

(1980) 03 GUJ CK 0003
In the Gujarat High Court

State Bank of India

APPELLANT

Vs

M.V. Raval

RESPONDENT

Date of Decision : 03-03-1980

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo), 23, 25F, 25F

Citation : (1981) 22 GLR 86

Hon'ble Judges : S.H. Sheth, J;A.M. Ahmadi, J

Bench : Division Bench

Judgement

A.M. Ahmadi, J.—By this Writ Petition the State Bank of India challenges the Award passed by the Industrial Tribunal dated 19th September 1979 whereby the Tribunal held that the services of the respondent, M.V. Raval, were illegally terminated and directed his reinstatement with full back wages with effect from the date of termination. The Tribunal further directed the petitioner-Bank to pay the arrears of wages within one month from the date of the publication of the award in the Gazette.

2. The facts giving rise to this petition, briefly stated, are as under. The respondent was employed as a Clerk in the Mehsana Branch of the petitioner Bank by their letter dated 10th October 1974. His services were, however, terminated on 9th June 1975 without assigning any reason and without making payment in lieu of notice. The workman thereupon made representations to the Bank and ultimately approached the Conciliation Officer, Government of India, for intervention under the provisions of the Industrial Disputes Act, 1947, (hereinafter called "the Act"). Before the Conciliation Officer a settlement was reached between the petitioner Bank and the workman on 10th October 1975. Under the settlement it was agreed between the parties as follows:

(i) The management of the Bank agreed to offer a temporary appointment of Clerk-cum-Cashier to Shri M.V. Raval within a fortnight,

(ii) Shri Raval having qualified in the test, will be offered permanent appointment by

the Bank when his number comes according to merit, and

(iii) Both the parties agree to send implementation report by 31-10-1975.

After this settlement was reached, the Bank did not offer an appointment to the respondent whereupon the Conciliation Officer wrote to the Bank and threatened to prosecute it for non-compliance. The Bank explained its position by pointing out that the settlement was signed on the misrepresentation that the respondent had passed the N.I.B.M. test to qualify himself for appointment as a Clerk in the Bank. It appears that thereafter at the intervention of the Conciliation Officer, the Bank gave an appointment to the respondent on purely ad hoc basis on condition that the respondent shall appear at the N.I.B.M. test and qualify for permanent appointment in the Bank. The respondent was appointed intermittently in different Branches of the Bank in the State of Gujarat. It is an admitted fact that he appeared at the N.I.B.M. test held sometime in March 1977. The result of that test became known to the Bank on 14th October 1977 and the same was communicated to the respondent on 18th December 1977. As the respondent had failed to pass the N.I.B.M. Test, his services were finally terminated with effect from 18th December 1977. Thereupon the respondent once again made a representation to the Conciliation Officer complaining of breach of terms of settlement whereupon the Conciliation Officer called the parties but as no settlement was possible, the Conciliation Officer submitted a report to the Ministry of Labour, Government of India. Pursuant to the said report, the dispute was referred for adjudication to the Industrial Tribunal, Ahmedabad. The demand made by the workman which the Industrial Tribunal was called upon to settle reads as under:

Whether the action of the management of State Bank of India, Local Head Office, Bhadra, Ahmedabad in terminating the services of Shri M.V. Raval, Clerk in Bhadra Branch of the Bank with effect from 18-12-77 is legal and justified? If not, to what relief is the workman concerned entitled.

3. In support of the aforesaid demand, the workman filed his claim statement on 3rd October 1978, The Bank filed a written statement answering the said demand on 27th October 1978. The Bank contended that the workman had joined service with effect from 16th October 1974 under the letter of appointment dated 10th October 1974. The fact of the Bank having entered into a settlement before the Conciliation Officer on 10th October 1975 was not disputed but it was explained that the said settlement having been entered into under the mistaken belief that the workman had passed the N.I.B.M. test, could not be implemented as it was subsequently realised that another workman having the same initials and surname had passed the N.I.B.M. test and not the respondent before us. This fact was explained to the Conciliation Officer at a subsequent meeting and it was thereafter that the Bank agreed to give a fresh appointment to the respondent on condition that the respondent will pass the N.I.B.M. test to be held in March 1977. As pointed out earlier, admittedly the respondent appeared at the N.I.B.M. test held in March 1977 but the results

