

(2008) 04 GUJ CK 0023

In the Gujarat High Court

Case No : Special Civil Application No. 5972 of 2002

State of Gujarat

APPELLANT

Vs

Dipak Kumar Madhusudanbhai Gandhi

RESPONDENT

Date of Decision : 25-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 17B, 2, 25B, 25F, 25G

Citation : (2008) 04 GUJ CK 0023

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

Bench : Single Bench

Advocate : K.J. Dwivedi, AGP for Petitioner 1, for the Appellant; M.B. Gandhi, for Respondent 1 and Trusha M. Gandhi, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned AGP Mr. K.J. Dwivedi for the petitioner and learned advocate Mr. Gandhi for the respondent.

2. In the present petition, the petitioner has challenged the award passed by the Labour Court, Anand in Reference No. 1203 of 1992 dated 6.12.2001 whereby the Labour Court has set aside termination order and granted 40% back wages of interim period with cost of Rs. 1000/-.

3. This Court has, on 10.7.2002, issued Rule and granted interim relief in terms of Para.14(C) subject to the right of the respondent u/s 17B of the I.D. Act, 1947.

4. Learned AGP Mr. Dwivedi raised contention that respondent was appointed in a particular project and a moment project comes to an end, his service comes to an end and it cannot be considered to be a termination and the workman is not entitled the benefit of Section 25F of the Industrial Disputes Act, 1947 (for short "the Act"). He also raised contention that workman was not selected by due process of selection and therefore, he is not entitled the reinstatement in service. He also raised contention that there is no post is available and therefore, there is

no question to reinstate the workman by the petitioner. Therefore, according to him, the award passed by the Labour court is bad and contrary to law laid down by the Supreme Court.

5. Learned advocate Mr. Gandhi submitted that there was no written order issued by the petitioner in favour of respondent where his appointment was made in a particular project. He also submitted that respondent is covered by definition of "workman" u/s 2(s) of the Act and he has completed continuous service of 240 days within the meaning of Section 25(2) of the Act and these facts are not in dispute between the parties. He further submitted that non compliance of Section 25F of the Act render the order of termination ab-initio void. Therefore, the Labour Court has rightly granted the reinstatement in service with 40% back wages of interim period. For that, according to him, the Labour Court has not committed any error which requires interference by this Court while exercising the power under Article 227 of the Constitution of India.

6. I have considered the submissions made by both the learned advocates and perused the award passed by Labour Court, Anand. According to facts as narrated by Labour Court in Para.2, the respondent workman was appointed as an Agriculture Supervisor on 3.3.1991 on daily wage basis of Rs. 60/-. The respondent is possessing educational qualification of B.Sc. (2nd class) graduate from Gujarat Agriculture University. His presence was marked in the muster roll and designation was given as of Supervisor. He remained in service upto 30.6.1992. During that period, he had completed 240 days continuous service with the petitioner. At the time of terminating the service of the workman, provision of Section 25F of the Act is not followed by the petitioner. Therefore, the dispute which was raised, was referred for adjudication on 8.8.1992. Vide Exh.9, reply was submitted by petitioner before the Labour Court. The workman has not produced any evidence before the Labour Court. The workman has not produced any documentary evidence before the Labour Court but, petitioner establishment has produced certain documents vide Exh.11, 12 and 14 which have been exhibited as Exh.15 to 17, 18 to 21 and 22 to 25. The workman was examined vide Exh.27 and he was working as Agriculture Supervisor receiving basic salary of Rs. 45/- and his service was terminated on 30.6.1992. So during the period from 3.3.1991 to 30.6.1992, he completed more than 240 days continuous service with the petitioner. Along with the workman, another 4 to 5 employees were working and the salary was paid on voucher and vide Exh.17, signature of the workman was there. The stand of the petitioner is that workman was appointed against Valmi Project, which has been denied by the workman in his evidence. Thereafter, witness Shri Raman H. Patel was examined vide Exh.34 who was Executive Engineer. According to his evidence, on 1.10.1991 to 31.8.1994, India Imi Collaboration Research Study Project was announced for a period of 2 years and on that basis, post was created and accordingly, respondent was appointed initially for a period of six months. Thereafter, further extension of six months, 1 month and 3 months. Ultimately, on 30.6.1992, he was terminated by petitioner because the project was over and subsequently, the

