

**(2018) 02 AHC CK 0016**  
**In the Allahabad High Court**  
**Case No : 55882 of 2013**

|                                                    |            |
|----------------------------------------------------|------------|
| Regional Manager, State Bank Of India, And Another | APPELLANT  |
| Vs                                                 |            |
| Central Government Industrial Tribunal And Another | RESPONDENT |

**Date of Decision :** 02-02-2018

**Acts Referred:**

[Industrial Disputes Act, 1947](#), [Section 25](#)/  
[Section 10](#) - Prohibition of financial aid to illegal strikes  
and lock-outs - Reference of disputes to Boards, Courts or Tribunals  
[U](#)

**Citation :** (2018) 02 AHC CK 0016

**Hon'ble Judges :** Sangeeta Chandra

**Bench :** Single Bench

**Advocate :** Satish Chaturvedi, R.D. Tiwari, P.K. Sinha, R.P. Tiwari

**Final Decision :** Dismissed

## Judgement

1. This writ petition has been filed by the State Bank of India through its Regional Manager and Branch Manager challenging the award of respondent No. 1 passed in favour of respondent No. 2 on 04.09.2012 as published on 18.09.2012. In the impugned award, respondent No. 1 has directed reinstatement of respondent No. 2 along with payment of 30% back wages from the date of termination of his service till the date of reinstatement. However, respondent No. 2 has been held in the facts and circumstances of the case, as not entitled to regular salary of Peoncum- Messenger w.e.f. 01.06.1993 or from the date of termination as claimed by him.

2. The challenge has been made to the award on the ground that the State Bank of India on the basis of agreement with the representatives of Union of Bank employees at all India level had created a Staff Welfare Fund for carrying out various welfare activities. As portion of the fund is allocated to each circle of the Bank for providing canteen facility to the staff of the Bank at concessional rates in the respective Branches. For implementation of various welfare schemes the

Local Implementation Committees are constituted at Branch level with the Branch Manager as Exofficio President and one other employee of the Bank acting as Secretary. The details regarding the constitution and functioning of Local Implementation Committee for providing canteen facilities have been mentioned in the Hand-book of the Staff Welfare Activities pertaining to Staff Welfare Fund. The relevant extract of which has been filed as an annexure to the writ petition.

3. It has been stated in the writ petition that canteen, which is run in Branch having staff strength of less than 100 is managed by Local Implementation Committee as aforesaid, which is a non-statutory body and the Bank has nothing to do with the supervision or day-to-day running of the canteens. Reference has been made to Shashtri Award and Desai Award and a judgment rendered by the Hon"ble Supreme Court in State Bank of India and others vs State Bank of India Canteen Employees" Union (Bengal Circle) as reported in 2000 (2) UPLBEC 1703 to state that Kheshraha Bank Branch at District Siddharth Nagar had a staff of less than 100, and therefore, canteen facility was provided by the Local Implementation Committee only for welfare of the staff. The persons hired by the Local Implementation Committee for serving in the canteen were not recruited by the Bank and the Service Rules of the Bank did not apply to them. In 1993, respondent No. 2 was appointed as a Canteen Boy by the Local Implementation Committee on a fixed salary of Rs. 350/- per month, which was subsequently increased to Rs. 500/- per month and no employer and employee relationship between the Bank and respondent No. 2 existed. At the relevant point of time, there was sufficient Messenger-cum-Peon in the Branch and thus, there was no occasion to take work of Messenger from respondent No. 2.

4. It has also been stated that respondent No. 2 never worked continuously for 240 days in a calendar year. The services of respondent no. 2 were terminated by the Local Implementation Committee on 03.01.2004 and initially respondent No. 2 filed Writ Petition No. 1672 of 2004, which was disposed of on 28.04.2004, and thereafter, Special Appeal No. 642 of 2004 was filed, which was disposed of on 07.11.2006 giving liberty to respondent No. 2 to approach the Labour Court for redressal of his grievance against his termination. Respondent No. 2 thereafter raised an industrial dispute, which was referred by the State Government in exercise of powers under Section 10 of the Industrial Disputes Act, 1947 by an order dated 27.07.2007 to the effect :- "Whether the action of the management of the State Bank of India, Siddharth Nagar in terminating the services of Ved Prakash Pandey, son of late Rudra Narain, Canteen Boy-cum-Messenger w.e.f. 03.01.2004 is legal and justified? If not, to what relief the concerned workman is entitled?"

5. The reference being received by the Central Government Industrial Tribunal-cum- Labour Court, Kanpur was registered as Adjudication Case No. 29 of 2008.

6. It has been stated in the writ petition that in the claim set up by respondent No. 2 before respondent No. 1 it was clearly stated that he was engaged initially

on the salary of Rs. 350/- per month, subsequently, raised to Rs. 500/- per month by the Local Implementation Committee and the salary Cheques were issued to him under the joint signatures of Manager of the Bank and a member of the Local Implementation Committee mentioning therein that he was a Canteen Boy. In his claim, the respondent No. 2 had further stated that there was no canteen in the Branch and there was no occasion for appointing him as Canteen Boy. In fact the work of Messenger-cum-Peon was taken from respondent No. 2 from the date of his initial engagement in 1993 upto 2004 and since he started claiming salary of Messenger-cum-Peon, the management of the Bank became annoyed and terminated his services on 03.04.2004, without giving him Retrenchment Compensation or Notice Pay in violation of section 25 N of the Industrial Disputes Act, 1947.