declared in October 1977 showed that he had failed to pass the test. This result was communicated to the respondent on 18th December 1977. As it was not permissible to continue the employment of the respondent any further, in view of his having failed to clear the test, his services were terminated forthwith. The Bank, therefore, contended before the Industrial Tribunal that it had given full opportunity to the workman to qualify for permanent absorption in the service of the Bank but unfortunately the workman failed to clear the test with the result that the Bank was obliged to terminate the employment of the respondent. It was, therefore, urged on behalf of the Bank that the demand raised by the workman in the reference could not be legally granted and the reference must, therefore, be rejected.

4. Before the Industrial Tribunal the rival parties adduced oral as well as documentary evidence. The Industrial Tribunal analysed the evidence placed on its record and by its Award dated 19th September 1979 it directed the reinstatement of the respondent with full back wages. The Industrial Tribunal came to the following conclusions:

(i) The respondent was appointed in the service of the Bank with effect from 10th October 1974 and not 16th October 1974 and he had, therefore, served for the requisite period of 240 days on the date of the first termination, that is, 9th June 1975. The termination, therefore, amounted to a retrenchment within the meaning of Section 2(oo) of the Act and the said retrenchment being contrary to Section 25-F read with Section 25-B, could not be sustained. It also took the view that as the initial termination was bad in law, all future terminations following intermittent appointments must also be held to be illegal and of no consequence whatsoever.

(ii) Under the bipartite agreement (All India Industrial Tribunal (Bank Disputes), Bombay Award, popularly known as "the Sastry Award) which governed the relations between the Bank management and its workmen, the respondent having been appointed in a substantive vacancy could be said to have been appointed as a "probationer" and he having completed six months" probation period and having been continued thereafter in service, must be deemed to have been confirmed in the post and hence his services could be terminated only on three months" notice or on payment of three months" salary and allowances in lieu thereof; and

(iii) Under the order of appointment the Bank could terminate his employment by giving fourteen days" notice which in the instant case was not given and hence the termination was in breach of the terms of employment as well as the Sastry Award and was, therefore, illegal and unsustainable.

On this line of reasoning, the learned Presiding Officer of the Industrial Tribunal came to the conclusion that the services of the respondent were wrongly terminated on 9th June 1975 and all the subsequent terminations were also illegal as the respondent must be deemed to have continued in service

throughout. The Tribunal, therefore, answered the reference in favour of the workman and directed the Bank to reinstate him forthwith in the position which he was holding on 18th December 1977 with full back wages payable at the rate at which he was receiving salary including allowances and other benefits on the date of the illegal termination. The Bank was also directed to pay the arrears of back wages within one month from the date of publication of the award and Rs. 500/- towards the workman's costs. Being aggrieved by this award of the Industrial Tribunal the Bank has preferred the present Writ Petition.

