computed and paid for total number of days until 21.2.1995 which, undisputedly, is not done.

8.3 Besides this, the language in the said communication 18.2.1995 also indicates that right from 1.2.1995 the respondent was already terminated - relieved with effect from 1.2.1995 and that is why it was mentioned in the said communication that the respondent would be deemed to be on service and shall be accordingly paid his wages for the period from 1.2.1995 which aspect makes to clear that post facto operation to regularize and correct the action already taken and implemented on 1.2.1995 was undertaken by way of said communication dated 18.2.1995.

8.4 In this context it is relevant to take note of the explanation mentioned in para 3 of the said communication, read with the details mentioned in para 1 of the said communication establishes that the respondent was actually discontinued with effect from 1.2.1995 (as claimed by him) and also that at that

point of time i.e. on 1.2.1995 neither compensation and notice pay was paid nor other procedure was followed.

8.5 A conjoint reading of the details and explanation contained in para 1 and 3 of the said communication gives out that the communication was forwarded and was served on the respondent as an afterthought and pursuant to the legal advice, (which also becomes clear from the contents of the said communication dated 18.2.1995 wherein it is mentioned to the effect that the delay in forwarding the order occurred because the establishment could not consult and take advice of their advocate since he was not available until 16.2.1995 so as to regularize the action which was already taken viz. discontinuing the respondent and his service with effect from 1.2.1995 and then only with a view to providing a platform so as to base the submission that respondent was retrenched from 18.2.1995 that, as an afterthought the respondent was conveyed vide the above mentioned communication dated 18.2.1995 that he would be paid wages from 1.2.1995.

8.6 The contradiction which emerges as a result of the aspects mentioned in 2nd para of the said communication and the fact that the communication was served on and received by the respondent on 21.2.1995 amplifies the fact that the said communication is merely an attempt to regularize and clothing the action of discontinuing the respondent in such a manner that it may appear that the action was taken only on 18.2.1995.

8.7 Thus, neither the petitioner's denial of respondent's claim that he was discontinued with effect from 1.2.1995 is acceptable or sustainable nor the petitioner's own case that respondent's service was retrenched with effect from 18.2.1995 is sustainable or acceptable.

8.8 It is pertinent that going by the stipulation contained in para 1 of the said communication and the remark put by the respondent reflecting that the communication was served on and received by the respondent on 21.2.1995, the so called and alleged retrenchment would still be in violation of section 25F inasmuch as the respondent is, undisputedly, not paid wages and the compensation after calculating the same until the relevant and effective date i.e. 21.2.1995 being the date of service/receipt of the communication on and by the respondent.

8.9 Before proceeding further it is necessary to mention that the copy of the above mentioned communication dated 18.2.1995 which is placed on record by the petitioner at annexure J (page 178 and also at page 195) which purport to be photo copy of the petitioner's office copy of the communication dated 18.2.1995 some how and for unexplained reasons does not contain the remark put by the respondent on the second/office copy of the said communication which came to be supplied on the record of petition during the hearing.

8.10 Besides this, the photocopies of the same document are at page 178 and page 195 and they reflects further discrepancy i.e. one of the copies (i.e. page

195) reflects the number (i.e. number 129 of 1994/1995) which is also seen in the typed second/office copy which came to be supplied by the petitioner separately during the hearing of the petition, but is not reflected from the photocopy at page 178.

8.11 It is in light of the above discussed aspects emerging from the evidence that the deposition, and particularly the cross examination of petitioner's witness Mr. Nair (exhibit 85) becomes relevant and vital inasmuch as the said witness admitted, in his cross examination, that it is true that Vasant bhola (i.e. the respondent workman) was retrenched with effect from 1.2.1995.

8.12 Upon conjointly considering all the aspects and details mentioned above, it is not possible to find any fault with the conclusion of the labour court that the petitioner society has failed to establish that the respondent's service was retrenched with effect from 18.2.1995.

9. Once the aforesaid conclusion is reached then the petitioner's case would fall to the floor inasmuch as the said conclusion would demonstrate that though the respondent was relieved on and from 1.2.1995 (as claimed by him) any procedure was undisputedly not followed before or on 1.2.1995 and the compensation was also not paid. Thus, the action taken on/from 1.2.1995 would amount to action taken in breach of prescribed procedure and in violation of Section 25F of the Act. This aspect has to be considered and appreciated in light of the fact that it is not and has never been the case and defence of the petitioner that the respondent had on his own, stopped reporting for duty/work. In this view of the matter, there would, as such, be no need to examine the matter further since, as such, the petitioner's action would fail on this singular ground.

