

(2016) 01 BOM CK 0087

In the Bombay High Court

Case No : Letters Patent Appeal No. 150/2007 in Writ Petition No. 846/2006

The Nagpur District Central Co-operative Bank Ltd.

APPELLANT

Vs

Prashant Ashokrao Salunke and Others

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Constitution of India, 1950 — Article 136
Industrial Disputes Act, 1947 — Section 2, Section 2 (bb), Section 2 (oo), Section 2 (oo) (bb), Section 2(oo), Section 2(oo)(bb), Section 25F, Section 25-F, Section 25F(b), Section 25G, Section 25-G, S

Citation : (2016) 2 AIRBomR 389 : (2016) 2 CLR 3 : (2016) 3 LLJ 191 : (2016) 1 MhLJ 706

Hon'ble Judges : B.R. Gavai and P.N. Deshmukh, JJ.

Bench : Division Bench

Advocate : S.S. Ghate, Advocate, for the Appellant; N.N. Thengre, Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.R. Gavai, J.—1. The appeal takes exception to the judgment and order passed by the learned Single Judge of this Court dated 4.5.2007 thereby reversing the judgments and orders passed by the learned Labour Court and the learned Industrial Court and allowing the complaint of the respondent No. 1-employee.

2. The facts in brief giving rise to the present appeal can be summarised as under:--

"The respondent No. 1-employee (hereinafter referred to as "the complainant") filed a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "MRTU & PULP Act) being Complaint (ULPA) No. 239/1999 contending that his services were orally terminated with effect from 13/14.1.1999. The complainant sought consequential reliefs of reinstatement with continuity of service and back wages. It was the case of the complainant that he was

appointed on daily wages with effect from 21.2.1994 as Clerk by the appellant-Bank (hereinafter referred to as "the Bank") and his services were terminated on 13.1.1999. It was his further case that the retrenchment compensation or notice pay as required under the provisions of Sections 25F and 25G of the Industrial Disputes Act, 1947 (for short "ID Act") was not paid, neither the procedure as required under the said provision was complied with. It was further his case that the seniority list of the employees was not prepared, nor displayed on the notice board and on the contrary several new employees were appointed. It was further his case that the provisions of the Bombay Shops and Establishment Act, 1948 (for short "Bombay Act") which were applicable to the Bank requires issuing 30 days of notice or wages in lieu thereof, was also not complied with. It was, therefore, submitted that the termination was illegal amounting to unfair labour practice which is prohibited under Item 1 of Schedule IV of MRTU & PULP Act."

3. The complaint as filed by the complainant was resisted by the appellant-Bank. Though it was not disputed by the Bank that the complainant had put in 240 days continuous service in a year, it was contended that in view of the fact of his appointment being purely contractual in nature, no right accrued in his favour on that count. It was the case of the Bank that as and when there was a requirement of work in different Branches of the Bank, the services of the complainant were engaged for a limited period of 58 days by issuing orders from time to time. It was the case of the Bank that though the advertisements were issued for making recruitment after taking requisite permission of the Cooperative Department, the recruitment could not proceed further on account of the various proceedings initiated before the Labour Court and the Industrial Court by the Employees' Union. It was a specific case that ultimately in view of the permission granted by the learned Single Judge of this Court in a writ petition, the written examination as well as the oral interviews were held for the purposes of recruitment. It was also a specific case that the complainant had applied in pursuance to the advertisement and had also participated in the selection process. It was the case of the Bank that the complainant having failed in the said selection process, had filed the complainant.

4. The complainant examined himself in support of his case. The Bank examined one Shri Sheshrao Shamrao Gode, an employee of the Bank who was officiating as the Manager of the Bank at the relevant time, in support of its contention.

5. After perusal of the evidence, the learned Judge of the Labour Court, Nagpur vide judgment and order dated 7.9.2001 though held that the complainant had failed to prove that the Bank had indulged in unfair labour practice, held that he is entitled to get one month's pay in lieu of notice and 15 days retrenchment compensation.

6. Being aggrieved thereby, two revision applications were preferred before the learned Industrial Court, one by the complainant being aggrieved by the denial of reinstatement with continuity of service and back wages being Revision (ULPA) No. 295 of 2001 and the other one by the Bank being aggrieved by the direction

to pay one month's pay in lieu of notice and 15 days retrenchment compensation being Revision (ULPA) No. 297 of 2001. The same were heard and decided together by the learned Industrial Court, Nagpur vide judgment and order dated 11.8.2005. The learned Industrial Court dismissed the revision of the complainant and allowed the revision of the Bank.