7. In the written statement filed by the Bank it had stated that respondent No. 2 was never appointed as Messenger-cum-Peon by the Management of the Bank and he was appointed by the Local Implementation Committee as Canteen Boy under the scheme of Staff Welfare Fund and it was clearly denied that respondent No. 2 had ever worked for 240 days in the preceding 12 months to his termination. In fact, if respondent No. 2 sometimes worked as Messenger-cum-Peon that was because he had offered his services of his own and the Branch Manager paid him the expenses for acting as Messenger from time to time.

8. Respondent No. 2 filed his rejoinder statement and also got his oral statement recorded on 11.08.2010. It was admitted by respondent No. 2 in his oral statement that no appointment letter was issued to him and there was no post in the Bank by the name of Canteen Boy-cum-Messenger. He admitted that he was appointed by the then Branch Manager without following the due procedure as prescribed for appointment of regular staff of the Bank and that he never complained regarding giving of salary of Canteen Boy only and not that of Messenger-cum- Peon to him.

9. On behalf of the Bank, Mr Satya Narayan Pandey, who was the Manager of the Bank between 01.09.2000 to October, 2003, was examined as Management Witness No. 1 (MW-1) and he stated that there was a procedure prescribed for appointment of the staff in the Bank, which was not followed in the appointment of respondent No. 2 and that respondent No. 2 was only appointed as Canteen Boy and not as Messenger by the Local Implementation Committee. He was appointed for the canteen situated in the Bank Branch, which is a nonstatutory body and it was denied that any work of Messenger was ever taken from respondent No. 2 or that he worked for 240 days continuously in the preceding Calendar Year.

10. It has been stated in the writ petition that despite clear evidence of respondent No. 2 being engaged by Local Implementation Committee for the canteen established in the Bank Branch, respondent No. 1 in the Award dated 04.09.2012 has allowed the claim on the ground that documentary evidence had

been filed showing that respondent No. 2 was engaged to work as Messenger on several occasions and in the said documentary evidence, entries written by the clerks of the Bank had mentioned respondent No. 2 as Messenger. Ledger sheets (Paper Nos. 15/2 to 15/5) and cheques (Paper Nos. 15/6 to 15/14) showed that respondent No. 2 was paid remunerations i.e. Travelling Allowance and Daily Allowance as Messenger.

11. It has been contended that such documentary evidence could only prove one thing i.e. on a few occasion, the respondent No. 2 was given the work of Messenger for which he was duly paid, but such documentary evidence could not be treated as sufficient evidence to come to the conclusion that the work of Canteen Boy-cum- Messenger was being taken from respondent No. 2 since the date of engagement till the date of termination. There is no post of Canteen Boy-Cum-Messenger in the Bank and in the award impugned, respondent No. 1 has given completely perverse finding only on the basis of claimant having worked for 86 days in the Bank as Messenger that respondent No. 2 was actually engaged as Messenger, but to avoid the payment of regular salary to him that of Messenger-cum- Peon work was taken of Canteen Boy as well as Messenger from respondent No. 2 and his services were illegally terminated in violation of provisions of section 25 N of the Act without payment of Retrenchment Compensation or Notice Pay.

12. Mr Satish Chaturvedi, learned counsel appearing for the petitioner, on the basis of pleadings made in the writ petition as well as annexures filed in support thereof, has argued that respondent No. 1 could not have placed reliance upon "Daak" Register and Vouchers issued in favour of respondent No.2 regarding payment of Travelling Allowance for working as Messenger to come to a conclusion of respondent No. 2 being in continuous service as Messenger. Respondent No. 2 had claimed that there was no canteen in the Bank, however, no finding has been recorded to this effect by respondent No. 1. Also, there was a categorical pleading of the petitioners that respondent No. 2 was appointed by the Local Implementation Committee and not by the Bank and there was no employer and employee relationship, but no finding has been recorded on this issue. Moreover, in the claim set up by respondent No.2, he had made no pleadings regarding his not being in gainful employment with effect from the date of termination of his service on 03.04.2004, and since there was no finding recorded regarding gainful employment, no back wages, even upto 30% as directed by respondent No. 1 could have been awarded to respondent No. 2.

13. Mr Satish Chaturvedi has also submitted written arguments along with case law in support of his submission that respondent No. 2 was engaged as Canteen Boy by the Branch Manager, who had no authority to appoint regular staff without following regular procedure as prescribed under the Rules and therefore, respondent No. 2 had no right of any kind against the Bank as no employer and employee relationship existed between the Bank and respondent No. 2.

14. It has also been argued that at best a person can be reinstated on the post

to which he was appointed. Respondent No. 2 was appointed as Canteen Boy and assuming that certain other work was taken from him by the Branch Manager unauthorizedly, that would not convert his appointment to that of a Messenger and all findings recorded by respondent No. 1 referring to Ledger sheets, Daak Register and Vouchers holding that the work of Peon-cum-Messenger was taken from respondent No. 2 were perverse and liable to be set aside, inasmuch as there is no post of Canteen Boy-cum-Messenger in the Bank.

