

(2001) 07 BOM CK 0042

In the Bombay High Court

Case No : L.P.A. No's. 19, 20, 118 and 119 of 2000 in Writ Petition No's. 5536 and 5550 of 1998

R.P. Sawant and Others

APPELLANT

Vs

Bajaj Auto Ltd. and Another

RESPONDENT

Date of Decision : 12-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 21(1), 25T, 25U, 26, 32

Citation : (2002) 4 BomCR 376 : (2001) 91 FLR 37 : (2001) 2 LLJ 1349 : (2002) 1 MhLj 626

Hon'ble Judges : Ranjana Desai, J; B.N. Srikrishna, J

Bench : Division Bench

Advocate : C.U. Singh, S.R. Nargolkar, S.B. Bombale Deshmukh, Seema Sarnaik and P.M.Gore, for the Appellant; J.P. Cama and K.P. Anilkumar, for the Respondent

Judgement

B.N. Srikrishna, J.—These four Letters Patent Appeals challenge the judgment and order dated 24th December, 1999 delivered by the learned Single Judge (R.J. Kochar, J.) in Writ Petition No. 5536 of 1998 and Writ Petition No. 5550 of 1998. The issues of fact are common and the questions of law arise from the same judgment. It would, hence, be convenient to decide all the four Letters Patent Appeals by a common judgment.

2. The appellant in Letters Patent Appeal No. 118 of 2000 and Letters Patent Appeal No. 119 of 2000 is a Public Limited Company which manufactures three wheelers and two wheelers (hereinafter referred to as "the Company"). The respondents in the aforesaid Letters Patent Appeals and the appellants in Letters Patent Appeal No. 19 of 2000 and Letters Patent Appeal No. 20 of 2000 are about 703 temporary workmen employed in the Company (hereinafter referred to as "the workmen"). The 2nd respondent in Letters Patent Appeal No. 19 of 2000 and Letters Patent Appeal No. 20 of 2000 and the 3rd respondent in Letters Patent Appeal No. 118 of 2000 is the Industrial Court, Pune, constituted under

the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

FACTS

3. The Company has a factory at Akurdi, Pune, where it manufactures three wheelers and two wheelers. Prior to or about August 1984, the Company did not have the practice of hiring temporary employees in its Akurdi Plant. Employees were hired as probationers, but were given breaks in service after successive periods of probation and after several such breaks they were ultimately confirmed as permanent employees. In or about the year 1981, there were about 8000 permanent workmen in the Akurdi Plant of the Company. From August 1984, the Company discontinued the system of appointing workmen on probation. All employment thereafter was done on temporary basis for fixed periods of seven months followed by a break of varying period in each case. As a result of these breaks, no temporary employee would complete 240 days' service in any period of twelve months.

4. As a result of the introduction of this new pattern of work, not a single workman was made permanent from and after August, 1984. The strength of permanent workmen which stood around 8000 in 1981, declined to about 6088 in 1990 as a result of natural separation caused by retirements, deaths, resignations and dismissals, but the ensuing permanent vacancies were not filled up, though the production continuously kept rising during the said period. More than about 700 temporary workmen were engaged on seven months contract at any given time of the year. The vacant permanent posts were neither abolished, nor were they filled up. It is the case of the workmen that the permanent and perennial work, which was formerly done by permanent workmen who had ceased to be in service, was got done by temporary workmen who were appointed on seven months contracts. These temporary workmen were hired by rotation as Assemblers, Machinists, Grinders, Press shop Operators, Welders and Carpenters. Though, according to the workmen initially, a handful of temporary workmen were engaged as Helpers, subsequently, by the mid and late 1990, all temporary workmen were employed only on permanent and perennial work of Metal Pressing, Assembly, Welding, Machining, Grinding and Carpentry and not a single temporary workman was hired as a Helper. It is the case of the workmen that inspection of the musters and records of the Company would reveal that while about 33 seven-month temporary workmen were employed on 1st January 1986, this number progressively increased to about 983 seven-month temporary workmen as on 15th August 1997. This system of appointment of temporary workmen for short spans of seven months and thereafter discontinuing their service led to disaffection and dissatisfaction amongst the workmen.

5. Sometime in May 1997, about 660 temporary workmen filed individual Complaints of unfair labour practice against the Company invoking Items 5, 6, 9, and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the

"1971 Act") read with Section 28 thereof. These complaints were contested by the Company. The workmen also moved for interim relief by filing applications for interim relief.

6. By a common order made on 26th August 1997, the Industrial Court at Pune rejected 125 such applications for interim relief which were taken up in the first batch since Written Statements had been filed therein. Though the Industrial Court rejected the applications for interim relief of continuation in service, it extended the ad-interim stay so as to enable the workmen to approach this Court.

7. On 4th September 1997, a learned Single Judge of this Court (P.S. Patankar, J.) summarily rejected Writ Petition No. 4066 of 1997 filed by the said 125 temporary workmen challenging the common order of the Industrial Court refusing to grant them interim relief of continuation in service pending hearing and disposal of their Complaints.

8. The temporary workmen, being aggrieved by the order of the learned Single Judge, appealed to the Division Bench by Letters Patent Appeal No. 157 of 1997. On 17th September, 1997, a Division Bench of this Court (M.B. Shah, C.J. and S.D. Gundewar, J.) admitted Letters Patent Appeal No. 157 of 1997 and granted interim relief restraining the Company from terminating the services of the said 125 workmen pending disposal of their Complaints. The Division Bench (vide paragraph 5 of the order) observed : "In our view, by such device or scheme, the Company has avoided granting permanency to at least 500 to 8000 employees, who are required by the Company permanently in its establishment. Admittedly, number of workers are working as daily rated employees since year 1981. They do not get benefits which permanent employees are entitled to have." Further (vide paragraph 8) the Division Bench observed, ".....The object appears to be that they do not get the benefit of permanency or at least employees required by respondent No. 1, permanently are not absorbed in the service. In our view, whether respondent No. 1 is paying more than minimum wages is totally irrelevant. Granting of permanency has its own effect and benefits. Employees get security of their jobs and they get salary with all pre-requisites throughout the year. As against this, minimum wages or daily wages equivalent to the wages payable to a permanent employee would not make any difference." Though the Division Bench granted interim relief in the complaints, it observed (vide paragraph 10). "This should not be treated as a precedent for granting interim relief to other employees,"

9. On 22nd October, 1997, 3rd November, 1997 and 4th November, 1997, the Industrial Court heard interim relief applications in 301 complaints filed by other temporary workmen and rejected them by three separate orders. The interim relief sought therein was continuation in service pending disposal of the main complaints. Despite rejecting the prayers for interim relief, the Industrial Court continued the ad interim orders of continuing the temporary workmen in service to enable them to approach this Court. The concerned 301 temporary workmen

filed Writ Petition No. 5257 of 1997, Writ Petition No. 5491 of 1997 and writ petition No. 5834 of 1997 challenging the three orders of the Industrial Court, Pune.

10. The Company moved SLP (Civil) No. 29685 of 1997 against the order of the Division Bench of this court dated 17th September, 1997. The Supreme Court by an order made on 1st December 1997, summarily dismissed the said SLP on the ground that the company had been sufficiently protected by the order of the High Court which had granted limited interim stay as regards the number of workmen and directed the Industrial Court to dispose of the matter before 31st December 1997. The Supreme Court, however, directed that, in case the matter was not disposed of by the Industrial Court by 31st December, 1997, it would be open to the Company to move this Court for vacating the stay order.

11. On 1st December 1997, a learned Single Judge of this court (D.K. Deshmukh, J.) admitted writ petitions Nos. 5257 of 1997, 5491 of 1997 and 5834 of 1997 and granted interim relief to the concerned 301 temporary workmen on the same lines as granted by the Division Bench on 17th September 1997 on the ground that it was being granted not by following a precedent but because the learned Single judge had independently come to the same conclusion.

12. The Company challenged the order of the learned Single Judge (D.K. Deshmukh, J.) made in the three writ petitions on 1st December 1997 by their Letters Patent Appeals Nos. 210 of 1997, 211 of 1997 and 212 of 1997. On 18th December 1997 when these Letters Patent Appeals No. 210 of 1997, 211 of 1997 and 212 of 1997 came up before the Division Bench (M.B. Shah, C.J. and R.J. Kochar, J.), a seniority list maintained by the Company for giving employment by rotation was filed and taken on record. After hearing Counsel on both sides, the Division Bench observed, ".....It is true prima facie under the Scheme framed by the appellants employees do not get benefits of permanent employees, but, at this stage it would create more problems by granting interim relief as prayed for by the respondents. For finding out a solution to this vicious scheme prepared by the appellants, the matters are adjourned to 16th January, 1998". (emphasis ours). The orders of the learned Single Judge were stayed until further orders, but it was clarified that the order would not affect the right of the employees to continue with their complaints before the Industrial Court which was directed to expedite hearing.

