

(2011) 06 MAD CK 0215

In the Madras High Court

Case No : Writ Petition No's. 11080 to 11083, 11024, 11539, 11860, 12169, 11648 and 13068 of 2006

The Management of Best and Crompton Engineering Limited

APPELLANT

Vs

A.M. Sekar and The Presiding Officer

RESPONDENT

Date of Decision : 06-06-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 227

Evidence Act, 1872 — Section 106, 92

Industrial Disputes Act, 1947 — Section 17B, 2, 25F, 25N, 25N(1)

Citation : (2011) 06 MAD CK 0215

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : K.V. Ananthakrishnan, for the Appellant; V. Prakash, Ramapriya Gopalakrishnan, for 1st Respondents in all WPs., for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—In all these writ petitions, the Petitioner/Respondent before the Labour Court (hereinafter referred to as ""the

Management"") has challenged the awards of the Labour Court in the industrial disputes raised by the first Respondents/Petitioners before the

Labour Court (hereinafter referred to as ""the employee(s)"") u/s 2A(2) of the Industrial Disputes Act, 1947 (for brevity, ""the Act"") directing the

Management to reinstate the employees in service with full back-wages, continuity of service and all other attendant benefits.

2. By virtue of the judgment of the Hon'ble First Bench of this Court in W.A. Nos. 1438 of 2008, etc. batch, dated 5.11.2008, it is informed that

the employee in W.P. No. 11860 of 2006 (G. Sumathi I.D. No. 633 of 2002), the employee in W.P. No. 11539 of 2006 (K.U. Suresh Kumar

I.D. No. 630 of 2002) and the employee in W.P. No. 11204 of 2006 (R. Srinivasan I.D. No. 632 of 2002) were reinstated on 9.4.2009.

3. It is also brought to the notice of this Court that the employee in W.P. No. 11648 of 2006 (M. Sankaran I.D. No. 735 of 2002), the employee

in W.P. No. 11081 of 2006 (P.G. Ranganathan I.D. No. 738 of 2002), the employee in W.P. No. 11082 of 2006 (N. Sukumaran I.D. No. 737

of 2002) and the employee in W.P. No. 11080 of 2006 (A.M. Sekar I.D. No. 739 of 2002) have retired on attaining superannuation in June,

2009, April, 2009, May, 2009 and October, 2008 respectively.

4. It is informed by the learned Counsel for the Management that the employee in W.P. No. 12169 of 2006 (P. Lokesh (Bangalore) I.D. No. 736

of 2002) has been offered employment, but he is not attending. It is also informed that while the employee in W.P. No. 13068 of 2006 (S.N.

Shyam Sundar I.D. No. 631 of 2002) is being paid salary u/s 17B of the Act, the employee in W.P. No. 11083 of 2006 (B. Subbu Venkatraman

I.D. No. 734 of 2002) is neither offered employment nor paid wages u/s 17B of the Act.

5.1. The company, which is engaged in the manufacture of industrial motors and pumps, was incorporated in the year 1911 as Best and Co., and

amalgamated with Crompton Engineering in the year 1971. The company is having units both at Chennai and Bangalore with total strength of all

staff around 200 and its administrative office is at No. 39, Industrial Estate, North Ambattur, Chennai.

5.2. It is stated that the company has incurred huge financial loss due to recession and decided to retrench 48 employees, viz., 13 employees from

the administrative office and 35 employees from various units, on payment of compensation. It is stated that out of 48 employees, 35 employees

have accepted the offer of cessation of service, while 13 employees raised industrial disputes before the Conciliation Officer on the termination

notice dated 14.2.2002 issued by the Management and the conciliation ended in failure and the 13 employees raised industrial disputes. It is stated

that out of the 13 employees, 3 employees have settled the dispute and the remaining 10 employees have proceeded with the petitions filed before

the Labour Court.

W.P. No. 11080 of 2006:

6.1. The employee in W.P. No. 11080 of 2006, who has filed I.D. No. 739 of 2002, has joined the services of the Management on 4.5.1981 as a

Clerical apprentice and subsequently, he was promoted to Managerial Grade II Level on 1.4.2000. However, according to him, he is a workman

as per Section 2(s) of the Act and his responsibilities were preparation of monthly operational results, maintenance of debtors, creditors and stores

ledgers, verification of purchase order, supplier bill and payment vouchers, product costing and preparation of schedules for statutory tax audit.

6.2. The employee was placed in the Foundry Division of Ambattur Factory and in respect of all procurements made he was maintaining accounts.

It is stated that even though the Management has introduced voluntary retirement scheme in various years, including 1998 and 1999, no such

application was given to him, since the Management required his services. However, on 14.2.2002, the Management has issued a statutory order

stating that the employee need not report for work for a period of three months and he will be paid salary and other benefits and that he can use

the said period to find an alternate job and whether or not he finds an alternate job, he would cease to be an employee from 15.5.2002.

6.3. The impugned order of termination, according to the employee, amounts to retrenchment and no retrenchment compensation has been paid

and the procedure contemplated u/s 25-N of the Act has not been followed and his juniors are still working in the company. It is stated that the

conciliation efforts have failed. Even though in the report of the Conciliation Officer dated 7.6.2002, it is stated that the employee did not press for

reinstatement and was primarily interested only in the quantum of compensation, the same was denied and the said conciliation report was

challenged.

6.4. It is stated that the Management has given effect to the order of termination without applying for permission u/s 33 of the Act and according to

the employee, his last drawn wage was Rs. 9,950/-. It is also denied that the Management is incurring heavy loss for the past few years. Therefore,

the employee has raised industrial dispute seeking reinstatement in service with full back-wages, continuity of service and all other attendant

benefits.

7.1. It has been the case of the Management, which is the Respondent in I.D.

No. 739 of 2002, that the employee has joined on 4.5.1981 and was designated as a Clerk and he has accepted promotion from the non management cadre to the management cadre. It is stated that the employee was promoted as Officer in the year 1989 and Senior Officer in the year 1993 and Deputy Manager in the year 1995 and promoted as Manager in the year 2000.

7.2. The Management has stated in the counter affidavit before the Labour Court that the employee was responsible for the accounts and finance of the foundry, management of information systems of the Madras Foundry, preparation and finalization of the annual budget, apart from approval of payments to sundry creditors, and therefore, according to the Management, the employee was not a "workman" as per Section 2(s) of the Act and hence, the applicability of the provisions of Chapter VA and VB does not arise.

7.3. It has been the case of the Management before the Labour Court that the employee was aware of the position of the Management which has issued the letter on 14.2.2002 and the employee was not singled out. Even though the Management could have dispensed with the services of the employee by giving notice as per the terms of the appointment, the compensation package has been offered.

7.4. It was also stated that Section 2(oo) of the Act is not applicable and therefore, there is no question of giving any opportunity to the employee.

It is also stated that Section 25-N of the Act is not applicable. The employee not being a workman, according to the Management, the principle of first come last go" is not applicable. It was also the case of the Management before the Labour Court that the employee sought higher compensation than what was offered by the Management. According to the Management, Section 33 or Section 25F are not applicable to the case on hand.

W.P. No. 11081 of 2006:

8.1. The employee in W.P. No. 11081 of 2006, who has filed I.D. No. 738 of 2002, has joined the services of the Management on 19.2.1973 and at the time of termination from service, he was designated as Senior Accountant. However, according to him, he is a workman as per Section 2(s) of the Act and his responsibilities were maintaining electrical machines

factory accounts, administration department accounts and pay roll

section, apart from the responsibilities of attending to reconciliation of general ledger accounts, creditors ledgers, debtors ledgers and stores

ledgers, preparation of journal entries, checking cash and bank payment vouchers and bill accounting payment vouchers, preparation of MIS

reports and scheduling for auditing, and he was not having power to appoint or suspend or take disciplinary action against any employee or to

sanction leave or to enter into contract on behalf of the company and therefore, he was neither having managerial duties nor supervisory duties.

According to the employee, the Management is an industry within the meaning of Section 2(j) of the Act.

8.2. It is stated that, on 14.2.2002, the Management has issued a statutory order stating that the employee need not report for work for a period

of three months and he will be paid salary and other benefits and that he can use the said period to find an alternate job and whether or not he finds

an alternate job, he would cease to be an employee from 15.5.2002.

8.3. The impugned order of termination, according to the employee, amounts to retrenchment and no retrenchment compensation has been paid

and the procedure contemplated u/s 25-N of the Act has not been followed and his juniors are still working in the company. It is stated that the

conciliation efforts have failed. Even though in the report of the Conciliation Officer dated 7.6.2002, it is stated that the employee did not press for

reinstatement and was primarily interested only in the quantum of compensation, the same was denied and the said conciliation report was

challenged.

8.4. It is stated that the Management has given effect to the order of termination without applying for permission u/s 33 of the Act and according to

the employee, his last drawn wage was Rs. 7,950/-. It is also denied that the Management is incurring heavy loss for the past few years. Therefore,

the employee has raised industrial dispute seeking reinstatement in service with full back-wages, continuity of service and all other attendant

benefits.