7. Being aggrieved thereby, a petition came to be preferred before this Court by the complainant being Writ Petition No. 846 of 2006. The learned Single Judge held that since it was an admitted position that the complainant had completed 240 days of service in a year prior to the date of the complaint and since there was non-compliance with the provisions of Section 25F of the ID Act, the termination of the complainant was illegal and amounted to unfair labour practice as specified in Item 1 of Schedule IV of the MRTU & PULP Act. The learned Single Judge, therefore, directed reinstatement of the complainant in his original post with continuity of service and full back wages. Being aggrieved thereby, the present appeal came to be filed.

8. The Division Bench vide its order dated 5.7.2007 rejected the prayer for grant of stay insofar as the reinstatement is concerned, however, insofar as back wages are concerned, stayed the direction for payment of back wages on a condition that the Bank deposits an amount equal to 50% of the back wages in this Court. It is not in dispute that the 50% of the back wages are deposited by the Bank in this Court and also withdrawn by the complainant.

9. We have extensively heard Mr. S.S. Ghate, learned counsel appearing for the appellant-Bank and Mr. N.N. Thengre, learned counsel for respondent No. 1-complainant.

10. Mr. Ghate, learned counsel submits that the learned Single Judge has totally misdirected himself in interfering with the concurrent findings of fact. Mr. Ghate submits that though the first Court and the revisional Court appreciated the evidence and upon appreciation of evidence had come to the conclusion that the nature of employment of the complainant was purely contractual in nature and for a specific period, the said appreciation of the concurrent findings has been over-looked by the learned Single Judge. It is submitted that the learned Single Judge has reappreciated the entire evidence to come to a different conclusion. The learned counsel submits that though it was a specific case of the Bank that the present case would be covered by Clause 2 (oo) (bb) of Section 2 of the ID Act, the said contention has not at all been considered by the learned Single Judge.

11. Mr. Ghate further submits that the reliance by the learned Single Judge on the judgment in the case of Santosh Gupta vs. State Bank of Patiala reported in , AIR 1980 Supreme Court 1219 and in the case of Mohan Lal vs. The Management of M/s. Bharat Electronics Ltd. reported in , AIR 1981 Supreme Court 1253 is totally misplaced inasmuch as there was no occasion for Their Lordships of the Apex Court to consider the provisions of Section 2 (oo) (bb) of

the ID Act, inasmuch as the said provision has come on the statute book for the first time in 1984. The learned counsel submits that though various judgments of the Hon"ble Supreme Court considering the effect of Section 2 (oo) (bb) were brought to the notice of the learned Single Judge, the learned Single Judge has not taken them into consideration. The learned counsel submits that the present case is squarely covered by the judgment of the Apex Court in the case of Harayana State Agricultural Marketing Board vs. Subhash Chand and another reported in , (2006) 2 Supreme Court Cases 794, Karnataka Handloom Development Corporation Ltd. vs. Sri Mahadeva Laxman Raval reported in , (2006) 13 Supreme Court Cases 15, Gangadhar Pillai vs. Siemens Ltd. reported in , (2007) 1 Supreme Court Cases 533 and in the case of Bhavnagar Municipal Corporation vs. Salimbhai Umarbhai Mansuri reported in , (2013) 14 Supreme Court Cases 456. The learned counsel submits that since the employment of the complainant was purely contractual in nature and his non-continuation was on account of non-renewal of contract, the provisions of Section 25F and 25G of the ID Act would not be applicable to the facts of the present case.

12. Shri Ghate submits that insofar as the finding of the learned Single Judge with regard to the applicability of the Bombay Act is concerned, it was a specific case that the complainant had not worked continuously either for 3 months or for one year and as such the said provisions could not be made applicable to the facts of the present case. In the totality of the circumstances, the learned counsel submits that the learned Single Judge has committed an error in upsetting the concurrent orders passed by the learned Labour Court and the learned Industrial Court.

13. Mr. Thengre, learned counsel appearing for the complainant on the contrary submits that the learned Single Judge has rightly reversed the orders passed by learned Labour Court and the learned Industrial Court. Mr. Thengre submits that the learned Labour Court and the learned Industrial Court though had held that the complainant had completed 240 days of service in a year preceding the date of the complaint, had erroneously not allowed the complaint. He submits that the error which was committed by the learned Labour Court and the learned Industrial Court has rightly been corrected by the learned Single Judge. The learned counsel submits that once it was an admitted position that the complainant had completed 240 days of service in a year preceding the date of the complaint, the complaint ought to have been allowed by the learned Labour Court. Mr. Thengre submits that the learned Single Judge has rightly relied on the judgments of the Apex Court in the cases of Mohan Lal and Santosh Gupta (supra) in support of the finding that once the non-compliance with the provisions of Sections 25F and 25G was established, the termination has to be held bad in law and the consequential reliefs of reinstatement and the continuity of service with back wages must follow. Mr. Thengre further relied on the judgment of the learned Single of this Court in the case of Municipal Council, Jintur vs. Sunder Namdeo Khillare reported in , 2013 (4) Mh.L.J. 770. Mr. Thengre, therefore, submits that the appeal is without any merit, the order of

the learned Single Judge is well reasoned and in accordance with law and, therefore, the appeal deserves to be dismissed with exemplary costs.

