

(2011) 10 MAD CK 0158

In the Madras High Court

Case No : Writ Petition (MD) No. 1664 of 2009, M.P. (MD) No's. 1, 1, 1, 1, 1, 1, 1, 1, 1, 1 and 1 of 2009 and M.P. (MD) No's. 2, 2, 2, 2, 2, 2, 2, 2, 2, 2 and 2 of 2009

The Commissioner, Rajapalayam Municipality Rajapalayam,
Virudhunagar District

APPELLANT

Vs

K. Balu and Others

RESPONDENT

Date of Decision : 28-10-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 38, 39

Industrial Disputes Act, 1947 — Section 11, 2, 2(A)(2)

Tamil Nadu District Municipalities Act, 1920 — Section 71, 72, 73, 74, 75

Citation : (2011) 10 MAD CK 0158

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P. Srinivas, for the Appellant; V. Ramajegadeesan for Respondent-1, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioners in all these writ petitions is the Rajapalayam Municipality, represented by its Commissioner. In these writ petitions, the challenge is made to a common Award passed by the second respondent Labour Court, Madurai, made in I.D.Nos.30/2003 to 39/2003 and I.D.No.69/2003, dated 07.10.2008. By the impugned Award, the Labour Court, directed reinstatement of each first respondent with service continuity and back wages. A direction was also given to the petitioner Municipality, to reinstate the workmen, within a period of two months from the date of the Award. The petitioner, challenging the common Award, filed these eleven writ petitions.

2. The Writ Petitions were yet to be admitted and only Notice Regarding Admission was ordered by this Court on 06.03.2009. Pending Notice, an interim

stay was given, directing the petitioner Municipality to deposit Rs.25,000/-in respect of each writ petitions with the second respondent Labour Court, within a period of one month. It is admitted by both sides that the said interim order has been complied with by the Municipality.

3. The facts leading to filing of the writ petitions are as follows:

The contesting first respondent in all the Writ Petitions were appointed, as sanitary workers on a consolidated pay. The appointments were made during the year 1989. It is claimed that the petitioner Municipality comprised of 42 Wards and it has a population of over 1.5 lakhs. The workers were given a term appointment and it was renewed on an yearly basis. The total number of sanitary workers available for the Municipality was 360, out of which, 206 workers were on a regular basis. Further, 86 workers were initially appointed, as "Badli" and subsequently, they were all regularised. But, the Municipality continued to keep lesser number of staff than the sanctioned strength of 360 workers. They also denied their legitimate rights to get confirmation. Therefore, the workers were making constant representations either individually or through their Union. Even the Municipality had passed a resolution that they should be made permanent. The said resolution of the Municipality was also forwarded to the Regional Director of Municipal Administration, Tirunelveli, who had in turn sent proposals to the Government. Notwithstanding the same, the Municipality was delaying grant of permanent status. Even the essential infrastructure of providing cleaning materials, such as, Phenoyl, Bleaching Powder, Soap and the Spoons were not given to the workmen. The Trade Union, to which the petitioner belonged, passed a resolution, demanding the Municipality to regularise 85 workers and also to provide necessary materials for carrying out the efficient discharge of their duties and also to fill up the vacancies, kept pending for several years.

4. It is also stated that the resolution of the Trade Union was not complied with and therefore, it was decided to go on strike to press for redressal of their legitimate grievance. On the basis of the strike notice given by the Union, the Labour Officer, Virudunagar, conducted negotiations. He asked the Union to postpone their direct action, scheduled for 08.04.2002. Accepting the advice rendered by the conciliation officer, the strike action was postponed. Further negotiations were held on 08.04.2002 and 16.04.2002, before the conciliation officer. But, the Municipality did not participate in the talks and did not give full co-operation. Therefore, on 17.04.2002, the sanitary workers went on strike. Once again, talks were held before the conciliation officer, in which, the representatives of the Municipality were also participated and advice was given to call-off the strike. Accordingly, on 26.04.2002, the strike was called-off by the workmen. When they reported for duty on 27.04.2002, they were not allowed to perform their duties. The Union sent representations regarding the denial of employment to the workmen and also sent Telegrams to various authorities. However, by proceedings, dated 08.08.2002, the workmen were discharged from service.