petitioner establishment has advertised the post of Garden Supervisor but, no procedure was initiated to fill up the post of Garden Supervisor. In cross-examination, the said witness has admitted that he was not aware that on what basis the workman was appointed by the petitioner and there is no appointment order issued in favour of respondent workman by the petitioner. There was no any terms and conditions was incorporated in appointment order. In reality, he was orally appointed and no terms and conditions agreed between both the parties and therefore, no order was produced by petitioner before the Labour Court that workman was appointed for a particular project. Therefore, the contention is raised by learned AGP Mr. Dwivedi that workman was appointed on project, meaning thereby that periodical work was taken. Therefore, provision of Section 2(oo)(bb) of the Act is applicable and such termination does not amount to retrenchment within the meaning of Section 2(oo) of the Act, cannot be accepted in light of undisputed facts that no written appointment order was issued in favour of respondent workman by the petitioner. In Para.9 of the award, the Labour Court has examined the submissions made by both the parties and also examined the evidence on record and come to the conclusion that there is no appointment order produced by petitioner on record which suggests that workman was appointed against the special project. Therefore, the Labour Court has come to the conclusion that looking to the documentary evidence vide Exh.18, initially the workman was appointed on 3.3.1991 and thereafter, his service was terminated on 3.3.1992 and again, he was appointed on 3.4.1992 and remained continued upto 30.6.1992. The project was continued upto 31.3.1992 but, thereafter, no order was produced on record or letter was produced that project can be extended for a further period w.e.f. 1.4.1992. That fact was admitted by the witness of the petitioner vide Exh.34. But it is necessary to note that respondent remained in service after completion of the project for a further period upto 30.6.1992. That was also on the basis of oral order passed by petitioner. Ultimately, the Labour Court has come to the conclusion that Section 2(oo)(bb) of the Act is not applicable because there is no appointment order issued in favour of respondent by the petitioner giving appointment on project. Therefore, the Labour Court has come to the conclusion that such termination amounts to retrenchment within the meaning of Section 2(oo) of the Act and undisputedly, non-compliance of Section 25F of the Act render the order of termination ab-initio void as per decision of Apex Court reported in Mohan Lal Vs. Management of Bharat Electronics Ltd., Therefore, the Labour Court has granted reinstatement in favour of workman and considering that workman remained without service about more than 9 years, therefore, the labour Court has granted 40% back wages of interim period on the presumption that workman may not remain without work for a pretty long time as the petitioner has not proved gainful employment of the respondent workman. Therefore, the Labour Court has granted relief in favour of respondent workman.

7. Recently, the Apex Court has taken the view in the case of Hindustan Petroleum Corporation Ltd. v. Ashok Raghba Ambre reported in 2008 (1)

Supreme Today 257. Relevant observation are in 11, 18 and 19 which are quoted as under:

11. To us, however, the learned Counsel for the appellant-Corporation is right in submitting that setting aside an action of termination of services being violative of Section 25F of the Act does not necessarily follow that the workman must be held entitled to the benefits claimed by him in the writ petition, namely, status of permanency and claim of regular pay scales and other benefits based on permanency. In our judgment, two things are distinct, different and operate in different areas. In Reference proceedings, the question before the Industrial Tribunal as also before the High Court was whether termination of services of the workman was in consonance with law. Once it was held that there was breach of Section 25F of the Act, it necessarily followed that the order of termination was in violation of law and direction was required to be issued in the form of reinstatement of the workman. The said order was, therefore, confirmed by the High Court. But in our considered opinion, in the proceedings before the High Court under Article 226 of the Constitution as to permanency and other benefits on that basis, the writ petitioner could not contend that since the action of termination of his services was held to be illegal and he was ordered to be reinstated by Industrial Tribunal and the said Award was confirmed by the High Court, ipso facto, he ought to be treated as permanent employee of the Corporation and must be held entitled to the benefits claimed in the writ petition. To that extent, therefore, the order passed by the High Court is not in consonance with law.

18. In the case on hand, according to the appellant-Corporation, the workman was appointed on a purely ad hoc and temporary basis, without following due process of law. His name was never sponsored by the Employment Exchange nor an advertisement was issued for the purpose of filling the post to which the writ petitioner was appointed. Cases of other similarly situated persons were not considered and the appointment was not legal and lawful. In industrial adjudication, an order of termination was quashed as it was not in accordance with law. But that did not mean that the workman had substantive right to hold the post. The High Court was, therefore, wrong in directing the Corporation to make the writ petitioner permanent and to extend him all benefits on that basis from 1992. The said direction, therefore, has to go.

19. For the foregoing reasons, the appeal is allowed by setting aside the direction issued by the High Court ordering the appellant-Corporation to make the writ-petitioner (respondent herein) permanent employee of the Corporation and to grant all benefits on that basis with effect from the date of filing of writ petition.