14. With the assistance of the learned counsel for the parties, we have gone through the pleadings of both the parties, the evidence adduced by both the parties and the judgments and orders rendered by the learned Labour Court, learned Industrial Court and the learned Single Judge.

15. For appreciating the rival contentions, it will be appropriate to refer to Section 2(oo) and Section 25F of the ID Act:--

"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 workmen; 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."

"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 aid 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 Official Gazette."

No doubt that perusal of Section 25F would reveal that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until three conditions specified therein are followed. However, the perusal of sub-clause (bb) of clause (oo) of Section 2 would reveal that the term retrenchment does not include 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.

16. Their Lordships of the Apex Court in the case of Haryana State Agricultural Marketing Board (supra) had an occasion to consider the case of an employee who was appointed on contractual basis as an Arrival Record Clerk. The employee in question had worked for various period between 17.10.1997 to 13.12.1998. After the termination of the employee, he raised an industrial dispute. A reference was made to the Industrial Tribunal-cum-Labour Court. The Labour Court had held that the termination of services of the workman was in violation of the provisions of Section 25G of the ID Act. The petition carried out by the employer before the High Court was also dismissed and as such the matter went before the Hon"ble Apex Court. It will be relevant to refer to the following observations of the Apex Court:--

"A bare perusal of the offer of appointment clearly goes to show that the appointments were made on contract basis. It was not a case where a workman was continuously appointed with artificial gap of 1 day only. Indisputably, the respondent had been re-employed after termination of his services on contract basis after a consideration period (s).

10. In Municipal Council, Samrala v. Raj Kumar wherein, in the offer of appointment it was specifically averred that "his services will be availed till it is considered as fit and proper and necessary. After that his services will be dispensed with", which was accepted by the employee by affirming an affidavit to the effect that he would not have any objection, if Municipal Corporation dispensed with his services and thereby acknowledged its right to that effect, this Court held:

"Clause (oo)(bb) of Section 2 contain an exception. It is in two parts. The first part contemplates termination of service of the workman as a result of the non-renewal of the contract of employment or on its expiry; whereas the second part postulates termination of such contract of employment in terms of stipulation contained in that behalf"

[See also Punjab State Electricity Board. v. Darbara Singh , (2006) 1 SCC 121 and Kishore Chandra Samal v. Orissa State Cashew Development Corpn. Ltd., Dehnkanal. , (2006) 1 SCC 253].

11. The question as to whether Chapter VA of the Act will apply or not would be dependent on the issue as to whether an order of retrenchment comes within the purview of Section 2 (oo) (bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a "retrenchment", the question of applicability of Chapter V-A thereof would not arise.

12. Central Bank of India V.S. Stayam & Ors. [, 1996 (5) SCC 419], whereupon

reliance was placed by Mr. Singh, is itself an authority for the proposition that the definition of "retrenchment" as contained in the said provision is wide. Once it is held that having regard to the nature of termination of services it would not come within the purview of the said definition, the question of applicability of Section 25-G of the Act does not arise."

It could thus be seen from the aforesaid observations that the question as to whether Chapter V-A of the ID Act will apply or not would be dependent on the issue as to whether an order of retrenchment comes within the purview of Section 2(oo)(bb) of the ID Act or not. Their Lordships have held that if the termination of service in view of the exception contained in clause (bb) of Section 2(oo) of the Act is not a retrenchment, then the question of applicability of Chapter V-A thereof would not arise.

