

(1980) 09 CAL CK 0004
In the Calcutta High Court

Tapan Kumar Jana

APPELLANT

Vs

Calcutta Telephones and Others

RESPONDENT

Date of Decision : 24-09-1980

Acts Referred:

Constitution of India, 1950 — Article 226, 310, 311
Industrial Disputes Act, 1947 — Section 10, 2, 22, 25C, 25F

Citation : 85 CWN 91 : (1981) 2 LLJ 382

Hon'ble Judges : Amarendra Nath Sen, C.J.; Murari Mohan Dutt, J

Bench : Division Bench

Judgement

Murari Mohan Dutt, J.—In this appeal, the appellant Tapan Kumar Jana has challenged the propriety of the judgment of a learned single Judge of this Court discharging the rule nisi obtained by the appellant on his application under Article 226 of the Constitution.

2. The case of the appellant was that he was appointed a casual employee of the Calcutta Telephones by the respondent No. 2, the Sub-Divisional Officer of Phones (South), Russa External, on December 6, 1976 and he continued in service till March 31, 1977. Thereafter, he was again employed after a break in service of seven days on April 8, 1977 and continued in uninterrupted service, without any break whatsoever for about 15 months, when his service was verbally terminated on July 1, 1978 by the order of the respondent No. 2. His terms of engagement were not on "no work, no pay" basis, but he was paid his wages on the 5th day of every month for the work rendered by him in the preceding month; the amount was calculated at a daily rate which was Rs. 5.80 per day when his service was terminated. He also used to sign the attendance register regularly.

3. The grievance of the appellant was that at the time of verbal termination of his service he was neither paid any retrenchment compensation, nor was he given any notice as required under the law for effecting such termination of service or any pay in lieu of such notice. It was contended by the appellant that inasmuch

as the Calcutta Telephones carried on systematic activity organised by the co-operation between the employer and the employees for production and or distribution of goods and services calculated to satisfy human wants and wishes, it was an industry. The further contention of the appellant was that as he was in uninterrupted service under the Calcutta Telephones for a period of about 15 months before July 1, 1978 the date of termination of his service and, in any event, as he had actually worked under the said employer for not less than 240 days during the period of 12 calendar months preceding July 1, 1978, the termination of his service amounted to retrenchment. It was contended that such termination of service not having been made in accordance with the provision of Section 25F of the Industrial Disputes Act, 1947, he should be deemed to be in service of the Calcutta Telephones.

4. The respondents opposed the Rule by an affidavit-in-opposition. The case of the respondents was inter alia that the service the appellant and 36 others were utilised on purely casual basis as casual labourers by the respondent No. 2 in connection with urgent works relating to the construction of cable-laying and also installation works pertaining to 46, 41 and 42 Telephone Exchanges. The said "Casual Mazdoors" including the appellant were engaged without any letter of appointment and they were so engaged on purely casual basis as casual labourers. It was contended by the respondents that the appellants, being a casual labourer appointed purely on casual work-charge basis, was not entitled to any notice or retrenchment compensation or payment of any money in lieu of such notice. The further contention of the respondents was that the Calcutta Telephones was neither an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act. nor was the appellant a "workman" as defined in Section 2(s) of the Act. Therefore, according to the respondents, the appellant was not entitled to any retrenchment notice or retrenchment compensation,

5. The questions that mainly arose for the consideration of the learned Judge in the rule nisi, as noted by the learned Judge in his judgment, were: (i) whether the Calcutta Telephones was an "Industry" as defined in Section 2(j) of the Industrial Disputes Act; (ii) whether the appellant being a casual labourer was a "workman" u/s 2(s) of the Act and (iii) whether the termination of service of the appellant amounted to "retrenchment" within the meaning of Section 2(oo) of the Act. It was recorded by the learned Judge that the respondents did not dispute that the requirements of Section 25F of the Act had not been complied with before terminating the service of the appellant. Indeed, it has also been admitted before us on behalf of the respondents that the provision of 25 F was not complied with.