8. The Apex Court has taken the view in the case of S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka, Relevant observation are in 11, 12, 13 and 14 which are quoted as under:

11. It is common knowledge that the Government as a welfare State floats

several schemes and projects generating employment opportunities, though they are short lived. The objective is to meet the need of the moment. The benefit of such schemes and projects is that for the duration they exist, they provide employment and livelihood to such persons as would not have been able to secure the same but for such schemes or projects. If the workmen employed for fulfilling the need of such passing-phase-projects or schemes were to become a liability on the employer State by too liberally interpreting the labour laws in favour of the workmen, then the same may well act as a disincentive to the State for floating such schemes and the State may opt to keep away from initiating such schemes and projects even in times of dire need, because it may feel that by opening the gates of welfare it would be letting in onerous obligations entailed upon it by extended application of the labour laws. Sub-clause (bb) in the definition of retrenchment was introduced to take care of such like situations by Industrial Disputes (Amendment) Act, 1984 with effect from 18-8-1984.

12. "Retrenchment" in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well settled that the Parliament has employed the expression "the termination by the employer of the service of a workman for any reason whatsoever" while defining the term "retrenchment", which is suggestive of the legislative intent to assign the term "retrenchment" a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term "retrenchment", and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of "retrenchment" de hors the reason for termination. To be excepted from within the meaning of "retrenchment" the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of "retrenchment".

13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of Sub-clause (bb) subject to the following conditions being satisfied:

- (i) that the workman was employed in a project or scheme of temporary duration;
- (ii) the employment was on a contract, and not as a daily wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project ; and
- (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
- (iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.

14. The engagement of a workman as a daily wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or upto to the occurrence of some event, and therefore, the workman ought to know that his employment was short lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore, complain that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the abovesaid ingredients so as to attract the applicability of sub Clause (bb) abovesaid. In the case at hand, the respondent-employer has failed in alleging and proving the ingredients of Sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily wagers in a project. For want of proof attracting applicability of Sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment.

9. The Patna High Court has taken the view in the case of Bennett Coleman and Co. Ltd. v. Presiding Officer, Labour Court, Patna and Ors. reported in 2003-III-LLJ-981. Relevant observation are in 16, 17, 19 and 29 which are quoted as under:

16. This takes us to the moot question as to whether the termination amounted to retrenchment within the meaning of Section 2(oo) of the I.D. Act. The protection u/s 25F of the Act is against retrenchment and therefore, the workman is required to prove that his dismissal etc. amounted to retrenchment. The argument of the counsel for the management is that as the respondent held a tenure employment her case would fall under exception (bb) appended to Section 2(oo) and therefore, the termination of her service did not amount to retrenchment. In order to appreciate this submission the definition of "retrenchment" u/s 2(oo) may be noticed as under:

(a) ...

(b) ...

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or (c)

According to learned Counsel for the management, the latter part of Clause (vv) i.e. "contract being terminated under a stipulation" covers the case of the respondents. I do not find any merits in this submission. The first part of Clause (bb) governs cases where the termination results from non-renewal of the

contract such as where appointment is for a particular tenure and on expiry whereof his appointment comes to an end. The latter part of the clause refers to a situation where the contract is terminated on the happening of certain events in accordance with the stipulation as indicated in the appointment order i.e. contract of service.

17. In the instant case, as seen above, the services were terminated on the ground of performance not being found satisfactory during her training period. The termination being on the ground of unsatisfactory performance cannot be said to be "under a stipulation" contained in the appointment order. The appointment order simply stipulated that the appointment was termination at any time without notice and without assigning any reason and, further, the appointment would stand terminated on expiry of six months from the date of joining. As the appointment was not terminated after expiry of the six months" period from the date of joining, clearly, that part of the appointment order was not attracted. So far as the other part is concerned, if I may say so, the stipulation was general; it merely incorporated what is implicit in every case of temporary appointment. Every case of temporary appointment is terminable at any time without notice and if such termination were to come within the ambit of second part of Clause (bb) it would mean that all such cases of termination would be covered by the exception and stand out of pale of retrenchment. Such interpretation would not be in the interest of labour for whose benefit the I.D. Act has been enacted. Every retrenchment has an element of termination and vice versa, unless it is by way of punishment in a departmental proceeding or is covered by any of the exceptions. I accordingly hold that termination of the respondent's service amounted to retrenchment within the meaning of Section 2(oo) of the I.D. Act.

19. On a plain reading of the section it would appear that any workman who has been in continuous service for not less than one year under an employer cannot be retrenched without one month's notice in writing, indicating reasons for retrenchment or wages in lieu of such notice and, further, without retrenchment compensation equivalent to fifteen days" pay for every completed year of service or any part thereof in excess of six months, and lastly, without serving notice in the prescribed manner on the appropriate Government. Law is well-settled on the point that for valid retrenchment it is necessary that all the three conditions precedent must be satisfied failing which the retrenchment becomes void ab initio.