5. In the order of discharge, it was stated that in the absence of any Government Order, the question of regularisation of the workmen could not have been considered by the Municipality. The workmen were engaged only on a tenure basis and their tenure was renewed from time to time. They were employed due to 4th renewal of their tenure. Even during the tenure employment, the workmen had gone an illegal strike with effect from 17.04.2002, which had affected the public health. Despite notice given on 22.04.2002, they did not report for duty. Therefore, on the basis of the resolution passed by the Municipality, the tenure of the first respondent in all the writ petitions along with other workers was brought to an end with effect from 10.05.2002. Though the discharge orders will not be a "retrenchment", within the meaning of Section 2(oo) of the Industrial Disputes Act, by way of abundant caution, the Municipality offered them their retrenchment compensation, in terms of Section 25-F of the Industrial Disputes Act. They were given one month pay in lieu of notice and compensation at the rate of 15 days pay for each year of service. The retrenchment compensation and notice pay were paid by way of cheque sent along with the notices of discharge.

6. Aggrieved by the en masse discharge order, the workmen raised an Industrial Dispute, u/s 2(A)(2) of the I.D. Act, before the Labour Officer. The Labour Officer, after notice to the Municipality held negotiations. As he could not bring about mediation, he gave his failure reports u/s 12(4) of the I.D. Act. On the strength of the failure reports, each of the workmen, who are the first respondent herein, filed claim statements dated 26.03.2003. The Labour Court registered all the disputes and assigned various I.D. Numbers such as 30/2003 to 39/2003 and 69/2003. Notices were ordered to the petitioner Municipality. They also filed identical counter statements, dated Nil, (November 2004).

7. The stand of the workmen was that termination was illegal and they have gone on strike on a legitimate expectation of fulfilling their demands made before the Municipality on several occasions and hence, the termination was illegal. It was also urged that when their disputes relating to general charter of demand regarding regularisation as well as filling up of the vacancies and supply of necessary materials for the discharge of duties. No prior approval for termination was obtained from the said authorities concerned and therefore, they requested the Labour Court to grant the relief of reinstatement with all back wages and service continuity.

8. In the counter statement filed by the petitioner Municipality it was urged that the workmen were appointed on term basis and that too, for a period of one year on consolidated wages. Their appointments themselves was made pursuant to the order passed by the State Government in G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.04.1997. By the said Government Order, the State Government revised the complement of sanitary workers, attached to the Public Health Department of the Municipality. In para 4.6 of the said Government Order it was stated the workmen should be

appointed only for a period of one year and it should be renewed upto a period of three years. Thereafter, on reviewing their work, they should be brought under time scale-of-pay and the Government will pass appropriate orders on the request made by the Municipality in regularising them. All the Municipalities were directed to adhere to the staff strength fixed by the Government Order. The said Government Order was also circularised by the Director of Municipal Administration vide proceedings dated 29.09.1997.

9. Therefore, the petitioner Municipality appointed 86 workers on term basis, with a view to reduce the expenditure involved in engaging them. When they themselves did not want to continue in service, the Municipality was forced to discharge their services by a resolution No.57, dated 06.05.2002. It was also stated that after three years employment of these workers, proposals should have been submitted to the State Government for bringing them under regular time scale-of-pay. If they were terminated, the question of conferring permanent status, will not arise. Therefore, on humanitarian consideration, their services were continued even for the 4th year. But, there was no response from the State Government regarding granting them time scale-of-pay. Hence, they were forced to discharge the services of the workmen. Notwithstanding the fact that such a termination after the end of the tenure, which is covered by exception to Section 2(oo)(bb), the Municipality offered notice pay and retrenchment compensation. Therefore, there was no illegality or irregularity in the order of termination.

10. Reliance was placed on the judgments of the Supreme Court in Director, Institute of Management Development, U.P. Vs. Puspha Srivastava (Smt.) reported in (1992 SCC L&S 767) and in Delhi Development Horticulture Employee's Union Vs. Delhi Administration and Others reported in (1992 SCC L&S 805). It was further stated that the power to appoint persons by a Municipality is provided under Sections 71 to 77(A) of the Tamil Nadu District Municipalities Act, 1920. It is the Municipality, which has power to appoint and determine the service. Therefore, the Municipality had exercised its power of termination of the workmen.

11. With reference to non-seeking of approval of their action from the conciliation officer, it was stated that the workmen had gone on illegal strike, contrary to Section 22 of the Industrial Disputes Act. Since the termination was a discharge and no stigma was attached in the order, the question of seeking permission u/s 33 will not arise. The workers are also guilty of contravening Section 22 of the Industrial Disputes Act by going on an illegal strike. In the absence of the State Government granting regularisation despite proposals being sent, there was no other option, except to discharge these workmen.