15. It has also been argued that even if disengagement/ termination of respondent No. 2 was found illegal for non compliance of section 25 F of the Industrial Disputes Act, 1947, reinstatement could not have been directed, moreso, when respondent No. 1 has not mentioned in the award impugned, the post on which respondent No. 2 is to be reinstated.

16. The judgments relied upon by the learned counsel for the petitioners for the aforesaid submissions are being given herein-below: 1. The Factory Manager, CIMMCO Wagon Factory vs Virendra Kumar Sharma and another, 2000 (6) SCC 554 ;

2. M.P. State Agro Industries Development Corp.Ltd. Vs S.C. Pandey, 2006 (2) SCC 716;

3. Nagar Maha Palika vs State of U.P., 2006 (5) SCC 127;

4. Arkal Govind Raj Rao vs Ciba Geigy of India Ltd., Bombay, AIR 1985 SC 985

5. Gaukaran Yadav vs State of Chhattisgarh, 2017 FLR 153;

6. Mahboob Deepak vs Nagar Panchayat Gajraula & others, 2008 (1) SCC 575;

7. Ghaziabad Development Authority vs Ashok Kumar and another, 2008 (4) SCC 261;

8. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub Division, Kota vs Mohan Lal, 2013 (14) SCC 543;

9. Assistant Engineer, Rajasthan Development Corporation and another vs Gitam Singh, 2013 (5) SCC 136;

10.U.P. State Electricity Board and others vs Presiding Officer, Faizabad and others, 2017 (152) FLR 227;

11. Disriect Sports Officer vs P.O. Labour Court and others, 2017 (152) FLR 946;

12.Junior Engineer, U.P. Jal Nigam, Construction Division, Mirzapur vs P.O. Labour Court, Varanasi and another, 2008 (116) FLR 558;

13.M/s SIEL Ltd. Vs State of U.P. and others, 2008 (116) FLR 565;

14.State of U.P. through Executive Engineer Irrigation Division-II vs Presiding Officer, Labour Court, Gorakhpur and another, 2007 (114) FLR 19;

15.U.P. Samaj Kalyan Nirman Nigam Ltd. Vs Presiding Officer, Labour Court-I, Kanpur and another, 2007 (112) FLR 1000;

16.Assistant General Manager, State Bank of India vs Presiding Officer, CGIT cum Labour Court and another, in Writ C No. 24610 of 20017 decided on 21.07.2014.

17. These aforecited judgments will be dealt with by me later on while discussing findings of the respondent No. 1.

18. Mr P. K. Sinha, learned counsel for respondent No. 2 has filed his counter affidavit, wherein it is stated that it has not been disputed by the petitioners that respondent No. 2 was engaged in State Bank of India, Kheshraha Branch, Siddharth Nagar, U.P. on 01.06.1993 on a fixed salary of Rs. 350/- per month, which was later on enhanced to Rs. 500/- per month for the post of Canteen Boy by the Local Implementation Committee under the signatures of the Manager of the Branch, who acted as ex-officio Chairman and another official of the Bank, who acted as Secretary of the Local Implementation Committee. It is also not disputed that Kheshraha Bank Branch did not have any canteen so there was no question to engage a Canteen Boy. The engagement of respondent No. 2 under the joint signatures of Branch Manager as Chairman and Secretary of Local Implementation Committee was only a camouflage to deny the respondent workman his due for the actual work taken from him, which was that of Peon-cum Messenger. The learned Labour Court has found on the basis of Ledger sheets produced by the Bank on directions of respondent No. 1 that not only was payment made through Debit Slips for 86 days of Travelling Allowance and Daily Allowance to respondent No. 2, when he delivered outstation "Daak" to Gorakhpur on various dates, but also it has been found from the Ledger sheets that respondent No. 2 was regularly asked to deliver local "Daak" and the clerical staff of the Bank had made entries of his name as he delivered "Daak" locally to various offices. The signatures of respondent No. 2 have been found on several pages of the Ledger Book and in continuation to show regular delivery of "Daak" by respondent No. 2 and occasionally delivery of "Daak" to Gorakhpur, for which he used to raise the bills, which were paid through Debit Slips by the Bank.

19. It has been argued by learned counsel for respondent No. 2 that the retired Manager, Shri Satya Narayan Pandey had appeared as Management Witness No. 1 and in his examination-in-chief and also in his crossexamination, he had admitted that respondent No. 2 worked continuously from the date of his initial engagement on 01.06.1993 upto the date of his termination in 2004. Only on Bank holidays and other Gazetted holidays and the weekly offs, respondent No. 2 was not working. It has been argued on the basis of the finding recorded by the learned Tribunal that the Local Implementation Committee may have engaged him as a Canteen Boy, and issue salary cheques to him, but the actual work performed by respondent No. 2 was that of Peon-cum-Messenger, which amounted to a unfair labour practice.

20. It has also been found by the learned Labour Court on the basis of evidence

recorded that tea and snacks were being purchased from the market by making payment either in cash or through vouchers to the suppliers directly and no tea and snacks were made in the canteen. The Bank by its own conduct had created a master servant relationship with respondent workman and now they could not resile out the same only by arguing that there was no post as mentioned in the Reference Order i.e. Canteen Boy-cum- Messenger in the Bank. The engagement of respondent No. 2 as Canteen Boy by the Local Implementation Committee has not been denied. The salary cheques issued by the Local Implementation Committee to the respondent has also not been denied. The vouchers/Debit Slips issued to respondent No. 2 for Daily Allowance and Travelling Allowance, bills raised by him have also not been denied. The Ledger sheets showing the name of respondent No. 2 being noted for delivery of local "Daak" on various dates continuously for days together, have also not been denied.