5. The finding of the Tribunal that the workman had joined service in the Mehsana Branch of the Bank on 10th October 1974 was questioned before us. According to the petitioner Bank, under letter of appointment the workman was appointed as a temporary Cashier in the Mehsana Branch of the Bank with effect from 10th October 1974 for a period of one month on the conditions set out in the letter of appointment, Exhibit 2. It was urged that even though the appointment was intended to take effect from 10th October 1974, the workman actually joined service on 16th October 1974 and as his services were terminated on 9th June 1975, indisputably he had not served for 240 days and was, therefore, not entitled to invoke Section 25-F of the Act. Ordinarily, as a rule of practice, this Court is loath to interfere with a finding of fact recorded by a Tribunal. However, in the instant case it was urged by Mr. Desai, learned Counsel for the Bank, that the finding recorded by the Tribunal was on a mis-reading of the material evidence and was, therefore, patently erroneous on the face of the record. We think that this grievance made by Mr. Desai on behalf of the Bank is well-founded. It is not in dispute that the workman had to furnish security before he took over charge as a Cashier in the Mehsana Branch of the Bank. It is clear from the record that he furnished security on 16th October 1974. The statement of establishment charges for the month of October 1974 also shows that the workman was paid salary from 16th October 1974 to 31st October 1974. This document was taken on record by consent of the representative of the workman. The letter dated 22nd November 1974 written by the Branch Manager also goes to show that he joined duty on 16th October 1974. A similar mention is to be found in the letter of 15th December 1975 written by the Regional Manager to the Assistant Commissioner of Labour. The clinching evidence in this connection is the certificate produced by the workman himself dated 12th July 1975 issued by the Branch Manager of the Mehsana Branch of the petitioner Bank to the workman after his services were first terminated on 9th June 1975. That certificate in terms states that the workman had served as a temporary Cashier in the Mehsana Branch of the Bank from 16th October 1974 to 9th June 1975. It is thus obvious from the documentary evidence on the record of the case that even though the workman was appointed with effect from 10th October 1974, he actually joined service on 16th October 1974 and was paid salary accordingly. The oral evidence to the contrary would, therefore, be of little probative value. Surprisingly the Tribunal brushed aside all this documentary evidence and particularly the testimonial certificate produced by the workman himself on the

specious ground that the certificate appears to have been tampered with as the date "16-10-1974" was hand-written by scoring out the typed date "10-10-1974". It is indeed true that this correction has been made in the testimonial certificate but it is necessary to bear in mind that the same is initialed by the Branch Manager who issued the testimonial certificate and the said certificate was throughout in the custody of the workman before he tendered it in evidence before the Tribunal. It is difficult to understand how the Tribunal could have ignored the unimpeachable documentary evidence on the record of the case which clearly goes to show that the workman had joined service with effect from 16th October 1974 and preferred the interested oral explanation of the workman which explanation also, in our opinion, does not destroy the documentary evidence. The explanation of the workman which appealed to the Tribunal was that he had joined service with effect from 10th October 1974 but he was paid salary from 16th October 1974 because it was on that day that he furnished security in the sum of Rs. 1,000/- demanded of him as he was expected to work as a temporary Cashier in the Bank. It is not possible to believe that the Bank would permit the workman to serve as Cashier without furnishing security if the Bank Rules required such security to be furnished before a Cashier joined duty. It is also difficult to believe that he would not be paid his wages for six days merely because he furnished security on 16th October 1974. Such a weak explanation given by the workman in his deposition before the Tribunal cannot efface the documentary evidence referred to earlier. If the workman had in fact joined duty with effect from 10th October 1974, he would not have tendered in evidence the testimonial certificate which clearly shows that he had served the Bank from 16th October 1974 to 9th June 1975. We are, therefore, satisfied from the aforesaid evidence that the Tribunal committed a serious error in ignoring the documentary evidence which clearly shows that the workman had joined duty as Cashier in the Mehsana Branch of the Bank on 16th October 1974. It is because we find that the conclusion reached by the Tribunal that the workman had served the Bank from 10th October 1974 to 9th June 1975, that is, for a period exceeding 240 days, is based on a mis-reading of the material evidence that we think it necessary to interfere with the finding of fact recorded in this behalf.

6. Once it is found that the workman had served the Mehsana Branch of the Bank as a Cashier from 16th October 1974 to 9th June 1975, there can be no doubt that he did not put in a service of 240 days as held by the Tribunal. Section 25-F of the Act provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer unless (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof

in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette. Section 25-B lays down that a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a look out or a cessation of work which is not due to any fault on the part of the workman. Sub-Clause (2) of that section says that where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days. As we have come to the conclusion that the respondent workman had networked for a period of 240 days, the question of the application of Section 25-F of the Act does not arise. The Tribunal's conclusion that the first termination of service was in violation of Section 25-F of the Act and, therefore, illegal and void cannot be sustained.