17. In the case of Karnataka Handloom Development Corporation Ltd. (supra), the Hon"ble Apex court was considering the case of an employee like the employee in the present case who was issued with various appointment orders for a fixed period. In the said case also, the Labour Court had allowed the reference. The writ petition as well as the writ appeal before the High Court were also dismissed. It will be relevant to refer to paragraphs 18, 20 and 24 of the said judgment:--

"18. We have perused all the appointment letters dated 14.01.1991, 24.02.1992, 10.02.1993, 03.03.1993 and 30.11.1993 produced by the respondent as annexures which consistently and categorically state that the respondent's appointment with the Corporation was purely contractual for a fixed period. The respondent was engaged only under the Vishwa programme/Scheme which is not in existence. Now the scheme came to an end during August, 1994; the respondent was also not governed by any service rules of the Corporation. The Corporation put an end to the contract w.e.f. 31.08.1994 which, in our opinion, cannot be termed as dismissal from service. Even assuming that the respondent had worked 240 days continuously he, in our opinion, cannot claim that his services should be continued because the number of 240 days does not apply to the respondent inasmuch as his services were purely contractual. The termination of his contract, in our view, does not amount to retrenchment and, therefore, it does not attract compliance of Section 25F of the I.D. Act at all.

20. Arijit Pasayat, J speaking for the Bench, after referring to the position of law relating to fixed appointments and the scope and ambit of Section 2(oo)(bb) of Section 25-F which were examined by this Court in several cases and also in *Morinda Coop. Sugar Mills Ltd. v. Ram Kishan & Ors.*, , (1995) 5 SCC 653 and which view was reiterated by a three- Judge Bench of this Court in *Anil Bapurao Kanase v. Krishna Sahakari Sakhar Karkhana Ltd. & Anr.* reported in , (1997) 10 SCC 599 noticed and reproduced para 3 as under: (SCC pp.599-600)

"3. The learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned order dated 28-3-1995 in Writ

Petition No. 488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In *Morinda Coop. Sugar Mills Ltd. v. Ram Kishan* in para 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing; in para 4 it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not "retrenchment" within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per sub-clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application. However, this Court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above.

24. As pointed out earlier, the respondent was engaged only on contract basis. It is only a seasonal work and, therefore, the respondent cannot be said to have been retrenched in view of what is stated in clause (bb) of Section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is not correct and is illegal. The appeal is accordingly allowed but in the circumstances without costs.

(emphasis supplied)

It could thus be seen that Their Lordships found that even assuming that the employee whose case was for consideration before Their Lordships had worked continuously for 240 days, in view of the appointment orders being purely contractual in nature, the provisions of Section 25F of the ID Act would not be attracted in view of sub clause (bb) of Section 2 (oo) of the said Act.

18. Again in the case of *Gangadhar Pillai* (supra), the Apex Court was considering the case of a workman who was appointed for a specific period. After the services of the workman had come to an end, he filed a complaint before the Industrial Court contending that the employer had committed an unfair labour practice within the meaning of Item 6 of Schedule IV of MRTU & PULP Act. The complaint was dismissed by the learned Industrial Court. A writ petition challenging the same and the letters patent appeal were respectively dismissed by the learned Single Judge and the Division Bench of this court, contending that an employee was purposefully kept on a temporary basis for a period of 22 years. It was contended before Their Lordships of the Apex Court that the employer had indulged in unfair labour practice as specified in Item 6 of Schedule IV of the MRTU & PULP Act. Their Lordships observed thus:--

"27. It has furthermore not been denied or disputed that services of the employees engaged on such terms would come to an end on completion of the period of contract. Such retrenchment would come within the purview of Section 2(oo)(bb) of the Industrial Disputes Act. Once the period of contract was fixed and the same was done keeping in view the nature of job, it cannot be said that the act of the employer in terminating the services of the appellant was actuated by any malice. Such an act on the part of the employer cannot be said to have been resorted to for defrauding an employee. The object of such temporary employment was bona fide and not to deprive the employee concerned from the benefit of a permanent status. We, having regard to the fact situation obtaining herein, cannot infer that the findings of the Tribunal as also the learned Single Judge of the High Court were manifestly erroneous warranting exercise of our extraordinary jurisdiction under Article 136 of the Constitution of India.

28. It is not the law that on completion of 240 days of continuous service in a year, the concerned employee becomes entitled to for regularization of his services and/or permanent status. The concept of 240 days in a year was introduced in the industrial law for a definite purpose. Under the Industrial Disputes Act, the concept of 240 days was introduced so as to fasten a statutory liabilities upon the employer to pay compensation to be computed in the manner specified in Section 25-F of the Industrial Disputes Act, 1947 before he is retrenched from services and not for any other purpose. In the event a violation of the said provision takes place, termination of services of the employee may be found to be illegal, but only on that account, his services cannot be directed to be regularised. Direction to reinstate the workman would mean that he gets back the same status.