10. Now, coming to the petitioner's contention that the labour court erred in recording observation/a conclusion that in 1992 the respondent was engaged as a clerk and not as seasonal clerk as claimed by the petitioner, it is appropriate to note that the document dated 31.10.1992 annexure VII page 231, placed on record by the respondent under his reply affidavit dated 21.11.2010 reflects that (a) the respondent is shown to have been appointed with effect from 1.11.1992, as "clerk"; and (b) he is shown to have been "appointed" in collection section at Sayan which does not support the petitioner's claim that the respondent was engaged in 1992 as seasonal clerk.

10.1 Furthermore, the said document also reflects that the respondent was engaged at Sayan in collection section whereas the intimation allegedly given to the competent authority, in compliance of the applicable rules framed under the Act reflects that the respondent was working in seasonal clerk department and he was shown to be the only person working in the said department i.e. seasonal clerk department. Thus, the said details are contrary to the above mentioned document which gives out that the respondent was engaged in "collection section" as "clerk".

10.2 Therefore, in light of the order dated 31.10.1992 which the petitioner itself claims to be the appointment order the observation by the labour court that the respondent was appointed as clerk and not as seasonal clerk cannot be faulted.

11. Now it is necessary to note that the petitioner does not dispute that the respondent was engaged/appointed in 1986. However, the petitioner also claims that subsequently the respondent joined, as a clerk in the credit society, (which, according to the petitioner, is run by the employees of the petitioner) wherefrom, he allegedly resigned and joined the petitioner society at sayan with effect from 1.11.1992 after tendering resignation and leaving the credit society from 31.10.1992.

11.1 On this count it is appropriate to note that though the petitioner claims that the respondent had left the petitioner society and joined employees' credit society, interestingly the petitioner has not placed any material on record (e.g. respondent's letter of resignation from service of the petitioner and/or petitioner's relieving letter evidencing that he was relieved on tendering resignation from the petitioner society and/or any material to show that the resignation (if at all there was one) was accepted and/or petitioner society's resolution accepting the respondent's resignation and relieving him) to support its claim that the respondent had left the petitioner's service and then joined the credit society as new appointee.

11.2 Thus the petitioner has not been able to establish respondent's alleged exit, or rather allegedly voluntary exit, from the petitioner society.

11.3 On the other hand the documents (related to credit society) which are placed on record have, many dents.

11.4 So as to support the said submission the petitioner relied on the communication forwarded by it (i.e. the petitioner) to the respondent on 31.10.1992. The said communication dated 31.10.1992 is placed on record by the petitioner wherein it is mentioned that the respondent is appointed as clerk with effect from 1.11.1992 and that he should report for work at sayan on 1.11.1992.

11.5 On the other hand another document is placed at page 174 which purportedly, is the letter of resignation allegedly tendered by the respondent in the credit society.

11.6 Interestingly the said letter of resignation (from the service of credit society) is dated 2.11.1992. However, the above referred document dated 31.10.1992 conveys that the respondent was required to report and start work with effect from 1.11.1992.

11.7 The another interesting aspect which emerges from the said document is that the honorary secretary of the credit society is shown to have accepted the resignation on 2nd November 1992 but he accepted it retrospectively i.e. with effect from 1.11.1992.

11.8 Thus, while the petitioner required vide its appointment order dated 31.10.1992 that the respondent should report for work at sayan on and from 1.11.1992, the respondent's resignation letter is dated 2.31.1992 as per which he allegedly requested that his resignation may be accepted with effect from 1.11.1992 (i.e. retrospectively) and the said credit society seems to have received the said letter on 2.11.1992 and it allegedly accepted the said resignation on 2.11.1992 but retrospectively (i.e. with effect from 1.11.1992) and the administrative committee of the credit society appears to have passed resolution approving the acceptance of resignation on 13.11.1992.

11.9 Furthermore, the resignation (dated 2.11.1992 page 174) allegedly tendered by the respondent contains the remark put by the honorary secretary of the credit society on 2.11.1992 approving, retrospectively, the said resignation from 1.11.1992. Besides the said remark made by the honorary secretary on 2.11.1992 the said document (which is dated 2.11.1992) interestingly also bears another remark i.e. the resolution number and date of the resolution (by which the action of accepting respondent's resignation was allegedly approved) which happens to be 13.11.1992.

11.10 In light of such details it is appropriate and necessary to recall that the entire paper work i.e. resignation, its alleged acceptance by honorary secretary, the credit society's resolution etc. is placed on record to lend support to the claim that the respondent had resigned and left the service of the employees' credit society.