13. Taking advantage of the stay granted by the Division Bench of the order of the learned Single Judge dated 1st December, 1997 granting interim relief, during the period 20th December, 1997 to 27th February, 1998, the Company terminated the services of all 301 complainants who were concerned in letters Patent Appeals Nos. 210 of 1997, 211 of 1997 and 212 of 1997. Strangely, during the period January and February 1998, the Company went ahead and appointed 65 new temporary workmen despite removing the aforesaid 301 temporary workmen.

14. On 21st January, 1998, a registered Trade Union known as Bhartiya Kamgar Sena was declared to be the recognized Union under Chapter III of the 1971 Act in respect of the Akurdi Plant of the Company.

15. Sometime between January and February 1998, 42 temporary workmen filed complaints of unfair labour practice under Items 5, 9 and 10 of Schedule IV read with Section 28 of the 1971 Act.

16. On 25th March 1998, the Industrial Court at Pune granted interim relief to the remaining 224 complainant workmen and the 42 new complainant workmen, inter alia, on the ground that the Company had continued to recruit seven months temporary workmen by taking advantage of the order of the Division Bench in Letters Patent Appeals Nos. 210 of 1997, 211 of 1997 and 212 of 1997 made on 18th December, 1997.

17. The Company challenged the order of the Industrial Court granting interim relief by its Writ Petition No. 3048 of 1998. This Writ Petition came up for admission before the learned Single Judge (P.S. Patankar, J.) on 22nd July, 1998. The learned Single Judge summarily rejected it but directed that if the complaints are not finally heard and disposed of by 31st December, 1998, the interim stay granted by the Industrial Court would come to an end. Writ Petition No. 3048 of 1998 was directed against the order made in only one individual workman's complaint, but the interim orders in respect of remaining 223 complainant workmen were not challenged.

18. The Industrial Court, Pune, thereafter recorded evidence in the main complaints pending before it. The workmen examined three workmen Gajanan A. Khopade, Rajendra K. Magare and Tukaram D. Nikam in support of their case. The said Tukaram D. Nikam was one of the 301 seven months temporary workmen who had been removed after the order of the Division Bench made on 18th December, 1997. The workmen also led the evidence of one Dnyaneshwar B. More. By consent, the evidence of these four witnesses was treated as common evidence in the 700 and odd complaints which were pending before the Industrial Court.

19. On its part, the Company led the evidence of one Suresh P. Dani, Senior Manager (Personnel). On 13th August 1998, the 301 complainant workmen whose services had been terminated after the order dated 18th December, 1997 made in Letters Patent Appeal Nos. 210 of 1997, 211 of 1997 and 212 of 1997, sought formal amendments of prayer clauses. These amendment applications were rejected by the Industrial Court by the order made on the same day. Thereafter the Industrial Court recorded the evidence of Dhirendra K. Sharma, Deputy General Manager (Works), S. Ravi Kumar, Senior Manager (Research and Development), in support of the case of the Company.

20. On 17th August 1998, the temporary workmen aggrieved by the common order dated 13th August 1998 rejecting prayer for amendment of their complaints, moved Writ Petition No. 4404 of 1998 before this Court. A learned

Single Judge of this Court (A.V. Savant, J.) made an order on 24th August, 1998 directing the Industrial Court to keep final orders in the case of the concerned 301 complainants in abeyance.

21. On 29th August, 1998, the Industrial Court delivered a common judgment in all 703 complaints, but reserved final orders in 301 complaints in view of the order of this Court (A.V. Savant, J.) dated 24th August, 1998.

22. The Division Bench of this Court (B.N. Srikrishna and Dr. P.D. Upasani, JJ.) allowed Writ Petition No. 4404 of 1998 and the Rule granted therein was made absolute by consent of both sides reserving liberty to the Company to raise objections regarding jurisdiction to grant reliefs before the Industrial Court in the case of temporary workmen who had been removed from service during the pendency of their complaints.

23. On 3rd September 1998, the Division Bench of this Court (B.N. Srikrishna and Dr. P.D. Upasani, JJ.) disposed of Civil Application No. 8482 of 1997 filed in Letters Patent Appeal No. 212 of 1997 with liberty reserved to the petitioners/Applicants therein to seek interim reliefs afresh if the Industrial Court ultimately declines relief to the 301 terminated temporary workmen on the ground of jurisdiction. On 11th September, 1998, the said Division Bench clarified its order and directed that the Industrial Court should allow the amendment applications made by the temporary workmen and dispose of the complaints finally within a period of three weeks.

24. On 25th September, 1998, the Industrial Court dismissed the complaints of 301 complainants filed by the temporary workmen whose services had been terminated during the pendency of the complaints on the ground that, once their services were terminated, the Industrial Court had no jurisdiction to entertain the complaints. The aggrieved 301 temporary workmen challenged the judgment of the Industrial Court by their Writ Petition No. 5536 of 1998. The Company challenged the judgment of the Industrial Court in the 402 complaints in which the temporaries were continued in service, by its Writ Petition No. 5550 of 1998.

25. Writ Petition No. 5536 of 1998 and Writ Petition No. 5550 of 1998 were admitted by the learned Single Judge of this Court, but interim stay of the operation of the Industrial Court's order was refused to the Company and similarly no interim relief was granted to the 301 temporary workmen who were out of service. The result was that the status quo continued with 401 temporary workmen continuing in service, while 301 temporary workmen were out of service.

26. On 24th December, 1999, the learned Single Judge (R.J. Kochar, J.) delivered judgment allowing the Company's Writ Petition No. 5550 of 1998, and dismissing the workmen's Writ Petition No. 5536 of 1998. The workmen have challenged the order of the learned Single Judge by the present Letters Patent Appeal No. 19 of 2000 and Letters Patent Appeal No. 20 of 2000. The Company has also filed Letters Patent Appeal No. 118 of 2000 and Letters Patent Appeal No. 119 of

2000 challenging the directions contained in paragraph 19(i) to (iii) as under :--

"19. I, therefore, hold and declare that there is no unfair Labour Practice engaged by the Petitioner Company as alleged by the complainants employees. The petition, therefore, succeeds. The Rule is made absolute in terms of prayers 21 (a) on the following conditions:--

(i) The Petitioner Company shall strictly follow the list of the complainants temporary employees under the model standing orders while absorbing them as its permanent employees in any of its undertakings,

(ii) The Petitioner Company shall give priority to the complainants temporary employees according to their seniority in the category and service while employing for the newly proposed factory at Chakan on permanent basis.

(iii) The Petitioner Company shall make its best efforts to remove even the marginal disparity between the benefits of the permanent and the temporary employees."

CONTENTIONS

27. Mr. C.U. Singh, learned Counsel for the workmen, urged that the learned Single Judge, while exercising jurisdiction under Article 226 of the Constitution of India, erred in interfering with factual findings recorded by the Industrial Court. He contended that the requisites for issuance of writ of certiorari were totally absent and that the learned Single Judge ought not to have interfered with the order of the Industrial Court which is the subject matter of Letters Patent Appeal No. 19 of 2001. He also relied on a number of authorities to carry forth his argument. We shall shortly notice those authorities.

28. We notice from paragraph 1 of the order of the Industrial Court that it had clubbed together all 702 complaints on the ground that they were complaints of a similar nature filed under Items, 5, 6, 9, and 10 of Schedule IV of the 1971 Act. The Industrial Court was of the view that the issues involved in all the complaints were of identical and similar nature. The Industrial Court recites in its order that the parties had filed a purshis on record that all the complaints be further that the Company had also filed a purshis that the evidence adduced in Complaint (ULP) No. 169 of 1997 be treated as evidence of the Company in all the complaints. The Industrial Court, therefore, states that, on the basis of the purshis filed by the parties, all the complaints were being decided by a common order, The Industrial Court raised the following issues and recorded the following findings thereupon ;--

"Issues

1. Whether the Complainants prove that the respondent-Company has committed any of the unfair labour practice under Items 5, 6, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971? If yes, under which items?

2. Whether the respondent-Company proves that the Complaints are not

maintainable?

3. Whether the Complainants are entitled to get the relief as prayed for?

4. What relief and order?

Findings

1. Yes under Items 5, 6 and 9 of Schedule IV of the Act?

2. No.

3. Yes.

4. As per final order."

29. In paragraph 15 of the order, the Industrial Court has placed on record the admitted facts in all the Complaints and observed, "..... From the pleadings of the parties, it is an admitted fact that all the Complainants were engaged for a specific period and none of them has completed 240 days continuous service during the tenure of their service mentioned in the appointment order. All the Complainants are paid the wages equivalent to the permanent workers, but certain benefits which are given to the permanent employees are admittedly not given to these Complainants. The main issue is regarding the security of the services which is given to the permanent employees, is not given to the Complainants.... it is also an admitted position on record that the respondent-Company has engaged more than 7000 permanent employees and since from 1981 more than 4000 temporary employees were engaged by the Company which number was brought down from time to time and at present there are near about 1000 temporary employees working with the Company."