9.1. It has been the case of the Management, which is the Respondent in I.D. No. 738 of 2002, that the employee concerned has joined on

19.2.1973 and was promoted as Officer in Grade V. in the year 1975 and was

further promoted as Senior Officer in Grade IV in the year 1991.

9.2. The Management has stated in the counter affidavit before the Labour Court that the employee was responsible for preparation and

finalization of MIS reports, authorization of payment vouchers, authorization of journal entries, preparation and finalization of the Accounts for

EMF, and therefore, according to the Management, the employee was not a "workman" as per Section 2(s) of the Act and hence, the applicability

of the provisions of Chapter VA and VB does not arise.

9.3. It has been the case of the Management before the Labour Court that the employee was aware of the position of the Management which has

issued the letter on 14.2.2002 and the employee was not singled out. Even though the Management could have dispensed with the services of the

employee by giving notice as per the terms of the appointment, the compensation package has been offered.

9.4. It was also stated that Section 2(oo) of the Act is not applicable and therefore, there is no question of giving any opportunity to the employee.

It is also stated that Section 25-N of the Act is not applicable. The employee not being a workman, according to the Management, the principle of

first come last go" is not applicable. It was also the case of the Management before the Labour Court that the employee sought higher

compensation than what was offered by the Management. According to the Management, Section 33 or Section 25F are not applicable to the

case on hand.

W.P. No. 11082 of 2006:

10.1. The employee in W.P. No. 11082 of 2006, who has filed I.D. No. 737 of 2002, has joined the services of the Management on 1.8.1974 as

a Clerical apprentice and he was promoted as Managerial M5 level (Grade III) on 1.4.2000. However, according to the employee, he is a

workman as per Section 2(s) of the Act and his responsibilities were preparation of monthly operational results, maintenance of general ledger,

debtors, creditors and stores ledger, verification of purchase order, supplier bill and payment vouchers, product costing, preparation of cash flow

statements, and preparation of schedules for statutory tax audit with respect to automotive product division. He was placed in the Corporate

Office and in respect of all procurements made he was maintaining accounts. It is

stated that even though the Management has introduced voluntary retirement scheme in various years, including 1998 and 1999, no such application was given to him, since the Management required his services.

10.2. It is stated that, on 14.2.2002, the Management has issued a statutory order stating that the employee need not report for work for a period of three months and he will be paid salary and other benefits and that he can use the said period to find an alternate job and whether or not he finds an alternate job, he would cease to be an employee from 15.5.2002.

10.3. The impugned order of termination, according to the employee in W.P. No. 11082 of 2006, amounts to retrenchment and no retrenchment compensation has been paid and the procedure contemplated u/s 25-N of the Act has not been followed and his juniors are still working in the company. It is stated that the conciliation efforts have failed. Even though in the report of the Conciliation Officer dated 7.6.2002, it is stated that the employee did not press for reinstatement and was primarily interested only in the quantum of compensation, the same was denied and the said conciliation report was challenged.

10.4. It is stated that the Management has given effect to the order of termination without applying for permission u/s 33 of the Act and according to the employee, his last drawn wage was Rs. 9,750/-. It is also denied that the Management is incurring heavy loss for the past few years. Therefore, the employee has raised industrial dispute seeking reinstatement in service with full back-wages, continuity of service and all other attendant benefits.

11.1. It has been the case of the Management, which is the Respondent in I.D. No. 737 of 2002, that the employee concerned has joined on 1.8.1974 and was promoted as Officer in the year 1989, as Senior Officer in Grade IV in the year 1996 and as Deputy Manager in the year 2000.

11.2. The Management has stated in the counter affidavit before the Labour Court that the employee was responsible for the accounts and finance of the automotive ancillary division and for preparation of cash flow for the division and therefore, according to the Management, the employee

was not a "workman" as per Section 2(s) of the Act and hence, the applicability of the provisions of Chapter VA and VB does not arise. It is

stated that the employee has only power to recommend leave and he does not sanction any leave and he has no power to sign any contract on

behalf of the company.

11.3. It has been the case of the Management before the Labour Court that the employee was aware of the position of the Management which has

issued the letter on 14.2.2002 and the employee was not singled out. Even though the Management could have dispensed with the services of the

employee by giving notice as per the terms of the appointment, the compensation package has been offered.

11.4. It was also stated that Section 2(oo) of the Act is not applicable and therefore, there is no question of giving any opportunity to the

employee. It is also stated that Section 25-N of the Act is not applicable. The employee not being a workman, according to the Management, the

principle of "first come last go" is not applicable. It was also the case of the Management before the Labour Court that the employee sought higher

compensation than what was offered by the management. According to the Management, Section 33 or Section 25F are not applicable to the case

on hand.

W.P. No. 11083 of 2006:

12.1. The employee in W.P. No. 11083 of 2006, who has filed I.D. No. 734 of 2002, has joined the services of the Management on 1.6.1989

and he was designated as Senior Officer. However, according to him, he is a workman as per Section 2(s) of the Act and his responsibilities were

purchase and sales accounting, maintenance of ledgers and MIS reports, preparation of journals, and he was not having power to appoint or

suspend or take disciplinary action against any employee or to sanction leave or to enter into contract on behalf of the company and therefore, he

was neither having managerial duties nor supervisory duties. According to the employee, the Management is an industry within the meaning of

Section 2(j) of the Act.

12.2. It is stated that, on 14.2.2002, the Management has issued a statutory order stating that the employee need not report for work for a period

of three months and he will be paid salary and other benefits and that he can use

the said period to find an alternate job and whether or not he finds an alternate job, he would cease to be an employee from 15.5.2002.

12.3. The impugned order of termination, according to the employee, amounts to retrenchment and no retrenchment compensation has been paid

and the procedure contemplated u/s 25-N of the Act has not been followed and it is stated that his juniors are still working in the company. It is

stated that the conciliation efforts have failed. Even though in the report of the Conciliation Officer dated 7.6.2002, it is stated that the employee

did not press for reinstatement and was primarily interested only in the quantum of compensation, the same was denied and the said conciliation

report was challenged.

12.4. It is stated that the Management has given effect to the order of termination without applying for permission u/s 33 of the Act and according

to the employee, his last drawn wage was Rs. 6,650/-. It is also denied that the Management is incurring heavy loss for the past few years.

Therefore, the employee has raised industrial dispute seeking reinstatement in service with full back-wages, continuity of service and all other

attendant benefits.

13.1. It has been the case of the Management, which is the Respondent in I.D. No. 734 of 2002, that the employee concerned has joined on

1.6.1989 and was promoted as Officer in Grade V. in the year 1990 and was further promoted as Senior Officer in Grade IV in the year 2000.

13.2. The Management has stated in the counter affidavit before the Labour Court that the employee was responsible for preparation and filing of

returns for the States Orissa, West Bengal, Bihar and Madhya Pradesh, preparation, compilation of turnover consolidation statements in respect of

the States which he was coordinating, and therefore, according to the Management, the employee was not a workman as per Section 2(s) of the

Act and hence, the applicability of the provisions of Chapter VA and VB does not arise.

13.3. It has been the case of the Management before the Labour Court that the employee was aware of the position of the Management which has

issued the letter on 14.2.2002 and the employee was not singled out. Even though the Management could have dispensed with the services of the

employee by giving notice as per the terms of the appointment, the

compensation package has been offered.

13.4. It was also stated that Section 2(oo) of the Act is not applicable and therefore, there is no question of giving any opportunity to the

employee. It is also stated that Section 25-N of the Act is not applicable. The employee not being a workman, according to the Management, the

principle of "first come last go" is not applicable. It was also the case of the Management before the Labour Court that the employee sought higher

compensation than what was offered by the Management. According to the Management, Section 33 or Section 25F are not applicable to the

case on hand.

W.P. No. 11204 of 2006:

14.1. The employee in W.P. No. 11204 of 2006, who has filed I.D. No. 632 of 2002, has joined the services of the Management on 14.6.1989

and at the time of termination from service, he was designated as Senior Officer. However, according to him, he is a workman as per Section 2(s)

of the Act and his responsibilities were furnishing monthly operational result, complete control of debtors and creditors, verification of purchase

order, supplier's bills and payment orders, etc., and he was not having power to appoint or suspend or take disciplinary action against any

employee or to sanction leave or to enter into contract on behalf of the company and therefore, he was neither having managerial duties nor

supervisory duties. According to the employee, the Management is an industry within the meaning of Section 2(j) of the Act.

14.2. It is stated that, on 14.2.2002, the Management has issued a statutory order stating that the employee need not report for work for a period

of three months and he will be paid salary and other benefits and that he can use the said period to find an alternate job and whether or not he finds

an alternate job, he would cease to be an employee from 15.5.2002.

14.3. The impugned order of termination, according to the employee, amounts to retrenchment and no retrenchment compensation has been paid

and the procedure contemplated u/s 25-N of the Act has not been followed and it is stated that his juniors are still working in the company. It is

stated that the conciliation efforts have failed. Even though in the report of the Conciliation Officer dated 7.6.2002, it is stated that the employee

did not press for reinstatement and was primarily interested only in the quantum

of compensation, the same was denied and the said conciliation report was challenged.

14.4. It is stated that the Management has given effect to the order of termination without applying for permission u/s 33 of the Act and according to the employee, his last drawn wage was Rs. 6,550/-. It is also denied that the Management is incurring heavy loss for the past few years.