12. Before the Labour Court, on behalf of the first respondent workmen Mr.K.Balu, (first respondent in W.P.1664 of 2009) the petitioner in I.D.No.38 of 2003 was examined, as WW1. One S.Arunachalam, who was the Commissioner of Kadayanallur Municipality was also examined as WW2. On their side 48 documents were filed and marked as W1 to W48. On the side of the petitioner

Municipality one Syad Abas, who is the Manager of the Municipality was examined as MW1. On the side of the Municipality 30 documents were filed and marked as M.1 to 30.

13. The Labour Court, on the basis of the evidence (both oral and documentary), framed two issues. The first issue was whether the workmen are entitled for reinstatement and also wages for a period of non-employment and other benefits. The second issue was whether they are entitled for any other relief?

14. All the industrial disputes were tried jointly and common evidence was let in. The Labour Court held that the Municipality itself had recommended the regularisation, as per the G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.04.1997, marked as Ex.M1. After the completion of three years' service, there was also correspondence between the Municipality and the Director of Municipal Administration. The Director of Municipal Administration had not given any orders to stop the work of these workmen. Therefore, the reliance placed upon the term employee found in the order of appointment cannot be accepted. The decision made by the Municipality was unilateral and there was no order of the State Government or the Director of Municipal Administration, to terminate their services. In the place of unfilled vacancies, the Municipality had to out-source the garbage cleaning work to private contractors for which substantial amounts, were spent will clearly show that the financial difficulties pleaded by the Municipality was not valid.

15. The Labour Court also relied upon the evidence of WW2, who was the Commissioner of Kadayannallur Municipality that in their Municipality they have regularised the service of workmen after three years of tenure employment without any orders of the Government. Therefore, the Labour Court raised a doubt, as to how the Kadayannallur Municipality which was able to regularise, but the petitioner Municipality could not do it. The fact that the workmen had been employed more than 12 years, initially, as "Badlis" and latter, as term employees was not denied and there was no complaint about the work done by each individual workman. Immediately, after the discharge of the workmen, the Municipality had out sourced the work to private contractors. Therefore, even the reasons given for retrenching them, cannot be accepted. Since the Management had not satisfied the Labour Court with reference to the need for terminating the service and had not justified their non-employment by producing the appropriate materials, the Labour Court held that the so called discharge was unjustified and they are eligible for all normal reliefs.

16. Attacking the common Award, these writ petitions came to be filed. The contentions raised in these writ petitions were that since the discharge was based upon a resolution passed by the Municipality, the Industrial Dispute raised by the workmen was not maintainable. Since the resolution of the Municipality was not under challenge, the consequential orders cannot be subject matter of disputes. The retrenchment compensation have been paid and received by the workmen, the I.D is not maintainable. The Municipality was forced to pass a

resolution in respect of 86 workers, as the Government had not given nod of approval for their continuation. The workmen had come through the back door and have they have to go through the same back door. No concession can be obtained from the Labour Court, contrary to law.

17. In the light of these rival pleadings, it has to be seen whether the impugned common Award suffers from any illegality.

18. In the present case, a perusal of the order of discharge, dated 08.05.2002, marked as Exs.M13 to 23 will clearly shows that what prompted the Municipality was the workmen going on strike to press for their demands. Even the counter statement filed before the Labour Court the alleged illegality of strike u/s 22 was shown as the motive for passing the orders of discharge. Therefore, labelling the orders of discharge as non stigmatic cannot be countenanced. Merely because, the Municipality had labelled these orders, as discharge order, it will not take away the power of the Court to scan the order and to find out the real motive of the Municipality.

19. In this context, in an identical circumstances, the Supreme vide its judgment in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, has held that the form of the orders is not conclusive and if the real motive of the order is punitive, then it has to be taken only an order of dismissal. The Supreme Court held that an employer and an employee cannot be allowed to play hide and seek in the matter of dismissal of workmen. A discharge cannot be held to be a dismissal with a price. It is necessary to refer to the following passages found in paragraph Nos.53, 65 & 66, of the said judgment reads as follows:

53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used.

