

(2010) 06 GUJ CK 0007

In the Gujarat High Court

Case No : S.C.A. No's. 3601 of 2009 to 3607 of 2009

State of Gujarat and Another

APPELLANT

Vs

Ramabhai Lalabhai

RESPONDENT

Date of Decision : 21-06-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Industrial Disputes Act, 1947 — Section 2, 25B, 25F, 25F(6N), 6N

Citation : (2011) 1 LLJ 637

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Shachi Mathur, for the Appellant; Sunil S. Joshi, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned AGP Ms. Shachi Mathur for Petitioners and learned advocate Mr. A.N. Parmar for learned advocate Mr. Sunil S. Joshi on behalf of Respondents workmen.

2. In present group of petitions, common award passed by Labour Court, Dahod in Reference Nos. 756/2008 to 762/2008 (Old Reference Nos. 557 to 563/2001), dated February 10, 2009, is under challenge. The Labour Court, Dahod has set aside termination of each workman dated November 14, 2000 and granted relief of reinstatement in favour of Ramabhai Lalabhai, Maheshkumar Pravinbhai, Hirabhai Nanabhai, Pratapbhai Somabhai, Khumjibhai Amjibhai, Chandansinh Lalabhai and Nareshbhai Kuberbhai, with continuity of service with 60% back wages of interim period with cost of Rs. 7000/-.

3. Learned AGP Ms. Mathur giving brief facts of present group of petitions which are as under:

3.1 According to Petitioners, Respondents-workmen were working with the Petitioners on the post of Chowkidar since April 1, 1989. The Respondents workmen were working on daily wage basis, receiving Rs. 45/-per day. According to workmen, they were working continuously and sincerely with the Petitioner

Institute and therefore, demand was raised for increasing wages and in result of that, according to workmen, their services were terminated by Petitioner on November 14,2000 without following any procedure of law.

3.2 In support of aforesaid allegation made against Petitioners by workmen, statement of claim was filed before Labour Court by workmen (Annexure-D). The Petitioners had appeared and filed written statement, raising contention that present Petitioner Institute is relating to Archeology Department. The work of the workmen was to maintain garden and to protect the monuments. The said work has a universal cause and social value. The aim of the present institute is not to get profit out of it and therefore, said institute does not fall within the definition of "Industry" u/s 2(j) of the Industrial Disputes Act, 1947 (fort short the I.D. Act, 1947). Therefore, according to Petitioners, Labour Court has no jurisdiction to decide such dispute. Further contention was raised by Petitioner department that Petitioner Archeology Department functions under the State Government and main function was to take measures for protection and preservation of ancient monuments which are of great importance. The work done by the Archeology Department is mostly seasonal in nature and is executed only when there is a requirement or the monuments need it. Some time, department is provided budget/grant by other agencies to carry out the development works, which mainly includes seasonal works providing for fencing, providing for pathways, maintenance of landscape and restoration of ancient monuments. According to Petitioners, Respondents workmen were engaged only for these works and these workers made continued for a period till the grant is available. The Respondents workmen were engaged for such work purely on temporary basis and it will depend upon the availability of the grant. Present Respondents workmen were engaged only as part time workers for the maintenance of monuments till the work was required at the site and therefore, present Petitioner prays that as they are engaged as a part time wagger and when work was not available, they were discontinued. Therefore, reference was filed by workmen is required to be dismissed.

3.3 According to Petitioner, provisions of the I.D. Act, 1947 cannot apply to present Petitioner Institute and there are several decisions in the said line of the Labour Court, Rajkot in Reference No. 746/1990, Anr. decision in the case of Central Government Industrial Authority and Labour Court, Jaipur in the case of CGIT/B-18/97 and the decision on the same line is of CAT, Ahmedabad in O.A. No. 33/1986, which have been produced at Annexure-C collectively by Petitioner. A reply was filed by Petitioner department before Labour Court denying averments made in statement of claim which is at Annexure-D.