21. In the supplementary affidavit filed by the petitioners, the examination-in-chief of the Management Witness was filed. The oral statement of the Management Witness in crossexamination has been filed as Annexure-CA 1 to the counter affidavit. The delay in approaching respondent No. 1 has been explained in the counter affidavit and it has been submitted that on his illegal termination, respondent No. 2 had filed Writ Petition No. 1672 of 2004, which was dismissed on 28.04.2004. Thereafter, respondent workman filed Special Appeal No. 642 of 2004, which was disposed of on 07.11.2006 by this Court with a direction to the workman to approach the Labour Court.

22. Respondent No. 2 has placed reliance upon the judgments rendered by the Hon"ble Supreme Court for arguing that there is a limited jurisdiction of the High Court in a writ of certiorari to interfere in an order passed by the Labour Court and the findings recorded on the factual aspects by the Labour Court can only be interfered with when the Labour Court has made a patent mistake in admitting evidence that was inadmissible, or has made gross error in appreciating evidence in coming to conclusion on fact of law. The High Court does not sit in appeal over judgment awards passed by the Labour Court and only error of law apparent on the face on record can be corrected by the Writ Court, but not an error of fact, however, grave it may appear to be.

23. Judgments relied upon by Mr P.K. Sinha, learned counsel for the respondent No. 2 are as follows: 1. Bhuvnesh Kumar Dwivedi vs M/s Hindalco Industries Limited, 2014 (142) FLR 20 (SC);

2. Anoop Sharma vs Executive Engineer, Public Health Division-I, Panipat (Haryana), 2010 (125) FLR 629 (SC);

3. Harjinder Singh vs Punjab State Warehousing Corporation, 2010 (124) FLR 700 (SC);

4. Management of Madurantakam Cooperative Sugar Mills Ltd. Vs S. Viswanathan, 2005 (104) FLR 1229 (SC);

5. Krishan Singh vs Executive Engineer Haryana State Agriculture Marketing Board, Rohtak, (Haryana), 2010 (125) FLR 187 (SC);

6. Jasmer Singh vs State of Haryana and another, 2015 (144) FLR 837;

7. Raj Kumar Dixit vs M/s Vijay Kumar Gauri Shanker, Kanpur Nagar, 2015 (146) FLR 158;

8. I.V.P. Ltd. Vs I.V.P. Limited Workers Union and another, 2010 (126) FLR 572;

9. Management Aurofood Pvt. Ltd. Vs S. Rajulu, 2008 (117) FLR 770 (SC).

24. It has also been pleaded that reliance has been placed by the High Court in certain judgments setting aside the orders of the Labour Court directing reinstatement, Secretary, State of Karnatak vs Umadevi and others, 2006 (4) SCC 1. This cannot help the petitioner as the said observations of the Hon"ble Supreme Court related to Statutory Authorities/ Local Bodies and has no relevance to an Award passed by the Labour Court with regard to a Corporation or a Public Sector Undertakings or Public Sector Banks.

25. Counsel for the Respondent No. 2 has relied upon Krishan Singh vs Executive Engineer Haryana State Agriculture Marketing Board, Rohtak, Haryana, 2010 (125) FLR 187 (SC) to substantiate his arguments.

26. Mr P.K. Sinha, learned counsel for respondent No. 2 has also argued that it is only with respect to reinstatement of daily wage workers where there was no post in the first place in the Local Body/Public Sector Corporation that the Hon"ble Supreme Court has showed interference. With regard to other cases, the law has been settled that reinstatement should be maintained when a workman has completed 240 days of continuous service with his employer. Learned counsel for respondent No. 2 has relied upon Jasmer Singh vs State of Haryana and another, 2015 (144) FLR 837 (SC) and Raj Kumar Dixit vs M/s Vijay Kumar Gauri Shanker, Kanpur Nagar, 2015 (146) FLR 158.

27. With regard to arguments made by learned counsel for the petitioners that reinstatement could not have been ordered by respondent No. 1 because no finding was given as to on which post, respondent No. 2 was found working and no post having been mentioned in the operative part, such order of reinstatement by respondent No. 1 should be set aside, learned counsel for respondent No. 2 has submitted that respondent No. 1 while reinstating the workman in service has awarded 30% backwages and further observed that considering the facts and circumstances of the case, he was held not entitled to regular salary of Peon-cum-Messenger w.e.f. 01.06.1993 or from the date of termination as claimed, meaning thereby the Central Government Industrial Tribunal, Kanpur Nagar has reinstated the workman on the post of Peon-cum-Messenger, but declined to grant regular salary of Peon-cum-Messenger from the date of termination. In the counter argument submitted by Mr. P.K. Sinha, learned counsel for the respondent No. 2 reliance has been placed upon judgment of Bombay High Court in I.V.P. Ltd. Vs I.V.P. Limited Workers Union and

another, 2010 (126) FLR 572, which in turn has relied upon the Full Bench judgment of Delhi High Court passed in Delhi Transport Corporation vs Sh Jagdish Chander, reported in 2005 (3) LLJ 390 (Del.-FB), to hold that the Award by itself cannot be read in isolation and given a meaning so as to render the direction for reinstatement ineffective or inconsequential.