7. Before we proceed to the next ground which weighed with Tribunal we must in fairness to Mr. Desai mention that he had urged that the Tribunal had erred in going into the question regarding the validity of the initial termination of 9th June 1975. His submission was that in doing so, the Tribunal had transgressed the limits of the reference made to it, the text whereof has been reproduced in the earlier part of this judgment. The reference made to the Tribunal shows that the question at issue was whether the action of the management in terminating the services of the respondent workman with effect from 18th December 1977 was legal and well-founded. Mr. Desai submitted that the validity of the order of termination of 9th June 1975 was not in issue before the Tribunal and hence the Tribunal was in error in holding that as the Bank had failed to pay retrenchment compensation to the workman u/s 25-F of the Act even the initial termination dated 9th June 1975 was illegal and of no consequence whatsoever. As we have come to the conclusion that the Tribunal committed an error in holding that the workman had joined duty with effect from 10th October 1974 and had, therefore, completed 240 days of service on 9th June 1975 is factually not established, the question of payment of retrenchment compensation u/s 25-F of the Act never arose and, therefore, on that premise it could not be said that the first termination of 9th June 1975 was illegal and void. We, therefore, do not feel called upon to decide whether the Tribunal had travelled beyond the scope of the reference in concluding that the first termination order was null and void and of no consequence whatsoever.

8. We must take note of the decision of the Supreme Court in *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, bearing on the interpretation of Section 25-F read with Section 25-B of the Act to which our attention was drawn by Mr. Desai. Dealing with Section 25-F of the Act, Their Lordships pointed out

that on the plain terms of the section only a workman who has been in continuous service for not less than one year under an employer is entitled to its benefit. "Continuous Service" as defined in Section 2(ece) meant uninterrupted service, and included service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal or a lock out or a cessation of work which is not due to any fault on the part of the workman. This definition was omitted by the Industrial Disputes (Amendment) Act, 1964. By the said Amendment Act, Section 25-B as it presently stands was substituted. u/s 25-B as it originally stood "one year of continuous service" was defined and a workman who during a period of twelve calendar months actually worked in an industry for not less than 240 days was to be deemed to have completed one year of completed service in the industry. The question which arose was whether a person who has worked for 240 days in an industry would be entitled to payment of retrenchment compensation u/s 25-F of the Act, Dealing with the said question in the light of the definition contained in Section 25-B, Their Lordships observed that before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than twelve calendar months and next that during those twelve calendar months he had worked for not less than 240 days. Where the workman has not at all been employed for a period of twelve calendar months, it becomes unnecessary to examine whether the actual days of work numbered 240 days or more. Their Lordships pointed out that the requirements of Section 25-B would not be satisfied by the mere fact of the number of working days being not less than 240 days. This decision was rendered by the Supreme Court on 7th May 1963. Thereafter Section 25-B underwent an amendment with effect from 19th December 1963. The language of Section 25-B as it now stands is substantially different from the language of Section 25-B interpreted by the Supreme Court in the decision to which our attention was drawn by Mr. Desai. We are, therefore, of the opinion that in view of the statutory change undergone by Section 25-B, this decision cannot be pressed in service. However, since we have reached the conclusion that the workman had not put in 240 days of actual service, it is not necessary to discuss in detail the statutory changes effected by the Amendment Act of 1964.

9. The Tribunal has taken the view that as the respondent workman was appointed in a substantive vacancy, he fell within the category of a "probationer" under the Sastry Award and as he had completed the six months" probation period, he stood confirmed in the post in question and hence his services could not be terminated in the manner in which they were terminated with effect from IXth December 1977. In order to appreciate this line of reasoning it is necessary to refer to some of the recommendations made in the bipartite agreement known as the Sastry Award Paragraph 508 of the Award directs that employees shall be classified as (a) permanent employees; (b) probationers; (c) temporary employees; and (d) part-time employees. The expression "probationer" means" an employee who is provisionally employed to fill a permanent vacancy or post