3.4 On the basis of aforesaid facts, certain details have been produced by Petitioner before Labour Court and according to Petitioner, Respondent workmen were appointed as temporary workmen and they were paid fixed pay of Rs. 1350/- per month. The Petitioner has also produced details with regard to contingencies expenditure at Anneuxre-E. According to Petitioner, there are

permanent Chowkidar available and appointed by department, in absence of that, these workmen were appointed on temporary basis and not on regular basis. According to Petitioner, at present there is no budget for engaging such workers on permanent basis for the protection of monument but regular chowkidars are still there. Only few monuments are provided with round the clock regular chowkidars for the safeguards of the monuments. There is no sanctioned post for these monuments. However, according to Petitioner, without considering aforesaid facts which are on records, Labour Court has passed award which is contrary to law and records. Similarly, other contention has been raised that in fact, the burden is upon workmen to prove 240 days continuous service. Thereafter, such burden is shifted upon Petitioner.

4. Learned AGP Ms. Mathur submitted that certain documents are produced on record by Petitioners which justify that Petitioner Institution is not covered by definition of "Industry". That aspect has not been properly dealt with by Labour Court. She also submitted that certain decisions are also relied upon but, same have been ignored by Labour Court. She also submitted that Labour Court ought to have considered the fact that there are 360 monuments in the State and if all the workmen, who are working for the said monuments, will fall under the definition of "labourers", then it will impose unnecessary financial burden on the shoulder of the State. The provisions of the I.D. Act, 1947 is not applicable to the Petitioner Institute. Therefore, learned AGP Ms. Mathur submitted that workmen were appointed for project work and as and when project was over, their services were discontinued and at present, no other workman like present Respondents workmen is engaged in the Petitioner department. However, without considering the same, Labour Court has committed gross error in granting relief in favour of Respondents workmen.

5. Learned advocate Mr. A.N. Parmar appearing on behalf of Respondents workmen submitted that Labour Court has rightly examined the industrial dispute which has been referred for adjudication. He also submitted that Labour Court has considered entire evidence which are on record and Labour Court has given detailed reasons in support of its conclusion. He further submitted that witness Ravi Gajanan, who was retired officer as Director, was examined before Labour Court and he was cross-examined by advocate of workmen. He submitted that Labour Court has rightly come to conclusion that whatever activities have been carried out by Petitioner department have not been proved by leading proper evidence before the Labour Court and only one witness Exhibit 18 who was examined, has not justified the defence raised by Petitioner which has been rightly examined by Labour Court. He submitted that Labour Court has rightly considered one decision of Bombay High Court in the case of Hospital Mazdoor Sabha v. State of Bombay. In short, his submission is that Petitioner department is not carrying out any sovereign function as the State Government has to carry out. Therefore, any other activity except sovereign function are covered by definition of "industry" u/s 2(j) of the I.D. Act, 1947. Accordingly, he submitted that Petitioner has failed to establish exception before Labour Court and not

satisfactorily led proper evidence to exclude the Petitioner department from the definition of "industry". He also submitted that Labour Court has rightly examined the matter on the basis of evidence on record and come to conclusion that workmen remained in service for more than 9 to 10 years which facts have been established on the basis of record and there was no evidence produced by Petitioner department before Labour Court that workmen were appointed in particular project and their services have been terminated because of completion of project. The Petitioner has not produced relevant documents on record. Therefore, Labour Court has rightly drawn adverse inference and accordingly, each workman has completed 240 days. The finding given by Labour Court cannot consider to be erroneous which requires interference by this Court. He also submitted that Labour Court has rightly granted relief of reinstatement in favour of workmen and also rightly granted 60% back wages as gainful employment is not proved by Petitioner department against the evidence of workmen, those who remained unemployed during the interim period. Therefore, in short, his submission is that Labour Court has rightly decided the matter and not committed any error which requires interference by this Court.

6. I have considered submissions made by both learned advocates and also perused the common award passed by Labour Court, Dahod. An industrial dispute has been raised against termination by workmen which referred for adjudication on May 22, 2001. Before Labour Court, statement of claim was filed by workmen vide Exhibit 2. Thereafter, written statement has been filed by Petitioner vide Exhibit 7. On behalf of Respondents, vide Exhibit 9 list, mark 9/1 documents have been produced before Labour Court. This mark 9/1 is a document which gives details about each Respondent workman as to how many days, they remained in service as well as also giving details about nature of work performed by workmen. On behalf of Petitioner, vide Exhibit 12 list, certain documents have been produced and on that documents, during the interim period when workmen remained in service, their working days as well as salary paid to each workman one specific statement produced by Petitioner before the Labour Court. Vide Exhibit 14, Respondents workmen were examined before Labour Court and it was cross-examined by Government Pleader, Shri P.L. Gandhi on behalf of Petitioner. One pursis vide Exhibit 15 was submitted by Government Pleader before the Labour Court that whatever the cross-examination of Ramabhai Lalabhai made by him, may be treated as cross-examination in each Respondent workman. Therefore, that facts have been recorded accordingly by Labour Court. On behalf of Petitioner, one retired Director Shri Ravi Gajanan was examined before the Labour Court vide Exhibit 18, who was cross-examined by advocate of workmen and that cross-examination has been completed on June 17, 2006. Thereafter, no further evidence has been led by Petitioner and on December 23, 2008 vide Exhibit 22, right to lead further evidence of Petitioner has been closed. Thereafter, on January 6, 2009, Labour Court has heard the matter finally. Thereafter, Labour Court has framed the issues in Para.7. First issue has been raised by Petitioner that Petitioner department is not an