(emphasis supplied)

19. It could be seen from the aforesaid observations that once the services of the employee engaged on a contractual basis for a fixed period come to an end on account of completion of the period of contract, the same would come within the purview of Section 2(oo)(bb) of the ID Act. It has been further held that once the period of contract was fixed and the same was done keeping in view the nature of job, it cannot be said that the act of the employer in terminating the services of the appellant was actuated by any malice. It has been further held that merely on completion of 240 days of continuous service in a year, the employee concerned does not become entitled for regularisation of his services and/or permanent status. Their Lordships have held that under the Industrial Disputes Act, the concept of 240 days was introduced so as to fasten statutory liabilities upon the employer to pay compensation to be computed in the manner specified in Section 25F of the ID Act, before he is retrenched from services and not for any other purpose. It has been further held that in the event of violation of the said provision takes places, termination of services of the employee may be found to be illegal, but only on that account, his services cannot be directed to be regularised.

20. Again in the case of Bhavnagar Municipal Corporation (supra) the Apex Court had an occasion to consider the case of a workman who was appointed for a fixed period. It will be relevant to refer to paragraphs 11 and 13 of the said judgment:--

"11. The facts would clearly indicate that the respondent's service was terminated on the expiry of the fixed periods mentioned in the office orders and that he had worked only for 54 days. The mere fact that the appointment orders used the expression "daily wages" does not make the appointment "casual" because it is the substance that matters, not the form. The contract of appointment consciously entered into by the employer and the employee would, over and above the specific terms of the written agreement, indicates that the employment is short-lived and the same is liable to termination, on the fixed period mentioned in the contract of appointment.

13. Section 25-H will apply only if the respondent establishes that there had been retrenchment. The facts will clearly indicate that there was no retrenchment under Section 2 (oo) read with Section 2 (bb) of the ID Act. Consequently, Section 25-H would not apply to the facts of the case. Similar is the factual and legal situation in the civil appeal arising out of SLP (C) No. 5387 of 2012 as well."

The perusal of the aforesaid observations would reveal that even if the words used in the order are "daily wages", does not make the appointment "casual" but it is the substance that matters, not the form. Their Lordships of the Apex Court on the facts of the said case found that the terms of the agreement would reveal that the appointment was for a fixed period and liable to be terminated at the end of the period.

21. It could thus be seen that while construing the provisions of Section 2(oo) (bb) read with Chapter V-A of the ID Act, Their Lordships have consistently held that if the contract of employment is for a fixed period and the appointment is terminable at the end of the period of contract, then in view of provisions of Section 2(oo)(bb) , the provisions of Chapter V-A would not be applicable. It has been further held that assuming that a workman has completed 240 days" of service in a year, even then if the provisions of Section 2(oo)(bb) of the ID Act are applicable, the provisions of Chapter V-A of the ID Act would not be applicable. It has been further held that what is important is substance of the contract and not the form.

22. In the present case, it will be relevant to refer to the following findings of the learned Industrial Court:--

"On going through the record of the Labour Court apparently it is clear that the orders issued in favour of the complainant directing the complainant to work they are at Exh. 15 to 25. Apparently from those appointment orders it is clear that every time the complainant was appointed as a daily wages and that too for a temporary period. Stipulated period is mentioned in each order and the orders

are not in continuity with each other. The appointment of complainant vide appointment order Exh. 15 to 25 are against any post. The complainant was asked to work as a clerk on temporary basis as daily wages and that too in a Bank. There are recruitment rules of the respondent and one of the rules is passing of competitive examination by the candidate. Here the complainant has admitted in the cross-examination that in response to the advertisement the complainant made an application. Exh. 89 is that application. The complainant appeared in the written examination but he was not successful. The complainant was even called for interview but the selection committee has not selected the complainant. If we consider the evidence of complainant coupled with the documents on record then apparently it is clear that the appointment of the complainant as per Exhs.15 to 25, it is only for a temporary work. The post of clerk is form Pay Group II and, therefore, considering this aspect the recruitment rules for appointment they are required to be followed. The appointment of the complainant was purely on temporary nature for a stipulated period and each appointment order comes to an end after the period is over. Therefore, the provisions of Section 25-F and 25-G of the I.D. Act are not attracted. With the respondent the order passed by the Labour court rejecting the prayer of reinstatement with continuity of service and backwages that order is proper and calls for no interference.