and has not been made permanent or confirmed in service. The expression "temporary employee" means an employee who has been appointed for a limited period for work which is of an essentially temporary nature, or who is employed temporarily as an additional employee in connection with a temporary increase in work of a permanent nature. Paragraph 495 deals with the period of probation and refers to the Sen Award which fixed the period of probation as six months, which in certain cases could be extended by three months. This recommendation of the Sen Award was accepted by the Sastry Award and accordingly it directed that ordinarily the period of probation should not exceed six months. It provided that in case of persons whose work is not found to be quite satisfactory during the said period but who are likely to improve and give satisfaction if a further opportunity is given to them, the period may be extended by three months provided due notice in writing is given to them and their consent in writing is obtained before the extension of their period of probation. It then proceeded to add that in all other cases probationers after the expiry of the period of six months should be deemed to have been confirmed, unless their services are dispensed with on or before the expiry of the period of probation. It is pointed out that so far as the respondent workman is concerned, he was appointed to fill a permanent vacancy and was, therefore, a "probationer" and as he had completed the six months' probation period and his services were found to be satisfactory, he stood confirmed in the absence of any extension of the probation period under the Sastry Award. Our attention was next invited to paragraph 522 of the Award which states that the service of a probationer may be terminated by one month's notice or on payment of a month's pay and allowances in lieu of notice. It was urged that as the services of the respondent workman were terminated without giving any such notice, the order of termination was clearly in contravention of the Sastry Award and was, therefore, null and void. On behalf of the Bank, Mr. Desai vehemently submitted that this entire line of reasoning was fallacious and wholly misconceived.

10. The first order of appointment, Exhibit 2, shows that the respondent-workman was appointed as a purely temporary Cashier in the Mehsana Branch of the Bank for a period of one month. It was also made clear by the said appointing order that he will not be entitled to claim permanent appointment on account of his temporary services. This order makes it crystal clear that the initial appointment was on purely temporary basis and for one month only. It was also made clear to the workman that this temporary service would not entitle him to a permanent appointment. Thereafter the services of the employee were terminated on 9th June 1975. He was given a fresh appointment from 10th May 1976 at Nalia Abdasa (Kachchh) Branch of the Bank to 9th June 1976 on which date his employment stood concluded. He was again employed in the Balasinor Branch of the Bank from 12th October 1976 to 11th November 1976. After a gap of about one month he was given yet another appointment in the Mehmedabad Branch of the Bank from 8th December 1976 to 2nd February 1977. Then there was a gap of almost 2, months and thereafter he was appointed in the Zalod

Branch of the Bank from 21st April 1977 to 4th June 1977. After a gap of nearly two months he was appointed in the same Branch of the Bank for the last time from 2nd August 1977 to the date of the final termination order which became effective from 18th December 1977. It would thus appear that he was intermittently appointed in different Branches of the Bank on as many as six occasions. His last appointment was from 2nd August 1976 to 17th/18th December 1976, that is, for a period of a little over four months. The Tribunal, however, thinks that his first appointment was to fill in a permanent vacancy and, therefore, he was a probationer within the meaning of the Sastry Award and as his services were illegally terminated on 9th June 1975 without payment of compensation and notice pay under the Sastry Award, he must be deemed to have continued in service throughout till the date of the final termination which gave rise to the reference in question. With respect we think that this approach of the Tribunal is not correct. Strong reliance has been placed on the letter dated 22nd November 1974 written by the Branch Manager, Mehsana, to the Regional Manager, Region I, Ahmedabad, wherein it is stated:

I have to advise having appointed (he following candidates as temporary Cashiers at the Branch in permanent vacancies for a period of one month.