30. In paragraph 16, the Industrial Court noticed certain documents which were filed by the Company before the Court pursuant to a direction given by it and the inspection report filed by the Union of employees after taking inspection. The Industrial Court took the view that as long as the said inspection report was not contradicted by the evidence adduced by the parties, it had to be considered as a piece of evidence. The Industrial Court noticed that the witnesses examined on behalf of the Complainants had deposed for themselves as well as for remaining Complainants. Interestingly, when the witness of the workmen, G.K. Khopade, was cross-examined, it was suggested to him that whenever work was available, in view of the exigency of work, he was given appointment by the Company temporarily. This suggestion was denied by him. A further suggestion was also put to him in cross-examination that the services of the temporary employees were terminated when the work was not available, but the witness denied the said suggestion. A further suggestion that the employees were engaged as per seniority was also denied by him. The witness for the Company Suresh Purshuottam Dani, Senior Manager (Personnel), admitted that the Model Standing Orders were applicable to the workmen employed in the Akurdi Plant of the Company. He also tried to make out a case that all the Complainant workmen

were temporarily appointed by the Company whenever there was temporary increase in the work and on completion of the period of employment, their services were being terminated. The Industrial Court, after appraising the evidence led on behalf of the Company, rejected the said evidence of the Company on the footing that the witness knew nothing about the production or that he did not want to tell the truth. It recorded a finding that the story of the Company, that due to modernisation there was vast reduction in the manpower, could not be accepted. It also recorded the finding that there was no reason for the Company to give overtime to the employees, if there was reduction of manpower and production was increased. It also rejected the evidence of one Dharendra Kumar Sharma, Deputy General Manager (Works), on the ground that he was not conversant with the figures shown in the statement filed by the Company as the witness admitted that he had seen the said document for the first time in the Court.

31. Thus, after discussing the evidence led by the parties, the Industrial Court recorded the following clear factual findings ;--

(a) The concerned temporary workmen were engaged by the Company as Assembler, Painter, Welder, Machinists, etc. for a specific periods mentioned in the appointment orders, but the appointment orders did not specify the job for which the employees were engaged.

(b) That the Company has failed to prove by cogent evidence that the services of the Complainants were terminated only because the work on which they were engaged was over.

(c) A careful perusal of the seniority list filed showed that the Complainants were engaged by rotation which fact was admitted by the witnesses examined by the Company.

(d) In all the months of a year, there was attendance of every Assembler in the Assembly Shop; same was the position regarding Paint Shop, Grinding and Machine Shop, the Company had taken care of manpower by appointing temporary employees for a specific period of seven months; after the service of one group was terminated, the next group, remained on duty; after the completion of period of seven months of the next group, third group remained on duty. Therefore, during all the twelve months, the cycle continued and there was not a single day on which there was no single temporary employee engaged by the Company.

Therefore, on the basis of the evidence, the contention of the Company that the Complainants were engaged as temporaries so as to take care of work arising due to exigency of work, shortfall of permanent employees and additional work, etc., fell to the ground.

(e) That the Company had failed to follow the Model Standing Orders by strictly not following the seniority list.

(f) The explanation given by the Company for re-engaging junior persons, as compared to senior temporary employees, was not acceptable.

(g) There was no proof placed on record by the Company to show that the employees were surplus.

(h) Even if it was presumed for the sake of argument that there was surplus manpower, it could not be surplus within a span of six months only.

(i) The Company had engaged temporary employees from the year 1984 to 1988 during which time the number of temporary employees kept on increasing year after year. If there was any surplus, there was no reason to further engagement of temporary employees.

(j) Even after the Complaints were filed in the Court, services of certain employees were terminated by the Company and thereafter also in January 1998 i.e. during the period of pendency of other Complaints, about 65 temporary employees were engaged by the Company.

(k) The Company had tried to make out a case that there was surplus manpower in the Company and, therefore, the Complainants could not be absorbed as temporary employees, but the Court was unable to accept the said contention as the Company had failed to prove on record that there was surplus manpower.

(l) The contention of the Company that temporary employees were surplus was unacceptable as the Company had failed to show on record how the manpower had become surplus during the period of six months after the Complaints were filed. It was, therefore, clear that with an intention to give a go-bye to the prayers of the Complainants, the Company had deliberately and falsely attempted to place on record that there was surplus manpower.

(m) Though the recognized Union was having the knowledge that a number of Complaints were pending before the Industrial Court for permanency, yet the said Union had failed to take care of the interests of the said temporary employees in the Agreement dated 21st June, 1998.

(n) That the Complainants were successful in proving that they were engaged by the Company for years together for short periods with an intention that they do not complete 240 days of work, though work was available with the Company. Consequently, there was contravention of Clause 4-C of the Model Standing Orders.

(o) The work performed by the Complainant workmen could not be described as work of seasonal and temporary nature which had arisen due to exigencies.

(p) That the workmen had not challenged their repeated termination of their services for fear that, if they did so the Company may not re-engage them on the next occasion.

(q) The Complaints invoking Item 6 of Schedule IV of the 1971 Act having been

filed before the Bhartiya Kamgar Sena was recognized as a recognized Union under Chapter III of the 1971 Act, the Complaints were maintainable.

(r) There was not an iota of material placed on record by the Company to show that there was reduction in the sales as a result of which stocks had accumulated.

(s) The contention of the Company that there was fluctuation in the market for their vehicles and that there was recession in the sales could not be accepted by any stretch of imagination. This was a false defence taken to defeat the demands of the Complainant workmen.

(t) On the basis of the evidence, the contention of the Company that Assemblers could not be adjusted in the place of Painters and so on had no substance.

(u) The company had not followed the provisions of Clauses 4-C and 4-D of the Model Standing Orders and sections 25H and 25G of the Industrial Disputes Act, 1947 while engaging the employees as temporary workmen.

(v) The Company had failed to file production records to establish that the services of the employees concerned were terminated when the work was completed and there was no work in existence. Despite notice for production of documents, the Company having failed to produce the documents which were in the custody of the Company, adverse inference ought to be drawn against the Company and the contention of the Company, that the services of the workmen were terminated only upon the work being completed, could not be accepted.

(w) The workmen had clearly established on record that they were engaged by the Company for short specific periods by misusing its power and in colourable exercise of the employer's right.

(x) The record showed that the number of permanent employees which was about 8000 in 1981, had come down to 6088 in 1998, which means that nearly 2000 vacancies of permanent posts existed in the Company and it was an admitted fact that, during the period 1984 to 1998, the Company had not appointed any employee on permanent basis which had become vacant due to retirement, resignation, dismissal, termination or death of the concerned employees. Nor were the permanent vacant posts abolished by following the provisions of the Industrial Disputes Act, 1947.

(y) That there was an act of favouritism on the part of the Company vis-a-vis a section of employees is sufficient to attract Item 5 of Schedule IV of the 1971 Act.

(z) That there was work available for the employees whose services were terminated in the month of December, 1997.

(aa) Though the work was available, the services of the Complainants were terminated by the Company in colourable exercise of the employer's right.

(bb) By adopting a device or scheme, the Company had avoided granting permanency to the Complainants who were required by the Company

permanently in its jobs. Admittedly, all the workmen were working as daily rated employees since 1984 and did not get all the benefits which the permanent employees were entitled to.

(cc) Only some of the benefits given to the permanent employees were given to the temporary employees and the evidence showed that there was difference in the benefits given to the Complainant workmen and the permanent employees of the Company.

(dd) The Complainants were engaged by the Company as temporaries with the intention to deprive them of the benefits of permanency. The Company had failed to comply with the provisions of Clauses 4-C and 4-D of the Model Standing Orders.

(ee) The procedure and device adopted by the Company of engaging the Complainants for specific periods of seven months and not allowing them to complete 240 days of working, though work was available, showed clear cut mala fide intention of the Company.

(ff) The evidence adduced by the parties and the documents placed on record showed clearly that the services of the complainant workmen were required by the company. No one can believe that not a single temporary employee was required as suggested by the company. The services of the complainants being absolutely necessary for the Company, the complainants are necessary to be retained in the service of the company and be made permanent.