In regard to notice pay and retrenchment compensation, here every order speaks a lot. The appointment orders are speaking. The services of the complainant were obtained for a stipulated period. Some time it was even for 2 days or 3 days. Considering this aspect apparently it is clear that the service tendered by the complainant they were purely on temporary basis and that too on daily wages. No right is created in favour of the complainant but claim retrenchment compensation or notice pay. Every appointment order was giving notice to complainant that on such and such day the relationship will come to an end and the services of the complainant are not required. Despite of specific mention in the appointment order the complainant was doing work. Therefore, considering the nature of appointment orders and the fact that the complainant submitted application in response to the advertisement but the complainant was not selected, the complainant was not successful in competitive examination, all these factors clearly demonstrate that no right is created in favour of the complainant. Even, if we consider the appointment orders which are at Exh. 16 to 26 yet there is no such continuity of service, particularly within 12 preceding months prior to the presentation of complaint. As a result of it, by efflux of time the relations come to an end. Hence, the complainant is not entitled for retrenchment compensation or notice pay. Thus, the orders of Labour Court in regard to retrenchment compensation and notice pay is a perverse order and needs to be interfered."

It could thus be seen that the learned Industrial Court while concurring with the finding of fact as recorded by the learned Labour Court has come to a conclusion that the appointments were for a temporary period and for a stipulated period

and each appointment order came to an end after the period was over. In these premises the learned Industrial Court came to the conclusion that the provisions of Section 25F and 25G of the ID Act were not attracted.

23. It will be relevant to refer to one of the appointment orders issued to the complainant. All the appointment orders are identical:--

"Exhibit No. 16.

Office" The Nagpur District Central Co-operative Bank Ltd. Nagpur.

Head Office" Ruikar Road, Gandhisagar, Nagpur - 440018.

No.: Administration/Daily Wages/94-95/1043.

Date : 30/4/1994. 2.5.

To,

Shri Prashant Ashokrao Salunke, Lodhipura, Santra Market Road, Nagpur-18.

Taking into consideration your application, you are being permitted to work as Clerk in the bank on temporary daily wages from 2/5/94 on the daily wages of Rs. 30-00 (In words Rs. Thirty Only). This arrangement is of temporary nature and your appointment on daily wages is being made temporarily for 58 days only and you will get salary at the rate of Rs. 30-00 (in words Rs. Thirty Only) per day for the number of days you worked. You will not avail any benefit of the service rules of the Bank and you will not get any kind of allowance or other concessions.

Hence, you should join as Clerk on daily wages at the Mahal branch on 2/5/1994.

Sd/- (x Illegible x) General Manager, The Nagpur D.C. Co-op. Bank Ltd. Nagpur."

It could thus be seen that the appointment order is for a specific period of 58 days from the date mentioned in the said order. The appointment order clearly stipulates that the complainant would be entitled to daily wages @ Rs. 30-00 per day. It also specifically stipulates that no benefit of service conditions as stipulated in the relevant rules would be applicable to the complainant. It could thus be seen that the perusal of the appointment orders clearly show that the appointment of the complainant was contractual in nature for a specific period and was to come an end at the period as specified in the said order. In view of what has been discussed hereinabove, the present case would squarely fall under the ambit of Section 2(oo)(bb) of the ID Act. As such the provisions of Chapter V-A which includes Section 25F and 25G would not be applicable to the facts of the present case.

24. It will also be relevant to refer to Item 1 of Schedule IV of the MRTU & PULP Act:--

"1. To discharge or dismiss employees-

(a) by way of victimisation;

- (b) not in good faith, but in colourable exercise of employer's rights;
- (c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;
- (d) for patently false reasons;
- (e) on untrue or trumped up a legation of absence without leave;
- (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;
- (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employees, so as to amount to a shockingly disproportionate punishment."

25. The complaint of the complainant would be tenable under Item 1 only if the complainant would be in a position to fit in his case in any of the clauses mentioned in Item 1 of Schedule IV. We find that the complainant has utterly failed to establish the case of victimisation, the employer not acting in good faith, but in colourable exercise of employer's right. We further find that it is not even the case of the complainant that he was sought to be dismissed by implicating him in a criminal case on false evidence or on concocted evidence or sought to be dismissed for patently false reasons or was dismissed on untrue or trumped up allegation of absence without leave. The case of the complainant would also not come under clause (f) which deals with the dismissal in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste, nor it would come under clause (g) which deals with the misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment.