"industry". That has been considered by Labour Court. The Labour Court has considered oral evidence of retired Director at Exhibit 18, whose evidence remained silent in respect to contention of "industry" raised by Petitioner department. On which circumstances or the activities, Petitioner department is not covered by definition of "industry", for that no details are given by aforesaid witness in support of contention raised by Petitioner. Merely raising dispute that Petitioner department is not an "industry", is not enough but, they should have to prove it by leading proper evidence. The provisions of Section 2(j) of the I.D. Act, 1947 suggests that any kind of regular systematic activities carried out by any department with the help of relationship as a master and servant and satisfying the need of mankind or people or human resources, the question of profit and loss while performing such activities is totally irrelevant. Therefore, said test being a triple test laid down by Apex Court in case of *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, where activities in question carried out by department, no such activities the profit or loss do not make a material difference. The important decision of Apex Court in respect to deciding definition of Section 2(j) "industry" given by Apex Court in case of *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*,

7. The Labour Court has rightly considered the Section and activities carried out by Petitioner department but, merely Petitioner department is a part of Government department, is not enough to exclude the activities carried out by Petitioner from the purview of Section 2(j) of the I.D. Act, 1947. In fact, Exhibit 18, evidence of witness of Petitioner has not led clear evidence before Labour Court that what kind of activities carried out, which can be considered to be a sovereign function of Petitioner department. If systematic activities carried out with the help of relationship as a master and servant and it may manufacturing of any item or distribution of any item or satisfied the needs of human being, then also such activities is considered to be an industry within the meaning of Section 2(j) of the I.D. Act, 1947. So there was no sufficient evidence, produced by Petitioner department before Labour Court to justify his defence except oral evidence of one retired Director at Exhibit 18, who is failed to establish contention raised by Petitioner department. Therefore, in light of above observations made by Labour Court considering Apex Court's decision in case of *State of Bombay and Ors. v. Hospital Mazdoor Sabha and Ors.* (supra) as well as *Bangalore Water Supply and Sewerage Board v. A. Rajappa and Ors.* (supra) where tripple test has been laid down which has been satisfied in facts of this case because Petitioner department is failed to establish the fact before Labour Court that Petitioner department is performing sovereign function of State Government. Therefore, according to my opinion, contention which has been raised by learned AGP Ms. Mathur cannot be accepted. The Labour Court has rightly come to conclusion that Petitioner department is covered by definition of Section 2(j) "industry" under provisions of the I.D. Act, 1947. For that, Labour Court has not committed any error which requires any interference by this Court. Relevant observations of aforesaid decision are quoted as under:

Industry as defined in Section 2(j) has a wide import.

Where there is (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and service calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale, prasad or food), prima facie, there is an industry in that enterprise.

Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer employee relations.

8. The second issue which has been examined by Labour Court is that the workmen, those who are working with Petitioner department, are covered by definition of Section 2(s) of the I.D. Act, 1947. The Labour Court has also examined further question as to whether these workmen are engaged or appointed by Petitioner department or not. This factual aspect has been considered by Labour Court on the basis of oral evidence led by workmen as they were appointed as Chowkidar, receiving Rs. 45/- per day and they were required to work six hours and their salary has been paid by Petitioner department on voucher. No register has been maintained by Petitioner department. The statement giving details of working has been produced by Petitioner from 1989-90 to 2000 and workmen were working as monument watchman and on the basis of such documents produced by Petitioner as well as Respondents workmen and their oral evidence as well as considering evidence of witness of Petitioner at Exhibit 18, facts have been established before Labour Court considering evidence of Ramabhai Lalabhai and cross-examination Exhibit 14, the Labour Court has rightly come to conclusion that these workmen were appointed or employed or engaged by Petitioner department as a daily wager in the post of monument chowkidar. Therefore, accordingly this factual aspect has been rightly decided by Labour Court. The reasoning given by Labour Court is based on legal evidence means documentary and oral evidence. Therefore, this finding is also not required to be interfered with by this Court being a finding of fact.