32. These are the material findings recorded by the Industrial Court in its order after exhaustively analyzing the evidence recorded by it. It appears to us that there is justification in the criticism of Mr. Singh, learned counsel for the workmen, that learned Single Judge has very much exceeded his jurisdiction under Article 226 of the Constitution of India by reappreciating the evidence on record and interfering with findings of fact recorded by the Industrial Court. There is also merit in the grievance of Mr. Singh that the learned Single Judge has dealt with the matter as if it was an appeal over the judgment of the Industrial Court.

33. Mr. Singh criticized the judgment of the learned Single Judge for having readily accepted the story of a benevolent scheme for rotating the temporary employees (which the learned Single Judge was pleased to christen as "Bajaj Rozgar Yojana" like "Jawahar Rozgar Yojana"). Mr. Singh urged that despite several detailed findings recorded by the Industrial Court as the purpose of implementing the rotational scheme and the deleterious effect it had on the rights of permanency of the temporary workers, the learned Single Judge brushed off the whole thing by his observation,"From the whole evidence and material on record, I do not see in any manner the industrial activity of the petitioner company had any element of unfair labour practice when it increased and reduced the temporary labour force on the basis of the fluctuation in the market". Mr. Singh, in our view is right in criticizing this finding of the learned

Single judge as not only without jurisdiction but also as flying in the face of the record. Mr. Singh also urged that the learned Single Judge was more concerned with his philosophy of what should be the manner in which the industry should be run, than dealing with the challenge to the order of the Industrial Court in writ jurisdiction. Mr. Singh pointed out that at several places the learned Single Judge has unjustifiably criticized the Industrial Court for not believing the evidence of the company, though it was the prerogative of the Industrial Court as the trial court to believe or disbelieve the witnesses.

34. In order to drive home his contention, Mr. Singh took us through the evidence on record as well as the detailed findings of the Industrial Court made on several of the issues some of which we have highlighted and the casual manner in which those findings have either been dismissed or interfered with on the ground that the Industrial Court ought not to have believed some witness as against some other witness. We broadly agree with the contention of Mr. Singh that this is not a permissible exercise in writ jurisdiction and that the learned Single Judge sat in appeal over the several factual findings recorded by the Industrial Court after careful appreciation of evidence on record.

35. In *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, , the Supreme Court pointed out that a writ of certiorari can be issued by the High Court under Article 226 for correcting errors of jurisdiction committed by inferior Courts or Tribunals. Similarly, a writ can be issued for breach of natural justice, and where the findings are ultimately perverse. Conversely, the Supreme Court says, ".....This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be....." Even though the Supreme Court points out that a finding on fact could be interfered with in writ jurisdiction on occasions where a finding is perverse, the Supreme Court was quick to point out, "..... In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a Writ Court. It is within these limits that the jurisdiction-conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."

36. In *Union of India and Another Vs. M/s. Mustafa and Najibai Trading Co. and Others*, it was pointed out by the Supreme Court that while exercising jurisdiction under Articles 226 and 227 of the Constitution of India, it is not open to the High Court to reappreciate the evidence produced before the subordinate Tribunal and on the, basis of such reappreciation of the evidence, to arrive at a

finding different from that recorded by such Tribunal. The Supreme Court emphasised that findings of fact recorded by a subordinate Tribunal can be interfered with by the High Court only if they are found to be based on no evidence or if such findings can be regarded as perverse, as the High Court cannot convert itself into a Court of Appeal.

37. In *Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another*, the Supreme Court emphasised that the finding of fact recorded by a fact-finding authority duly constituted for that purpose should ordinarily be considered to have become final and could not be disturbed for the mere reason of having been based on material or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings, at any rate, as long as they are based on some material which is relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken.

38. In *H.D. Singh v. Reserve Bank of India* 1985 L.I.C. 1733, the Supreme Court was concerned with a similar situation of temporary appointments of Tikka Mazdoors in the Reserve Bank of India. A confidential Circular issued by the Central Office of Reserve Bank of India directed the Managers that in order to keep the candidates wait listed outside the scope of the Industrial Disputes Act, they should not be engaged continuously and should, as far as possible, be offered work on a rotation basis. The Supreme Court criticized and characterized the confidential Circular as an unfair labour practice falling within Item 10 of Fifth Schedule of the Industrial Disputes Act, 1947, which is identical with Item 6 of Schedule IV of the 1971 Act. The Supreme Court was of the view that the Bank had indulged in methods amounting to unfair labour practice and that it would not be far from truth to say that the Bank had deliberately indulged in unworthy practice by rotating the employees to deny them the benefits under the Industrial law. In our judgment, this decision of the Supreme Court is on par with the case which was before the learned Single Judge.

39. In *K.C. Co-operative Bank Ltd. v. Presiding Officer, Labour Court* 1984 L.I.C. 974 (vide paragraph 9), the Supreme Court pointed that terminating the services of innocent workmen on the verge of completing 240 days of service, would create ill-will, frustration and utter disgust especially when the employer had nothing against the workmen with regard to his conduct. Says the Supreme Court, "..... Human material is not cheap and easy to be forsaken or abandoned. Every life has dignity, value. So, for preservation and promotion of industrial peace, acts which cause or tend to cause disturbance, even if not prohibited under the law, can still come under the purview of unfair labour practices." We are afraid that the situation before us is something much beyond what the Supreme Court contemplated. For, as the Industrial Court clearly held, it amounted to an unfair labour practice within the meaning of Item 6 of Schedule IV of the 1971 Act.

40. With regard to the Complaint of unfair labour practice under Item 9 of

Schedule IV of the 1971 Act by contravention of Model Standing Orders, Mr. Singh rightly urges that the learned Single Judge has dismissed it without any reason. Mr. Singh rightly relied on the judgment of the Division Bench of this Court in *Borosil Glass Works Ltd. v. M.G. Chitale* 1974 LLJ184, and the judgment of the Division Bench of this Court in *The Premier Automobiles Ltd. v. The Engineering Mazdoor Sabha and Ors.* 1976 ICR 206 as also the judgment of the Single Judge of this Court (Nagpur Bench) in *Mill Manager, Savatram Ramprasad Mills Vs. Industrial Court and Another*, , to urge that the provisions of Standing Orders -whether Model or Service are mandatory and contravention thereof will be an unfair labour practice within the meaning of Item 9 of Schedule IV of the 1971 Act.

41. Mr. Singh also relied on the judgment of the Supreme Court in *Chief Conservator of Forests and Anr. v. J.M. Kondhare* 1996 1 CLR 680, in which the Supreme Court severely criticized the Forest Department of the Government of Maharashtra for indulging in similar tactics of repeatedly terminating the services of employees to prevent them from becoming permanent. The Supreme Court was considering the very same Item 6 of Schedule IV of the 1971 Act and observed (vide paragraph 22) as under :--

"..... In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years....."

Considering the type of work before them, the Supreme Court observed as under:--

"Permanency is thus writ large on the face of both the types of work. If, even in such projects, persons are kept in jobs on casual basis for years the object manifests itself; no scrutiny is required."

We are of the view that these observations of the Supreme Court clearly apply to the case before us. The evidence on record fully justified drawing the inference that the object of the Company in keeping the employees temporary for repeated periods of seven months was to deprive them of the benefits of permanency so as to amount to an unfair labour practice within the meaning of Item 6 of Schedule IV of the 1971 Act.

42. To similar effect are the observations of the Supreme Court in *Ratnagiri Municipal Council v. Harishchandra Shankar Pawar and Ors.* (1995) 1 CLR 1058.

43. Mr. Singh, therefore, urged that the order of the learned Single Judge in interfering with the order of the Industrial Court was wholly unjustified.

44. Turning to Letters Patent Appeal No. 20 of 2000, Mr. Singh, who appeared for the appellant workmen contended that the view taken by the Industrial Court that it had no jurisdiction to entertain the Complaints under Items 5, 6, 9 and 10 of Schedule IV of the 1971 Act because the Complainant workmen had been removed during the pendency of the Complaints is erroneous and needs

interference. He, therefore, urged that the learned Single Judge erred in dismissing the Writ Petition and not interfering with the order of the Industrial Court dated 25th September 1998 dismissing the 301 Complaints. He drew our attention to the order of the Appeal Court dated 18th December, 1997 in which the Appeal Court was persuaded to grant interim relief to me workmen for finding out a solution to the "vicious scheme" prepared by the appellant Company. It was for this reason that the Appeal Court stayed the order passed by the learned Single Judge, the result of which was that the order of the Industrial Court that the workmen shall not be removed from service pending hearing and disposal of their Complaints continued. It is urged by the learned counsel for the appellant Workmen that accepting the view of the Industrial Court would mean that the Complaints of such nature could be rendered infructuous by merely dismissing them during the pendency of such complaints. The Industrial Court in coming to its conclusion that the Complaints ought to be dismissed for want of jurisdiction relied on the two judgments of this Court. One in *National General Mazdoor Union v. Nitin Casting Ltd.* 1990 2 CLR 641 and *A-Z (Industrial) Premises Co-op. Society Ltd. v. A.T. Utekar, and Ors.* 1997 2 CLR 1033. Mr. Singh urged that the Industrial Court has completely misunderstood the scheme of the 1971 Act and the learned Single Judge has paid no attention whatsoever to this aspect of the matter. The contention appears to us to have merit.