65. In our opinion, the facts of the case before us speak for themselves. Here are workmen on strike. The strike is illegal. The Management is hurt because production is paralysed. The strikers allegedly indulge in objectionable activities. The exasperated Management hits back by ordering their discharge for reasons set out in several pages in the appropriate contemporaneous proceeding. Misconduct after misconduct is flung on the workers to justify the drastic action. In all conscience and common sense, the discharge is the punishment for the misconduct. The Management minces no words. What is explicitly stated is not a colourless farewell to make way for fresh hands to work the factory until the strike is settled but a hard hitting order with grounds of guilt and penalty of removal.

66. The inference is inevitable, however, ingenious the contrary argument, that precisely because the Management found the workmen refractory in their misconduct they were sacked. Maybe, the Management had no other way of working the factory but that did not change the character of the action taken. Once we hold the discharge punitive the necessary consequence is that enquiry before punishment was admittedly obligatory and confessedly not undertaken. The orders were bad on this score alone.

20. In the very same judgment, the Supreme Court has also held that merely because workmen has gone on illegal strike that by itself cannot constitute a cause of action to have an earmark dismissal and in such circumstances, the Labour Court armed with a power under the Section 11-A of the I.D.Act to modify and mould the relief. In doing so, the Court will have to make a distinction between ringleaders, who caused disruption, violent activities and the one who merely participated in the strike. It is only in the case of first category the relief of reinstatement can be denied.

21. In the present case, neither in the order of discharge nor in the counter statement filed before the labour Court, there was no averment about the role of each individual (first respondent). Therefore, the Labour Court was right in ordering their reinstatement. In the absence of any specific misconduct attributed to the workmen and there being no specific pleading with reference to the nature of work rendered by them during their 12 years of service in the Municipality, no fault can be found with the impugned Award passed by the Labour Court.

22. The second submission, which was specifically raised before the workmen before the Labour Court both in the pleadings as well as in the evidence was that a charter of demand placed by the Union was followed by a strike notice. Hence a conciliation started was pending before the Government Labour Officer. Since their termination had taken place during the pendency of the conciliation before the Conciliation Officer, in the absence of any express permission from the Conciliation Officer, the order is violative of Section 33(1)(a) or 33 (2)(b) of the I.D.Act. In the absence of either prior approval or post approval being obtained by the Municipality in discharging the workmen, the order is void ab initio. That

was why in the counter statement the Municipality had attempted to make it appear the orders of discharge were non-punitive and the question of seeking approval will not arise. Merely because, the Municipality passed orders with innocuous wordings that will not takeaway the right of the Court from scanning the order and finding out the real motive behind the order.

23. Even in the absence of any enumerated misconduct set out in the order of termination in an application u/s 33, the Labour Court / Tribunal has power to find out whether the termination is in truth, substance and innocuous and bona fide exercise of contract and the employer cannot get away merely describing the termination as simple in the letter of discharge. In this context, it is necessary to refer to a judgment of the Supreme Court in Mahendra Singh Dhantwal Vs. Hindustan Motors Ltd. and Others, and in paragraphs 18,25 and 32 it was observed as follows:

18. From the provisions of Section 33 it is manifest that punitive action by the employer in whatever form it may be passed is permissible against an ordinary workman, as distinguished from a protected workman, even during the pendency of proceedings before the tribunal provided that the employer pays one month's wages and also applies to the concerned tribunal for approval of his action. Since the action is punitive, namely, dismissal or discharge for misconduct, the tribunal has to oversee the action to guarantee that no unfair labour practice or victimisation has been practised thereby. If the procedure of fair hearing has been observed the tribunal has to find in an application u/s 33 that a prima facie case is made out for dismissal. If, on the other hand, there is violation of the principles of natural justice in the enquiry, the tribunal can go into the whole question relating to the misconduct and come to its own conclusion whether the same is established.

25. Termination simpliciter or automatic termination of service under the conditions of service or under the standing orders is outside the scope of Section 33 of the Act. This does not mean that the employer has the last word about the termination of service of an employee and can get away with it by describing it to be a simple termination in his letter of discharge addressed to the employee. It is also not a correct proposition of law that in case of a complaint u/s 33-A the tribunal would be debarred from going into the question whether notwithstanding the form of the order, in substance, it is an action of dismissal for misconduct and not termination simpliciter.

32. It is true that on the face of the order of termination the company invoked clause (1) of the agreement and even so it was open to the tribunal to pierce the veil of the order and have a close look at all the circumstances and come to a decision whether the order was passed on account of certain misconduct. This is a finding of fact which could not be interfered with under Article 226 of the Constitution unless the conclusion is perverse, that is to say, based on no evidence whatsoever. We are, however, unable to say so having regard to the facts and circumstances described by the tribunal in its order.