26. On the contrary, the perusal of the case of the Bank as could be found in the written statement and the deposition of the witness examined on its behalf would show that it was the specific case of the Bank that it was required to engage the services of the Clerk on contractual basis since though it had issued an advertisement for filling up the vacancies after approval from the Cooperative Department, the recruitment process could not proceed further since the Employees' Union had approached the Labour Court and the Industrial court. It is the specific case of the Bank that only after the learned Single Judge of this Court permitted the written examination and interviews to be conducted and the appointments to be made, the selection process in accordance with the rules and regulations could proceed further. It is the case of the Bank that only thereafter with the permission of this Court appointments could be made. It is the specific case and which is also not disputed by the complainant that in the selection process, the complainant was also given an opportunity to compete, however, he failed in the written examination and could not be appointed. We find that though the learned Labour Court and the learned Industrial Court had correctly

appreciated the evidence of the Manager of the Bank, on this aspect, the learned Single Judge has erred in re-appreciating the evidence in that regard so as to come to a different conclusion. It is a settled law that even the Industrial Court has limited jurisdiction while re-appreciating the evidence. The interference by the Industrial Court is permitted only when the finding of fact is either perverse or impossible. The jurisdiction of the learned Single Judge while re-appreciating the evidence to set aside the concurrent findings of fact would be much narrower.

27. The learned Single Judge while allowing the complaint has heavily relied on the judgment of the Apex court in the case of Mohan Lal and Santosh Gupta (supra). No doubt that the learned Single Judge has rightly relied on the observations of the Apex Court in the case of Santosh Gupta in para 5 which holds that the width of Section 25F covers every kind of termination of service except those not expressly included in Section 25F or not expressly provided for by other provisions of the Act. However, it is to be noted that the judgment in the case of Santosh Gupta was delivered by Their Lordships of the Apex Court on 29.4.1980 whereas the judgment in the case of Mohan Lal was delivered on 21.4.1981. Clause (bb) has been introduced in Section 2 (oo) by Act No. 49 of 1984 with effect from 18.8.1984. As such Their Lordships in the case of Mohan Lal as well as Santosh Gupta did not have an occasion to consider the import of clause (bb) of Section 2(oo). The judgments to which we have referred hereinabove, are the judgments which have been rendered by Their Lordships of the Apex Court, after clause (bb) was brought on the statute book. In that view of the matter though the reliance as placed by the learned Single Judge on the aforesaid judgments of the Apex Court in the case of Santosh Gupta as well as Mohan Lal is well merited, but in the facts of the present case the said judgments which were rendered prior to 18.8.84 i.e. date on which clause (bb) was inserted in Section 2(oo) of the I.D. Act, would not be applicable, inasmuch as the present case concerns the alleged termination of 1999 i.e. much after the Act was amended in the year 1984.

28. The learned Single Judge then relied on the judgment of the Apex Court in the case of Krishna Bahadur vs. Purna Theatre and others reported in , 2004 (8) Supreme Court Cases 229, in support of his finding that the provisions of Section 25F(b) are imperative in nature. In the said case, the employee therein was appointed in the post of messenger-cum- bearer in the establishment of the employer, which was a cinema house. He was also confirmed on the said post. In the disciplinary proceeding initiated against him, he was found guilty and as such was dismissed from services. In an industrial dispute arising out of the said dispute, the order of dismissal was set aside with full back wages and compensation. After the decision of the learned Industrial Tribunal, the workman was permitted to join the duties but back wages were not paid. However, within one month from the date on which he was permitted to be joined, he was retrenched from services. A sum of Rs. 9030/- as retrenchment compensation was paid. A Trade Union took up the cause of the workman, on the ground of contravention of the provisions of Section 25G of the ID Act, as also insufficiency

of the amount of compensation paid to the employee in terms of Section 25F(b) thereof. Accordingly an industrial dispute with regard to retrenchment was raised before the Assistant Labour Commissioner which failed and as such the learned Industrial Court was approached by the workman. In the meanwhile, the workman had also initiated a proceeding under Section 33-C(2) of the ID Act which ended in an amicable settlement in terms whereof the workman allegedly agreed to receive a sum of Rs. 39,000/- as full and final settlement. In the proceeding before the learned Industrial Court, the learned Industrial Court held the retrenchment to be illegal. The writ petition preferred by the employer was dismissed by the learned Single Judge. However, the Division Bench of the Calcutta High Court allowed the appeal of the employer. Being aggrieved thereby, the workman went before the Apex Court by way of S.L.P. contending that the Division Bench of the Calcutta High Court failed to take into consideration that Section 25F(b) of the ID Act was imperative in character. In the background of these factual scenario, Their Lordships of the Apex Court have observed what has been reproduced by the learned Single Judge in his judgment. However, the issue with regard to applicability of Chapter V-A in view of the employment being contractual in nature and covered by Section 2(oo)(bb) of the ID Act was not an issue for consideration before Their Lordships of the Apex Court in the said case.