45. In *National General Mazdoor Union v. Mis. Nitin Casting Ltd.* 1990 2 CLR 641, the Union had alleged unfair labour practices under Items 3 and 4(a) of Schedule II and Items 1 (a), (b) and (f) and 2 and 5 of Schedule IV of the 1971 Act before the Industrial Court. The Industrial Court rejected the Complaint, inter alia, on the ground that the Complaint pertained to Item 10 of Schedule IV of the 1971 Act and it was within the exclusive jurisdiction of the Labour Court alone. A learned Single Judge of this Court was persuaded to hold that the Scheme of the unfair labour practices under the 1971 Act was rigidly compartmentalized and that the Industrial Court did not have jurisdiction to deal with the unfair labour practices under Items 1(a), (b) and (f) of Schedule IV of the 1971 Act. Nonetheless, the learned Single Judge did hold that, if under the provisions of the 1971 Act the Industrial Court had no jurisdiction to deal with the unfair labour practices mentioned in Item 1 of Schedule IV, Section 32 of the 1971 Act which deals with "Powers of Courts" did not enlarge its jurisdiction and did not empower the Industrial Court to entertain the Complaint. After quoting Section 32 of the 1971 Act, the learned Single Judge observed, "..... While deciding such a Complaint or an Application, if certain matters or issues or questions arise, the concerned Court has been invested with the power to decide all those matters, issues or questions so arising. The Court is not debarred from dealing with such matters, issues or questions arising merely on the ground that no specific provision has been made elsewhere conferring power upon the concerned Court to deal with such incidental questions. This is the meaning of Section 32 of the 1971 Act. It does not enlarge the jurisdiction of either the Industrial Court or of

the Labour Court which is otherwise not being conferred upon it by the other provisions of the PULP Act."

46. In *A-Z (Industrial) Premises Co-op, Society Ltd. v. A.T. Utekar and Ors.* 1997 2 CLR 1033, a complaint had been filed alleging unfair labour practice both under Item 1 as also under Item 9 of Schedule IV of the 1971 Act before the Industrial Court. The learned Single Judge of this Court held that the Industrial Court had jurisdiction to try the Complaint under Item 9 of Schedule IV of the 1971 Act but lacked jurisdiction to try the Complaint under Item 1 of Schedule IV.

47. We are unable to read these two judgments in the manner in which the Industrial Court has read it for more than one reasons. Section 7 of the 1971 Act provides that it shall be the duty of the Labour Court established under the Act to decide Complaints relating to unfair labour practices prescribed in Item 1 of Schedule IV and to try offences punishable under the Act. The duties of Industrial Court enumerated in Section 5 of the 1971 Act do not include the duty to decide the Complaint relating to unfair labour practices under Item 1 of Schedule IV. Section 32 of the 1971 Act entitled "Power of Court to decide all connected matters" reads as under :--

"Notwithstanding anything contained in this Act, the Court shall have the power to decide all matters arising out of any application or complaint referred to it for the decision under any of the provisions of this Act."

48. A conjoint reading of sections 5, 7 and 32 of the 1971 Act would make it clear that, though, for the purpose of exercising initial jurisdiction into a substantive Complaint, the jurisdictions have been compartmentalized inasmuch as the Labour Court has no jurisdiction to entertain Complaints other than Complaints falling under Item 1 of Schedule IV of the 1971 Act and, conversely, the Industrial Court has been given powers to entertain Complaints in all other matters, it does not mean that the Industrial Court, while exercising jurisdiction within the sphere legitimately assigned to it, cannot pass an order which is required to be done in the interest of justice. It cannot be forgotten that Section 32 starts with a non-obstante clause "Notwithstanding anything contained in this Act" and provides that the Court trying the matter shall have the power to decide "all matters arising out of any Application or Complaint referred to it for the decision under any of the provisions of this Act." In our judgment, the decision in *National General Mazdoor Union* (supra) does not recognize and give full effect to the amplitude of the non-obstante clause in Section 32. In our judgment, the enumeration of the respective jurisdictional limits of the Industrial Court and Labour Court, provided in sections 5 and 7 of the 1971 Act, when read with the non-obstante provision in Section 32 of the 1971 Act, means this : A substantive Complaint can be entertained by the Court (Labour Court or Industrial Court) only with regard to the matters provided in Section 5 or 7. If a Complaint is substantively made to the Industrial Court, then by reason of Section 5(b), it has no jurisdiction to entertain a Complaint relating to unfair labour practices falling under Item 1 of Schedule IV of the 1971 Act; conversely, a Complaint of unfair

labour practice falling only under Item 1 of Schedule IV can be entertained by the Labour Court, but not any other Complaint. This does not, however, mean that while trying a substantive Complaint legitimately falling within its jurisdictional purview, the Labour Court or Industrial Court is precluded from moulding the relief as required by the facts of the case.

49. As a matter of fact, in the Complaints filed before the Labour Court, the workmen had not invoked Item 1 of Schedule IV of the 1971 Act at all. As we have already pointed out, the Complaints invoked Items 5, 6, 7, 9 and 10 of Schedule IV. The Industrial Court was perfectly competent to entertain such Complaints. During the pendency of such Complaints, which, inter alia, invoked Item 6 of Schedule IV, the services of the workmen were terminated on the ground that they were temporary workmen. Even the amendment permitted pursuant to the directions of this Court made on 3rd September, 1998 did not seek to invoke Item 1 of Schedule IV. The amendment merely pointed out the circumstances, namely, that when the Complaints of the temporary employees invoking, inter alia, Item 6 of Schedule IV were pending before the Industrial Court, their services had been terminated with a view to frustrate the Complaints and, therefore, relief of reinstatement was sought. In our view, this is a far cry from invoking Item I of Schedule IV. Nor are we in a position to accept the contention of the Company that this amounts to entertaining a Complaint beyond the jurisdiction of the Industrial Court. Further, a reading of the Act suggest that the subject of termination of service is not totally alien or foreign to the jurisdiction of the Industrial Court. For example, Items 1 (a), 4(a), 4(b) and 4(f), though found in Schedule II of the Act pertaining to the exclusive jurisdiction of the Industrial Court, do suggest that the Industrial Court does have powers of interfering with orders of termination of service passed against employees. Thus, there certainly is some area of legitimate overlap in the respective jurisdictions of the two Courts. Even in Schedule IV, we notice that, to a certain extent, the jurisdiction of interfering with orders of discharge/dismissal given to the Labour Court under Item 1 Overlap with the powers of the Industrial Court to interfere with discharge and dismissal in Item 6 of the same Schedule. For these reasons, we are unable to read the two Judgments, namely, National General Mazdoor Union (supra) and A-Z (Industrial) Premises Co-operative Society Ltd., (supra), as excluding the jurisdiction of the Industrial Court to grant relief of interfering with termination of service of an employee even in a Complaint other than one falling under Item 1 of Schedule IV of the 1971 Act before the Industrial Court. If the said judgments are to be so read, then they would not be good law.

50. Reliance placed by Mr. Singh on the judgment of a Division Bench of this Court in Maharashtra General Kamgar Union and Ors. v. Balkrishna Pen Pvt. Ltd., and Ors. 1988 Mh.L.J. 832 : 1987 11 CLR 374 is apt. The Division Bench of this Court pointed out that, notwithstanding the provisions of Section 25 of the 1971 Act, which gives exclusive jurisdiction to the Labour Court to declare the legality of a strike or a lockout, the Industrial Court also has the jurisdiction to decide whether the strike is deemed to be illegal under the Act. The Division Bench

pointed out that the Industrial Court can assume this power as incidental to its power to investigate the Complaint u/s 30 of the Act; that the said power is implicit in it and should be read and deemed to have been vested in the Court u/s 30 read with Section 5(d) and Item 1 of Schedule III and Item 6 of Schedule II. The Division Bench emphasized the non-obstante clause of Section 32 as indicative of legislative intention and said "The language of this question is crystal clear and no further and other argument is necessary to vest the Industrial Court with the said incidental power. What is latent is made explicit by the aforesaid provisions. The section begins with the non-obstante clause and thus first negates the argument of the so-called exclusive jurisdiction of the Courts and proceeds to vest in them the power to decide all matters arising out of any application or complaint referred to it for decision under any of the provisions of the Act." (Emphasis ours.).