28. Reliance has also been placed by Mr P.K. Sinha, upon the judgment of Hon''ble Supreme Court in Management, Aurofood Pvt. Ltd. Vs S. Rajulu, 2008 (117) FLR 770 (SC), where the Hon''ble Supreme Court has held that consequent upon bitter relations between the parties and charges having been proved, though trivial in nature, instead of reinstatement, giving compensation of Rs. 10,00,000/- to respondent therein, was appropriate. In case this Court finds that there was no post, on which respondent No. 2 could be reinstated in the Bank, this Court may direct payment of compensation.

29. Having heard the rival submissions of the learned counsel for the parties and having perused the evidence viz., claim petition, written statements, rejoinder statement and oral statement of M.W.-1 and W.W.-1 and the Award impugned, this Court finds that in the impugned Award, the Presiding Officer has correctly appreciated all facts relevant for decision of the Reference made to him by the Central Government on 27.07.2007.

30. The Labour Court has correctly appreciated that the initial engagement of respondent No. 2 by the Local Implementation Committee was as Canteen Boy and Salary Cheques were issued to him by the Bank with the joint signatures of the Manager of the Bank and Secretary of the Local Implementation Committee. It has however given a finding that the claim of respondent No. 2 that the Bank had no canteen, has not been specifically controverted by the Bank or by M.W.-1.

31. It has been found by the Tribunal on the basis of documentary evidence produced viz., Local Dispatch Book, certain Vouchers and T.A. Bills and Ledger Sheets that at some of the pages in the column of messenger, the name of claimant was shown and this was admitted by M.W.-1 that the clerks used to right the name of the claimant in the Dispatch Book. The Tribunal found at pages, 20, 22, 31, 13, 34, 35, 37, 38, 43 and 60 that on various dates starting from 09.08.1996 onwards to 12.12.2003, the claimants had delivered local "Daak". Apart from serving local "Daak", the Tribunal had found from the T.A. Bills and expenses paid to him through Debit Slips, copies of which were filed as Paper Nos. 12/1 to 12/14 that the claimant used to serve outstation "Daak" also to the Zonal Office of the Bank at Gorakhpur.

32. It has also been found by the Tribunal that the claimant used to do other miscellaneous work at the Branch also. The entries made in the Ledger sheets and Dispatch Book, which was produced in original, were admitted by M.W.-1 to be written by the concerned clerks of the Bank and the Tribunal found that this admission fortified the claim of the workman. The Tribunal has observed that from the statements of W.W.-1 and M.W.-1 and from the documents, which were

filed, it could be easily inferred that the work of Messenger was being taken from the workman.

33. The argument of the Bank that the workman was engaged as Canteen Boy by the President of the Local Implementation Committee and filling of certain Ledger sheets, Papers from Exhibit Nos. 15/2 to 15/5 as well as filling of Cheques in original from Paper Nos. 15/6 to 15/14 by the Management was found by respondent No. 1 showed that the payment made to the workman was as Canteen Boy. But on the other documentary evidence as well as oral evidence, the Tribunal has come to the conclusion that the work of Messenger was also taken from the workman.

34. From the facts as are evident from a plain reading of various documentary evidence filed and oral statements, the Tribunal rightly inferred that the work of Canteen Boy-cum- Messenger was taken from the workman since the date of his engagement till the date of his termination. M.W.-1 had clearly admitted in his evidence that the respondent workman had worked continuously since the date of his initial engagement in 1993 upto the date of his termination, except for weekly offs and Gazetted holidays, the Tribunal found that the respondent workman was in continuous engagement.

35. The Tribunal has further found that whereas the pleadings had been made that workman had never been engaged by the Bank as Messenger because definite procedure was prescribed for engagement of Peon-cum- Messenger, the said argument of the Management was contradictory to its own pleadings and documentary evidence and statement of Management Witness. The Tribunal has therefore, observed that the version of the Bank, which is a model employer of the country and from whom it is expected that it will come with clean hands before the Forum of law, was not acceptable at all.

36. The Tribunal has further observed that W.W.-1 had been cross examined at length and there was nothing in his evidence which made his evidence unbelievable. The Bank had also not produced any evidence that Retrenchment Compensation/Notice Pay or even Retrenchment Notice was given to the workman, although if such was the fact, then the Bank could have produced the evidence. It has also been observed that the termination of the workman was therefore, illegal and he was entitled to be reinstated in service. However, the Tribunal considering the facts of the case has observed that the workman was entitled to only 30% of the back wages and was not entitled to regular salary of Peon-cum-Messenger w.e.f. 01.06.1993 or from the date of his termination as claimed by him.

37. Although, the learned counsel for the petitioners has argued that the finding of fact recorded by the Labour Court are perverse and liable to be set aside, this Court has itself perused the documentary evidence filed before the Tribunal and copies of oral statements of Bank's witness and oral statement of respondent No. 2, which has been filed through supplementary affidavit by the learned

counsel for the petitioners.