29. The question which then arises for consideration is whether the award of the Labour Court directing reinstatement without full back wages and other service benefits is correct. In *Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another*, , the Court observed that removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been and so it must ordinarily lead to back wages too. But

there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The Court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the Court may mold the relief but, ordinarily the relief to be awarded must be reinstatement with full back wages.

10. Recently, this Court has considered identical issue in case of Gujarat Agro Industries Corporation Limited v. Pravinsinh Babubhai Chauhan reported in 2008 (1) GCD 346. Relevant observations are made in Para.9 to 13, which are quoted as under:

9. Findings given by the labour court are based on legal evidence and labour court has given cogent reasons in support of its conclusions. Looking to the appointment order, why such type of appointment orders were issued periodically and on temporary basis, for that, there is no justification coming forward from the side of the petitioner. If the requirement is continuing from the date of appointment till the date of termination, then, why management is issuing such orders on periodical basis, on temporary basis. Reason is apparent that this is done only with a view to get rid of the mandatory provisions of Section 25F of the ID Act, 1947 and to deprive the workman from claiming protection of the said mandatory provisions. Such type of efforts on the part of the petitioner are arbitrary and same amounts to unfair labour practice adopted by the petitioner. Looking to all the orders of appointment periodically given to the petitioner from time to time on temporary basis, there is no reason or justification given by the petitioner for issuance of such orders. Last order is dated 15th July, 1994. Why service period was extended and for that, no appointment order has been issued which suggests periodical or temporary. Looking to the last order dated 15th July, 1994, services of the respondent workman came to an end on 20th July, 1994. For that, periodical order was not given to the respondent by the petitioner. This being an undisputed position, upto 30th September, 1993, periodical appointment orders were there but beyond that from 1st October, 1993 to 20th July, 1994, no such periodical appointment orders have been given by the petitioner to the respondent and, therefore, considering the entire period of services including the order dated 15.7.1994, services of the respondent workman were terminated by the petitioner without complying with the provisions of Section 25F of the ID Act, 1947. In light of this situation, whether the provisions of Section 2(oo)(bb) of the ID Act, 1947 would be applicable or not. Considering the submission of Ms. Desai that such contention was not raised by petitioner before the labour court which is not disputed by learned Advocate Mr. Nanavati for petitioner, therefore, since the labour court was not given an

opportunity to examine this contention and to give finding thereon, this Court cannot permit the petitioner to raise such contention for the first time before this Court as it is a mixed question of law and facts required to be pleaded and proved by the petitioner before the labour court. However, without entering into that aspect, this Court has examined the contention. Looking to the facts of this case as emerging from the record, Section 2(oo)(bb) of the ID Act, 1947 would not be applicable in this case because there is no fixed term order of appointment issued by the petitioner in favour of the respondent. There is some purpose behind bringing this provisions in the Statute with effect from 18.8.1984. In *Executive Engineer, District Panchayat, Bharuch v. Shankarbhai Jivabhai Patel* reported in 2006 Lab IC 2180, this aspect has been considered by this Court in detail. Relevant observations made by the Madras High Court in case of *Manager (P&A) Oil and Natural Gas Corporation Ltd. Chennai v. G. Radhakrishnan* (200) Lab IC 2570 have also been considered by this Court in the said decision by referring to para 22 of the said decision. Scope of Section 2(oo) (bb) has been considered and it has also been considered how the employer is abusing such provision unscrupulously while employing the workman and in such circumstances, court should see the real position so as to rule out the injustice to workman. Decision of the Division Bench of Madras High Court has been considered by this Court in the above referred decision of this Court in case of *Executive Engineer, District Panchayat, Bharuch v. Shankarbhai Jivabhai Patel* reported in 2006 Lab IC 2180. Therefore, relevant observations made by this Court in case of *Executive Engineer, District Panchayat, Bharuch* (supra) in para 8, 9, 10, and 11 are reproduced as under:

8. Relying upon the decision of Apex Court in *General Manager, Haryana Roadways* (supra) it is submitted that in case termination is found to be bad or illegal, workman is not entitled automatically for full backwages or any wages, but before granting wages, certain relevant factors are to be taken into account by the Labour Court about the length of service, age, family circumstances and condition of establishment. He submitted that as per the decisions of Apex Court, periodical appointments are outside the scope of Section 2(oo) of the Act, means, it is not retrenchment. However, the facts in each case are different in comparison to the facts of the present case. Recently, the Division Bench of Madras High Court in *The Manager (P&A), Oil and Natural Gas Corporation Ltd., Chennai v. G. Radhakrishnan* 2005 Lab.I.C. 2570 has considered the scope of Section 2(oo)(bb) and also considered that how unscrupulous employer abuse such provision while employing the workmen, and that in such circumstances, the court should see the real position so as to rule out injustice to the workmen. The Division Bench of Madras High Court in above decision considered certain decisions of Apex Court and various High Courts and thereafter held in paragraph-22 that:

22. The above referred to decisions on interpretation of Section 2(oo)(bb) explain the legal position to the effect that a claim of an employer on a term based employee providing for automatic termination whether within the terms

fixed or on expiry of the said term, cannot be taken for granted to sustain the order of termination. On a plain reading of Section 2(oo)(bb), it is quite clear that such term based employment would fall outside the scope of 'retrenchment' so long as the requirement of such fixed period of employment was bona fide required by the employer. It was therefore, repeatedly pointed out that such excepted categories required a rigorous test rather than accepting the plea of employer on its face value or otherwise it would cause serious prejudice to an employee, who can be taken for a ride by unscrupulous employers by contending that the term of employment was for specific period though as a matter of fact such period of employment lasted quite for a long spell. In other words even though the requirement of employment was perennial by adopting the methodology of employing a person for a specific period as many a times, an unscrupulous employer can always resort to abusing the provision contained in Section 2(oo)(bb) to thwart the other statutory protection available to an employee u/s 2(oo), namely, in the case of a 'retrenchment' vis-a-vis the consequential benefits contained u/s 25F of the Industrial Disputes Act. Therefore, when such extraordinary circumstances are brought out in the matter of employment and termination is resorted to by taking umbrage u/s 2(oo)(bb) of the Industrial Disputes Act, in the interest of justice, we are of the view that a close scrutiny of the real position will have to be necessarily made to rule out the possibility of any injustice being caused to an employee. It cannot be lost sight of that Section 2(oo)(bb) is specifically meant to cover only such employment which would be needed for an employer for a specific period alone and beyond which the requirement will not be there and even on such occasions, the employer should not be put into an unnecessary predicament of facing the other consequences that would normally occur while resorting to retrenchment. The benefit of the said exception will have to be strictly restricted to such specific situations alone and the same cannot be allowed to be misused or abused by the employers even in regard to cases where the nature and requirement of employment is perennial.

See:

- (1) S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka,
- (2) Dpty. Director of Health Services, Nashik v. Latabai Rajdhar Paturkar 1996 Lab IC 428 : (1996)3 Lab LN 675 (Bom)
- (3) Madhya Pradesh Bank Karmachari Sangh (MP) v. Syndicate Bank 1996 Lab IC 1161 (MP)
- (4) Alexander Yesudas Maikel v. Perfect Oil Seals and IRP 1995(1) Lab LN 1165 : 1995 Lab LR 777 (Bom)
- (5) M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another,
- (6) Chairman-cum-Managing Director, Orissa Road Transport Co. Ltd. v. Ramesh

Chandra Gouda 1994 Lab IC (NOC) 387 : 1994(2) Lab LJ 1127 (Ori

(7) Chakradhar Tripathy v. State of Orissa 1992 Lab IC 1813 (Orissa)

(8) Shailendra Nath Shukla v. Vice-Chancellor, Allahabad University 1987 Lab IC 1607.

9. Termination of service of casual workmen on daily wages will not fall within the exception contained in Sub-clause (bb) of Section 2(oo) of the Act, because the "contract of employment" is referable to the contract other than engagement of casual workers on daily wages. 'Non-renewal of the contract of employment' presupposes an existing contract of employment which is not renewed. Even in respect of a daily-wager a contract of employment may exist, such contract being from day to day. The position however, would be different when such a contract is in reality camouflage for a more sustaining nature of arrangement, but the mode of daily-wager is adopted so as to avoid the rigors of the Act. This clause does not contemplate to cover a contract such as of a daily-wager and is rather intended to cover more general class of contracts where a regular contract of employment is entered into and the termination of the service is because of non-renewal of the contract. This interpretation of Sub-clause (bb) is in consonance with the substantive provision of Clause (oo) of Section 2 defining 'retrenchment' as termination of service of a workman for any reason whatsoever (See: Chairman-cum-Managing Director Orissa Road Transport Co. Ltd. v. Ramesh Chandra Gouda [1994] II LLJ 1127 (1128(Ori.) (D.B.), per Rath, J.). Likewise termination of service of a 'badli' workman in terms of the contract of employment will not be retrenchment in view of this provision. (Shankariah v. K.S.R.T.C. [1986] I LLJ 195 (Kant.), per Rama Jois, J.)