51. The judgment of the Supreme Court in *S.G. Chemicals & Dyes Trading Employees' Union v. S.G. Chemicals and Dyes Trading Ltd. and Anr.* 1986 1 CLR 360 and the judgment of this Court in *Pratibha Sambaji Kubal v. Ravindra Hindustan Platinum Pvt. Ltd. and Ors.* 1987 1 CLR 23 reinforce the view which we are inclined to take.

52. There is another reason why we are inclined to agree with the contention of Mr. Singh that the Industrial Court had jurisdiction to entertain the Complaints of the workmen concerned in Letters Patent Appeal No. 20 of 2000. The "doctrine of restitution" demanded it. In *Mrs. Kavita Trehan and another Vs. Balsara Hygiene Products Ltd.,* , the Supreme Court held that every Court has the inherent power to ensure that justice is done to the parties and summarised the law of restitution in the following words :--

"13. The law of Restitution encompasses all claims founded upon the principle of unjust enrichment. "Restitutionary claims are to be found in equity as well as at law." Restitutionary law has many branches. The law of quasi-contract is "that part of restitution which stems from the common indebitatus counts for money had and received and for money paid, and from quantum meruit and quantum valebat claims." (See "The Law of Restitution"-- Goff and Jones, 4th Edn. Page 3). Halsbury's Law of England, 4th Edn. page 434 states :--

"Common Law. Any civilised system of law is" bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English Law are generically different from remedies in contract or in tort, and are now recognized to fall within a third category of the common law, which has been called quasi contract or restitution.

For historical reasons, quasi contract has traditionally been treated as part of, or together with, the law of contract. Yet independently, equity has also developed principles which are aimed at providing a remedy for unjustifiable enrichment. It

may be that today these two strands are in the process of being woven into a single topic in the law, which may be termed "restitution".

Recently the House of Lords had occasion to examine some of these principles in *Woolwich Equitable Building Society vs. Inland Revenue Commissioners* 1993 AC 70.

14. In regard to the law of restoration of loss or damage caused pursuant to judicial orders, the Privy Council in *Alexander Rodger Charles Carnie v. The Comptoir D'Escompte De Paris* (1869) 3 AC 465 stated:

"..... one of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the Suitors, and when the expression "the act of the Court" is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case."

In AIR 1922 269 (Privy Council) the Judicial Committee referring to the above passage with approval added:--

"It is the duty of the Court u/s 144 of the CPC to "place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed."

Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved."

In *Binayak Swain Vs. Ramesh Chandra Panigrahi and Another*, this Court stated the principle thus:--

"..... The principle of the doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the erroneous decree; and the Court in making restitution is bound to restore the parties, so far as they can be restored, to the same position they were in at the time when the Court by its erroneous action had displaced them from....."

15. Section 144, CPC incorporates only a part of the general law of restitution. It is not exhaustive. (See *Gangadhar and Others Vs. Raghobar Dayal and Others*, and *State Govt. of Andhra Pradesh Vs. Manickchand Jeevraj and Co.*, Bombay,

The jurisdiction to make restitution is inherent in every Court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words "Where and insofar as a decree or an

order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose....." The instant case may not strictly fall within the terms of Section 144; but the aggrieved party in such a case can appeal to the larger and general powers of restitution inherent in every Court....."

53. This doctrine of restitution also supports the case of the workmen that pending hearing and disposal of their Complaints invoking, inter alia, Item 6 of Schedule IV of the 1971 Act, their Complaints could not have been scuttled by their unceremonious removal from service and, therefore, the Industrial Court should have exercised jurisdiction to interfere with the orders of termination of their services.

54. Finally, Mr. Singh relied on the judgment of the Supreme Court in *The Maharashtra State Co-op. Cotton Growers Marketing Federation v. Shripati Pandurang Khade and Ors.* 1989 Mh.LJ. 264 : 1989 1 CLR 144. In this case, the appellant-employer had terminated the services of some of the employees purportedly pursuant to the directions given by the Government of Maharashtra. The respondent-workmen claimed that they were permanent employees of the employer and the directions contained in the letter of the Government dated 10th August 1984 required their continuance in service. It was also contended by the workmen that there was an Award in their favour by the Industrial Court declaring them as permanent employees and yet the employer had failed and neglected to give them the status of permanent employees. In these circumstances, the employees therein moved a Complaint invoking Items 6 and 9 of Schedule IV of the 1971 Act. The Industrial Court took the view that, as the services of the workmen had been terminated, Items 6 and 9 of Schedule IV could not be invoked by them and that the Complaints could only fall under Item 1 of Schedule IV. In this view of the matter, the Complaints were dismissed. The Supreme Court held that there was no justification for the Industrial Court's finding that the Complaints would not fall under Items 6 and 9 of Schedule IV or that they would exclusively fall under Item 1 of Schedule IV to be decided exclusively by the Labour Court and not by the Industrial Court. Reading the averments in the Complaint, the Supreme Court took the view that there was no scope for categorizing it as a Complaint under Item 1 of Schedule IV of the 1971 Act. This judgment, though indirectly, also supports the case of the workmen.

55. On behalf of the employer, the learned Counsel, Mr. Cama, has raised a number of legal points and we are constrained to observe here that most of them were not raised before the Industrial Court, nor urged before and considered by the learned Single Judge during the hearing of the Writ Petitions. Mr. Cama, while conceding that these contentions were not raised before the learned Single Judge, contends that these are pure questions of law and can be urged at any time. We are unable to accept this argument. The appeal is directed against the judgment and order of the learned Single Judge and our function is to scrutinize the correctness of the said judgment under appeal. If a contention - albeit legal

one- was never urged before the learned Single Judge, the learned Single Judge's judgment cannot be faulted on the basis of a contention which was neither argued nor considered by the learned Single Judge and vice versa. Though, at first blush, we were inclined to decline permission to Mr. Cama to argue these contentions which were not urged before the learned Single Judge, we have decided to permit the contentions to be urged so as to avoid further expenditure of time, energy and money on litigation, which the workmen can ill afford. We, however, hasten to deprecate such a tendency on the part of the employers as it is indicative of an intention to prolong the day of reckoning and tire out the workmen.

56. The first contention of Mr. Cama is that, in case of certain Complaints, namely, Complaint (ULP) Nos. 56 to 76 of 1998, 83 to 94 of 1998, 98 of 1998, 103 of 1998 and 112 to 114 of 1998, the Complaints were filed after the recognized Union had been registered i.e. after 15th January, 1998. These Complaints invoked Item 6 of Schedule IV of the 1971 Act and, therefore, the Complaints were barred by Section 21 of the 1971 Act. In the case of ten other Complaints, namely, Complaint (ULP) Nos. 161 to 170 of 1998, the Complaints were filed by individual workmen invoking Item 6 of Schedule IV of the 1971 Act after the recognized Union had come into existence on 15th January 1998. Hence also it is contended that these ten Complaints are barred by reason of Section 21 of the 1971 Act.

57. Mr. Cama went one step further and contended that even Complaints which had been filed prior to the coming into existence of the recognized Union would also be hit by the bar of Section 21 of the 1971 Act after the recognized Union came into existence.

58. It is not in doubt that the undertaking of the employer is covered by the provisions of the Central Act i.e. the Industrial Disputes Act, 1947,

The provisions of the 1971 Act apply to undertakings to which the provisions of the Central Act i.e. the Industrial Disputes Act, 1947 and the Bombay Act i.e. the Bombay Industrial Relations Act, apply. Section 21(1) of the 1971 Act reads as under :--

"21. Right to appear or act in proceedings relating to certain unfair labour practices :-- (1) No employee in an undertaking to which the provisions of the Central Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceeding relating to unfair labour practices specified in Items 2 and 6 of Schedule IV of this Act except through the recognized union : Provided that where there is no recognized union to appear, the employee may himself appear or act in any proceeding relating to any such unfair labour practices.