Therefore, the employee has raised industrial dispute seeking reinstatement in service with full back-wages, continuity of service and all other attendant benefits.

15.1. It has been the case of the Management, which is the Respondent in I.D. No. 632 of 2002, that the employee concerned has joined on

14.6.1989 and was promoted to Officer cadre and was working as a Senior Officer.

15.2. The Management has stated in the counter affidavit before the Labour Court that the employee was responsible for preparation of MIS and

budget for both the units, preparation and maintenance of the schedules of both units for audit purposes, review of the general ledgers maintained

for both the units, coordinating with the marketing department and the factory for the purposes of effective cost control, apart from accounts of one

of the subsidiary companies, and therefore, according to the Management, the employee was not a workman as per Section 2(s) of the Act and

hence, the applicability of the provisions of Chapter VA and VB does not arise.

15.3. It has been the case of the Management before the Labour Court that the employee was aware of the position of the Management which has

issued the letter on 14.2.2002 and the employee was not singled out. Even though the Management could have dispensed with the services of the

employee by giving notice as per the terms of the appointment, the compensation package has been offered.

15.4. It was also stated that Section 2(oo) of the Act is not applicable and therefore, there is no question of giving any opportunity to the

employee. It is also stated that Section 25-N of the Act is not applicable. The employee not being a workman, according to the Management, the

principle of "first come last go" is not applicable. It was also the case of the Management before the Labour Court that the employee sought higher

compensation than what was offered by the Management. According to the

Management, Section 33 or Section 25F are not applicable to the case on hand.

W.P. No. 11539 of 2006:

16.1. The employee in W.P. No. 11539 of 2006, who has filed I.D. No. 630 of 2002, has joined the services of the Management on 27.3.1995

and was designated as an Officer. However, according to him, he is a workman as per Section 2(s) of the Act and his responsibilities were

transferring of shares and debentures documentation and verification, coordinating with consultancy agencies, assisting secretarial and legal

activities of the company and preparation of legal documents for court cases, and he was not having power to appoint or suspend or take

disciplinary action against any employee or to sanction leave or to enter into contract on behalf of the company and therefore, he was neither

having managerial duties nor supervisory duties. According to the employee, the Management is an industry within the meaning of Section 2(j) of

the Act.

16.2. It is stated that, on 14.2.2002, the Management has issued a statutory order stating that the employee need not report for work for a period

of three months and he will be paid salary and other benefits and that he can use the said period to find an alternate job and whether or not he finds

an alternate job, he would cease to be an employee from 15.5.2002.

16.3. The impugned order of termination, according to the employee, amounts to retrenchment and no retrenchment compensation has been paid

and the procedure contemplated u/s 25-N of the Act have not been followed and it is stated that his juniors are still working in the company. It is

stated that the conciliation efforts have failed. Even though in the report of the Conciliation Officer dated 7.6.2002, it is stated that the employee

did not press for reinstatement and was primarily interested only in the quantum of compensation, the same was denied and the said conciliation

report was challenged.

16.4. It is stated that the Mmanagement has given effect to the order of termination without applying for permission u/s 33 of the Act and

according to the employee, his last drawn wage was Rs. 4,850/-. It is also denied that the Management is incurring heavy loss for the past few

years. Therefore, the employee has raised industrial dispute seeking reinstatement in service with full back-wages, continuity of service and all other attendant benefits.

17.1. It has been the case of the Management, which is the Respondent in I.D. No. 630 of 2002, that the employee has joined on 27.3.1995 as a

Junior Management Trainee and was promoted as Assistant Officer in Grade VI.

17.2. The Management has stated in the counter affidavit before the Labour Court that the employee was carrying out the jobs in the secretariat

and legal department and he was assisting the Company Secretary in respect of specific assignments, and therefore, according to the Management,

the employee concerned was not a workman as per Section 2(s) of the Act and hence, the applicability of the provisions of Chapter VA and VB

does not arise.

17.3. It has been the case of the Management before the Labour Court that the employee was aware of the position of the Management which has

issued the letter on 14.2.2002 and the employee was not singled out. Even though the Management could have dispensed with the services of the

employee by giving notice as per the terms of the appointment, the compensation package has been offered.

17.4. It was also stated that Section 2(oo) of the Act is not applicable and therefore, there is no question of giving any opportunity to the

employee. It is also stated that Section 25-N of the Act is not applicable. The employee not being a workman, according to the Management, the

principle of "first come last go" is not applicable. It was also the case of the Management before the Labour Court that the employee sought higher

compensation than what was offered by the Management. According to the Management, Section 33 or Section 25F are not applicable to the

case on hand.

W.P. No. 11860 of 2006:

18.1. The employee in W.P. No. 11860 of 2006, who has filed I.D. No. 633 of 2002, has joined the services of the Management on 2.6.1995

and she was designated as Officer. However, according to her, she is a workman as per Section 2(s) of the Act and her responsibilities were

maintenance of share registers, coordinating with consultancy agencies and preparation of legal documents for court cases, and she was not having

power to appoint or suspend or take disciplinary action against any employee or to sanction leave or to enter into contract or sign cheques on

behalf of the company and therefore, she was neither having managerial duties nor supervisory duties. According to her, the Management is an

industry within the meaning of Section 2(j) of the Act.

18.2. It is stated that, on 14.2.2002, the Management has issued a statutory order stating that the employee need not report for work for a period

of three months and she will be paid salary and other benefits and that she can use the said period to find an alternate job and whether or not she

finds an alternate job, she would cease to be an employee from 15.5.2002.

18.3. The impugned order of termination, according to the employee, amounts to retrenchment and no retrenchment compensation has been paid

and the procedure contemplated u/s 25-N of the Act have not been followed and it is stated that her juniors are still working in the company. It is

stated that the conciliation efforts have failed. Even though in the report of the Conciliation Officer dated 7.6.2002, it is stated that the employee

did not press for reinstatement and was primarily interested only in the quantum of compensation, the same was denied and the said conciliation

report was challenged.

18.4. It is stated that the Management has given effect to the order of termination without applying for permission u/s 33 of the Act and according

to the employee, her last drawn wage was Rs. 5,050/-. It is also denied that the Management is incurring heavy loss for the past few years.

Therefore, the employee has raised industrial dispute seeking reinstatement in service with full back-wages, continuity of service and all other

attendant benefits.

19.1. It has been the case of the Management, which is the Respondent in I.D. No. 633 of 2002, that the employee concerned has joined the

services as a Management staff on probation and on successful completion of her probationary period, she was confirmed in Grade VI of the

Management Cadre and was designated as Assistant Officer and was subsequently promoted to Grade V. and she was designated as Officer in

the Secretarial and Legal Department.

19.2. The Management has stated in the counter affidavit before the Labour Court that the employee was responsible for evolving and designing

programs for the use of the department, to attend to all the work connection with the In House Share Registry, to coordinate and prepare all papers and notes for the Share/Debenture Transfer Committee Meetings of the Board of Directors of the company and periodical updating of the records of the Secretarial Department with specific reference to the register of members, etc. and therefore, according to the Management, the employee was not a workman as per Section 2(s) of the Act and hence, the applicability of the provisions of Chapter VA and VB does not arise.

19.3. It has been the case of the Management before the Labour Court that the employee was aware of the position of the Management which has issued the letter on 14.2.2002 and the employee was not singled out. Even though the Management could have dispensed with the services of the employee by giving notice as per the terms of the appointment, the compensation package has been offered.

19.4. It was also stated that Section 2(oo) of the Act is not applicable and therefore, there is no question of giving any opportunity to the employee. It is also stated that Section 25-N of the Act is not applicable. The employee not being a workman according to the Management, the principle of "first come last go" is not applicable. It was also the case of the Management before the Labour Court that the employee sought higher compensation than what was offered by the Management. According to the Management, Section 33 or Section 25F are not applicable to the case on hand.

W.P. No. 12169 of 2006:

20.1. The employee in W.P. No. 12169 of 2006, who has filed I.D. No. 736 of 2002, has joined the services of the Management on 1.6.1981 and he was subsequently designated as Senior Officer. However, according to the him, he is a workman as per Section 2(s) of the Act and his responsibilities were preparation of receipt voucher, payment voucher, journal vouchers, audit schedules; maintenance of sundry debtors ledger, sundry creditors and general ledger; preparation of cost audit report; reconciliation of sundry creditors and sundry debtors; preparation of management information report; and preparation of annual budget, and he was not having power to appoint or suspend or take disciplinary action against any employee or to sanction leave or to enter into contract or sign

cheques on behalf of the company and therefore, he was neither having managerial duties nor supervisory duties. According to the employee, the Management is an industry within the meaning of Section 2(j) of the Act.

20.2. It is stated that, on 14.2.2002, the Management has issued a statutory order stating that the employee need not report for work for a period of three months and he will be paid salary and other benefits and that he can use the said period to find an alternate job and whether or not he finds an alternate job, he would cease to be an employee from 15.5.2002.