11.11 This is the stage to recall that while the petitioner has not been able to produce any document (not even resignation) evidencing that the respondent had voluntarily left the service of petitioner society by tendering resignation and that the resignation was accepted, whereas now, in contradistinction to the said situation, the petitioner society has ensured that complete set of documents are ready and placed on record so that its claim that the respondent had resigned from the credit society can be supported and established and thereby it can, now, indirectly be claimed that the respondent had left the petitioner society and had joined the credit society, as against the respondent's case that actually he was transferred to the credit society. It, however, is pertinent to note that accordingly to the respondent, his service was transferred in 1990 to the credit society of the employees of the petitioner-Society. The petitioner has maintained convenient silence about the said allegation of the respondent and has merely claimed that the respondent had worked with the credit society with effect from 01.08.1990.

11.12 In light of such discrepancies and anomalies it comes out that the respondent did not intend to and actually he had not resigned from the petitioner's service and his tenure with the credit society was merely paper arrangement. The findings of fact by the labour Court seems to be one possible view in light of the material on record and when the learned labour Court has proceeded in the matter on such findings of fact, this Court does not find, and

the petitioner has not been able to show, any compelling reason to interfere with and upset the findings, conclusions and view of the learned labour Court on the basis of the material on record.

11.13 On this count it is relevant to also note that any witness on behalf of the petitioner has not given evidence to establish that the said credit society had its own separate set of employees distinct from the employees of the petitioner society and that the credit society had its own separate administrative, accounting and clerical set up and staff and separate set of rules and service conditions and separate pay scales etc. for its employees and that employees of the petitioner society do not work for/work in the credit society. It is also not established before the labour court that the salary of the respondent in the credit society was different (i.e. less or more) than his salary with the petitioner society and that he was governed by different set of rules and service conditions and that he was paid salary by the credit society as per its own pay scale/service conditions which were different from the service conditions of the petitioner society for its employees.

11.14 Besides the aforesaid aspects it was also not established before the labour court that the said credit society had issued separate appointment order containing different service conditions etc.

At this stage it is necessary to mention that evidence of one Mr. V.I. Desai, one of the witnesses of the petitioner society has been recorded at exhibit 83 but has not clarified the said aspects in his evidence.

12. Now so far as the respondent's appointment - according to petitioner's case - in the "collection centre" is concerned, the labour Court has also taken note of the distinction between the "appointment letter" (exhibiti 57) dated 30.10.1992 and the appointment letter issued in October 1986 (exhibit-37) and was issued on the letterhead of the petitioner society moreover the said order did not contain or mention any service conditions except the respondent's designation whereas in the appointment letter issued in October 1986 i.e. exhibit 37 the conditions of service were also mentioned. By emphasizing the said distinction the labour court has driven home the point that the subsequent order i.e. exhibit 57, also was merely paper arrangement.

12.1 Another aspect which the labour Court took into consideration is that the witness of the petitioner society namely Mr. R.U. Patel (exhibit 82) clarified during his cross examination that the provident fund code number of both the branch/department is common. As regards the petitioner's claim that the respondent's work was of seasonal nature, the labour Court has considered evidence of Mr. B.T. Parekh (exhibit 72) who clarified that the nature of work and duties performed by the respondent was not or cannot be described or considered as seasonal in nature. The labour court also considered that the petitioner society had not placed on record any evidence to establish that the duties and functions which the respondent was required to perform were

seasonal in nature.

12.2 The labour court also took into consideration the fact (which emerged from the evidence of the petitioner society) that the place of work at Olpad and at Sayan and at jahangirpura are merely sections/departments and extension of the petitioner society and not separate and different establishments having distinct existence. One Mr. R.U. Patel, Manager of the petitioner society was examined by the petitioner as its witness by placing on record his affidavit in lieu of chief examination who admitted during his cross examination that the registration of the collection center and the petitioner society was not separate i.e. they were not registered separately. The said witness admitted that in case of both (i.e. the collection center and the petitioner society) the Provident Fund Number was also common. The said witness also admitted that the collection center and the petitioner society operate from the same premises.

13. After examining the material on record the labour has recorded conclusion that the service of the respondent was terminated with effect from 1.2.1995 and as mentioned above any material which could convince this court to take a different view or to hold that the said conclusion of the labour court is perverse or completely contrary to the weight of evidence, is not available on record.

13.1 It is an admitted position that before 1.2.1995 any departmental inquiry/proceedings were not initiated - conducted and admittedly the termination was not effected as a disciplinary measure for any (alleged) misconduct.

13.2 Likewise, it is not the case and/or defence of the petitioner that the respondent left the job voluntarily i.e. he voluntarily abandoned the service and on his own stopped reporting for duty.