59. Mr. Cama relied on the judgment of the Supreme Court in *Balmer Lawrie Workers' Union, Bombay and Another Vs. Balmer Lawrie and Co. Ltd. and Others*, , to buttress the contention that the moment the recognized Union

comes into existence, no workman can be allowed to appear or act in any proceedings relating to unfair labour practices under Items 2 and 6 of Schedule IV of the 1971 Act except through the recognized Union. In our view, this contention is misconceived and overlooks the impact of the proviso to the sub-section. The proviso is intended to give the employee the right of appearing or acting in any proceeding relating to unfair labour practices even under Items 2 and 6 of Schedule IV of the 1971 Act. Mr. Cama, however, contends that the proviso contemplates only a situation of non-existence of a recognized Union. We are unable to accept this contention. The expression "..... there is no recognized union to appear....." does not mean "there is no recognized union". It is possible that in an industry covered by the Central Act, there may not exist a recognized Union. Undoubtedly, by the force of the proviso, an employee would be entitled to appear or act in a proceeding relating to unfair labour practices under Items 2 and 6 of Schedule IV in such a case. There may also exist a situation where, in an industry covered by the Central Act, there may exist a recognized Union which may not appear for the employee invoking Items 2 and 6 of Schedule IV of the 1971 Act in his Complaint. In such a case, can it be legitimately said that the employee's right of moving the Court is taken away merely because there exists a recognized Union which has not "appeared" or "acted" for the employee before the Court? In our judgment, the reasonable way of construing the proviso would be that even if there exists a recognized Union, which has not appeared for the employee who invokes Items 2 and 6 of Schedule IV of the 1971 Act in his Complaint to the Industrial Court, then the employee is entitled to continue such proceedings before the Industrial Court subject to one exception, namely, if the trade Union appears in Court for the employee, then this right of the employee gets displaced by the recognized Union's superior right. It is inconceivable that mere existence of the ineffective, unwilling or recalcitrant Union can take away the right of the employees granted to them under the 1971 Act of filing the Complaint. The Scheme of the Act itself suggests that if the recognized Union "appears" for the employee, then the employee may not be allowed to continue with the Complaint if it pertains to Items 2 and 6 of Schedule IV of the 1971 Act. We, therefore, reject the contention of Mr. Cama,

60. The next contention urged by Mr. Cama, learned Counsel for the employer, is that by reason of the amendment carried out in Chapter V-C of the 5th Schedule to the Industrial Disputes Act, 1947, the entire gamut of provisions of the 1971, Act pertaining to unfair labour practices must be deemed to have been repealed by reason of Article 254(2) of the Constitution of India.

61. The Industrial Disputes Act, 1947 was brought into force with effect from 11th March 1947. In exercise of its legislative powers under Item 22 of List III (Current List) in VIIth Schedule to the Constitution, the State Legislature enacted the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 which was reserved for the assent of the President, received such assent on 1st February 1972 and was brought into force from 8th September 1975. This Act, as its long preamble indicates, is an "Act to provide

for the recognition of the trade unions for facilitating collective bargaining for certain undertakings, to state their rights and obligations to confer certain powers on unrecognized unions; to provide for declaring certain strikes and lock-outs as illegal strike and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute Courts (as independent machinery) for carrying out the purposes of according recognition to trade unions for enforcing the provisions relating to unfair labour practices, and to provide for matters connected with the purposes aforesaid." The Industrial Disputes Act, 1947, as its preamble indicates, is an "Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes" as appearing in the Act.

62. The contention of Mr. Cama is that though as a result of the 1971 Act being reserved for and receiving the assent of the President, by virtue of Article 254(2) of the Constitution of India, the Act would override any inconsistent provisions made in any Central Act, as a result of re-enactment by Parliament in the form of Central Act No. 46 of 1982, the entire provisions of the 1971 Act dealing with unfair labour practices stand repealed in toto as it was the intention of the Parliament to prescribe uniformity in the law relating to unfair Labour practices throughout the country. It is contended that not only is there express inconsistency between the provisions of Chapter V-C read with Fifth Schedule of the Industrial Disputes Act, 1947 with Chapters VI and VII of the 1971 Act, but the entire field having been occupied by Central legislation, the corresponding provisions of the State Legislature must be deemed to have been impliedly overruled.

63. The judgment of the Supreme Court in *Thirumuruga Kirupananda Variarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others*, is strongly relied upon to contend that the test of two legislation's containing contradictory provisions is not the only criterion of repugnance. Repugnancy may arise between two enactments even though obedience to each of them is possible without disobeying the other, if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field. In *Deep Chand Vs. The State of Uttar Pradesh and Others*, , while dealing with Article 254 of the Constitution, the Supreme Court held :--

"Repugnancy between two statutes may thus be ascertained on the basis of the following three principles :

- (1) Whether there is direct conflict between the two provisions;
- (2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State legislature; and
- (3) Whether the law made by Parliament and the law made by the State legislature occupy the same field."

64. The judgment of the Supreme Court in *Pt. Rishikesh and Another Vs. Salma*

Begum (Smt), was also relied upon to urge that if the Central Act is a consolidating Act intended to repeal a State Act and intended to be a complete code, then the State Act would stand repealed protanto.

65. In our view, the contention is wholly unsound. In the first place, we are unable to accept that Central enactment is intended to cover the whole field. The State enactment defines unfair labour practices in a certain manner and has devised an elaborate adjudication machinery for affording relief against unfair labour practices on the part of the employers, unions or employees. Reading Chapters VI and VII of the 1971 Act leaves no doubt as to this intention of the State Legislature. In fact, if one reckons the historical background of the State Act, it becomes clear that the Committee on unfair labour practices (The Committee headed by Justice V. A. Naik) was constituted basically to go into and report on the question of ascertaining the collective bargaining agent. The Committee, while making an elaborate report on this issue, also suggested that efforts to thwart the process of identification and recognition of sole bargaining agent must be discouraged and, therefore, advised that an elaborate machinery be created to identify such unfair labour practices and grant appropriate relief in such cases. That is the reason why the 1971 Act is in two parts. The 1971 Act creates three kinds of machinery :--One for dealing with the recognition of trade unions as recognized unions under Chapter III, one for dealing with unfair labour practices in Chapter VI and one for deciding legality of strikes and lock-outs.

66. When we turn to the Industrial Disputes Act, 1947, as we have already pointed out, the intention of the Act is to make provision for the "identification and settlement of industrial disputes" and for certain other purposes as indicated in the Act. Though Chapter V-C of the Industrial Disputes Act, 1947 deals with unfair labour practices and makes the commission of any unfair labour practice an offence u/s , 25-T and prescribes penalty therefore u/s 25-U, the Act has not devised a machinery for adjudication of unfair labour practices as done under the State Act. This was presumably for the reason that an "unfair labour practice", in a general manner, can be said to be an industrial dispute" and there is a machinery for dealing with industrial disputes as such. This machinery is, of course, the machinery of raising of an industrial dispute, its processing by the conciliation authorities and Reference of the dispute by the Appropriate Government for adjudication of the Labour Court or Industrial Tribunal. Thus, what is referable is an Industrial dispute and not an unfair labour practice as such. An unfair labour practice may give rise to an industrial dispute, which may itself require granting of relief so as to eliminate the unfair labour practice. We do not see any elaborate machinery of the nature found in Chapters VI and VII of the 1971 Act introduced in the Industrial Disputes Act, 1947, even after its amendment by Act 46 of 1982 with effect from 21st August, 1984. The expression "unfair labour practice" has now been defined in Section 2(ra) to mean any of the practices specified in the Fifth Schedule. Several of the unfair labour practices listed in the Fifth Schedule are similar to, if not identical with, unfair labour practices defined in Schedules II, III and IV of the 1971 Act, We

may mention here that the Fifth Schedule contains certain further unfair labour practices other than those contained cumulatively in Schedules II, III and IV of the 1971 Act.

67. Another glaring distinction which we cannot avoid noticing is that the emphasis in the Industrial Disputes Act, 1947 is to declare an unfair labour practice on the part of an employer to be an offence and provide for punishment for such an offence. Under the 1971 Act, it is not an offence for a person to engage in unfair labour practice. Chapter IX dealing with penalties does not constitute commission of an unfair labour practice to be an offence, nor does it provide for any punishment in respect thereof. In our view, these are vital distinctions which lead to the conclusion that the intention of Parliament in adding Chapter V-C to the Industrial Disputes Act, 1947 was not to make a consolidating law on the subject, as contended by the learned Counsel for the employer. In our view, Parliament has merely improved the sweep of the Industrial Disputes Act, 1947 by incorporating unfair labour practices as punishable offences under the Act. This is a far cry from the doctrine of "completely occupied field" or "intention to consolidate legislation" as urged by the learned Counsel. We are, therefore, of the view that the contention has no merit. We are unable to accept that as a result of the amendment carried out in the Industrial Disputes Act, 1947 by Central Act 46 of 1982, the provisions relating to unfair labour practices contained in the State Act stand repealed in toto as urged. The contention has no merit and we reject the same.

68. In this view of the matter, we consider it unnecessary a detailed reference to the judgments in *T. Barai Vs. Henry Ah Hoe and Another*, nor do we find anything in the judgment in *Lokmat Newspapers P. Ltd. v. Shankarprasad* 1999 2 CLR 433, which were cited in support.

69. The judgments in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, , *State of Punjab Vs. Labour Court Jullunder and Others*, and *Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others*, , were cited to contend that the Industrial Disputes Act is a code by itself and that when a remedy is not available under the Act, it must be deemed to be a part of the legislative scheme not to give such a remedy. In our view, this contention is irrelevant. We are required to focus, our attention on the issue as to whether Parliament has, by adding Chapter V-C read with the Fifth Schedule to the Industrial Disputes Act, 1947, turned it into a consolidating Act which would replace the State legislation on the subject. For reasons which we have already given, our answer is a clear negative.