20.3. The impugned order of termination, according to the employee, amounts to retrenchment and no retrenchment compensation has been paid and the procedure contemplated u/s 25-N of the Act have not been followed and it is stated that his juniors are still working in the company. It is stated that the conciliation efforts have failed. Even though in the report of the Conciliation Officer dated 7.6.2002, it is stated that the employee did not press for reinstatement and was primarily interested only in the quantum of compensation, the same was denied and the said conciliation report was challenged.

20.4. It is stated that the Management has given effect to the order of termination without applying for permission u/s 33 of the Act and according to the employee, his last drawn wage was Rs. 7,150/-. It is also denied that the Management is incurring heavy loss for the past few years.

Therefore, the employee has raised industrial dispute seeking reinstatement in service with full back-wages, continuity of service and all other attendant benefits.

21.1. It has been the case of the Management, which is the Respondent in I.D. No. 736 of 2002, that the employee has joined on 1.6.1981 and

was promoted as a Senior Officer in the year 2000. The Management has stated in the counter affidavit before the Labour Court that the

employee was responsible for preparation of monthly statements; preparation of monthly returns for various statutory authorities; maintenance of

the accounts of the Bangalore Pump Factory;

preparation of and finalization of the Creditors and Debtors Ledgers; co-ordinate and complete the various data received from other departments

for finalization of the annual accounts of the unit; and preparation and finalization of journal entries, and therefore, according to the Management,

the employee was not a workman as per Section 2(s) of the Act and hence, the applicability of the provisions of Chapter VA and VB does not arise.

21.2. It has been the case of the Management before the Labour Court that the employee was aware of the position of the Management which has issued the letter on 14.2.2002 and the employee was not singled out. Even though the Management could have dispensed with the services of the employee by giving notice as per the terms of the appointment, the compensation package has been offered.

21.3. It was also stated that Section 2(oo) of the Act is not applicable and therefore, there is no question of giving any opportunity to the employee. It is also stated that Section 25-N of the Act is not applicable. The employee not being a workman according to the Management, the principle of "first come last go" is not applicable. It was also the case of the Management before the Labour Court that the employee sought higher compensation than what was offered by the Management. According to the Management, Section 33 or Section 25F are not applicable to the case on hand.

W.P. No. 11648 of 2006:

22.1. The employee in W.P. No. 11648 of 2006, who has filed I.D. No. 735 of 2002, has joined the services of the Management on 1.7.1977

and he was designated as Officer. However, according to the him, he is a workman as per Section 2(s) of the Act and his responsibilities were

preparation of monthly statement for sales tax returns; and follow up of matters in respect of collection of C and E1 Forms, and he was not having

power to appoint or suspend or take disciplinary action against any employee or to sanction leave or to enter into contract on behalf of the

company and therefore, he was neither having managerial duties nor supervisory duties. According to the employee, the Management is an industry

within the meaning of Section 2(j) of the Act.

22.2. It is stated that, on 14.2.2002, the Management has issued a statutory order stating that the employee need not report for work for a period

of three months and he will be paid salary and other benefits and that he can use the said period to find an alternate job and whether or not he finds

an alternate job, he would cease to be an employee from 15.5.2002.

22.3. The impugned order of termination, according to the employee, amounts to retrenchment and no retrenchment compensation has been paid

and the procedure contemplated u/s 25-N of the Act have not been followed and it is stated that his juniors are still working in the company. It is

stated that the conciliation efforts have failed. Even though in the report of the Conciliation Officer dated 7.6.2002, it is stated that the employee

did not press for reinstatement and was primarily interested only in the quantum of compensation, the same was denied and the said conciliation

report was challenged.

22.4. It is stated that the Management has given effect to the order of termination without applying for permission u/s 33 of the Act and according

to the employee, his last drawn wage was Rs. 6,850/-. It is also denied that the Management is incurring heavy loss for the past few years.

Therefore, the employee has raised industrial dispute seeking reinstatement in service with full back-wages, continuity of service and all other

attendant benefits.

23.1. It has been the case of the Management, which is the Respondent in I.D. No. 735 of 2002, that the employee has joined in the year 1977

and was promoted as Officer in the year 1989. The Management has stated in the counter affidavit before the Labour Court that the employee

was responsible for maintenance of all records and papers in respect of sales tax appeals and assessments for Tamil Nadu, which involves

interaction with the counsels, preparation and compilation of the documents received from various department; all matters pertaining to Central

Sales Tax Assessments for four years; and attending assessment hearings representing the Management and therefore, according to the

Management, the employee was not a workman as per Section 2(s) of the Act and hence, the applicability of the provisions of Chapter VA and

VB does not arise.

23.2. It has been the case of the Management before the Labour Court that the employee concerned was aware of the position of the

Management which has issued the letter on 14.2.2002 and the employee was not singled out. Even though the Management could have dispensed

with the services of the employee by giving notice as per the terms of the appointment, the compensation package has been offered.

23.3. It was also stated that Section 2(oo) of the Act is not applicable and therefore, there is no question of giving any opportunity to the employee. It is also stated that Section 25-N of the Act is not applicable. The employee not being a workman according to the Management, the principle of "first come last go" is not applicable. It was also the case of the Management before the Labour Court that the employee sought higher compensation than what was offered by the management.

According to the Management, Section 33 or Section 25F are not applicable to the case on hand.

W.P. No. 13068 of 2006:

24.1. The employee in W.P. No. 13068 of 2006, who has filed I.D. No. 631 of 2002, has joined the service of the Management on 31.11.1986

and at the time of termination from service, he was designated as Senior Officer. However, according to the him, he is a workman as per Section

2(s) of the Act and his responsibilities were arranging data entry job, processing check list and updating the check list, control development,

processing finance reports and maintenance of data, and he was not having power to appoint or suspend or take disciplinary action against any

employee or to sanction leave or to enter into contract on behalf of the company and therefore, he was neither having managerial duties nor

supervisory duties.

According to the him, the Management is an industry within the meaning of Section 2(j) of the Act.

24.2. It is stated that, on 14.2.2002, the Management has issued a statutory order stating that the employee need not report for work for a period

of three months and he will be paid salary and other benefits and that he can use the said period to find an alternate job and whether or not he finds

an alternate job, he would cease to be an employee from 15.5.2002.

24.3. The impugned order of termination, according to the employee, amounts to retrenchment and no retrenchment compensation has been paid

and the procedure contemplated u/s 25-N of the Act have not been followed and it is stated that his juniors are still working in the company. It is

stated that the conciliation efforts have failed. Even though in the report of the Conciliation Officer dated 7.6.2002, it is stated that the employee

did not press for reinstatement and was primarily interested only in the quantum

of compensation, the same was denied and the said conciliation report was challenged.

24.4. It is stated that the Management has given effect to the order of termination without applying for permission u/s 33 of the Act and according to the him, his last drawn wage was Rs. 6,950/-. It is also denied that the Management is incurring heavy loss for the past few years. Therefore, the employee has raised industrial dispute seeking reinstatement in service with full back-wages, continuity of service and all other attendant benefits.

25.1. It has been the case of the Management, which is the Respondent in I.D. No. 631 of 2002, that the employee concerned has joined on 1.12.1986 as Junior Management Trainee and was promoted as Officer in the year 1989 and was further promoted as Senior Officer in the year 2000.

25.2. The Management has stated in the counter affidavit before the Labour Court that the employee was responsible for updating and compilation of all reports for the company as a whole, creation of back up data of all records for easy retrieving and use by all departments, implementation of the Finance and Accounting Systems package for the Accounts and Finance Department and ensuring the maintenance and regular updating of all records data maintained by the department, and therefore, according to the Management, the employee was not a workman as per Section 2(s) of the Act and hence, the applicability of the provisions of Chapter VA and VB does not arise.

25.3. It has been the case of the Management before the Labour Court that the employee was aware of the position of the Management which has issued the letter on 14.2.2002 and the employee was not singled out. Even though the Management could have dispensed with the services of the employee by giving notice as per the terms of the appointment, the compensation package has been offered.

25.4. It was also stated that Section 2(oo) of the Act is not applicable and therefore, there is no question of giving any opportunity to the employee. It is also stated that Section 25-N of the Act is not applicable. The employee not being a workman according to the Management, the principle of "first come last go" is not applicable. It was also the case of the Management before the Labour Court that the employee sought higher

compensation than what was offered by the management. According to the Management, Section 33 or Section 25F are not applicable to the case on hand.

26.1. In all these cases, while on the side of the employees, the respective employee was examined as W.W.1 and one V. Ramachandran, a representative of the employer, was called and examined as W.W.2 at the instance of the Petitioners before the Labour Court, on the side of the Management, no witness was examined.

26.2. Before the Labour Court, the employee in W.P.11080 of 2006 has marked 20 documents as Exx.W1 to W20 and the Management has marked 8 documents as Exx.M1 to M8.

26.3. Before the Labour Court, the employee in W.P.11081 of 2006 has marked 23 documents as Exx.W1 to W23 and the Management has marked 7 documents as Exx.M1 to M7.

26.4. Before the Labour Court, the employee in W.P.11082 of 2006 has marked 25 documents as Exx.W1 to W25 and the Management has marked 9 documents as Exx.M1 to M9.

26.5. Before the Labour Court, the employee in W.P.11083 of 2006 has marked 9 documents as Exx.W1 to W9 and the Management has marked 4 documents as Exx.M1 to M4.