The name of the respondent workman appears at Section No. 2 of that letter. From this document the Tribunal has inferred that the workman was appointed against a permanent vacancy. Now, according to the Sastry Award, a probationer is an employee who is provisionally employed to "fill" a permanent vacancy or post. Can it be said that the respondent workman was provisionally appointed to "fill" a permanent vacancy or post on the date of his appointment on 10th October 1974? If the workman was intended to "fill" a permanent vacancy, the appointment order would not have said that the appointment was being made purely as a temporary measure and that too for a period of one month only. It is also significant to note that the letter of appointment leaves the respondent workman in no doubt that his temporary appointment would not entitle him to occupy a permanent post. It must be borne in mind that the State Bank of India is constituted under the State Bank of India Act, 1955 and the Bank has formulated Rules for Recruitment of Clerks, Cashiers and other employees. Under the said Rules, candidates for permanent appointment are required to pass a written test held by the Bank. Such written tests are periodically held by the Bank for recruitment of clerks and cashiers on a permanent basis. Those who pass the written test known as the N.I.B.M. test qualify for an interview on the basis of which alone permanent employments can be offered. It is an admitted fact that before the respondent workman joined service of the Bank under the letter of appointment dated 10th October 1974, he had appeared at the N.I.B.M. test and failed. It is also a matter of record that after the Bank re-employed him on condition that he will appear at the next N.I.B.M. test, the respondent workman appeared at such written test held in March 1977. The result of the written test was declared on 14th October 1977 and the name of the respondent workman did not appear in that list of successful candidates. It was only

thereafter that the services of the respondent workman were terminated with effect from 18th December 1977. Could it then be validly urged that a person who had admittedly failed in the N.I.B.M. test which a candidate seeking permanent employment must clear under the Recruitment Rules of the State Bank of India was given an appointment under the letter of 10th October 1974 to fill a permanent vacancy? If that was so, what was the need of mentioning in the very same letter of appointment that the workman shall not be entitled to claim appointment to a permanent post on account of his being temporarily employed as a Cashier? If the letter of appointment is read in the light of the Recruitment Rules framed by the Bank which lay down that a candidate seeking permanent appointment shall be required to pass the N. I B. M. test, it becomes crystal clear that the appointment was meant to be purely temporary giving no right whatsoever to the incumbent for occupying the permanent post. With respect, the Tribunal has totally overlooked the requirement of clearing the N.I.B.M. test for permanent appointment to a post in the State Bank. Merely because the respondent workman was appointed in a permanent vacancy, it cannot be said that he was appointed to fill a permanent vacancy. The letter of appointment on which reliance has been placed by the Tribunal itself makes it clear that the appointment shall be purely of a temporary nature and shall not give any right to the incumbent to claim appointment to a permanent post. If the view taken by the Tribunal is upheld, the result would be that incumbents appointed on purely temporary basis shall claim appointment on permanent posts thus adversely affecting the chances of qualified candidates who have passed the written as well as the oral N.I.B.M. test. The fact that the present respondent workman has not succeeded in clearing the said test even after two attempts shows that it is a fairly difficult test and this becomes apparent if we refer to Exhibit 21. We are. There fore, of the opinion that even though the respondent workman was appointed against a permanent vacancy, it is difficult to say that he was provisionally employed to fill a permanent vacancy or post so as to be classified as a "probationer" under paragraph 508 of the Sastry Award, Once it is found that the respondent workman was not a probationer within the meaning of that expression in the Sastry Award, the entire edifice built on the basis of his being a probationer must collapse like a pack of cards.

11. Before we go to the next point, we may make a mention of the decisions cited at the Bar in this connection. Our attention was drawn to the decision of the Supreme Court in Sukhbans Singh Vs. State of Punjab, in support of the workman's contention that as he had completed the probation period, he was entitled to be automatically absorbed as a permanent workman. The decision on which reliance is placed deals with the employment of a person in Government service as a probationer. It is held that a probationer cannot, after the expiry of probationary period, automatically acquire the status of a permanent member of a service, unless of course the rules under which he is appointed expressly provide for such a result. It was pointed out that paragraph 495 of the Sastry Award in terms provides that the period of probation shall ordinarily not exceed

six months and in case of persons whose work is not found to be quite satisfactory during the said period, the period of probation may be extended by three months to give such persons an opportunity of showing improvement. In all other cases, probationers, after the expiry of the period of six months should be deemed to have been confirmed unless their services are dispensed with before the expiry of the period of probation. It was, therefore, urged on behalf of the respondent workman that as he had initially served from 16th October 1974 to 9th June 1975, that is, for over six months, and as his probation period was not extended, he must be taken as confirmed in service. We have already come to the conclusion for reasons indicated above that the respondent workman cannot be termed to be a probationer within the meaning of Paragraph 508 of the Sastry Award and therefore, this submission has no merit.