38. This Court does not find any perversity in the finding recorded by the Tribunal with regard to work of Messenger being taken from respondent No. 2 by the Bank. Respondent No. 2 was used to deliver not only local "Daak" very frequently, but also outstation "Daak" occasionally right from 1996 upto 2003. The Local Implementation Committee may have engaged respondent No. 2 as Canteen Boy, there was no canteen in the Bank Branch as it was operating with only 12-13 employees at the time of engagement of respondent No. 2. No Stock Register or evidence of vegetables or other buying provisions required by the canteen including Gas connection, etc. or engagement of a cook/helper was produced by the Bank to buttress its pleadings that the Local Implementation Committee had engaged respondent No. 2 as Canteen Boy and made payment to him of salary for services rendered as Canteen Boy.

39. I have also gone through the Scheme filed by the Bank regarding Staff Welfare Fund, which was established for carrying out welfare activities including promotion of canteen facilities and the establishment of Local Implementation Committee, which were Incharge of the Management of welfare activities. A detailed accounting procedure has been prescribed for the Staff Welfare Fund Account and maintenance of register is required at all offices for the fixed assets, non-recurring items in the Stock Register, viz., Crockery, Utensils, Heater, etc. to be used for canteen facilities and a record has to be maintained for details of all consumable stocks. The recurring expenses relating to subsidized tea/coffee and eatables, milk, sugar, kerosene, charcoal, electricity charges and non-recurring expenses like, electric or kerosene stoves, utensils, cutlery, crockery, etc. was to be maintained after properly classified entries were made in the Register maintained for the purpose. For the promotion of canteen facilities subsidy was to be provided on a uniform scale on a monthly basis to be paid out of Bank Charges Account on the basis of number of employees served at the canteen for which a specific format has been provided in the scheme as Annexure-4. Wherever canteen employees were engaged by Local Implementation Committee, their wages in excess of subsidy was to be borne by the Local Implementation Committee. Payment of wages to Canteen Boy has been specifically provided in paragraph 7 of Chapter 3 to be such as are equal to minimum wages payable to such employees as notified by the Government under the Minimum Wages Act and the Branch Manager has to ensure that no letter of appointment or service certificate is issued to the Canteen staff on the Bank's letter head under his signature even in his ex-officio capacity as Branch Manager.

40. It is quite clear from perusal of the scheme filed by the petitioners as Annexure to the writ petition that not only engagement of staff, but also buying of provisions and keeping stock of recurring expenses and non-recurring expenses has to be done through proper entries made in writing and documents kept are subject to accounting and audit. If the Bank had any canteen or maintained any kind of recurring and nonrecurring expenditure or number of

employees served by such canteen as required under the Scheme relied upon by the petitioners themselves, then the same could have been produced before the Tribunal, which was not done. If the Bank was running a full-fledged canteen where tea, snacks and eatables were prepared and served to the member of staff, a specific averment in that regard should have been made before the Tribunal. No such pleading was made despite clear allegation of the workman that there was no canteen in the Bank. There was no denial of such averment of the workman or even an attempt made to deny the allegation. There was no insistence by the Bank that Local Implementation Committee be unpleaded as respondent No. 2 in the Reference when the same was pending before the Central Government.

41. A perusal of the scheme filed along with writ petition shows that in Chapter 3 paragraph 8, sub paragraph (3) provides as under: (iii) It has been observed that at a number of branches, a sum of Rs. 500/- being the minimum amount of subsidy on account of wages of canteen boy, is being debited to Branch Charges Account even though no canteen boy has been engaged for the purpose and the amount is being utilised either fully or partly for supplying tea to members of staff or for other sources. This practice is highly irregular and is in contravention of the instructions. If the practice is in vogue at any branch, the same must be stopped forthwith. It will not be in order to utilise for the canteen any amount in excess of actual wage bill or the prescribed ceiling, whichever is less. Wherever canteen employees are engaged by the Local Implementation Committee, the wages in excess of the subsidy will have to be borne by the Committee."

42. From a perusal of the scheme and sub paragraph (3) of paragraph 8 thereof, it is evident that the Management of the Bank was aware that Local Implementation Committee was resorting to irregularities in not engaging canteen staff and utilizing the canteen subsidy for other purposes and hence, a specific prohibition has been made in the Scheme of such practice.

43. This Court has perused the judgment rendered in State Bank of India vs State Bank of India Canteen Employees' Union (Bengal Circle) reported in 2002 (2) UPLBEC 1703 in Civil Appeal Nos. 552-553 of 1994 decided on 17.04.2000. The Hon'ble Supreme Court has observed in paragraphs 33 and 34 as under: "33. In the present case, in our view, the canteens run by the LIC in a branch having strength of less than 100 employees are nonstatutory nonrecognized canteens because admittedly there is neither statutory provision nor any obligation arising out of award or contract between the employees of the Bank in running such canteens. As stated earlier, finally the 4th settlement was arrived at between All India SBI Staff Federation and the Bank which inter alia provides that Bank will take over canteens from Local Implementation Committees concerned at such offices/branches having a minimum staff strength of 100 where the canteens are still being run by the said Committees. Hence, contractual obligation is limited to that extent. For the canteens run by the Local Implementation Committees, there is no question of its recognition by the State

Bank as in the case of recognised canteens in the Railways where Railway Board granted recognition to the canteens as per prescribed detail in the Railway Establishment Manual. On the contrary, the status of canteens run by the Local Implementation Committees would be nonstatutory nonrecognised canteens. The employees of such canteens were not under the control of the Bank and their appointments are not governed by any rules framed by the SBI.