26.6. Before the Labour Court, the employee in W.P.11024 of 2006 has marked 12 documents as Exx.W1 to W12 and the Management has marked 5 documents as Exx.M1 to M5.

26.7. Before the Labour Court, the employee in W.P.11539 of 2006 has marked 10 documents as Exx.W1 to W10 and the Management has marked 2 documents as Exx.M1 and M2.

26.8. Before the Labour Court, the employee in W.P.11860 of 2006 has marked 10 documents as Exx.W1 to W10 and the Management has marked 2 documents as Exx.M1 and M2.

26.9. Before the Labour Court, the employee in W.P.12169 of 2006 has marked 13 documents as Exx.W1 to W13 and the Management has marked 5 documents as Exx.M1 to M5.

26.10. Before the Labour Court, the employee in W.P.11648 of 2006 has marked 15 documents as Exx.W1 to W15 and the Management has

marked one document as Ex.M1.

26.11. Before the Labour Court, the employee in W.P.13068 of 2006 has marked 9 documents as Exx.W1 to W9 and the Management has

marked 2 documents as Exx.M1 and M2.

27. The Labour Court framed the following points for consideration:

(i) whether the employees are workmen u/s 2(s) of the Act ?;

(ii) whether the Management is covered under Chapter VB of the Act ?; and

(iii) whether the employees are entitled to reinstatement in service with

full backwages, continuity of service and all other attendant benefits?

28. The Labour Court taking note of the admitted facts that there was no retrenchment compensation paid, no seniority list was displayed and

Sections 25N and 25F of the Act were not complied with, has considered as to whether the employees before it were workmen u/s 2(s) of the

Act. It was the case of the employees that even though their designations appear as if they are discharging managerial duties, in terms of the nature

of work done by them they were workmen.

29. The Labour Court has considered that even though in the letters of cessation certain reason of heavy operational loss was quoted, the

Management has not chosen to produce any annual balance sheet, etc. to prove the operational loss.

It has also considered the case of the employees that the purpose of termination notice was that the employees themselves should quit.

30. On the other hand, the Labour Court has also considered the contention of the Management that the petitions u/s 2-A of the Act are premature

and not maintainable, since the conciliation proceedings have been initiated even before the date of cessation which was slated to be on 15.5.2002

and that there is nothing u/s 2(oo) of the Act to suggest that it becomes retrenchment only when the order has been given effect to.

31. Before the Labour Court, the employees have relied upon the evidence of V. Ramachandran (W.W.2), who is working as the Group General

Manager, H.R. And Administration under the Management, who has admitted in the cross-examination, about the integral relationship between the

factory and the administrative department and that there are more than 130 clerical staff, including the employees herein, and there are nearly 400

workmen, and therefore, it is an industrial establishment covered under Chapter VB of the Act and in the absence of any prior permission from the

appropriate Government as required u/s 25N(1)(b) and 25N(7) of the Act, the retrenchment is illegal and when the conciliation proceeding was

pending, there was no approval for retrenchment on 15.5.2002.

32. The Labour Court has also taken note of the contention of the learned Counsel for the Management that only when there is a discharge,

dismissal or termination, the workman can invoke Section 2A of the Act. It was the contention of the Management before the Labour Court that

there is no evidence to show that there are more than 100 employees, so as to make Chapter VB of the Act applicable.

33. While considering as to whether the filing of the industrial disputes was premature, since the cessation contemplated in February, 2002 was to

conclude only on 15.5.2002 and even before that the conciliation proceedings have been initiated, by relying upon the term ""retrenchment"" u/s

2(oo) of the Act and construing the words ""for any reason whatsoever"", the Labour Court has concluded that the petitions u/s 2A of the Act are

maintainable.

34. While considering the next aspect as to whether the employees concerned have sought reemployment or demanded higher compensation, the

Labour Court has concluded that even if during the course of conciliation the employees have made certain demand for compensation, that is not a

bar for them during adjudication, after failure of conciliation, to claim reinstatement, holding that any such agreement during the period of settlement

for payment of compensation is not binding on the employees. The Labour Court has also found that in respect of the last drawn wages of the

employees, the Management has not contradicted the same before it or the Conciliation Officer.

35. While considering as to whether the employees were workmen on the basis that they do not have any control whatsoever over other

employees either with a power of appointment, dismissal, initiating of disciplinary proceedings, suspension, etc., and that few of the employees

concerned only have the power to recommend leave, without power to sanction the same, and that they do not have power of signing cheques

independently, the Labour Court has come to a conclusion that there is no

supervisory or administrative control exercised by the employees concerned and they are workmen u/s 2(s) of the Act.

36. The Labour Court has also taken note of the fact that even during cross-examination of W.W.1, the respective employee, there was no dispute regarding the nature of work narrated by the said witnesses, and the cross-examination was restricted to designation. That apart, the Management has not chosen to examine any witnesses. It was at the instance of the employees by filing an interlocutory application, the representative of the Management, V. Ramachandran, was called as a witness (W.W.2) on the workmen side and he was the Senior General Manager. The Labour Court has considered his evidence, which is affirmative to the effect that the employees concerned had no right of appointment, granting of leave, initiating disciplinary action, etc., except that some of the employees were required to be co-signatories of cheque when none of the superiors were available, and found that the signature of the employees concerned alone would not be sufficient for encashment of cheques and that the Management did not file any document to state about the duties and responsibilities of the employees concerned, and thereby concluded that the employees concerned are workmen.

37. While considering as to whether the establishment is covered under Chapter VB of the Act, which requires the employment of more than 100 workmen, the Labour Court relied upon the evidence of W.W.2 that both factory as well as the administrative department are integrated and are functioning in the same place and that there were 120 staff available at the time of termination. The Labour Court considered the evidence of W.W.2 during the cross-examination to the effect that 69 workers were employed in the electrical factory, apart from 79 workers in the busduct factory and 7 workers in the automobile production division and thus, in the factory there are 165 workers and in the Chennai Foundry, there are 53 workers. The Labour Court has also considered his evidence that all these factories balance sheet and accounts were maintained by the administrative office and has come to a conclusion that the activities of the administrative office cannot be effected without the manufacturing activity and therefore, the administrative office is integral to the manufacturing process. In this regard, the Labour Court relied upon the judgment in

S.G. Chemicals and Dyes Trading Employees" Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, and ultimately held that the

employees concerned are entitled to reinstatement in service with full back-wages, continuity of service and other attendant benefits, by allowing the industrial disputes.

38. It was against the said awards passed by the Labour Court, the Management has filed the present writ petitions mainly on the ground that even

as per the documents filed by the employees, it would be proved that they are managerial staff; that the Labour Court has given more or less the

same reason, without deciding the individual cases; that the documentary evidence has not been properly appreciated and relying on oral evidence

alone is amounting to non application of mind; that the Labour Court has failed to appreciate that the employees were drawing basic salary of more

than Rs. 6,000/- and they cannot be workmen u/s 2(s) of the Act; that the Labour Court failed to take note of the fact that out of 45 employees,

35 employees accepted the offer of cessation of service; that the Labour Court failed to note that the administrative side and the factory are

different units and the retrenchment in respect of 13 staff of administrative office would not attract Chapter VB of the Act; and that many of the

workers on the clerical side were working under the control of the employees concerned and that aspect has not been considered.

39.1. It is the contention of Mr. K.V. Ananthakrishnan, learned Counsel for the Management in all these cases that the employees concerned are

not workmen u/s 2(s) of the Act and there is no independent and individual finding in respect of each of the cases by the Labour Court, which has

passed a stereotyped order, even though independent awards have been passed.

39.2. It is his further contention that the documents produced before the Labour Court, which were marked by consent, have not been considered

and he would vehemently submit by relying upon Section 92 of the Indian Evidence Act that in the presence of documentary evidence, oral

evidence cannot be relied upon to throw away what is available in black and white. It is also submitted that the written arguments submitted and

the judgments relied upon by the Management have not been considered by the Labour Court.

39.3. It is his contention that before the Labour Court it was the case of the

employees concerned that they only wanted compensation and not reinstatement. He has also invited the attention of this Court to the pleadings in respect of individual cases and contended that employees concerned were carrying on supervisory work.

39.4. It is his submission that nowhere it has been the case of the employees while examining W.W.2 that the company was not in a bad financial position. To substantiate his contention that a perverse evidence should not be accepted, he would rely upon the decisions in S.K. Maini Vs. M/s.

Carona Sahu Company Limited and others, and Mr. C. Gupta Vs. Glaxo Smith Klin Pharmaceutical Limited, .

39.5. It is his submission that in the written arguments, the Management has made it very clear that the employees concerned even if they are workmen, they only demanded compensation and not reinstatement and according to him, in the absence of cross-examination of W.W.2 regarding the financial position of the company, it should be presumed that whatever the Management has stated before the Labour Court has been accepted.