9. Thereafter, Labour Court has examined the question as to whether the workmen have completed continuous service of 240 days in a year or requirement of Section 25-B of the I.D. Act, 1947 has been satisfied by the workmen or not? For that, Exhibit 14 evidence of Ramabhai Lalabhai has been considered as well as contention raised by Petitioner that they were appointed in DRD Project and after completion of project, their services have been terminated. But before Labour Court, the Petitioner department is not able to justify while producing relevant documents on record that workmen have not completed 240 days continuous service within a preceding 12 months from date of termination and also they were appointed in DRD project and after completion

of project, their services were terminated.

10. It is necessary to note that vide Exhibit 18 evidence of retired Director, Shri Ravi Gajanan, who has in terms in Para 2, admitted the fact that these workmen were working as a Chowkidars and in Para 9 he also admitted the fact that each workman has completed 240 days continuous service in Petitioner department and there was no oral or documentary evidence has been produced on record which justified that they were appointed on project and project has been closed by Petitioner department. Except Exhibit 18, no other oral evidence led by Petitioner department. Therefore, in light of aforesaid Para 9 on affidavit filed by retired Director Shri Ravi Gajanan, each workman has completed 240 days continuous service and total and relevant all the documents are not produced on record by Petitioner department. Therefore, Labour Court has rightly drawn adverse inference in favour of Respondents workmen. Therefore, finding given by Labour Court relying upon affidavit at Exhibit 18 of witness of Petitioner that each workman has completed 240 days continuous service. Therefore, on that basis it is established before Labour Court by Respondents workmen that they had completed continuous service of 240 days in a year. Therefore, finding of fact decided by Labour Court on the basis of evidence, cannot be disturbed by this Court while exercising powers under Article 227 of the Constitution of India. Thereafter, Labour Court has considered as to what relief is to be given in favour of Respondents workmen. The Labour Court has come to conclusion on basis of undisputed facts; one is that contention of "industry" is not established, the Respondents workmen were appointed by Petitioner department, therefore, they were employees of Petitioner department and they had completed 240 days continuous service within the meaning of Section 25-B of the I.D. Act, 1947 and Anr. undisputed fact that at the time of terminating their services, Section 25F of the I.D. Act, 1947 is not followed by Petitioner department, no notice or notice pay and retrenchment compensation has been paid by Petitioner department to Respondents workmen. Therefore, order of termination dated November 14, 2000 has been found to be illegal, contrary to provisions of Section 25-F of the I.D. Act, 1947. The contention which has been raised by Petitioner department that payment of salary were paid from contingency expenses, that has also not been proved by Petitioner department. There was no evidence also produced by Petitioner department that their services were terminated because the project has been closed. There was no evidence produced by Petitioner department that it has been running on the basis of receiving grant from State Government. Therefore, Labour Court has considered decision of Himachal Pradesh High Court 2008 LLR 763 wherein it has been observed that in case of daily wager or a part timer, if he completed 240 days continuous service, then his service cannot be terminated violating Section 25-F of the I.D. Act, 1947. Therefore, Labour Court has rightly come to conclusion that workmen are entitled a relief of reinstatement because order of 5 termination is held to be illegal and contrary to Section 25(F) of the I.D. Act, 1947. Thereafter, Labour Court has considered question as to what relief is to be given to the workmen. Ultimately, the Labour

Court has granted 60% 10 back wages of interim period.