34. The learned counsel for the employees further relied upon the decision in *Parimal Chandra Raha and Others v. Life Insurance Corpn. of India and Others* [1995 Supp (2) SCC 611] and submitted that as held in para 25 of the said decision, it should impliedly be held that Bank was under an obligation to provide canteen facilities to the employees as part of the service conditions. Relevant para is as under:"

What emerges from the statute law and the judicial decisions is as follows:

(i) Whereas under the provisions of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management.

(ii) Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the canteen becomes a part of the establishment and the workers working in the canteen, the employees of the management. The obligation to provide a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation, does not become a part of the establishment.

(iii) The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer either by an agreement or an award, etc., it may be inferred from the circumstances, and the provisions of the canteen may be held to have become a part of the service conditions of the employees. Whether the provision for canteen service has become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case.

Where to provide canteen services has become a part of the service conditions of the employees, the canteen becomes a part of the establishment and the workers in such canteen become the employees of the management.

(iv) Whether a particular facility or service has become implicitly part of the service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees employed in the establishment and the number of employees who avail of the service, the length of time for which

the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the service available etc.

44. Even if there was no obligation to run a canteen in Kheshraha Branch, which had not a more than 12 to 15 employees at the time i.e. in the year, 1996, the Local Implementation Committee was constituted and had engaged respondent No. 2 as Canteen Boy and was holding out to the higher echelons of the Management of the Bank that it was running a canteen and paying wages of Rs. 500/- to the Canteen Boy. Such a practice should be treated as subterfuge or camouflage for the actual operation of the Bank Branch concerned, wherein the services of the Canteen Boy was being utilized as Messenger as has been rightly found by the learned Tribunal. It is true that in the judgment rendered by the Hon"ble Supreme Court in *State Bank of India vs State Bank of India Canteen Employees" Union (Bengal Circle) (Supra)*, the Hon"ble Supreme Court has observed in paragraph 41 thus: "We, therefore, hold that employees of the canteens which are run at various branches by the Local Implementation Committees as per the welfare scheme framed by the SBI would not become employees of the Bank as the Bank is not having any statutory or contractual obligation or obligation arising under the Award to run such canteens. Hence, it is not necessary to decide the second question that fresh petition for the same cause was not maintainable in view of the order dated 14.10.1985 passed by this Court in Civil Appeal No.840 of 1977."

45. However, the facts of the said case and law settled therein cannot be said to be applicable to the case of the petitioners in this writ petition.

46. This Court had also put a query to the learned counsel for the petitioners as to why the Local Implementation Committee was not made a party in the conclusion proceedings before the Central Government before the Reference was made on 27.07.2007 by it to the Central Government Industrial Tribunal. No satisfactory answer could be given by Mr Satish Chaturvedi, learned counsel for the petitioner. The Bank had admittedly participated in the conclusion proceedings before the Central Government made Reference to the Central Government Industrial Tribunal. In fact in the oral statement of respondent No. 2 before the Tribunal it has come on record that respondent No. 2 had moved two amendment applications before the Central Government for amendments of certain clerical errors in Reference initially framed, the Bank could have also moved an amendment application had it being convinced of the truth of its argument that respondent No. 2 was an employee of the Local Implementation Committee and it should have insisted upon the Local Implementation Committee being impleaded in the array of the opposite parties. No such attempt was made by the Bank which speaks volumes for the case set up by the petitioners before this Court.

47. With regard to arguments made by the learned counsel for the petitioners that reinstatement cannot be ordered without there being any post and judgments relied upon by him to buttress such arguments, this Court finds that it has been the consistent view of the Supreme Court that where there are no post and a person is engaged either as daily wager or a work charge employee or a contractual employee or where the employee concerned, even if he is engaged against the post, has worked for only a few days or a few months or a few years, and a long time has elapsed or long delay has occurred in the workman instituting his claim before the Labour Court, reinstatement should not be granted and lump sum compensation may be granted if the Labour Court comes to a conclusion that the termination is illegal and in violation of the provisions of section 6 N of U.P. Industrial Disputes Act or section 25 F of the Industrial Disputes Act, 1947.

48. However, this Court also finds from a perusal of the aforecited judgments that the Hon''ble Supreme Court in several cases where the workman has worked continuously for several years and termination has been found to be illegal, has ordered reinstatement of the employee concerned.

49. In this case, respondent No. 2 was working since June, 1993 upto March, 2004. Against his illegal termination, he approached this Court in writ petition in 2004 itself and after disposal of the Special Appeal in November, 2006, approached the Central Government, which ultimately made a Reference to the Central Government Industrial Tribunal in July, 2007. There was no delay on the part of the workman. Also, the workman had indeed been found by the Tribunal, on the basis of documentary evidence, and oral evidence to have been working for several years without any break except for weekly offs or the Gazetted holidays. He was engaged as Canteen Boy no doubt, but work of Messenger was being taken from him. Even if, he was engaged as Canteen Boy, there would have been the post of Canteen Boy for engagement of respondent No. 2, as such on the said post.