24. Paragraph 3 of the discharge order, dated 08.05.2002 clearly shows that what prompted the Municipality was the so called illegal strike called for by the Union. Even though labelled as orders of discharge, it is only a cloak for dismissing the workmen. Once it is held to be a dismissal, then not seeking prior permission or post facto, such an order of discharge (dismissal) is clear void ab initio, as held by the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, . Though this point was raised by the workmen and noted in the Award, unfortunately, the Labour Court did not render any finding in this regard. But the contention of the Municipality that only a punitive order will attract Section 32 (2)(b) may be theoretically valid but in ground reality each order will have to be seen in their true colours. In the present case, the Labour Court has clearly held that it is not an order of discharge but an order of dismissal.

25. Even the bona fides if the so called retrenchments were not valid, because, the economic difficulties pleaded by the Municipality was disproved by the fact on the very next day itself the Municipality engaged the private

26. As rightly held by the Labour Court that G.O.Ms.No.101, Municipal Administration and Water Supply Department, dated 30.04.1997, marked as Ex.M1 only enabled the Municipality to send proposals for regularising the term appointees beyond period of three years and the correspondence in this regard was admittedly pending between the Municipality and the Director of Municipal Administration as well as the State Government and therefore, the Labour Court rightly found that in respect of Kadayanallur Municipality (as spoken to by WW1, who is none other than the Commissioner of Municipality) that nothing prevented the Municipality from regularising the service of the workmen even awaiting a nod from the Governmental authorities. Both in the counter statement as well as in the affidavit filed in support of the writ petition, the Municipality relied upon the power vested on them under Sections 71 to 77(A) of the Tamil Nadu Municipalities Act, thereby making it clear that it has the Municipality, who is the employer and no correspondence with the Government can determine the issue. In such circumstances, any action taken by them in dismissing the workmen, (though labelling it as discharge), it is the Municipality which will have take responsibility for the outcome of such decision. Therefore, the Municipality cannot play blow hot and blow cold in respect of the same matter. In one place the Municipality contends contractors and out sourced the works of the Municipality on a substantial expenses. that in the absence of Government's order, their regularisation cannot be made, but at another place it was pleaded that notwithstanding the correspondence that had taken place it was the Municipality, who was the employer for these workmen and they can decide the matter.

27. In any event, by offering retrenchment compensation at the same time pleading that it will not come under the definition of retrenchment u/s 2(oo) of the Industrial Disputes Act, they cannot prevent the Labour Court from

scrutinising the real action taken by the Municipality. Especially, in the context of strike followed by the termination and also engaging workers by out sourcing the work to private contractors will clearly shows that the termination was punitive and was done with a view to punish the workmen for adhering to the call of the trade Union.

28. The award passed by the Labour Court does not suffer from any legal impediment or illegality and the Labour Court has correctly kept in mind the principles for granting the relief in such matters. Added to the fact that in the present case, Section 33(2)(b) was clearly violated in the light of the Constitution Bench judgment of the Supreme Court in Jaipur Zila case (cited supra). The termination was void abinitio and the workmen are entitled for all the relief, as if there was no order of termination.

29. The Supreme Court, in more or less similar circumstances, dealt with the case of engagement of workers on contract basis due to ban on recruitment of consolidated wages. In dealing with the case, the Supreme Court observed that engagement of contract basis will not take them away from the purview of the Section 2(o)(o) of the Industrial Disputes Act, and such an appointment, in the absence of approval by the State Government, will not become back door appointment. The decision given by the High Court was reversed by the Supreme Court in K.C. Sareen Vs. C.B.I., Chandigarh, . In paragraphs 24,26, 27 and 29, it was observed as follows:

24. We are also convinced that the reasons assigned by the High Court for setting aside the award of reinstatement are legally untenable. In the first place, it deserves to be noticed that the respondent had engaged the appellant in the backdrop of the ban imposed by the State Government on the filling up of the vacant posts. The respondent had started a water supply scheme and for ensuring timely issue of the bills and collection of water charges, it needed the service of a clerk. However, on account of the restriction imposed by the State Government, regular recruitment was not possible. Therefore, the Resolution dated 27-4-1995 was passed for engaging the appellant on contract basis.