10.1 In this group of matters, facts have been proved on basis of record that each Respondent workman has completed 240 days continuous service and Section 25-F of the I.D. Act, 1947 is violated by Petitioner department. In such circumstances, order of termination is ab initio void and workman is entitled right of reinstatement which has been examined by Allahabad High Court in the case of Gyanandera Dutt Trivedi Vs. Labour Court and Another, Relevant observations are in Para 8 to 13 which are quoted as under at pp. 623 & 624 of LLJ:

8. I have carefully considered the submissions made by the learned Counsel for the parties and perused the record.

The provisions of Section 6N of the Act are 30 para materia with the provision of Section 25F of the Industrial Disputes Act, 1947. The various decisions rendered with reference to Section 25-F shall be applicable to the present case which is governed by 35 Section 6N of the Act also. In Mohan Lal Vs. Management of Bharat Electronics Ltd., it was held that termination simplicitor of services of a temporary workman not falling within the excepted or excluded categories mentioned in Section 2(oo) would amount to "retrenchment" and if immediately preceding the date of termination of service, such workman actually worked for not less than 240 days within a period of 12 months under the employer, he will be deemed to be in "continuous service" for one year and therefore would be entitled to retrenchment compensation u/s 25F(6N) would render the order of termination ab initio void entitling him to a declaration for continuation in service with full back wages. A reference was also made to L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another, Raj Kumar College, Karmachari Union v. Principal, Rajkumar College, Raipur and Anr. (1987) 55 FLR 93 , Makhan Singh Vs. Narainpura Co-operative Agricultural Service Society Limited and Another, Lallan Roi Vs. Presiding Officer, Labour Court and Another, and the decision of the Apex Court in Uptron India Limited Vs. Shammi Bhan and Another,

9. In the case of State of U.P. v. Putti Lal and Anr. 2003 (IV) LLJ 820 (All-NOC) this Court held that the termination of services of a workman, who has worked for more than 240 days in the preceding/calendar year, without complying with the provisions of Section 6-N of the U.P. Industrial Disputes Act is illegal and unjustified.

10. This Court again/held in the case of State of U.P. v. Presiding Officer/Labour Court, U.P. Gorakhpur and Anr. (2007) 3 UPLBEC 2756 that non-observance of Section 6-N of the Act prior to retrenchment renders the retrenchment totally unsustainable at law.

11. The unreported judgment of this Court dated September 4, 1998 given in Writ Petition No. 3739/1984, Hira Lal v. Labour Court., U.P. Lucknow and Anr. Relied upon by the Petitioner applies with full force to the facts and circumstances of the present case.

12. On the strength of the above decisions the learned Counsel for the Petitioner urged that the impugned order of termination of the services of the Petitioner was illegal and void ab initio as it was against the mandatory provisions of Section 6-N of the Act and that the Presiding Officer of the Labour Court was not justified in awarding the amount of compensation even though he had recorded a clear finding that the termination order was bad in law on account of non-compliance of the provisions of Section 6-N of the Act. The learned Counsel vehemently argued that the compensation is to be paid at the time of retrenchment and not subsequently. In support of his contention he placed reliance on the decision *The State Bank of India Vs. Shri N. Sundara Money*, in which it has been held that retrenchment compensation must be paid at the time of retrenchment.

13. Sri Masoodi, learned Counsel appearing for the opposite party No. 2 has failed to cite any decision to the contrary which may give strength to his submissions. After considering the entire case law cited on behalf of the Petitioner, I am of the view that the impugned order of termination of service of the Petitioner dated July 19, 1979 is nothing but an attempt to camouflage the order of retrenchment. The order of termination simpliciter in nature is virtually an order of retrenchment. A workman cannot be retrenched unless the requirements as mentioned in Section 6-N of the Act are complied with. Admittedly no compensation was paid to the Petitioner at the time of his retrenchment i.e. termination of his service although at the time, the service of the Petitioner were terminated, the Petitioner had admittedly worked continuously for more than four years in the Establishment. The Presiding Officer of the Labour Court also found the order of termination to be illegal and yet he made an order for payment of compensation in lieu of termination. The course adopted by the Presiding Officer of the Labour Court cannot be justified. It did not fall within his domain or jurisdiction to pass an order for payment of compensation in lieu of the retrenchment of the Petitioner. In view of the decisions referred to above, the Petitioner is entitled to reinstatement in service.

10.2 The Petitioner has not established before Labour Court that reinstatement of workmen is not possible. In support of that, no evidence has been produced by Petitioner and no documentary evidence has also been produced to show that reinstatement of workmen is not possible. Therefore, in such circumstances, relief of reinstatement has been rightly granted by Labour Court.

11. The finding which has been given by Labour Court that reference remained pending for a period of 8 years and in evidence of workmen, workmen have made clear statement on oath that they all are unemployed and Petitioner department has not proved gainful employment of Respondents workmen. In light of this background, Labour Court has granted 60% back wages of interim period.