50. Therefore, the petitioners cannot place reliance upon judgments of Hon''ble Supreme Court in cases where facts were completely different and a workman was engaged without a post and plead that no reinstatement could have been ordered by the Tribunal. The Tribunal has found on facts that respondent No. 2 was working as Messenger as there was no canteen in the Bank. He may have done miscellaneous work, like purchasing tea, snacks etc. from the outside, but he was being used as Messenger also.

51. Learned counsel for the petitioners has argued that the Branch Manager had no authority to engage respondent No.2 as Messenger against the procedure prescribed in the Rules, and therefore, he has placed reliance upon a Constitution Bench decision in the case of Secretary, State of Karnataka and others vs Umadevi and others, 2006 (2) LLJ 722, to argue that if a person is engaged without a post or without following the procedure prescribed in law or by an incompetent authority, such a person cannot be directed to be reinstated in

service.

52. In the case of respondent No. 2 such is not the case. Local Implementation Committee had engaged respondent No. 2 as Canteen Boy purportedly under the Scheme framed for utilization of Staff Welfare Fund for canteen facilities. There was a provision for engagement of Canteen Boy in such scheme and respondent No. 2 was engaged under the said provision purportedly.

53. It has also been argued by the learned counsel for the petitioners that the work for which a person is initially appointed or engaged is relevant and not the ancillary work, which is taken from him and a disengaged person can be reinstated at best on the post, on which he was appointed and reliance has been placed upon the judgment in *Arkal Govind Raj Rao vs Ciba Geigy of India Ltd. Bombay*, reported in AIR 1985 SC 985 and several such other judgments, but on perusal of the said judgments, this Court finds that Hon''ble Supreme Court was considering the question as to who is a workman and test for determination was the primary and basic duties performed by a person, which would constitute the criteria not incidental duties. The Hon''ble Supreme Court had placed reliance upon earlier judgments rendered by it in *S.K. Verma vs Mahesh Chand*, 1983 (3) SCR 799 and *Ved Prakash Gupta vs Delton Cable India Private Limited*, 1984 (2) SCC 569 and rejected the contention of the employers therein that the claimant was not a workman and held him to be a workman despite managerial or supervisory duties being performed incidentally by him.

54. It has been repeatedly argued by the learned counsel for the petitioners and as is evident from the Award of the Labour Court that no specific post has been mentioned on which respondent No. 2 was to be reinstated, a finding has been given by the Labour Court however, that respondent No. 2 was engaged as Canteen Boy and the Bank was taking work of Canteen Boycum- Messenger from him and he was illegally terminated also from the said post. Therefore, respondent No. 1 has directed for reinstatement. However it has also observed that salary of Peoncum- Messenger cannot be given to respondent No. 2 in the facts and circumstances of the case. This observation has come because the Tribunal was aware that respondent No. 2 was never engaged as Peon-cum-Messenger and there were regular employees working as Messenger in the Bank at the time of engagement of respondent No. 2, although the work of Messenger was being taken by the Bank from respondent No. 2.

55. The relief ultimately given of reinstatement on the post of Canteen Boy-cum-Messenger has to be suitably modified by this Court and it has to be held on facts, as discussed in detail in the Award and by this Court, that the respondent No. 2 was actually working as Messenger and should be reinstated on the post of Messenger, but the direction of the Hon''ble Supreme Court is that reinstatement cannot be ordered where there is no post. Admittedly, there is no post of Canteen Boy-cum-Messenger, therefore, this Court finds that a more appropriate relief could have been given by the Labour Court by directing payment of lump sum compensation.

56. Learned counsel for respondent No. 2 has relied upon Bhuvnesh Kumar Dwivedi vs M/s Hindalco Industries Limited (supra) and observations made by the Hon''ble Supreme Court in Devinder Singh vs Municipal Council, Sanaur, 2011 (13) FLR 337 (SC) and Harjinder Singh vs. Punjab State Warehousing Corporation, 2010 (124) FLR 700. The said judgments were rendered in the facts of the particular cases, these cases have been distinguished by the Hon''ble Supreme Court itself in later line of cases and it has been held that a more appropriate remedy would be grant of lump sum compensation in cases of illegal termination of service.

57. Respondent No. 2 was engaged as Canteen Boy in 1996 at Rs. 350/-, which was later on increased to Rs. 500/- till his disengagement in 2004. At the time of his disengagement, the respondent No. 2 was working on less than Rs 20/- per day for eight or more hours in a day for six days in a week. Thirteen years have passed from the date of such termination and in between these thirteen years, the Consumer Price Index on a conservative estimate has gone up by almost 130%. The minimum wages prescribed by Labour Department have gone up almost four times their original these years. As such, it would be appropriate for the Bank to give a sum of Rs. 2,50,000/- (Rupees two lac fifty thousand only) to respondent No. 2 as lump sum compensation for his illegal termination.

58. This Court finds no merit in the arguments raised otherwise by the Bank against the award, and therefore, in view of the law settled by the Hon''ble Supreme Court in Syed Yaqub vs K.S. Radhakrishnan, AIR 1964 SC 477 and in Swaran Singh vs State of Punjab, 1976 (2) SCC 868 as reiterated in Bhuvnesh Kumar Dwivedi vs M/s Hindalco Industries Limited, 2014 (142) FLR 20, the writ petition is dismissed.

59. No order as to cost.