10. In S. Gobindaraju v. K.S.R.T.C. [1986] II LLJ 351 (SC), per K.N. Singh, J. the case was decided on another short point viz., the workman was entitled to succeed as the termination order was violative of the principles of natural justice, the Supreme Court did not consider it necessary to decide the point that if the termination of service of a workman by non-renewal of the term of contract of employment or under a stipulation contained in the contract of employment in that behalf will not amount to 'retrenchment' in view of the provisions of Sub-clause 2(bb), it would enable unscrupulous employers always to provide a fixed term or stipulation in the contract of service for terminating the employment of employees to escape the rigor of Section 25F or Section 25N of the Act. And it would further confer arbitrary powers on the employer which would be destructive of the protection guaranteed by the Act to the employees. But various High Courts, using interpretative techniques have mellowed down the rigor of the bare reading of the statute. In Shailendra Nath Shukla v. Vice Chancellor, Allahabad University [1987] Lab.I.C. 1607 (All.) (D.B.), per Sahai, J.; Chairman-cum-Managing Director, Orissa Road Transport Co. Ltd. Vs. Ramesh Chandra Gouda and Another, (D.B.), per Rath, J.; Jayabharat Printers and Publishers Pvt. Ltd. Vs. Labour Court and Others, per Shamsuddin, J.; Bhikku Ram v. Presiding Officer Industrial Tribunal-cum-Labour Court, Rohtak [1995]

Lab.I.C. 2448 (P. & H.) (D.B.), per Singhvi, J. In the facts and circumstances of the case, the termination was held not to be bona fide.; Nathu Ram Saini Vs. Hindustan Copper Ltd. and Another, , per Singhvi J.; Ramkishan Vs. Samrat Ashok Technical Institute, , per Dwivedi, J.; Alexandar Yesudas Maikel Vs. Perfect Oil Seals and Irp and Others, , per Srikrishna, J.; Vadodara Municipal Corporation Vs. Gajendra R. Dhumal, per Balia, J.), a Division Bench of the Allahabad High Court observed that Sub-clause (bb) is in the nature of an exception to Section 2(oo) and has to be construed strictly and in favour of the workmen, as the entire object of the Act is to secure a just and fair deal to them, while adjudicating the termination of service of a workman for non-renewal of the contract of employment on expiry of the time stipulated in the contract of employment. The nature of employment must be judged by the nature of duties performed by the workman and not on the basis of the letter issued by the employer. Section 2(oo)(bb) cannot be extended to cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the workmen, as it would be 'unfair labour practice'. If contractual employment is resorted to as a mechanism to frustrate the claim of the employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual agreement is given to take it out from Section 2(oo), then such agreement cannot be regarded as fair or bona fide. In this case, since the workmen had been working for nearly five years continuously and their jobs were not seasonal, casual or of a daily worker and their duties were like that of a regular employee, the termination of their services on expiry of the stipulated period in the agreement or non-renewal of contract of employment did not come under Sub-clause 2(oo) (bb) and amounted to 'retrenchment'. A similar view has been taken by a single Judge of a Bombay High Court in Dilip Hanumantrao Shirke v. Zilla Parishad, Yavatmal [1990] Lab.I.C. 100 (Bom.), per Patel, J., holding that the mere fact that the contract of employment provided termination of by efflux of time, would not by itself be sufficient to take such terminations out of the scope of the definition of 'retrenchment'. The adjudicator has to address himself to the question as to whether the period of employment was stipulated in the contract of employment as a device to escape the applicability of the definition of 'retrenchment'. Likewise, a single Judge of the Punjab & Haryana High Court in Balbir Singh v. Kurukshetra Central Co-op. Bank Ltd. [1990] LLJ 443 (P & H.), per Amarjeet Chaudhary, J. See also: Chairman-cum-managing Director Orissa Road Transport Co. Ltd. v. Ramesh Chandra Gauda [1994] II LLJ 1127 (Ori.) (D.B.), per Rath, J.) has pointed out that this clause being in the nature of an exception cannot be given meaning which will nullify or curtail the ambit of the principle clause, because it is not intended to be an outlet to unscrupulous employers to shunt out workmen in the garb of non-renewal of the contract even if the work subsists. The clause, therefore, has to be construed strictly in favour of the workman as far as possible. This provision cannot be resorted to, to frustrate the claim of the employee against uncalled for retrenchment or for denying other benefits. In other words, it is not to be so interpreted as to enable

an employer to resort to the policy of "hire and fire" and give unguided power to him to renew or not to renew the contract irrespective of the circumstances in which it was entered into or the nature and extent of work for which he was employed. It has to be interpreted to limit it to the case where the work itself has been accomplished and the agreement of hiring for a specific period was genuine. If the work continues, the non-renewal of the contract has to be dubbed as mala fide.