12. Learned AGP Ms. Mathur has raised contention that mere breach of Section 25-F of the I.D. Act, 1947 does not automatically entitle workmen back wages.

She submitted that it is a duty of workmen to establish before Labour Court that they remained totally unemployed inspite of making sincere efforts to find out job. She also submitted that in facts of this case, there was no evidence given by any workmen except that they remained unemployed but, what efforts have been made by them to find out the job or to have gainful employment, for that there was no evidence led by workmen before Labour Court. Therefore, she submitted that during the period of 8 years pendency of reference, it is very difficult for workmen to survive for a period of 8 years without any work. Therefore, she submitted that legal presumption must have to be made that workmen must have earned something, otherwise they may not be able to maintain family. She submitted that while determining the question of back wages, certain relevant factors must have to be considered by Labour Court which have not been considered by Labour Court and mechanically granted lumpsum 60% back wages which is on higher side and also contrary to record. She submitted that relevant factors are nature of job, qualification of workman, status of employee and continuous working of workmen and total period of pendency of reference and why reference has been delayed and who is at fault. Therefore, she submitted that granting amount of 60% back wages is contrary to law.

13. Learned advocate Mr. A.N. Parmar appearing on behalf of Respondents submitted that Labour Court has rightly considered unemployment of workmen and burden is shifted upon Petitioner department to prove gainful employment, which has not been proved. Therefore, not granted full back wages of interim period and only granted 60% of back wages of interim period.

14. I have considered submissions made by both learned advocates and considering the principles which has been examined by Apex Court in case of Reetu Marbles Vs. Prabhakant Shukla, and also considered that there is no precise formula can be laid down as to under what circumstances, payment of entire back wages should be allowed. It depends upon the facts and circumstances of each case. It would however not to be correct to contend that it is automatic. It should not be granted mechanically only because of technical ground or otherwise the order of termination is found to be in contravention of Section 25-F of the I.D. Act, 1947. The changes brought about by the subsequent decision of Apex Court probably having regard to facts in the policy decision of the Government in the award on prevailing market economy globalization privatization and outsourcing.. That view has been taken by Apex Court in case of U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, Similar view has been taken by Apex Court in case of Haryana State Electronics Development Corporation Ltd. Vs. Mamni, and also in case of P.V.K. Distillery Ltd. Vs. Mahendra Ram, Thereafter, in case of; Haryana Urban Development Authority Vs. Om Pal, and also in case of U.P.S.R.T.C. Vs. Mahendra Nath Tiwari and Another,

15. In light of aforesaid decisions which have been relied by learned AGP Ms.

Mathur and considering facts of present case, one fact is there that Respondents workmen were not permanent monument employees appointed by Petitioner department. They were not regular-chowkidars but, they were appointed as a temporary chowkidar on ad hoc basis in absence of regular chowkidar. However, they remained in service about more than 9 to 10 years as chowkidar and they were receiving only daily wage from Petitioner department. The dispute remained pending before Labour Court for about 8 years and Petitioner department has led oral evidence little bit delayed and that evidence has come to an end on December 23, 2008. Therefore, matter has been delayed by Petitioner department and in light of this entire background, considering breach of Section 25-F of the I.D. Act, 1947 committed by Petitioner department, the order of termination has been rightly set aside. Looking to special facts and circumstances of the case, if order of granting 60% back wages by Labour Court for the period from date of termination November 14, 2000 till the date of award February 10, 2009, is reduced from 60% to 30% which will meet ends of justice between parties. Therefore, award of granting 60% back wages has been interfered with by this Court and it has been reduced to 30% back wages of interim period. Except that, entire award granting reinstatement with continuity of service in favour of Respondents workmen shall remain intact. Therefore, common award passed by Labour Court, Dahod, Exhibit 23, dated February 10, 2009 is modified to the extent that Respondents workmen are entitled reinstatement with continuity of service and with 30% back wages of interim period. Meaning thereby that this Court has modified direction in respect of back wages only and this Court has not modified direction in respect to reinstatement with continuity of service which was granted by Labour Court in favour of Respondents workmen. Accordingly, Petitioner has to implement the common award passed by Labour Court, Dahod in favour of Respondents workmen. Now, the workmen is entitled 30% back wages of interim period but, from date of award Respondents workmen are entitled full back wages till the date of actual reinstatement. Accordingly, all these petitions are partly allowed. Rule is made absolute to the aforesaid extent.