39.6. He would submit that even if it is found that the employees concerned are workmen, there cannot be automatic reinstatement with full back-wages by relying upon the judgments in J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, General Manager, Haryana Roadways Vs. Rudhan Singh, , Talwara Coop. Credit and Service Society Ltd. Vs. Sushil Kumar, O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, and Ashok Kumar Sharma Vs. Oberoi Flight Services,

40.1. On the other hand, Mr. V. Prakash, learned Senior Counsel appearing for the employees concerned in all these writ petitions would submit that there is no perversity in the finding of the Labour Court.

40.2. He would submit that to decide as to whether a person is a workman u/s 2(s) of the Act it is not the designation that is relevant and it is the nature of work. He would insist that even as per Section 2(s) of the Act, the term used is ""mainly"" whether in managerial or administrative capacity and therefore, one has to consider the main function. According to him, when the nature of work has been explained by the employees before the Labour Court, even though the designation is deceptive, the burden of proof shifts on the employer to prove that the employees are not workmen.

He would rely upon the decisions in *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff*

Association and Others, Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others, , S.K. Maini Vs. M/s. Carona Sahu

Company Limited and others,

40.3. It is his submission that the Labour Court award has to be considered as a whole and there is no question of re-appreciation of evidence by

the High Court under Article 226 of the Constitution of India.

40.4. According to him, the Labour Court was correct in coming to a conclusion that the Management has not chosen to produce any witness and

the onus which has been shifted on the Management has not been discharged. He has also drawn attention of this Court to the evidence of

witnesses on the side of the employees to show that the employees have complied with their requirement of proving the nature of work done by

them. It is his submission that W.W.2 was the management witness, who was called by an application filed on behalf of the employees, and his

evidence has to be given credibility.

40.5. He would submit relying upon the judgment in *Workmen of Macfarlane and Co. Ltd. v. Fifth Industrial Tribunal and Ors. (1964) II LLJ 556*

that writing of accounts is stated to be a clerical work. He would also submit that accounting work cannot be equated to supervisory work by

relying upon *Lloyds Bank Ltd., New Delhi Vs. Panna Lal Gupta and Others*, He would submit that a person must be in a place of command to

show that he is a supervisor, relying upon *Ananda Bazar Patrika (P) Ltd. Vs. The Workmen,*

40.6. He would submit that in respect of the employee in W.P. No. 11080 of 2006 (A.M. Sekar I.D. No. 739 of 2002), he has been given a right

to sign the cheque only if none of the superiors are available and that cannot be treated as a main function while deciding as to whether a person is

a workman u/s 2(s) of the Act.

40.7. He would rely upon the judgment of this Court in *The Management of Bata India Limited and Hosur Bata Employees Union Vs. The*

Presiding Officer Industrial Tribunal and The Workmen rep. by Podhu Seyalalar Hosur Bata Employees Union, apart from the decision in *Sadhu*

Ram Vs. Delhi Transport Corporation, to drive at home about the jurisdictional

factor.

41. I have heard the submissions made by the learned Counsel for the Management and the learned Senior Counsel for the employees and have referred to the documents filed, apart from various judgments relied upon by both the counsel, and given my anxious thought to the issue involved in this case.

42. As stated above, the Labour Court has considered everyone of the issues framed by it and, in fact, individual orders were passed in respect of each of the industrial disputes. It may be true that while passing such awards, the Labour Court in respect of the individual cases would have left out some of the points raised either as evidence or otherwise, but that itself is not sufficient to come to a conclusion that the awards passed by the Labour Court are perverse. On a reading of the awards of the Labour Court, it cannot be said that the Labour Court has passed stereotyped awards. The Labour Court has, in fact, considered the documents filed and the provisions of law threadbare, especially relating to the definition of retrenchment, applicability of Chapter VB to the Petitioner and as to whether the company is an industrial establishment.

43. The jurisdiction of this Court while considering the validity or otherwise of the award passed by the Labour Court as a judicial order is limited to the extent of finding out as to whether the award is perverse and per se illegal. It is certainly not open to this Court to re-appreciate the evidence exercising the jurisdiction under Article 226 of the Constitution of India.

44. It has been the well established principle that industrial adjudication is not merely adjudicating contractual rights based on strict principles of law. The higher courts can interfere against the awards passed by the Labour Courts only if there are manifest errors or the order is contrary to the provisions of law and the order has been passed without jurisdiction and that is the scope of jurisdiction of this Court under Article 226 of the Constitution of India. It was held that the High Court cannot sit on appeal over the findings recorded by the competent tribunal by converting itself into a court of appeal. In *Shama Prashant Raje Vs. Ganpatrao and Others*, the Supreme Court while dealing with the rent control proceedings in the context of Article 226 of the Constitution of India, has observed as follows:

5. ... Undoubtedly, in a proceeding under Articles 226 and 227 of the Constitution

the High Court cannot sit in appeal over the findings recorded by a competent tribunal. The jurisdiction of the High Court, therefore, is supervisory and not appellate. Consequently Article 226 is not intended to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or order to be made. But notwithstanding the same, on a mere perusal of the order of an inferior tribunal if the High Court comes to a conclusion that such tribunal has committed manifest error by misconstruing certain documents, or the High Court comes to the conclusion that on the materials it is not possible for a reasonable man to come to a conclusion arrived at by the inferior tribunal or the inferior tribunal has ignored to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible, then the High Court will be fully justified in interfering with the findings of the inferior tribunal.

45. In a plethora of judgments, while deciding about the jurisdiction of this Court under Article 226 of the Constitution of India, the Supreme Court has held that in a writ of certiorari, it is not merely an error but it must be something more which must be manifest on the face of the records and that alone gives jurisdiction to interfere with the awards. When once the tribunal having jurisdiction decides the question and comes to a finding of fact, it is certainly not open to the High Court to interfere with such finding of fact by reappreciation of evidence unless the finding is perverse and the award passed is wholly based on unwarranted evidence. Therefore, one has to see the overall view of the award passed by the Labour Court while dealing with the writ of certiorari.

46. By applying the above said broad principles of law laid down categorically, at the outset, I am not able to see any manifest error in any of the awards passed by the Labour Court. While deciding about the jurisdictional fact and the interference by the higher courts against the orders of the inferior courts or tribunals, Lord Esher, M.R., in an illustrative judgment in *Queen v. Commissioners for Special Purposes of Income Tax* (t) (1888) 21 QBD 313 has made the following remarkable assertion, as it was brought out by O.P. Malhotra in ""The Industrial Law"", which is as follows:

When an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by an Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the legislature is establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned that it is an erroneous application of the formula to say that the tribunals cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction.

The above said principle of law is an universally acclaimed one.

47. While holding that the jurisdiction of the High Court under Article 226 of the Constitution of India is very wide but while exercising it great care has to be taken, especially in respect of the orders of the tribunals constituted under the special legislation, the Supreme Court in *Sadhu Ram Vs.*

Delhi Transport Corporation, has observed as follows:

3. We are afraid the High Court misdirected itself. The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason, it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate court over tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from

ordinary civil disputes and to re-adjudicate upon questions of fact decided by those tribunals. That the questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High Court may be justified in interfering. But where the tribunal gets jurisdiction only if a reference is made and it is therefore impossible ever to say that the Tribunal has clutched at jurisdiction, we do not think that it was proper for the High Court to substitute its judgment for that of the Labour Court and hold that the workman had raised no demand with the management. There was a conciliation proceeding, the conciliation had failed and the Conciliation Officer had so reported to the Government. The Government was justified in thinking that there was an industrial dispute and referring it to the Labour Court.

48. In view of the above said categoric legal position, even though it is not necessary for this Court to go in detail about the finding of fact by the Labour Court in the impugned awards, inasmuch as it has been vehemently contended by the learned Counsel for the Management that the Labour Court has passed a stereotyped order, I am of the view that certain reference has to be made not only regarding the findings which may relate to the facts but also evidence, to test the veracity of the said argument.

49. The Labour Court in I.D. No. 739 of 2002, which is the subject matter of dispute in W.P. No. 11080 of 2006, has referred to the evidence of W.W.2, who has in categoric terms admitted that there are more than 130 clerical staff, including the employees concerned, and there are nearly 400 workmen and no application has been made to the appropriate Government u/s 25N(1)(b) of the Act and no permission was obtained u/s 25N(7) of the Act.

50. The reference made by the Labour Court that ""there is no evidence to show that there are more than 100 employees, so as to bring Chapter VB of the Act as applicable"", is only a reproduction of the contention made on behalf of the Management and is not a finding of the Labour Court.

On the other hand, W.W.2, in categoric terms, has admitted that there are more than 100 employees and therefore, on evidence, the Management is found as an industrial establishment. The Labour Court relied upon Chapter VB

of the Act and found that the Management is an industrial establishment, in which event the condition precedent for retrenchment of employees is prescribed u/s 25N of the Act, in which Section 25N(1)(b) of the Act, which is as follows:

Section 25N. Conditions precedent to retrenchment of workmen.

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until, -

(a) ***

(b) The prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official

Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

requires prior permission of the appropriate Government on the application made before retrenchment and consequently, as per Section 25N(7) of

the Act, which is as follows:

Section 25N. Conditions precedent to retrenchment of workmen.