12. Mr. Desai for the Bank invited our attention to the decision in *Orissa Cement Limited v. Their Workmen* (1960) II LL. J. 91, to support his contention that an employer is entitled to direct his temporary employees to qualify for permanent appointment by passing a certain examination. That was a case in which temporary wiremen employed in the Cement Factory were required to appear at a departmental wiremen's permit examination for being absorbed in the service of the factory. The wiremen employed in the factory who did not possess the requisite permit appeared for the examination but some of them including the wiremen concerned in the petition failed. A second chance was also given to those who failed but even at the second attempt these concerned wiremen did not pass the examination. The Secretary, Licensing Board, sent an intimation to the Factory that all electricians and wiremen must pass the departmental examination. The services of those wiremen who did not pass the examination even at the second attempt were terminated whereupon they filed an application u/s 23 of the Industrial Disputes (Appellate Tribunal) Act complaining of wrongful termination. The dispute was referred for adjudication and the Industrial Tribunal held on merits that the action of the employer in discharging the wiremen was not justified as the relevant rules did not prohibit employment of wiremen who did not pass the examination. The Supreme Court was approached by the Company under Article 13b of the Constitution and it held that even though there was no law or statutory rule compelling the Company to terminate the services of the wiremen on the ground that they had not passed the examination in question, the department was fully justified in insisting upon all wiremen being duly qualified before they were appointed as such. It pointed out that whether or not the statutory rule justifies such a request is really not material. The request is made in public interest because it is obviously desirable that the wiremen should be duly qualified and one of the well recognised methods of testing such qualifications is to require the candidate concerned to appear at an examination held in that behalf. It, therefore, laid down that even in the absence of a statutory rule, if the Department desires that the wiremen appointed by it must be qualified wiremen, no exception can be taken because the Department would be justified in making such a demand in public interest. In the instant case also,

the State Bank of India, which is one of the Nationalised Banks, has made Recruitment Rules which provide that only those persons who pass the N.I.B.M. test shall be entitled to permanent appointments in Bank Service. The object and purpose of this rule is clearly to provide efficient service to the members of the public and thereby subserve public interest. A person who fails to pass the N.I.B.M. test even at the second attempt cannot be continued in service at the cost of efficiency. The respondent workman was given a second opportunity by relaxing the age limit as a special case to enable him to clear the N.I.B.M. test but unfortunately he failed to do so. If in this backdrop of circumstances the Bank terminated his services With effect from 18th December 1977, it cannot be said that the Bank had contravened any provision or recommendation of the Sastry Award.

13. It was next urged on behalf of the respondent workman that under the order of appointment, Exhibit 2, the services of the workman could be terminated on giving fourteen days" notice. Under paragraph 522 of the Sastry Award, the services of any employee other than a permanent employee or a probationer can be terminated after fourteen days" notice. It further provides that the order of termination of service shall be in writing and signed by the manager. A copy of such order is required to be supplied to the employee concerned. It was urged that in the instant case the service of the respondent workman was terminated without giving any notice as required by the letter of appointment, Exhibit 2, or the provision contained in paragraph 522 of the Sastry Award. It is indeed true that the record does not show that the respondent workman was served with any such notice terminating his employment. The question then is, whether the failure on the part of the petitioner Bank to serve the respondent workman with fourteen days" notice of termination of service entitles the workman to reinstatement with full back wages.

14. On behalf of the workman strong reliance has been placed on the observations of the Supreme Court in *The State Bank of India Vs. Shri N. Sundara Money*, . That was a case where two employees were thrown out of jobs without payment of retrenchment compensation u/s 25-F of the Act. One of the two employees was re-absorbed in service, but the other remained unemployed. He was appointed intermittently between July 31, 1973 and August 29, 1973. The intermittent breaks notwithstanding, his total number of days of employment answered the test of "deemed" continuous service within the meaning of Section 25-B(2) and this fact situation was not disputed by the Bank. The order of appointment carried with it the order of termination and the question which arose before the Supreme Court was whether the said termination amounted to a retrenchment within the meaning of Section 2(oo) of the Act and, if yes, whether failure to comply with the requirements of Section 25-F of the Act rendered the termination order void. The Supreme Court came to the conclusion that the mandatory requirement of Section 25-F had not been followed and hence the order of termination was null and void. It then proceeded to make the following observations on which considerable reliance was placed on behalf of the

workman in paragraph 10 of the report-

What follows? Had the State Bank known the law and acted on it, half-a-month's .6 pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay, for no service rendered. Even so, hard cases cannot make bad law. Reinstatement is the necessary relief that follows.