26. In furtherance of the aforesaid resolution, the respondent engaged the appellant, who was already in its employment, as a clerk for a period of six months on contract basis on a consolidated salary of `1000 per month. At the end of six months, the respondent passed another Resolution dated 30-11-1995 and again employed the appellant for a period of six months from 1-11-1995 to 20-4-1996. This exercise was repeated in 1996 and the appellant's term was extended for six months from 1-5-1996. However, his engagement was discontinued w.e.f. 30-9-1996 without giving any notice or pay in lieu thereof and compensation as per the requirement of clauses (a) and (b) of Section 25-F of the Act.

27. It is true that the engagement of the appellant was not preceded by an advertisement and consideration of the competing claims of other eligible

persons but that exercise could not be undertaken by the respondent because of the ban imposed by the State Government. It is surprising that the Division Bench of the High Court did not notice this important facet of the employment of the appellant and decided the writ petition by assuming that his appointment/engagement was contrary to the recruitment rules and Articles 14 and 16 of the Constitution. We may also add that failure of the Director, Local Self-Government, Punjab to convey his approval to the resolution of the respondent could not be made a ground for bringing an end to the engagement of the appellant and that too without complying with the mandate of Sections 25-F(a) and (b).

29. The plea of the respondent that the action taken by it is covered by Section 2(oo)(bb) was clearly misconceived and was rightly not entertained by the Labour Court because no material was produced by the respondent to show that the engagement of the appellant was discontinued by relying upon the terms and conditions of the employment.

30. The other arguments that the workers came through backdoors cannot be accepted, as the Municipality itself had recommended for their regularisation and the workers have served for more than 12 years both as "Badli" as well as term appointees. The second argument that the workers have failed to challenge the Municipality's resolution is immaterial, as an Industrial Dispute u/s 2(A) is raised against an employer in respect of non employment. Therefore, when their termination is questioned by the workmen, it takes within itself, the ultimate decision taken by the Municipality and hence, it is not necessary to challenge the same by any separate proceedings.

31. On the question of relief granted by the Labour Court and the scope of this court reviewing such an order in a writ petition filed under Article 226 of the Constitution, it is necessary to refer to a judgment of the Supreme Court in Harjinder Singh Vs. Punjab State Warehousing Corporation, and in paragraphs 21,23,24,30 and 31 it was held as follows:

21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

10. ... The concept of social and economic justice is a living concept of

revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.

(State of Mysore v. Workers of Gold Mines¹³, AIR p. 928, para 10.)

23. The Preamble and various articles contained in Part IV of the Constitution promote social justice so that life of every individual becomes meaningful and he is able to live with human dignity. The concept of social justice engrafted in the Constitution consists of diverse principles essentially for the orderly growth and development of personality of every citizen. Social justice is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic devise to mitigate the sufferings of the poor, weak, Dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation of every section of the society.

24. In a developing society like ours which is full of unbridgeable and ever widening gaps of inequality in status and of opportunity, law is a catalyst to reach the ladder of justice. The philosophy of welfare State and social justice is amply reflected in large number of judgments of this Court, various High Courts, National and State Industrial Tribunals involving interpretation of the provisions of the Industrial Disputes Act, Factories Act, 1948; Payment of Wages Act, 1936; Minimum Wages Act, 1948; Payment of Bonus Act, 1965; Workmen's Compensation Act, 1923; Employees' State Insurance Act, 1948; Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Shops and Commercial Establishments Act enacted by different States.

30. Of late, there has been a visible shift in the courts' approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalisation and liberalisation are fast becoming the *raison d'être* of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganised workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman/employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood.

31. It need no emphasis that if a man is deprived of his livelihood, he is deprived

of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the directive principles of State policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer-public or private.

The above passage will clearly show that terminating the services of workmen who had worked for more than a decade and going for outsourcing by the petitioner Municipality cannot be countenanced by this court and that the Award does not call for any interference.

32. In view of the above, all the writ petitions stand dismissed and the impugned Award of the Labour Court stands confirmed. The petitioner Municipality is directed to reinstate the workers, within a period of eight weeks from the date of receipt of a copy of this order. The workmen are also in the meanwhile are entitled to withdraw a sum of Rs.25,000/-, deposited in the Labour Court and also claim balance amount from the Municipality.

33. The petitioner Municipality is directed to pay a sum of Rs.2000/-to each first respondent towards the legal costs, as the writ petitions were filed without any legal justification. Consequently, connected miscellaneous petitions are also dismissed.