29. We find that the reliance placed on the judgment of the Division Bench of this Court in the case of *Navbharat, Hindi Daily, Nagpur vs. Navbharat Sharamik Sangha* reported in , 1984 Mh.L.J. 483 by the learned Single Judge was also not correct in the factual scenario as is available in the present matter. Firstly the said case was not arising out of contractual employment. The main issue before the Court was with regard to violation of Section 25G of the ID Act which is on the principle of last come first go. In any case, the judgment is delivered on 13.10.1983 i.e. prior to clause (bb) being brought on the statute book.

30. The learned Single Judge then relied on the judgment of the learned Single Judge of this Court in the case of *Trade-Wings Limited vs. Prabhakar Dattaram Phodkar and others* reported in , 1992(2) Bom. C.R. 624. Again in the said case, the issue was with regard to violation of Section 25G of the ID Act i.e. not maintaining the seniority correctly and not paying retrenchment compensation as required under Section 25F(b) of the ID Act. The issue regarding Section 2(oo)(bb) did not fall for consideration before the learned Single Judge.

31. In the case of *M.S.E.B. Workers Federation, Pune vs. Maharashtra State Electricity Board and ors.* reported in , 1995 II CLR 588 relied upon by the learned Single Judge, the issue involved was regarding retrenchment of the persons who were senior in service and retaining the persons who were junior and as such violation of Rule 81 of the Industrial Disputes (Bombay) Rules, 1957 and Section 25G of the ID Act. In that view of the matter, we find that none of the aforesaid judgments would be applicable to the facts in the present case.

32. Mr. Thengre has vehemently relied on the judgment of the learned Single Judge of this Court in the case of *Municipal Council, Jintur vs. Sunder Namdeo*

Khillare reported in , 2013 (4) Mh.L.J. 770. The said case deals with the allegation of the employee that the employer was indulging in unfair labour practice as specified in Item Nos. 5 and 6 of Schedule IV of the MRTU & PULP Act. As such the said judgment would also be of no assistance to the case of the complainant.

33. That leaves us with the last finding by the learned Single Judge regarding the applicability of the Bombay Shops and Establishment Act, 1948. It is specifically averred by the Bank that the complainant was neither continuously working for 3 months nor for one year and as such the provisions of the Bombay Act would not be applicable to the facts of the present case. It is not even the evidence of the complainant that he is in continuous employment either for a period of not less than a year or for more than 3 months. In that view of the matter, we find that the finding in that respect would also not be sustainable.

34. In the aforesaid premises, we find that the learned Single Judge has erred in setting aside the concurrent orders passed by the learned Labour Court as well as the learned Industrial Court denying the reinstatement and continuity in service with back wages.

35. We further find that the view taken by the learned Industrial Court that the retrenchment compensation was not payable to the complainant, as was held by the learned Labour Court, is also correct in law. Once it is held that the nature of employment is covered under Clause (bb) of Section 2 (oo) of the ID Act, then the provisions of Chapter V-A would not be applicable and as such the complainant would not be entitled to retrenchment compensation. As such the learned Industrial Court was correct in law in setting aside the direction of the learned Labour Court directing payment of retrenchment compensation.

36. In the result, the appeal is allowed. The judgment and order passed by the learned Single Judge is quashed and set aside. The order of the learned Industrial Court is maintained.

37. At this stage, since the respondent-complainant is continuously working for last several years and since he has reached the age of about 50 years, we had requested Mr. Ghate, learned counsel appearing for the appellant-Bank to take instructions as to whether any post is available and as to whether the complainant can be adjusted against the said post. We had also requested the learned counsel to take instructions with regard to the service record of the complainant.

38. Mr. Ghate fairly states that the post is available, however, since on account of financial difficulties the appellant-Bank is facing hardship and an Administrator is appointed, it will not be possible for him to take a final decision in that regard. He also fairly states that there is nothing adverse as against the complainant's functioning in the Bank.

39. In that view of the matter so as to meet the equities, in the backdrop of the

facts and circumstances of the case without the same being treated as a precedent, we direct the appellant-Bank not to disturb the services of the complainant. We further direct the appellant-Bank to forward a proposal for regularization of the complainant's services to the respondent No. 2 for regularization of the services of the complainant with effect from 1.1.2016. Respondent No. 2 shall grant approval to the proposal forwarded by the appellant-Bank within a period of 3 months from the receipt thereof.

40. Though in view of what has been held by us hereinabove the complainant would not be entitled to any back wages, however, since on account of the interim orders passed by this Court the complainant has already received 50% of the back wages, we find that the direction to refund such a huge amount at this stage would cause great hardship to the complainant. We, therefore, though hold that the complainant was not entitled to any back wages, direct the appellant-Bank on equitable grounds, not to recover the said amount from the complainant.