(1) to (6) ***

(7) Where no application for permission under Sub-section (1) is made, or where the permission for any retrenchment has been refused, such

retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be

entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

Failure to obtain such permission will make retrenchment illegal from the date on which the notice of retrenchment was given to the employees and

it was in such circumstances, the Labour Court, in my view, has correctly come to a conclusion that the Management, being an industrial

establishment, has not followed the mandatory provisions of the Act.

51. The contention of the learned Counsel for the Management that such a decision has been arrived only on the basis of oral evidence of W.W.2

is baseless.

It is not as if W.W.2 is a alien or outsider to the Management, more particularly when it is the admitted case that it was W.W.2 who has signed the

letters of cessation in all these cases.

52. As far as the question relating to the definition of ""workman"" u/s 2(s) of the Act, which is as follows:

Section 2(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical,

operational, clerical or supervisory work for hire or reward, whether the terms of employment be express 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 Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as 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 one thousand six 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.,

the exclusion from the term ""workman"" in respect of the persons working in managerial and administrative capacity is qualified with the word

employed mainly"". Therefore, it is clear that if a person is otherwise a workman as per Section 2(s) of the Act, his activity in the managerial or

administrative capacity during intermittent period or incidentally will not take him away from the purview of the term ""workman"" u/s 2(s) of the Act.

53. W.W.2 has in the chief examination clearly admitted that both the registered office and the administrative office of the Management are lying in

No. 39, Industrial Estate, North Ambattur, Chennai. The relevant portion of his deposition is as follows:

VERNACULAR (TAMIL) PORTION DELETED

He has also admitted in the cross-examination that the employees concerned are working in the administrative office. The operative portion being

as follows:

VERNACULAR (TAMIL) PORTION DELETED

His further statement in the cross-examination is that in respect of the purchase of materials for factories, accounts are prepared in the administrative office.

His deposition in this regard is as follows:

VERNACULAR (TAMIL) PORTION DELETED

54. In the evidence of W.W.1, as it is seen in respect of I.D. No. 739 of 2002 and also in respect of other cases also, it is pertinent to note that it

has never been the stand of the Management during cross-examination of the said witness that they are not workmen. Admittedly, under Ex.W15

in I.D. No. 739 of 2002, which is the letter issued by the Management for cessation of employment, the Management has agreed to pay 15 days

basic salary for every completed year of service. If really the employees concerned are in the managerial capacity, where is the need for the

Management to pay that amount, which is a condition required u/s 25F of the Act in respect of retrenchment of workman. Section 25F of the Act,

which is as follows:

Section 25F. Conditions precedent to retrenchment of workmen. -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-

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the

workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every

completed year of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate

Government by notification in the Official Gazette.

contemplates the payment of fifteen days average pay for every completed year of service at the time of retrenchment and retrenchment is defined

u/s 2(oo) of the Act as follows:

Section 2(oo) "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) 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 the workman

concerned contains a stipulation in that behalf; or (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) termination of the service of a workman on the ground of continued ill-health

Therefore, on the admitted contents of the letters of cessation, it is clear that the Management has always considered the employees concerned as

workmen u/s 2(s) of the Act and hence, the Labour Court has come to a conclusion that the Petitioners before it are all workmen, which cannot be

said to be a perverse finding for this Court to interfere.

55. In such view of the matter, the reliance placed on behalf of the Management by the learned Counsel on the judgment in M.S. Jain, Proprietor,

Kiran Road Lines Vs. The Presiding Officer, First Additional Labour Court and M. Thiyagarajan, for the purpose of remanding the matter to the

Labour Court to give appropriate finding, in my considered view, does not merit acceptance. In that case, the Labour Court has only framed an

issue as to whether the petition filed by the Petitioner therein has to be allowed and there was no issue framed specifically on the substantial

question to be decided as to whether the individual is a workman u/s 2(s) of the Act. On the other hand, the Labour Court under the impugned

awards has framed the first issue as to whether the Petitioners before it are workmen or not and therefore, the said judgment which has been relied

upon by the learned Counsel for the Management is not applicable to the facts of the present case.

56. The contention of the learned Counsel for the Management by referring to the Service Rules while dealing with W.P. No. 11083 of 2006 (B.

Subbu Venkatraman I.D. No. 734 of 2002), especially with reference to Clause 3.11, which is as follows:

3.11. The services of the management staff may be terminated by the Company's authorised person as per the conditions mentioned in the letter of appointment/confirmation issued to him.

has no meaning in the context of Ex.W4, dated 14.2.2002, issued by the Management for cessation of employment, contending the same to be a

clause synonymous to the requirement u/s 25F of the Act. Admittedly, the Management has not terminated the services of the employees

concerned as per the appointment orders, but it was as per the cessation letters by following the provisions of the Act. There is no much change in

respect of the evidence and pleadings regarding each of the cases.

57. The reliance placed by the learned Counsel for the Management on the judgment in Ashok Kumar Sharma Vs. Oberoi Flight Services, has no

application to the facts of the present case. That was a case where in respect of misconduct against the employee who carried a spoon in his shoe

from work area when he was terminated without enquiry, instead of directing reinstatement, a direction for payment of compensation was ordered.

58. Again, the judgment relied upon by the learned Counsel for the O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, has

no application to the facts and circumstances of the present case for the simple reason that the employee therein was governed by the Indian

Tourism Development Corporation (Conduct, Discipline and Appeal) Rules, 1978, since the employer was a public sector undertaking covered by

Article 12 of the Constitution of India.

59. In Talwara Coop. Credit and Service Society Ltd. Vs. Sushil Kumar, relied upon by the learned Counsel for the Management, it is no doubt

true that the Supreme Court has held that while holding that the termination is invalid, the reinstatement is not automatic unless the workman proves

that he is not gainfully employed. By referring to Section 106 of the Indian Evidence Act to the effect that the burden is on the workman to prove

that he is not gainfully employed, it was held as follows:

13. This Court in a large number of cases noticed the paradigm shift in the matter of burden of proof as regards gainful employment on the part of

the employer holding that having regard to the provisions contained in Section 106 of the Evidence Act, the burden would be on the workman. The

burden, however, is a negative one.

If only the same is discharged by the workman, the onus of proof would shift on to the employer to show that the employee concerned was in fact gainfully employed.

In *Municipal Council, Sujampur Vs. Surinder Kumar*, this Court held:

The Labour Court and the High Court also proceeded wrongly on the premise that the burden of proof to establish non-completion of 240 days of work within a period of twelve months preceding the termination, was on the management. The burden was on the workman. (See *U.P. State*

Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, and State of M.P. v. Arjun Lal Rajak (2006) 2 SCC 610)

Equally well settled is the principle that the burden of proof, having regard to the principles analogous to Section 106 of the Evidence Act that he

was not gainfully employed, was on the workman. (See *Manager, R.B.I., Bangalore Vs. S. Mani and Others*,

It is also a trite law that only because some documents have not been produced by the management, an adverse inference would not be drawn

against the management. (See *Manager, R.B.I., Bangalore Vs. S. Mani and Others*,

of course, that was a case relating to the termination of an employee by way of punishment on the ground that by the conduct of the employee

monetary loss has been caused to the co-operative society.

60. In *J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another*, which relates to the termination of an employee by way of punishment for misconduct,

the Supreme Court has held that in respect of misconduct reinstatement, back-wages do not follow, by distinguishing reinstatement on illegal

termination and on misconduct.

61. In *General Manager, Haryana Roadways Vs. Rudhan Singh*, relied upon by the learned Counsel for the Management to substantiate his

contention that in case of reinstatement awarding of full back-wages is not automatic, the Supreme Court has held that order of payment of back-

wages should not be passed in a mechanical manner, but a host of factors are to be considered. There, while dealing with retrenchment u/s 25F of

the Act, the question as to whether the employee was a temporary employee or served for a long time was directed to be considered as follows:

8. There is no rule of thumb that in every case where the Industrial Tribunal

gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year.

However, on the facts of the present case, first of all, it is not a case of disciplinary proceedings or termination on misconduct, but it was construed to be a case u/s 25F of the Act, wherein the Management, having been covered under Chapter VB of the Act, has not followed the condition precedent u/s 25N(1)(b) of the Act and therefore, by following Section 25N(7) of the Act, which contemplates that in the absence of following procedure, including the permission as contemplated under Sub-Section 25N(1) of the Act, the workman is entitled to all the benefits under any law for the time being in force as if no notice had been given to him, the Labour Court has granted back-wages, which cannot be said to be illegal or perverse. The decisions relied upon by the learned Counsel for the Management are all relating to misconduct.

62. On the other hand, a reference to the individual evidence of the Petitioners

before the Labour Court makes it abundantly clear that it has been their categorical case that they were only performing the services as workmen. In fact, before the Labour Court, in respect of I.D. No. 739 of 2002 (W.P. No. 11080 of 2006), the employee has clearly stated that he was required to sign in the cheques along with Departmental Manager and his signature is only with the approval of the department head and he was doing only menial work and his main duties are that of accounting and checking, which is essentially a skill work.

63. Admittedly, in all these cases, the employees concerned were not having any power of issuing charge sheet or conducting disciplinary proceedings against any of the workmen or power to grant leave, except to do the accounting and verifying the accounts in the office, which consists of both administrative wing as well as the establishment, as admitted by W.W.2.