11. In *Madhya Pradesh Bank Karamchari Sangh v. Syndicate Bank* (1996) Lab. I.C. 1161 (M.P.), Per Doabia, J.] on a review of the law laid down by the Supreme Court and by various High Courts, a single Judge of the Madhya Pradesh High Court has stated the following principles of interpretation and application of the provisions of this clause:

(i) that the provisions of Section 2(o)(bb) are to be construed benevolently in favour of the workmen;

(ii) that if the workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would not fall u/s 2(o)(bb);

(iii) that the provisions of Section 2(o)(bb) are not to be interpreted in the manner which may stifle the main provision;

(iv) that if the workman continues in service, the non-renewal of the contract can be deemed as mala fide and it may amount to be a fraud on statute;

(v) that there would be wrong presumption of non applicability of Section 2(o)(bb) where the work is of continuous nature and there is nothing on record that the work for which a workman has been appointed had come to an end.

In *Alexander Yesudas Maikel v. Perfect Oil Seals and IRP and Ors.* 1996(1) LLJ 533, the Bombay High Court held in paragraph-5 that:

...In any event, one cannot lose sight of the fact that Clause (bb) has itself been restrictively interpreted and the judicial consensus appears to be that, if the post cannot be said to operate as a charter for unscrupulous employers to jettison their workmen. (See in this connection *Dilip Hanumantrao Shirke and others Vs. Zilla Parishad Yavatmal and others*, *The State Bank of India Vs. Shri N. Sundara Money, S.S. Sambre Vs. Chief Regional Manager, State Bank of India, Nagpur and another*, and *K. Rajendran v. Dir.(Per.) Project & Equipment Corporation of India Ltd. New Delhi* and Anr. 1992 I CLR 462. [See: *State of Gujarat and Kiritbhai Somabhai Bariya* reported in 2006 II LLJ . 1079].

. Recently, Madras High Court has also considered Section 25B and to interpret beneficiary legislation or welfare legislation in case of *Management, Malaysian Airlines Vs. The Presiding Officer, Principal Labour Court* and *K. Balu*, Ratio decidendi as decided by the Madras High Court in the aforesaid decision is as under:

I. "The word "preceding" has been used in Section 25B of the Industrial Disputes Act as incorporated in the year 1964. The concept of "preceding" was introduced in the Industrial Disputes Act so as to give complete and meaningful benefit of welfare legislation to the working class.

II. "only because of the action of the Management the workman was terminated without any order and he was stopped from service without being paid compensation either. The conduct of the Management amounted to victimization.

III. The approach to be borne in mind while interpreting the welfare legislation is illustrated in Surendra Kumar Verma's case where the Supreme Court observed that semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions.

11. In Haryana State Electronics Development Corporation Ltd. Vs. Mamni, the apex court has considered the provisions of Section 2(oo)(bb). Observations made by the apex court in para 7 to 11 are reproduced as under:

7. Mr. Ranvir Singh Yadav, learned Counsel appearing for the respondent, on the other hand, urged that the respondent having completed 240 days of service within a period of twelve months preceding the date of her termination and in view of the fact that no compensation had been paid as provided in Section 25F of the Industrial Disputes Act; the Labour Court and consequently the High Court has rightly directed her reinstatement with full back wages.

8. Section 2(oo)(bb) of the Industrial Disputes Act reads as under:

termination of the service of the workman as a result of the non removal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein.

9. The respondent was appointed from time to time. Her Services used to be terminated on the expiry of 89 days on regular basis. However, it is noticed that she used to be appointed after a gap of one or two days upon completion of each term. Such an action on the part of the Appellant cannot be said to be bona fide. The High Court rejected the contention raised on behalf of the appellant herein stating:

..... It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been disputed, reveals that the respondent workman was repeatedly engaged on 89 days basis. It is, therefore, clear that the intention of the management was not to engage the respondent workman for a specified period, as alleged, but was to defeat the rights available to him u/s 25F of the Act. The aforesaid practice at the hands of the petitioner " management to employ the workman repeatedly after a notional break, clearly falls within the ambit and scope of

unfair labour practice.

10. A finding of fact was arrived at that her services were terminated on regular basis but she was re-appointed after a gap of one or two days. In that view of the matter, the Labour Court or the High Court cannot be said to have committed any illegality.

11. In this case the services of the respondent had been terminated on a regular basis and she had been re-appointed after a gap of one or two days. Such a course of action was adopted by the Appellant with a view to defeat the object of the Act. Section 2(oo)(bb) of the Industrial Disputes Act, 1947, therefore, it is not attracted in the instant case.