70. The judgment in *Reserve Bank (supra)* was referred to contend that the provisions of the unfair labour practices can be enforced through the machinery contained in Industrial Disputes Act, 1947. Undoubtedly, the Supreme Court pointed out that an action of the Reserve Bank of India in issuing a confidential Circular bringing forth a scheme, much to the same, effect as done by the employers before us, amounted to an unfair labour practice u/s 2(ra) read with

Item 10 of Schedule V of the Industrial Disputes Act, 1947. No support can be drawn from this judgment for the proposition canvassed before us.

71. Upon anxious consideration of the contention, we are unable to accept that the provisions the 1971 Act pertaining to unfair labour practices stand impliedly repealed by the provisions of Chapter V-C read with the Fifth Schedule of the Industrial Disputes Act, 1947.

72. It is next contended that a simpliciter breach of the Industrial Disputes Act, 1947 or the Standings Orders Act is not an unfair labour practice by itself. We are not concerned with such a generalized and wide proposition of law at all. The complaints before the Industrial courts were specific and invoked specific items of unfair labour practice enumerated under the 1971 Act. The contention and the authorities cited in support of the general proposition that is *General Workers Union v. Sangli Municipal Council* 1984 (48) FLR 411 and *The Raja Bahadur Motilal Poona Mills Ltd v. Girni Kamgar Sanghatana and Anr.* 1985 1 CLR 188, are of no relevance. In fact as a result of the judgment of the Supreme Court in *Chief Conservator of Forests and Anr. v. J. M. Kondhare* 1996 1 CLR 680 the argument is no longer *res Integra*. In this case the Supreme Court was specifically considering Item 6 of Schedule IV of the 1971 Act and observed (vide paragraph 22) "...according to us the object of the State Act inter alia, being prevention of certain unfair labour practices the same would be thwarted or get frustrated if such a burden is placed on a workman which he cannot reasonably discharge. In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years...." Thus it is clear that there is no such burden on the employees to prove that they were employed as beadies/casuals/temporaries and continued as such for years "with the object of depriving them of the status and privilege of permanent employees". The object contemplated in the latter half of Item 6 of Schedule IV could also arise as a matter of inference from the facts of a particular case. The Industrial Court had rightly, on the basis of the evidence before it, raised such an inference and attributed such an object to the employer when it was undeniable that the workmen were being continued as temporaries for several years, though work was available.

73. The contention that the contravention of Model Standing Orders is not an unfair labour practice is also no longer *res Integra* before this Court in view of the judgment of our High Court in *The Premier Automobiles Ltd. v. The Engineering Mazdoor Sabha and Ors.* 1976 ICR 206 (supra) and 1982 L IC 1759, where it has been clearly laid down that the word "agreement" used in Item 9 of Schedule IV is wide enough to contemplate a Standing Order which, though not an instrument arrived at by consensus, is directly imposed on parties by statute. The judgment of the Supreme Court in *S. G. Chemical and Dyes Trading Employee's Union vs. S. G. Chemicals and Dyes Trading Ltd. and another* 1986 1 CLR 360, also supports this proposition. Notwithstanding the brave attempt on

the part of Mr. Cama to distinguish the judgment of the Supreme Court in S. G. Chemical case (supra) on facts, we remain unimpressed. S. G. Chemical (supra) lays down that every contract of employment of necessity includes a term to give the benefit of all applicable statutory provisions and this would include a Model Standing Order of the nature of Model Standing Orders 4C and 4D also. Hence, contravention of Model Standing Order was clearly an unfair labour practice within the meaning of Item 9 of Schedule IV in respect of which the Industrial Court was competent to grant relief.

74. Next contention urged is that Item 6 of Schedule IV would be attracted only if there are vacancies of permanent posts. There being none, no such unfair labour practice could have been found against the employers, urges Counsel. This contention is doubly unfounded. First, on facts, the Industrial Court has found that during the period 1984 to 1997, the number of permanent employees had considerably reduced on account of natural separation and these permanent posts were not filled by the employer, but that the work of such posts was being got done through temporaries. Secondly, the reliance on the judgment of the Supreme Court in cases where a demand for permanency was being adjudicated and the principles to be adopted by the Industrial Tribunal while adjudicating such a demand is incorrect as they have no relevance whatsoever to the facts of the case before us. Notwithstanding the strenuous attempt on the part of the learned counsel for the employer to change focus, we are unmoved. As far as Item 6 is concerned, all that had to be done by the Industrial Court was : (a) to see if the workmen had been employed as temporaries for years together and (b) to be satisfied as to the object. As to (a), it was admitted, as to (b) it was a matter of inference in the facts and circumstances which the Industrial Court legitimately drew. We see no reason why the inference drawn by the Industrial Court on the facts could have been interfered with in exercise of writ jurisdiction. In any event, we have seen no good reason in the order of the learned Single Judge to justify inference with them.

75. That there was contravention of Model Standing Orders 4C and 4D is a clear finding on facts made by the Industrial Court. That such contravention amounts to an unfair labour practice under Item 9 of Schedule IV is a matter of law. The Industrial Court was, therefore, justified in holding against the employer on this count also. We, therefore, see no reason for the learned Single Judge to have interfered with the said finding.

76. Mr. Cama, learned counsel for the employer, took us through the order of the Industrial Court and the evidence on record and attempted to persuade us that the Industrial Court's findings were perverse. Despite the Herculean effort of Counsel, we are not satisfied that there is any perversity in the findings recorded by the Industrial Court. The findings were not only supported by the material on record, but were fully justified thereupon. In our view, the findings recorded by the Industrial Court could not have been interfered with, not only because they were not perverse, but also because they were fully justified. In any event, the

learned Single Judge exercising writ jurisdiction could not reappraise the evidence and decline to believe witnesses who were believed by the Industrial Court and vice versa. We have already referred to the judgments laying down the law in this regard.

77. We, therefore, find that:--

(a) The Industrial Court was fully justified in holding that unfair labour practices under Items 6 and 9 of Schedule IV of the M.R.T.U. and PULP Act, 1971 had been proved against the employer on the basis of the material before it.

(b) The Industrial Court was fully justified in granting relief to, the Complainants before it on these findings.

(c) The Industrial Court erred in holding that it had no jurisdiction to grant relief to 301 number of temporaries whose services had been terminated during the pendency of the Complaints.

(d) The learned Single Judge erred in interfering with the order of the Industrial Court in Writ Petition No. 5550 of 1998 and in not interfering with the order made in Writ Petition No. 5536 of 1998.

78. In the result, we make the following order:--

(a) We quash and set aside the order of the learned Single Judge dated 24th December, 1999 made in Writ Petition No. 5536 of 1998 and Writ Petition No. 5550 of 1998.

(b) We affirm and restore the order of the Industrial Court dated 29th August, 1998 with regard to Complaint (ULP) Nos. 169 to 197 of 1997; 213 to 251 of 1997; 253 to 257 of 1997; 260 to 263 of 1997; 285 to 301 of 1997; 311 to 341 of 1997; 862 to 1072 of 1997; 1074 to 1086 of 1997; 56 to 76 of 1998; 83 to 94 of 1998; 99 to 103 of 1998; 112 to 114 of 1998 and 161 to 170 of 1998 allowing the Complaints and granting the reliefs prayed for therein.

(c) We quash and set aside the order of the Industrial Court dated 25th September, 1998 made in Complaint (ULP) Nos. 347 to 355 of 1997; 359 to 376 of 1997; 378 to 384 of 1997; 389 to 397 of 1997; 400 to 429 of 1997; 432 of 444 to 1997; 445 to 463 of 1997; 471 to 488 of 1997; 491 to 494 of 1997; 506 to 520 of 1997; 529 to 549 of 1997; 555 to 567 of 1999; 578 to 595 of 1997; 598 to 608 of 1997; 611 to 620 of 1997; 695 to 711 of 1997 and 731 to 797 of 1997, allow the said Complaints and grant the reliefs prayed for in the said Complaints.

(d) Letters Patent Appeal No. 19 of 2000 and 20 of 2000 filed by the workmen are allowed and Letters Patent Appeal No. 118 of 2000 and Letters Patent Appeal No. 119 of 2000 filed by the employer are hereby dismissed.

(e) Employer to pay a sum of Rs. 50,000/- (Rupees Fifty thousand only) as costs.

(f) Employer shall carry out the directions of the Industrial Court and of this

Court within a period of three months from today.

79. Parties to act on an ordinary copy of this judgment duly authenticated by the personal Secretary of this Court.

80. Issuance of certified copy expedited.