64. In *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, while construing the meaning of "workman" u/s 2(s) of the Act, in the context of the duty of the Transport Engineer appointed, who was to supervise and ensure that the skilled and unskilled manual workmen employed under him are properly doing the work of repair, maintenance, etc., and taking note of the fact that he allocates and reallocates work and takes disciplinary action against the employees, it was held he was discharging supervisory functions. The Supreme Court has held as follows:

19. In determining the nature of employment of Mathai, and in holding that he is employed to do supervisory work, we have taken into account not only the work of supervision which he carries on in ensuring that the skilled and unskilled manual workmen employed under him are properly doing the work of repairs, maintenance, servicing and fabrication, etc., but also the fact that the workmen function under his control and directions, that he allocates and re-allocates work to them, that he initiates, disciplinary proceedings, etc. The exercise of such powers is clearly a part of his supervisory duty. That such functions indicate that the employment is of supervisory character was laid down by this Court in *All India Reserve Bank Employees Association v. Reserve Bank of India* (1966) 1 S.C.R. 25. where Hidayatullah, J., as he then was, expressed the view of the

Court in the following words:

These employees distribute work, detect faults, report for penalty, make arrangements for filling vacancies, to mention only a few of the duties

which are supervisory and not merely clerical.

Thus, in the case of a Transport Engineer, there is a combination of supervisory duties of two types. The Transport Engineer actually supervises the

work of repairs, maintenance, servicing and fabrication which is carried on in the Central Garage by the skilled mechanics, fitters, and other

workmen, and, at the same time he has the supervision over those men in the matter of giving directions, recommending leave, initiating disciplinary

proceedings etc. In this view, the decision of the Tribunal holding that the Transport Engineer is a workman has to be set aside, because,

admittedly, the Transport Engineer is drawing salary in excess of Rs. 500 per mensem and ceases to be a workman under exception (iv) of the

definition.

Therefore, in effect, as laid down by the Supreme Court, for the purpose of making a person engaged in the supervisory capacity to exclude him

from the purview of Section 2(s) of the Act, it must be by virtue of the duties attached to the office, which is in the managerial nature, which

predominantly includes not only allotting skilled and unskilled workers, but also extending the managerial power like granting leave, initiating

disciplinary proceedings and it is the combination of the two works that should make him as Supervisor.

65. Later, it was in S.K. Maini Vs. M/s. Carona Sahu Company Limited and others, , the Supreme Court has held that the factual aspect has to be

considered as to whether the person concerned has been doing mainly supervisory work and in a fraction of time clerical work or conversely

mainly clerical work and incidentally supervisory work to decide whether he is a workman u/s 2(s) of the Act. The relevant portion of the judgment

is as follows:

9. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned Counsel for the

parties, it appears to us that whether or not an employee is a workman u/s 2(s) of the Industrial Disputes Act is required to be determined with

reference to his principal nature of duties and functions. Such question is

required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman u/s 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organisations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it. In this connection, reference may be made to the decision of this Court in *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, *In All India Reserve Bank Employees Association Vs. Reserve Bank of India*, it has been held by this Court that the word "supervise" and its derivatives are not words of precise import and must often be construed in the light of context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with the power of inspection and superintendence of the manual work of others. It has been rightly contended by both the learned Counsel that the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the employee concerned and not some works incidentally done. In other words, what is, in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of workman" as defined in Section 2(s) of the Industrial Disputes Act. Applying the said dictum laid down by the Supreme Court to the facts of the

present case and by referring to the individual evidence, which is of course not necessary for this Court to refer under Article 226 of the Constitution of India, I have no doubt to come to a conclusion that the awards passed by the Labour Court do not suffer from any manifest error.

66. As correctly submitted by the learned Senior Counsel for the employees, it was in *Lloyds Bank Ltd., New Delhi Vs. Panna Lal Gupta and*

Others, the Supreme Court has held that while deciding the status of an employee, it is not the designation which is decisive and it is only the nature

of duties. While observing so, it was held by the Supreme Court that the decision of the Tribunal that the following works are supervisory is

manifestly erroneous, as follows:

In deciding the status of an employee the designation of the employee is not decisive; what determines the status is a consideration of the nature

and duties of the functions assigned to the employees concerned. The duties assigned to one of the concerned employees (as for illustration) in the

instant case working in the audit department could be summarized as follows:

- (a) checking entries with vouchers in the specified books;
- (b) checking balances of the three specified ledgers;
- (c) checking entries in some specified subsidiary books with the vouchers;
- (d) checking impersonal and cash balance weekly;
- (e) checking contents of ordinary outgoing branch mail;
- (f) doing the work of reconciliation of the branch accounts with the other branches and preparing monthly branch reconciliation statements;
- (g) checking monthly reconciliation statements received from branches, etc.;
- (h) checking the authority of the person passing the voucher in order to check whether the limit had been exceeded or the amount was within the limit; and
- (i) examining whether the amount was within the security limit and if there are mistakes taking them to the clerk concerned and the assistant concerned for correction.

On these duties the conclusion of the industrial tribunal that the work and duties performed by the concerned employees were of a supervisory

nature must be held to be obviously or manifestly erroneous.

Therefore, holding that checking of accounts is not a supervisory work.

67. It was in Ananda Bazar Patrika (P) Ltd. Vs. The Workmen, the Supreme Court, while concurring with the decision in South Indian Bank Ltd.

Vs. A.R. Chacko, on the facts of the said case has held as follows:

In the course of the hearing of this appeal, learned Counsel took us through the evidence of both the witnesses examined on behalf of the Appellant

Co. as well as the sole witness examined on behalf of the workmen. The witness examined on behalf of the workmen is Gupta himself. When he

was in the witness-box, no attempt was made on the part of the Appellant Co. to question him on facts which, according to the written statement

of the Co., constituted his employment in supervisory capacity. In para 2(f) of the written statement, the Appellant Co. had pleaded that Gupta

used to supervise the work of the clerks working under him, allot work to them, give them directions regarding work, grant them permission to

leave office during working hours and recommend their leave. These facts were put forward in the background of the assertion that he was in-

charge or manager of the Provident Fund section of the Appellant Co. Gupta admitted that he was in-charge of the Provident Fund section and

was designated as Manager. As has been repeatedly held by this Court, the mere designation as manager cannot be decisive of the nature of

employment. The Appellant Co., in order to succeed, had to show that Gupta was in fact mainly doing the work stated in the pleading. Gupta was

not asked in the cross-examination whether he was supervising the work of the clerks working under him, or used to allot work to them or give

them directions regarding their work. The only points established were that the three clerks, who were working in the same section under him, had

to obtain his permission to leave during office hours and all their leave applications had to be routed through him and were forwarded with his

recommendation. Gupta stated that the main duties, which he was required to carry out, were those of writing out the cash-book and of filing up

the various returns required to be prepared in the section of which he was put in-charge.

The two witnesses examined on behalf of the Appellant Co. also stated that Gupta was in-charge of the Provident Fund section and was

designated as manager and that the three clerks working under him could not

leave office during working hours without his permission. They were also required to send their applications for leave through him. One of the witnesses, who worked as subordinate to Gupta, added that Gupta used to distribute the work among the clerks and that the clerks could not disobey him. He did not, however, make any positive statement that Gupta had any powers to give directions to the other clerks as to the actual manner in which they were to carry out their duties, nor did he state that Gupta actually used to scrutinise the work done by the other clerks in order to ensure that it was being properly done. The second witness was the successor of Gupta after his retirement. In general words, he did add that the work done by Gupta as manager of the Provident Fund section was of supervisory nature and that the employees under him were bound to carry out his orders. Again, he did not state that he himself, as successor of Gupta, had any powers at all to give instructions to the junior clerks as to the actual manner in which they were to perform their duties and to carry on their work. He also did not state that he was required to scrutinise the work done by them in order to ensure that it was being properly carried out.

On these facts, we are unable to hold that the Labour Court committed any error in arriving at the decision that Gupta was employed on clerical work and not in supervisory capacity. The principal work that Gupta was doing was that of maintaining and writing the cash-book and of preparing various returns. Being the senior-most clerk, he was put in-charge of the Provident Fund section and was given a small amount of control over the other clerks working in his section. The only powers he could exercise over them was to allocate work between them, to permit them to leave during office hours and to recommend their leave applications. These few minor duties of a supervisory nature cannot, in our opinion, convert his office of senior clerk in-charge into that of a supervisor. The Labour Court was, therefore, right in holding that Gupta was a workman on the date of his retirement and that an industrial dispute did, in fact, exist.

68. In view of the above said finding and inasmuch as all the employees concerned have categorically stated that they are all workmen and there was no contra evidence let in on the side of the Management, and on the overall consideration of the impugned awards passed by the Labour

Court, I do not see any perversity or illegality in the awards warranting interference of this Court under Article 226 of the Constitution of India.

In the result, these writ petitions stand dismissed by confirming the awards passed by the Labour Court in each of the cases. No costs.

Consequently, W.P.M.P. Nos. 13756 and 17075 of 2006 and 1499 and 261 of 2007 in W.P. No. 12169 of 2006 and W.P.M.P. Nos. 17074,

13241, 16561, 1285 and 16560 of 2006 in W.P. No. 11648 of 2006 are closed.