Leaning heavily on this authority, it was urged on behalf of the workman that the failure on the part of the Bank to serve fourteen days' notice of its intention to terminate the services of the workman renders the or (sic) of termination null and void and hence the Tribunal was justified in directing reinstatement with full back wages.

15. It must be emphasized that the decision of the Supreme Court turns on the interpretation of Section 25-F of the Act. The relevant part of that section clearly discloses a negative flavour by providing that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer unless he has been given one month's notice in writing or he has been paid in lieu of such notice wages for the period of the notice and has been paid at the time of retrenchment compensation depending on the length of service. The opening words of the section "no workman...shall be retrenched" clearly go to show that the section is mandatory in nature and prescribes a condition precedent which must be obeyed if an employer desires to retrench his workman. It is a statutory requirement which can be ignored by an employer on pain of being ordered to reinstate the retrenched workman from the date of retrenchment with full back wages. It is in the context of the language of Section 25-F and the object which the section was to achieve that the Supreme Court in *N.S. Money's case* (supra) came to the conclusion that contravention of the requirement of that section would render the termination of employment null and void ab initio. Breach of a term of employment contained in a letter of appointment would not visit the employer with the same drastic consequences. Breach of the recommendation of the Sastry Award cannot be equated to a breach of a mandatory provision of law. Paragraph 522 of the Sastry Award merely states that the service of an employee other than a permanent employee or probationer may be terminated after fourteen days' notice. The language is not similar to the language of Section 25-F and, therefore, it cannot be said that non-service of such a notice is fatal and renders the order of termination of service void ab initio. We are, therefore, of the opinion that in such a case the workman would be entitled to claim wages in lieu of notice and nothing more. With respect, the Tribunal was, therefore, wrong in concluding that the workman is entitled to reinstatement for the omission on the part of the petitioner Bank to address 14 days' notice terminating his employment.

16. For the reasons set out above, we are of the opinion, that the three grounds on which the Tribunal based its order are not well-founded and hence the

Tribunal's order cannot be sustained. However, before we part with this case, we must mentioned that during the hearing of this petition, we had impressed upon Mr. Dtsai that the Bank should appreciate the plight of the workman who had crossed the age limit for passing the N.I.B.M. Examination and for securing a job in any Government or semi-Government establishment. Mr. Desai promised to impress upon the Bank authorities to take a humanitarian approach and try to accommodate the respondent workman, as far as possible. In order to enable Mr. Desai to move the authorities that be, we kept back the matter and we are happy to say that Mr. Desai secured from the Bank a letter offering a temporary job to the respondent workman and further promising to relax the age bar to enable him to appear at the N.I.B.M test to qualify for permanent absorption in Bank service.

17. Unfortunately, the representative appearing on behalf of the respondent workman was not prepared to accept such an offer and hence Mr. Desai did not tender the letter for being kept on record. We are, however, sure that notwithstanding the initial rejection of the offer by the representative of the workman, the Bank will abide by its promise and make the offer in writing within two weeks from to-day and if the workman accepts the offer within a period of two weeks from the date of receipt of the Bank's communication, he will be given a posting at an early date.

18. The result is that the petition succeeds. The order of the Industrial Tribunal is set aside and quashed and the order of termination service of the respondent workman is upheld. We have no doubt in our minds that the petitioner Bank will pay to the workman wages in lieu of notice within a month from to-day and will not drive the workman to separate proceedings to recover the same. There will, however, be no order as to costs. The Rule is made absolute accordingly.