13.3 It is also not in dispute, or it is rather admitted, that the petitioner terminated respondent's service.

13.4 Under the circumstances termination of respondent's service would tantamount retrenchment. Actually on petitioner's side it is admitted position that the respondent was retrenched.

13.5 On the other hand it is also admitted position that on or before 1.2.1995 retrenchment compensation was not paid to the respondent on or before 1.2.1995.

13.6 When, the Court reached the conclusion that the respondent's termination was effected w.e.f. 1.2.1995 then the legality of retrenchment has to be examined from the said perspective i.e. whether the termination/retrenchment w.e.f. 1.2.1995 was in accordance with law, or not. Considered from the said perspective and in light of foregoing discussion and above mentioned aspects and evidence on record it emerges that the respondent's termination on and from 1.2.1995 was in violation of section 25F of the Act.

13.7 When the conclusion of the labour court that the respondent's service was

terminated on and from 1.2.1995 cannot be faulted then, the conclusion that termination of his service was in breach of section 25F would be the obvious corollary and consequence and such conclusion also cannot be faulted, more particularly because before 1.2.1995 neither inquiry proceedings were conducted nor compensation was paid.

14. Furthermore, it is also concluded by the labour court that the petitioner failed to establish even a single ingredient to support the claim that the collection center is a separate establishment having separate existence and distinct entity and, as mentioned above, the petitioner has also failed to successfully assail the said conclusion of the labour Court. Under the circumstances the direction to the petitioner society to reinstate the respondent cannot be faulted and cannot be said to be arbitrary or perverse and it does not amount to infirmity, much less a jurisdictional error or error of law.

This leaves behind the direction which requires the petitioner to pay 50% backwages. In this context it is relevant to note that so far as the action of terminating respondent's service is concerned, any ground to interfere with and to upset the conclusion of the labour Court (that the action is in violation of the provisions contained u/s 25-F) is not made out and the said conclusion does not deserve to be set aside and therefore the same has not been disturbed in present order. The learned labour Court has then considered the issue regarding respondent's claim for backwages in light of the conclusions on other issues and in light of the evidence and other material on record and has considered appropriate to direct the employer to pay 50% back-wages since action of terminating the respondent's service is found unsustainable and has been set aside.

14.1 The respondent claimed and asserted that he was unemployed, however though it is a matter of fact that the employer could not establish that the respondent was gainfully employed the balance 50% has been denied by the labour Court on the assumption that the petitioner may not have remained unemployed during entire period. The petitioner employer, contended that the respondent was obliged to establish the factum regarding his unemployment during the intervening period.

14.2 If the respondent's evidence on this count is examined then it comes out that the respondent had asserted that he was not employed and was ready to report for work and resume his duty immediately if he was allowed by the petitioner.

14.3 The petitioner even at that stage did not seize the opportunity and did not ask the respondent to resume duty keeping all contentions and justification in support of its action alive.

14.4 The petitioner employer did not ask the respondent workman, keeping all contentions and objection open and alive and subject to the final award to resume duties in the interregnum, although, according to the respondent the

petitioner had issued advertisement/s, after his retrenchment, inviting applications for recruitment. Such stipulation was not made in the written statement or at the stage of petitioner's evidence and not even in response to the respondent's said suggestion. The aforesaid aspects have to be taken into account while examining the justification and propriety and maintainability of the direction regarding payment of backwages. At the same time the total length of service which the respondent had completed with petitioner before his termination would also constitute one of the relevant factors to examine the issue on hand. Having regard to the aspects mentioned above and considering the salary which the respondent was being paid at the relevant time i.e. Rs. 1,684/- per month and considering the aspects mentioned in immediately preceding paragraphs, it is considered appropriate to modify the direction regarding payment of backwages by reducing the rate at which backwages are directed to be paid. Hence, while modifying the direction as regards backwages it is directed that the petitioner shall pay 25% (instead of 50% as directed by the labour Court) back-wages.

Accordingly the petition is partly allowed by modifying the award to the extent mentioned above i.e. qua backwages and Rule is made absolute to the aforesaid extent.

With the aforesaid direction and clarifications the petition stands disposed of.

The learned Counsel for petitioner has requested that operation of this judgment may be stayed.

The litigation is pending since 1995. The workman is out of employment since 1995. The petitioner lost in the reference proceedings before the labour Court. The award was passed against the petitioner. This is not the first decision against the petitioner and this judgment has not upset any order in favour of petitioner. Besides the foregoing reasons which would not allow this Court to stay the operation of this judgment, the learned Counsel for petitioner could not urge any convincing and strong reason to justify and support the request. Hence the request is not accepted and granted.