6. The learned Judge, after considering the submissions made on behalf of either party and the decisions of the different High Courts and of the Supreme Court that were cited at the Bar and also the facts and circumstances of the case, came to the conclusion that the Calcutta Telephones was an industry within the meaning of Section 2(j) of the Act and that the appellant, though he was a

casual labourer, yet he was a "workman" within the meaning of Section 2(s) of the Act. On the third question, namely, whether the termination of the service of the appellant amounted to retrenchment within the meaning of Section 2(oo) of the Act, the learned Judge took the view that as the employment of the appellant was for a particular urgent piece of work which came to an end or terminated immediately upon the completion of the work, such termination did not amount to retrenchment within the meaning of Section 2(oo) of the Act. The learned Judge has sought to make a distinction between termination of service where the employment is for a particular period and termination of service, where the employment is for doing a particular piece of work, on the completion of such work. In that view of the matter, the learned Judge held that the termination of the service of the appellant did not tantamount to retrenchment within the meaning of Section 2(oo) of the Act and, consequently, the appellant was not entitled to any notice or retrenchment compensation or any other compensation. The rule nisi was, accordingly, discharged. Hence this appeal.

7. The only ground on which the learned Judge has dismissed the writ petition of the appellant is that the termination of the service of the appellant did not amount to retrenchment within the meaning of Section 2(oo) of the Act. Consequently, Mr. Parthasarathi Sen Gupta, learned Counsel for the appellant, has challenged before us the soundness of the said ground and the reasoning of the learned Judge. On the other hand, Mr. Hussain, learned Counsel for the respondents has relied on the reasoning of the learned Judge in overruling the contention of the appellant that the termination of his service tantamounted to retrenchment. Counsel for the respondents also supports the judgment of the learned Judge on points found against the respondents, namely, that the Calcutta Telephones was an industry, and that the appellant was a workman. In the circumstances, all the points that have been decided by the learned Judge are at large before us, and we propose to consider the same.

8. We may first of all consider the fundamental question whether the Calcutta Telephones is an industry or not within the meaning of Section 2(j) of the Act. Section 2(j) defines "industry" as follows:

"Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

The definition is very wide and covers a large area, In considering whether the Calcutta Telephones is an industry or not, it will be pertinent to refer to the definition of "public utility service" as contained in Section 2(n) of the Act. Section 2(n) provides as follows:

Public utility service" means:

(i) any railway service or any transport service for the carriage of passengers or goods by air; (ia) any service in, or in connection with the working of, any major port or dock;

- (ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;
- (iii) any postal telegraph or telephone service;
- (iv) an industry which supplies power, light or water to the public;
- (v) any system of public conservancy or sanitation;
- (vi) any industry specified in the First Schedule which the appropriate Government may, if satisfied that a public emergency or public interest so requires, by notification in the official Gazette, declare to be a public utility service for the purpose of this Act, for such period as may be specified in the notification; Provided that the period so specified shall not, in the first instance, exceed six months but may, by the like notification, be extended from time to time; by any period not exceeding six months, at any one time if in the opinion of the appropriate Government, public emergency or public interest requires such extension.

9. In *D.N. Banerjee v. P.R. Mookerjee* 1953 I L.L.J. 159, which is the leading case on the point, the Supreme Court had to interpret the definition of the term "industry". The principal question before the Supreme Court was whether the Industrial Disputes Act, 1947 was applicable to disputes with Municipalities. It has been observed by the Supreme Court that apart from the concept of industry as understood by a man in the street, the industry has a wider concept as defined in Section 2(j) of the Act. Further it has been observed that when the Act came to be passed, labour disputes had already assumed big proportions, and there were clashes between the workmen and employers in several instances, and it is consequently necessary to give the terms employed in the Act, referring to such disputes as wide an import as reasonably possible. It has been held that the Act, applies to the disputes between the Municipalities and their employees. In that connection, the Supreme Court had also noticed the definition of the term "public utility service" already set out above and observed:

A public utility service such as railways, telephones and the supply of power, light or water to the public may be carried on by private companies on business corporation. Even conservancy or sanitation may be so carried on, though after the introduction of local self-Government this work has in almost every country been assigned as a duty to local bodies like our Municipalities or District Boards or Local Boards. A dispute in these services between employers and workmen is an industrial dispute, and the proviso to Section 10 lays down that where such a dispute arises and a notice u/s 22 has been given, the appropriate Government shall make a reference under the subsection. If the public utility service is carried on by a corporation like a Municipality which is the creature of a statute and which functions under the limitations imposed by the statute, does it cease to be an industry for this reason? The only ground on which one could say that what would amount to the carrying on of an industry if it is done by a private person ceases to be so if the same work is carried on by a local body like a Municipality

is that in the latter there is nothing like the investment of any capital or the existence of a profit-earning motive as there generally is in a business. But neither the one nor the other seems a "sine qua non" or necessary element in the modern conception of industry.

10. It is, therefore, clear from the observation set out above, that telephone service which is a public utility service is an industry. It may be that a public utility service is carried on by the Government, but that will be quite irrelevant in considering whether it is an industry within the meaning of the Section 2(j). In D.N. Banerjee's case (supra), the Supreme Court while considering the application of the Act to disputes with Municipalities noticed the various normal functions or ordinary activities of the Municipalities and observed that the very idea underlying the entrustment of such duties or functions to local bodies was not to take them out of the sphere of industry but to secure the substitution of public authorities in the place of private employers and to eliminate the motive of profit-making as far as possible; the undertaking of the service would still remain within the ambit of "industry".

11. The scope and extent of the term, "industry" as defined in Section 2(j) has been considered by the Supreme Court from time to time, particularly whether charitable undertakings like hospitals, etc., are industries or not. As the scope and extent of the term "industry" as laid down by the Supreme Court in its earlier decisions were conflicting with its later decisions, the Supreme Court, in a seven-Judge Bench, had to review all its earlier decisions on the scope and extent of the word "industry" in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . The principal judgment of the Bangalore Water Supply case (supra) was delivered by Krishna Iyer, J., on behalf of himself, Bhagwati and Desai, JJ., Chandrachud, Jaswant Singh and Tulzapurkar, JJ. agreed with the view expressed by Krishna Iyer, J., and stated that they would give reasons later. Beg, C. J., while fully agreeing with the judgment of Krishna Iyer, J., delivered a short judgment. Krishna Iyer, J., in his judgment reviewed all the earlier decisions of the Supreme Court on the scope and extent of the term "industry" as defined in Section 2(j) of the Act and laid down certain principles or criteria for the determination whether an establishment is an industry or not. So far as we are concerned, it is not necessary for our purpose to refer to all these principles or criteria except that we would refer to some principle, criteria or tests for determining whether an establishment is an industry or not. It has been observed:

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

In laying down the principles, Krishna Iyer J., has followed, approved and relied

on the earlier decision of the Supreme Court in D.N. Banerjee's case (supra).

12. It has been already pointed out that in D. N. Banerjee's case (supra), the Supreme Court, after referring to the definition of "public utility service" as contained in Section 2(n) of the Act, held that telephone service was an industry. In Bangalore Water Supply case (supra), Krishna Iyer, J., has made copious reference to the observations made in D. N. Banerjee's case (supra), by setting out different passages from the judgment of that case including the passage which we have quoted above. Thus it appears that the latest authoritative decision of the seven-Judge Bench of the Supreme Court has followed and reiterated with great approval the principles laid down in D. N. Banerjee's case (supra) including its decision that the public utility service such as railways, telephones, etc. are industries. In this connection it may be noticed that in the case of The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi, , and in the case of The Dhanrajgirji Hospital Vs. The Workmen, the same view was taken with regard to the public utility service, though the said decisions have been overruled by the Supreme Court in the Bangalore Water Supply case (supra) on the other points. Thus it is now well-settled that any establishment carrying on telephone service will be an industry.

13. Mr. Hussain, learned Counsel for the respondents has drawn our attention to an observation of Beg, C. J. in the Bangalore Water Supply case (supra). It has been observed by Beg, C. J.:

Therefore, only those services which are governed by separate rules constitutional provisions, such as Articles 310 and 311 should, strictly speaking, be excluded from the sphere of the industry by necessary implication.

It is contended that as rules have been framed under Articles 310 and 311 governing the conditions of service of the employees of the Calcutta Telephones, it cannot be treated as an industry within the meaning of Section 2(j). This contention is fallacious. The said observation has been made by Beg, C.J. in regard to the governmental function only, In our opinion the observation cannot be read de hors that preceded and followed it. The observation will not apply to public utility services about which Beg, C. J. immediately after the said observation, observed that he was impressed by the argument that certain public utility services which were carried out by governmental agency or corporations were treated by the Act itself as within the sphere of industry. Further it was observed that the meaning of the term "industry" should be determined in the context of and for the purposes of matters provided for in the Act. In the circumstances, we hold that the Calcutta Telephones is an industry within the meaning of Section 2(j) of the Act as rightly held by the learned Judge.

14. The next point is that whether the appellant, being only a casual labourer, is a "workman" within the meaning of Section 2(s) of the Act. Section 2(s) defines "workman" as follows .

"Workman" means any person (including an apprentice) employed in an industry

to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:

(i) who is subject to the Army Act, 1950 (XLVI of 1950), or the Air Force Act, 1950 (XLV of 1950) or the Navy (Discipline) Act, 1934 (XXXIV of 1934); or

(ii) who is employed in the police service or is an officer or other employee of a prison ; or,

(iii) who is employed mainly in a managerial or administrative capacity ; or.

(iv) Who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

15. The definition has not provided for the exclusion of a casual labourer from the category of workman, nor has it laid down that only the permanent employees of an industry will be workmen. Certain employees have been excluded from the operation of the definition of "workman", but such exceptions also do not include a casual labourer. The primary condition that has to be fulfilled by an employee to bring him within the definition of "workman" is that he must be employed in an industry for hire or reward. The concept of permanent employment is not the only criterion of the definition of the term ""workman". Any employee who satisfies the primary condition as stated above and who does not come within the exception contained in the definition will be a workman. If a casual labourer is employed in an industry for hire or reward, he will be a "workman" within the meaning of Section 2(s). There is nothing in the definition of terms ("workman") which excludes a casual labourer. On the contrary Section 25C of the Act gives a sufficient indication that a badli-workman or a casual workman is a workman when it excludes them from the right to compensation for lay-off, in *Employers in Relation to Digwadih Colliery Vs. Their Workmen*, , the Supreme Court upheld the award of the Central Government Industrial Tribunal, Dhanbad, holding that the termination of the service of a badli-workman amounted to retrenchment within the meaning of Section 2(oo) of the Act. In other words, it was impliedly ruled by the Supreme Court that a badli-workman was a "workman" within the meaning of the definition of the term "workman". In *Pilot Pen Company (India) Limited v. The Presiding Officer, Additional Labour Court, Madras* 1971 I L.L.J. 241, it was held by the Madras High Court that there was no room for the contention that Section 2(s) incorporated into it the idea that only a permanent employee can be construed to be a workman. In *P. Joseph and Others Vs. The Management of Gopal Textile Mills and Another*, , it has been

observed that the definition of "workman" does not exclude even the casual employee or a substitute like "badli". The learned Judge has relied on the above two decisions and has come to the conclusion that the appellant who is a casual labourer is a "workman" within the meaning of Section 2(s) of the Act. In our view, the learned Judge is perfectly justified in holding that the appellant is a workman.

16. The next point that requires consideration is of some importance. It has been stated already that the rule nisi has been discharged by the learned Judge only on the ground that the termination of the service of the appellant did not amount to retrenchment within the meaning of Section 2(oo) of the Act. Section 2(oo) defines retrenchment as follows:

"Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action, but does not include.

- (a) a voluntary retirement of the workman; or,
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and workman concerned contains a stipulation in that behalf; or,
- (c) termination of the service of a workman on the ground of continued ill-health.

Thus it appears from the definition of the word "retrenchment" that except in the four cases mentioned in the definition, termination by the employer of the service of the workman for any reason whatsoever will be retrenchment. The Supreme Court had to interpret the word "'retrenchment" as defined in Section 2(oo) in the case of the The State Bank of India Vs. Shri N. Sundara Money, . In that case, the respondent was appointed by the State Bank of India from time to time. The last of such appointments was made on the following terms:

- (1) The appointment is purely a temporary one for a period of 9 days but may be terminated earlier without assigning any reason therefore at the Bank's discretion ;
- (2) The employment, unless terminated earlier, will automatically cease at the expiry of the period, i.e., 18-11-1972;

17. The employment of the respondent came to be automatically terminated on the expiry of the period of 9 days, but taking into consideration the earlier period of his service, he was found to be in continuous service for 240 days. The question was whether the said automatic termination of service of the respondent amounted to retrenchment. While holding that the termination of the service of the respondent amounted to retrenchment, Krishna Iyer, J., who delivered the judgment of the Court, observed:

A break down of Section 2(oo) unmistakably expands the semantics of retrenchment. Termination..."for any reason whatsoever" are the key words.

Whatever the reason, every termination spells retrenchment.

Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced.

Without speculating on possibilities, we may agree that "retrenchment" is no longer terra incognita but area covered by an expansive definition. It means "to end, conclude, cease".

Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened, we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely by passing an order as the service runs. He can do so by writing a composite order, one giving employment and the other ending or limiting it. The separate subsequent determination is not the sole magnetic pull of the provision. A pre-emptive provision to terminate is struck by the same vice as the post appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision.

18. The decision in Sundara Money's case (supra) was strongly relied on by the appellant before the learned Judge. The learned Judge, however, took the view that the principles of law laid down in the said decision were inapplicable to the facts of the instant case. According to the learned Judge, when the service of a workman was for a certain period, the termination of his service on the expiry of the period would amount to retrenchment as held by the Supreme Court in Sundra Money's case; but where, as in the present case, a workman was appointed for a particular job and when his service terminated on the completion of the job, it would not be "retrenchment" within the meaning of Section 2(oo). Further, the learned Judge observed ;that as the termination of service of the appellant was neither by the employer nor by efflux of time in terms of any agreement between him and his employer, the automatic termination of his service on the completion of the job was not retrenchment. In that view, the learned Judge held that the termination of the service of the appellant did not tantamount to retrenchment.

19. Mr. Parthasarathi Sen Gupta, learned Counsel appearing on behalf of the appellant, submits that no such distinction as made by learned Judge can be made of the decision of the Supreme Court in Sundara Money's case (supra). It is contended by him that in Sundra Money's case (supra), the Supreme Court had first of all interpreted the term "retrenchment" as defined in Section 2(oo) and thereafter considered whether the termination of the respondent's service in that case amounted to retrenchment. Mr. Sen Gupta submits that it is not the decision of the Supreme Court that unless a person is appointed for a fixed period, so the order appointing him may be said to be a composite order consisting of both appointment and termination which, Krishna Iyer, J., described as ""a pre-emptive provision to terminate", termination on the completion of the job for which a workman was appointed, will not amount to retrenchment.

Counsel submits that in view of the wide definition of the term "retrenchment" meaning termination of service for any reason whatsoever except on the ground of punishment and the three other cases mentioned in the definition and also in view of the observation of the Supreme Court in *Sundara Money's* case, there cannot be any scope for the contention that the termination of the service of the appellant was not retrenchment.

20. Mr. Sen Gupta has also placed reliance on a recent decision of the Supreme Court in *Santosh Gupta Vs. State Bank of Patiala*, . It has been held by the Supreme Court in that case, that the expression "termination of service for any reason whatsoever" in Section 2(oo) covers every kind of termination of service except those not expressly included in Section 2(oo) or not expressly provided for by other provisions of the Act such as 25FF and 25FFF. On the other hand, Mr. Hussain, learned Counsel for the respondents has strongly relied on the reasoning of the learned Judge in arriving at the conclusion that the termination of the service of the appellant was not "retrenchment",

21. It has been already noticed that the definition of the term "retrenchment" is very wide. It includes all kinds of termination of service for any reason whatsoever except those which are specifically excluded by the definition. "Termination of service" means cessation of the relationship of master and servant between the employer and the workman concerned. There is such relationship between the employer and his casual labourers and it continues so long as the particular works for which they are employed are not completed. As soon as the works are done or completed their services come to an end, that is there is cessation of the relationship of master and servants and, consequently, automatic termination of services. The reason for such termination is the completion of the works. The definition of the word "retrenchment" being very wide-termination for any reason whatsoever -obviously includes within it termination of the service of a casual labourer on the completion of the specific work. The Legislature has in defining "retrenchment" excluded from the scope of the definition, the four cases of termination as mentioned therein and, in our opinion, barring these four cases, it will be neither proper nor permissible under the rules of interpretation not to give effect to the definition to termination of the service of a workman for any reason whatsoever. If an employee is a workman and his service is terminated, such termination will be retrenchment, no matter for what reason there has been such termination, unless his case comes under any one of the four cases excluded from the definition of "retrenchment".

22. There is obvious reason for the Legislature for giving the definition of the word "retrenchment" a very wide scope and extent covering all kinds of termination of service for any reason whatsoever. Section 25F inter alia 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 until the workman has been given one month's notice in writing indicating the reason for such retrenchment or he is paid wages for the period of

notice and he is also paid retrenchment compensation to be computed in the manner laid down in the section. When the service of a workman is terminated, such termination amounting to retrenchment it is no fault of the workman. Upon such termination, he at once becomes unemployed and will soon find himself in a great predicament concerning the survival of himself and the members of his family. This will continue until he is employed somewhere. In order to save the workman from such a situation, the Legislature has included within the definition of "retrenchment" all kinds of termination of service excepting those that are specifically mentioned in the definition. In this connection, we may refer to the decision of the Supreme Court in *The Indian Hume Pipe Co. Ltd. Vs. The Workmen and Another*, where it was observed as follows:

As the expression "retrenchment compensation" indicates it is compensation paid to a workman on his retrenchment and it is intended to give him some relief and to soften the rigour or hardship which retrenchment inevitably causes. The retrenched workman is suddenly and without his fault, thrown on the streets and has to face the grim problem of unemployment. At the commencement of his employment a workman naturally expects and looks forward to security of service spread over a long period; but retrenchment destroys his hopes and expectations. The object of retrenchment compensation is to give partial protection to the retrenched employee and his family to enable them to tide over the hard period of unemployment.

23. The provisions of the Act should, in our opinion be interpreted with the above object in view. Thus it is apparent why the Legislature has given the word "retrenchment" a wide definition. A casual labourer will be in a worse position when his service ceases on the completion of the particular work for which he was employed. It is not in the contemplation of the Legislature to deprive the benefit to this class of employees, that is, the casual labourers whose employment is very short-lived, though they render valuable services in times of emergency.

24. The reason given by the learned Judge in holding that the termination of service of the appellant, who was only a casual labourer, was not retrenchment, does not appeal to us. In our view, the learned Judge has misconceived the principle laid down by the Supreme Court in *Sundara Money's case* (supra). The observations of Krishna Iyer, J., which have been set out above unmistakably supports the view we have taken, that termination of service of a workman for any reason whatsoever will amount to "retrenchment within the meaning of the definition of the term as given in Section 2(oo) of the Act including the automatic termination of the service of a workman, who is appointed for a fixed period, on the expiry of the period. *Sundara Money's case* (supra) and the observations of Krishna Iyer, J., cannot, in our opinion, be understood to be not applicable to the termination of service of a workman who is a casual labourer, simply because his service is not for a fixed period but for a particular job and terminates on the completion of the job. In our opinion, if any distinction is made between the

termination of service on the expiry of a fixed period and termination of service on the completion of a particular work, the very intention of the Legislature in bringing within the ambit of "retrenchment" all kinds of termination of service of workmen for any reason whatsoever, will be frustrated. No such distinction made by the learned Judge between the two kinds of termination of service is possible to be made in the face of the clear and unambiguous language of the definition of "retrenchment" as embodied in Section 2(oo) of the Act. No such distinction can also be made on the basis of the decision of the Supreme Court in *Sundara Money's case* (supra). It appears that the fact that the appellant was employed under the Calcutta Telephones without any letter of appointment and without any written contract of service has greatly weighed with the learned Judge in holding that the termination of the service of the appellant did not amount to retrenchment. The said fact, in our view, is quite irrelevant for the purpose of considering whether the termination of the appellant's service amounted to retrenchment or not. There is no legal principle that lays down that an oral appointment is not employment or does not create a relationship of master and servant. Similarly, there cannot be any proposition that there must always be a written contract of service, or the termination of service, must be in writing. As soon as it is found that the appellant was a workman, as has been rightly held by the learned Judge, there can be no doubt that there was relationship of master and servant between the Calcutta Telephones and the appellant. The view that has been taken by the learned Judge is contrary to his own finding that the appellant was a workman. It is contended on behalf of the respondents that as the appellant's service was not terminated by any order in writing but by a verbal order, such termination did not amount to retrenchment. This contention, in our opinion, is without any substance. We may only point out the observation of Krishna Iyer, J., in *Sundara Money's case* (supra) that termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. So the fact that is required and relevant to be considered is whether there had been termination of the service of the workman concerned, and it is quite immaterial how and in what manner such termination was effected. In our view, therefore, the termination of the service of the appellant as the casual labourer of the Calcutta Telephones, did amount to "retrenchment" within the meaning of Section 2(oo) of the Act.

25. It is not disputed that the appellant had been continuously in service for about 15 months till his service was terminated on July 1, 1978, that is the appellant had worked for more than 240 days in a year. Admittedly, the respondents have not complied with the provision of Section 25F of the Act. The respondents having terminated the service of the appellant, such termination amounting to retrenchment, without complying with the provision of Section 25F of the Act, it must be held that the termination of the service of the appellant is illegal. The respondents are, therefore, liable to reinstate the appellant.

26. Before we part with this appeal, we may dispose of some technical points raised by Mr. Hussain in Bar of the writ proceeding. It is contended by the

learned Counsel that as no specific order of the respondents has been challenged by the appellant or, in other words, there being no written order of termination that can be challenged, the writ petition was not maintainable. Our attention has been drawn to prayer (b) in the writ petition under which the appellant has prayed for a writ in the nature of mandamus directing the respondents to withdraw, rescind, recall and revoke the order terminating the service of the appellant on July 1, 1978 and to reinstate the appellant with full back wages, counsel submits that as there was no order in writing terminating the service of the appellant, no such direction can be given by this Court by issuing a writ. Further, it is contended that the appellant has really asked for a declaration that he continues in service and that the order of termination is illegal, inoperative and void. Indeed, under prayer (c) such a declaration has been prayed for. Accordingly, it is contended on behalf of the respondents that there is no effective prayer that can be granted by this Court on the writ petition of the appellant. The last ground of attack to the maintainability of the writ petition is that as the appellant had an alternative remedy by a reference u/s 10 of the Act, the writ petition was not maintainable.

27. It is difficult for us to accept the above contention which we consider to be wholly misconceived. It is true that there is no order terminating the service of the appellant, but the fact remains that there has been such termination by the verbal order of the respondent No. 2. As there is no order of termination in writing, but only a verbal order, there is no scope for quashing such order, but the respondents may be directed to reinstate the appellant in service. Indeed, there is a prayer for reinstatement. What has been complained of by the appellant is the action of the respondents in terminating his service. As the termination of the service of the appellant has been found to be illegal, the proper order will be to direct the reinstatement of the appellant in service. The contention that, as there is no written order of termination of service there is nothing to challenge, is without any substance. In view of the foregoing reasons, we do not find any merit in the contention of the respondents that there is no effective prayer that may be granted by this Court. Even if we leave out of consideration the prayer for a declaration under prayer (c), the effective prayer is the prayer for reinstatement of the appellant in service. It may, however, be stated that the prayers that have been made by the appellant in the writ petition are not satisfactory; but it is well-settled that if a case for the interference by this Court has been made out in the writ petition, it will not fail because of unsatisfactory or inartistic prayers. This Court has the jurisdiction to allow an amendment of the prayers or to mould the same itself so as to grant proper relief to a writ petitioner. So far as the last contention of the appellant is concerned, that is, that the writ petition was barred as the appellant had an alternative remedy by way of a reference u/s 10 of the Act, we are unable to accept the same. The power to make a reference u/s 10 of the Act has been conferred on the State Government. The exercise of that power by the State Government cannot be claimed as a matter of right. In our view, a remedy that

cannot be availed of by an aggrieved party as of right will not be considered an alternative remedy. In the circumstances, we do not think that there is any merit in the contention. No other point has been urged by either party.

28. In the circumstances, we set aside the judgment of the learned Judge and make the Rule absolute. The respondents are directed to reinstate the appellant in the service as a casual labourer with all back wages. Let a writ in the nature of mandamus issue in that regard. It is, however, made clear that the respondents will be entitled to terminate the service of the appellant after complying with the provision of Section 25F of the Act, and in accordance with law.

29. The appeal is allowed, but in the facts and circumstances of the case, there will be no order as to costs either in this Court or in the trial Court.

30. An oral application has been made on behalf of the respondents for a certificate to enable the respondents to prefer an appeal to the Supreme Court. As we are of the view that all the questions involved in the appeal are covered by the judgments of the Supreme Court and as no substantial question of law of general importance arises in this appeal which requires determination by the Supreme Court, the oral application for a certificate is, therefore, dismissed. No costs.

Amarendra Nath Sen, C.J.

31. I agree.