12. In *Union of India and Ors. v. Ramchander and Anr.* (2007) 1 SCC (L&S) 439, Section 25F of the ID Act, 1947 was considered by the apex court. Observations made by the apex court in para 4 of said decision are reproduced as under:

4. The respondents were appointed against casual labourers but nevertheless they continued in service for four spells and that too their reappointments were made immediately within a few days of termination on completion of 89 days. It shows that sufficient work was available with the employer and had there been no termination on completion of 89 days, they would have completed 240 days of continuous employment. In that view of the matter, the appellants had violated Section 25G of the Industrial Disputes Act. We do not find any error or illegality in the decision rendered by the Division Bench.

13. Therefore, considering the above referred decision of this Court wherein this Court has considered various decisions of the apex court as well as other High Courts including the Division Bench of Madras High Court as well as the above referred recent decision of the Madras High Court in case of *Management, Malaysian Airlines Vs. The Presiding Officer, Principal Labour Court and K. Balu*, and also considering the facts of the case before hand which are not much in dispute between the parties and also considering that the contention of Section 2(oo)(bb) of the ID Act, 1947 was not raised by the petitioner before the labour court but it has been raised by the petitioner before this Court for the first time, this Court cannot entertain such contention as it has been raised before this Court for the first time. However, without entering into such technicality, this Court has examined the issue in light of the undisputed facts of the case before hand and examined whether Section 2(oo)(bb) of the ID Act, 1947 would apply to this case or not. According to my opinion, Section 2(oo)(bb) would apply when employer is able to justify the issuance of periodical appointment on the basis of facts and circumstances which could demand such kind of appointment, otherwise, it would mean that the employer is resorting to such provision only with a view to abuse the provision for getting benefit by creating disadvantageous situation for the workman and also to disentitle him or defeat his rights and protection available under the mandatory provisions of the ID Act, 1947. Therefore, if the employer is unable to justify issuance of such periodical

or temporary orders of appointment or the orders of fixed term appointment confined for a particular project, then, same would not attract the provisions of Section 2(oo)(bb) of the ID Act, 1947. Similarly, labour court has also rightly observed having contradictory stand of petitioner from the very beginning and subsequent extension vide Exh. 49 and 50 which is suggesting that there is some ulterior motive or intention to take benefit or chance so that the workman may not be able to get justice from the labour court. I have considered the decisions referred to and relied upon by the learned Advocate Mr. HJ Nanavati. In the said decisions, there was justification for issuance of such kind of periodical orders of appointment on temporary basis or for fixed term and in light of such situation, the apex court has considered that the provisions of Section 2(oo)(bb) of the ID Act, 1947 are applicable whereas in this case, the petitioner management has not been able to justify it before this Court and not raised such contention before the labour court but raised before this Court for the first time. It is necessary to consider one important aspect which is not in dispute that the respondent workman was appointed against the clear vacancy. That can be inferred from Exh.48, letter dated 22nd September, 1993 in favour of Mr. BB Patel who was appointed as Site Engineer at Bavla Point. Even the written statement also suggests the same averments as earlier Mr. BB Patel whose services were terminated while working as supervisor was directed to be reinstated, therefore, Mr. BB Patel was appointed from 23.9.1993 and therefore, services of the respondent were not extended and in view of that also, it is covered by "retrenchment". Meaning thereby, the post in which the respondent was working was vacant and clear post and on that post respondent remained in service continuously from 1991 to 1994 and in between, there was not a break of even a day and therefore, same is satisfying the requirement of Section 25(B) of the ID Act, 1947. As per the opinion of this Court, periodical appointment orders which were issued by petitioner and placed on the record by learned Advocate Mr. HJ Nanavati is nothing but mere paper arrangement made by the petitioner for defeating the rights and claim of the workman available under the ID Act, 1947 and, therefore, according to my opinion, decisions referred to and relied upon by Mr. HJ Nanavati are not applicable to the facts of the present case. Labour Court has rightly examined the issue and has rightly adjudicated the matter on the basis of the record before it and has rightly granted the reinstatement in favour of the workman.

11. In view of the aforesaid observations of the Supreme Court, the Patna High Court and the Gujarat High Court, the contention raised by learned AGP Mr. Dwivedi that respondent was appointed on project only and not entitled reinstatement, cannot be accepted as decided by the Supreme Court in the case of Hindustan Petroleum Corporation (supra). Therefore, according to my opinion, the Labour court has rightly examined the issue and adjudicated it on the basis of record. For that, the Labour Court has not committed any error which requires interference by this Court while exercising the power under Article 227 of the Constitution of India. Hence, there is no substance in the present petition.

Present petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated.