

(2010) 03 GUJ CK 0050

In the Gujarat High Court

Case No : Special Civil Application No's. 15498, 15499 and 15500 of 2008 and 4993 and 4994 of 2009

Vadia Gram Panchayat

APPELLANT

Vs

Pratapbhai Dadbhai Kotila

RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 14, 15, 16, 17, 18
Industrial Disputes (Central) Rules, 1957 — Rule 77, 78
Industrial Disputes Act, 1947 — Section 11, 2, 25B, 25B(2), 25F

Citation : (2010) 03 GUJ CK 0050

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

Bench : Single Bench

Advocate : Kamal M. Sojitra, for the Appellant; G. Ramakrishnan, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned advocate Mr. Kamal Sojitra on behalf of Vadia Gram Panchayat in all five matters. The industrial disputes raised by workmen against their termination wherein Labour Court has granted reinstatement to one workman Gabhrubhai Matrabhai Khuman with 20% back wages. In case of Batukbhai Popatbhai Dholaria, reinstatement granted without back wages of interim period. In case of Ujiben Rajabhai Makwana, reinstatement granted with full back wages of interim period. In case of Pratapbhai Dabbhai Kotila, reinstatement granted with 20% back wages of interim period and in case of Lakhubhai Nagbhai Kahor where 50% back wages with effect from 1st February, 2002 till date of retirement of workman has been granted.

2. In all awards which are passed by Labour Court, Amreli and challenged by petitioner before this Court, learned advocate Mr. Sojitra raised contention before this Court that Labour Court has committed gross error in awarding reinstatement as well as back wages in favour of concerned respondent - workman. The relevant record has not been properly appreciated by Labour

Court, Amreli produced by petitioner.

3. Learned advocate Mr. Sojitra also raised contention that respondents workmen were not regular or permanent employee, therefore procedure is not required to be followed by petitioner. Respondent was called for work on temporary basis as per work required by the Panchayat. Therefore, question of giving permanent job does not arise. Respondent workman was appointed illegally dehorse the Service Rules and without prior approval of the Director of Municipality. He relied upon one decision of Apex Court reported in State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, He submitted that workman has not completed 240 days continuous service as per details given by petitioner. In short, his submission is that Labour Court has not properly considered matter and awarded reinstatement as well as in some cases back wages have been granted in favour of respondents - workmen.

4. I have considered common contentions raised by learned advocate Mr. Sojitra against common award and I have also perused each award passed by Labour Court, Amreli. In case of Lakhubhai Nagbhai Kahor, before Labour Court, workman has proved continuous service of 240 days before date of termination. Witness of petitioner who was examined before Labour Court vide Exh. 42 has admitted that at the time when service of workman was terminated on 1st February, 2002, Section 25-F has not been followed by petitioner. Therefore, on basis of aforesaid evidence and considering the fact that the evidence of workman Exh.17 whereby workman was examined and Exh.42 whereby witness of petitioner was examined, certain documents have been produced on record as referred to in para 5. Thereafter, those documents have been examined by Labour Court. Considering documents which are on record, workman was appointed as a daily wager on 1st November, 1979 and terminated on 31st July, 1984. Thereafter, again, he was reinstated on 10th September, 1990 and subsequently he was terminated by petitioner without following Section 25-F of I.D. Act, 1947. The documents and oral evidence of workman have not been disproved by producing rebuttal evidence on record by petitioner therefore, contention raised in written statement has not been proved by petitioner before the Labour Court and on that basis, considering the fact that workman has already retired from service, therefore 50% back wages were granted w.e.f. 1st February, 2002 with cost of Rs. 1,500/-. The workman was remained unemployed during interim period as per his evidence Exh.17 and fact that workman was in gainful employment has not been proved by petitioner before Labour Court. The Labour Court has considered written statement submitted by petitioner and also considered oral submissions made by both learned advocates and Labour Court has also considered service book which was produced by workman. Therefore, contention raised by learned advocate Mr. Sojitra cannot be accepted.

5. In case of Pratapbhai Dadbhai Kotila, Reference No. 9 of 2002, who was working with petitioner from 1977-1978 as octroi clerk and terminated on 1st

August, 1984. Thereafter, again he was reinstated in year 1990 and remained in service up to 1st February, 2002. At the time of terminating services of workman, Section 25-F has not been followed by petitioner. Workman was examined vide Exh.17 and on behalf of petitioner, no one was examined. Therefore, Labour Court has, after examining documents which have been referred to in para 5 produced by workman, come to conclusion that workman's service was terminated by violating Section 25-F of I.D. Act, 1947 though one year continuous service has been proved and during that period, 240 days continuous service has been proved by workman against which no rebuttal evidence produced by petitioner establishment and considering oral evidence of workman, as he was at some extent gainfully employed, only 20% back wages has been awarded.

6. In respect to Ujiben Rajabhai Makwana, learned advocate Mr. Sojitra submitted that she obtained service by producing false certificates. No departmental inquiry was carried out by petitioner against respondent - workman. She was working last more than 20 years as a Safai Kamdar and petitioner terminated her services on 29th October, 2003. Thereafter, vide Exh.17 Ujiben was examined before Labour Court where certain documents were produced by workman referred to in para 5. Labour Court has given reason in support of its conclusion that no oral or documentary evidence produced by petitioner before Labour Court and evidence of workman remained unchallenged and in light of facts and considering oral evidence of workman Exh. 17, there is no rebuttal evidence produced by petitioner. Therefore, termination has been held illegal, contrary to Section 25F, and accordingly, reinstatement has been granted in favour of workman with full back wages of interim period and there was no reason to terminate services of workman without following due procedure of law. The allegations made by petitioner must have to be proved against workman by holding departmental inquiry, which was not held by petitioner. Therefore, termination has been set aside.

7. In case of Batukbhai Popatbhai Dholaria, who was working since last more than 15 years as a Mukadam and his services were terminated on 20th April, 2002, which has been denied in written statement Exh.29 and thereafter workman was examined vide Exh.26. The workman was cross examined by advocate of petitioner and no oral as well as documentary evidence produced by petitioner before Labour Court and even in cross examination nothing adverse has been found from record and petitioner has not established any adverse thing against workman. Therefore, evidence of workman remained unchallenged and on that basis Labour Court has come to conclusion that termination is found to be contrary to provisions of Section 25-F of I.D. Act, 1947 and also Sections 25-G and 25-H both have been violated by petitioner. Therefore, Labour Court has granted reinstatement without back wages of interim period in favour of respondent workman.

8. In case of Gabhrubhai Matrabhai Khuman - workman was working as a peon

since 1990 and terminated on 20th April, 2002, which has been denied in written statement Exh.31 and thereafter workman was examined vide Exh.35 and no one was examined on behalf of petitioner and no documentary evidence also produced by petitioner before Labour Court. Therefore, Labour Court has considered evidence of workman and also considered documents produced by workman and come to conclusion that at the time of terminating service of workman, petitioner has violated Section 25-F, 25-G and 25-H of I.D. Act, 1947. The evidence of workman remained unchallenged and no rebuttal evidence produced by petitioner before Labour Court, therefore, Labour Court has granted reinstatement with 20% back wages in favour of respondent workman.

9. In aforesaid references, neither documentary evidence nor oral evidence except one matter has been produced on record by petitioner before Labour Court as referred above. The question is that 240 days has been proved by each workman by leading his evidence before Labour Court which was cross examined by advocate of petitioner where nothing adverse has been come on record against workmen and no rebuttal positive evidence produced by petitioner before Labour Court. Therefore, Labour Court has come to conclusion that concerned workman has proved 240 days continuous service preceding 12 months from the date of termination against which no positive evidence has been produced by petitioner as per their defence before Labour Court. Therefore, as evidence of workmen remained unchallenged, appropriate relief has been granted in favour of respondents - workmen by Labour Court, Amreli. After perusing each award passed by Labour Court as referred to above, according to my opinion, Labour Court has not committed any error, which requires interference by this Court while exercising powers under Article 227 of Constitution of India.

10. Recently, Apex Court has considered decision of this Court given in SCA 29355 of 2007 decided on 30th November, 2007, which has been confirmed by Apex Court in case of Director, Fisheries Terminal Department v. Bhikhubhai Meghajibhai Chavda reported in (2010) 1 SCC 47. The Apex Court, after considering submissions made by both learned advocates, observed at para 13 to 21, which are quoted as under:

13. The next contention of the learned Counsel for the appellant is that the respondent had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the respondent cannot claim any protection under the provisions of Industrial Disputes Act, 1947. The case of the respondent before the labour court was that as he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as 8 conditions precedent as contained in Section 25F of the Industrial Disputes Act, 1947 were not complied with.

14. Section 25B of the Act defines "continuous service". In terms of Sub-section (2) of Section 25B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be

deemed to be in continuous service.

15. The respondent claims that he was employed in the year 1985 as a watchman and his services were retrenched in the year 1991 and during the period between 1985 to 1991, he had worked for a period of more than 240 days. The burden of proof is on the respondent to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment. The law on this issue appears to be now well settled.

16. This Court in the case of R.M. Yellatty v. Assistant Executive Engineer has observed: (SCC p. 106, para 17)

17. ...However, applying general principles and on reading the [aforesaid] judgments, we find that this Court, has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping up in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment of termination. There will also be no receipt of proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment of termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case.

17. Applying the principles laid down in the above case by this Court, the evidence produced by the appellants has not been consistent. The appellants claim that the respondent did not work for 240 days. The respondent was a workman hired on a daily wage basis. So it is obvious, as this Court pointed out in the above case that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. He has come forward and deposed, so in our opinion the burden of proof shifts to the employer/appellants to prove that he did not complete 240 days of service in the requisite period to constitute continuous service.

18. It is the contention of the appellant that the services of the respondent were terminated in 1988. The witness produced by the appellant stated that the respondent stopped coming to work from February, 1988. The documentary evidence produced by the appellant is contradictory to this fact as it shows that the respondent was working during February, 1989 also.

19. It has also been observed by the High Court that the muster roll for 1986-87 was not completely produced. The appellants have inexplicably failed to produce the complete records and muster rolls from 1985 to 1991, inspite of the direction issued by the labour court to produce the same. In fact there has been practically no challenge to the deposition of the respondent during cross-examination. In this regard, it would be pertinent to mention the observation of three judge bench of this Court in the case of Municipal Corporation, Faridabad v.

Siri Niwas, where it is observed: (SCC p. 198, para 15)

15. A Court of Law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against this contentions. The matter, however, would be different where despite direction by a court the evidence is withheld.

20. It is not in dispute that the respondent's service was terminated without complying with the provisions of Section 25F of Industrial Disputes Act. Section 25G of the Act provides for the procedure for retrenchment. The section reads:

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

21. The labour court based on the pleadings and evidence on record has come to the conclusion that the services of some of the employees junior to the respondent was continued after the respondent was discharged from its duties. The dates of joining of some of the fellow employees of the respondent like Mohanbhai, Kalubhai and Nanjibhai were not produced by the appellants. The appellants have clearly failed to prove that the services of no junior employee was continued when the services of the respondent was terminated. Thus, the procedure laid down in Section 25G has also not been followed. The findings on facts by the labour cannot be termed as perverse and need no interference.

11. This Court also had an occasion to consider same aspect; in case where workman stated on oath that he remained in service and completed 240 days continuous service, admittedly no document was supplied to workman to prove his case of completion of 240 days continuous service and a moment when legal evidence led by workman against employer, burden shifted from workman to employer to disprove the claim of workman in case of Principal, S.V. Doshi Girls High School and Anr. v. Lilaben Somabhai Gadasa reported in 2008(1) G.L.H. 286, wherein paragraphs 9 & 10 read thus:

9. Identical question was examined recently by this Court in SCA No. 17165 of 2006 dated 24.8.2006, relying upon the decision in the case of R.M. Yellattii, as referred above and in this case, no documentary evidence has been produced by the employer to disprove the claim of the workman and the award of the Labour Court has been confirmed by this Court. Against which SLP was preferred by the Surendranagar District Panchayat being SLP No. 1918 of 2007, which has been dismissed by the Supreme Court on 3.1.2008. Therefore, considering the aforesaid law as relied by learned advocate Mr. Pandya and also considering the recent decision of the Apex Court, according to my opinion, the Labour Court has

rightly considered the oral evidence of the workman and also considering the certificates produced by the workman. In labour proceedings, strictly Evidence Act is not made applicable. Certain provisions are made applicable u/s 11 of the I.D. Act, 1947. If any document is produced by the party, if it is disputed by the other side then, other side must have to come out with the case that such document is not correct, bogus or not genuine. The certificate which has been produced on record with the petition page-27 which is not disputed by the petitioner, even considering these 10 vouchers, working days considering each month more than 15 to 18 days. So the stand taken by the employer that as and when work required, she was called by the employer which is apparently not found to be correct. It is also necessary to note on important aspect that two witnesses were examined by the petitioner before the Labour Court. None of the witnesses has made clear before the Labour Court that she was not remained in service from 1997 to 2005. Two persons were examined and both have not any personal information or knowledge in respect to the appointment, working and termination of the concerned workman. So their evidence is also not reliable and rightly not relied by the Labour Court and accordingly, the Labour Court has rightly believed the case of the workman and considering evidence of the workman which has not been disproved by the petitioner, granted the relief.

9.1 The Division Bench of this Court has considered the question of burden upon whom and how it to be discharged in case of Superintendent Engineer v. R. Chhanabhai Nathabhai in LPA No. 202 of 2005 decided on 4.3.2005 after taking into consideration the decision of the Apex Court in the case of M.P. Electricity Board Vs. Hariram etc., Relevant observations made in Para.9, 10 and 11 which are quoted as under:

9. In the matter of M.P. Electricity Board (supra), the Supreme Court has observed that the basic burden would be upon the workman. In the said matter, certain Muster Rolls were produced before the Court and some were kept back. On the basis of the Muster Rolls which were produced before the Court, the Supreme Court observed that the workman miserably failed to prove the fact that the work was for 240 days. The Supreme Court also observed that it was erroneous on the part of the Industrial Court and the High Court to draw an adverse inference on non-production of the Muster Rolls for some time.

10. The question of burden of proof would lose its importance when the question of onus of proof is taken up for consideration. In a given case, the basic burden may be upon a particular party and if the party does all what is required under the law, then the basic burden would stand discharged and the burden would be shifted upon the other side to disprove what has been said by the first party. It cannot be disputed nor can be argued that the official records are always available with the Department. A workman, if appears in the Court, enters the dock and makes a statement on oath that he had worked for 240 days in a year and the statement is not denied by the other side, or not controverted either, then the said statement can be taken to be correct. In the present matter, the

workmen did work for 240 days and if that be so, the burden shifted and the burden was on the other side to disprove the allegations made by the workman. The best of the evidence would be the records which are regularly maintained by the Department. The Department cannot be allowed to say that even if the basic burden was discharged, they were not required to produce the records which they possessed. If the best evidence is kept back or is not produced in the Court, then the Court would be justified in drawing an adverse inference against the party which could produce the best evidence in the Court.

11. In the matter of M.P. Electricity Board (Supra), the Supreme Court was considering the case where the first Court which could draw an adverse inference did not draw any inference and it was in the appeal where the Industrial Court, for the first time, had drawn adverse inference and the said finding was approved by the High Court. In the present matter, when the Labour Court, after giving its anxious consideration to the facts of the case and the evidence available on record, has recorded a finding and the said finding is approved by the learned Single Judge, it would not be for the Letters Patent Court to interfere with the discretion exercised by the Labour Court and the finding which was approved by the learned Single Judge. We must observe that the Labour Court was absolutely justified in drawing an adverse inference against the interest of the appellant. We find no reason to interfere in the matter and the appeals are dismissed. Notice is discharged. There shall be no order as to costs.

10. The contention which has been raised by learned advocate Mr. Pandya that she was not regularly appointed; four persons are working against the permanent post and no vacancy is available. The Labour Court has granted reinstatement the respondent workman and there is no direction of granting permanency or regular benefit in favour of respondent workman. The reinstatement suggests to restore the original position. for that, petitioner must have to restore the original position. The Labour Court has rightly granted the back wages considering the object of the trust and also gainful employment not proved by the petitioner and having some presumption against the respondent workman that she may not remain without work during the entire period and therefore, the Labour Court has rightly granted 20% back wages of interim period. For that, Labour Court has not committed any error which requires interference by this Court while exercising the power under Article 227 of the Constitution of India.

12. Recently the Apex Court has considered similar question in case of Harjinder Singh Vs. Punjab State Warehousing Corporation, The relevant para 10, 11, 13 to 15, 17 to 19 and 36 to 43 quoted as under:

10. We have considered the respective submissions. In our opinion, the impugned order is liable to be set aside only on the ground that while interfering with the award of the Labour Court, the learned Single Judge did not keep in view the parameters laid down by this Court for exercise of jurisdiction by the High Court under Articles 226 and/or 227 of the Constitution - Syed Yakoob Vs.

K.S. Radhakrishnan and Others, and Surya Dev Rai Vs. Ram Chander Rai and Others, In Syed Yakoob's case, this Court delineated the scope of the writ of certiorari in the following words:

The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised vide *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, and *Kaushalya Devi and Others Vs. Bachittar Singh and Others*,

It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; hut it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes

in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.

11. In *Surya Dev Rai's* case, a two-Judge Bench, after threadbare analysis of Articles 226 and 227 of the Constitution and considering large number of judicial precedents, recorded the following conclusions:

(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the CPC cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of

justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as

the court should have made in the facts and circumstances of the case.

A reading of the impugned order shows that the learned Single Judge did not find any jurisdictional error in the award of the Labour Court. He also did not find that the award was vitiated by any error of law apparent on the face of the record or that there was violation of rules of natural justice. As a matter of fact, the learned Single Judge rejected the argument of the corporation that termination of the appellant's service falls within the ambit of Section 2(oo)(bb) of the Act, and expressed unequivocal agreement with the Labour Court that the action taken by the Managing Director of corporation was contrary to Section 25G of the Act which embodies the rule of last come first go. Notwithstanding this, the learned Single Judge substituted the award of reinstatement of the appellant with compensation of Rs. 87,582/- by assuming that appellant was initially appointed without complying with the equality clause enshrined in Articles 14 and 16 of the Constitution of India and the relevant regulations. While doing so, the learned Single Judge failed to notice that in the reply filed on behalf of the corporation before the Labour Court, the appellant's claim for reinstatement with back wages was not resisted on the ground that his initial appointment was illegal or unconstitutional and that neither any evidence was produced nor any argument was advanced in that regard. Therefore, the Labour Court did not get any opportunity to consider the issue whether reinstatement should be denied to the appellant by applying the new jurisprudence developed by the superior courts in recent years that the court should not pass an award which may result in perpetuation of illegality. This being the position, the learned Single Judge was not at all justified in entertaining the new plea raised on behalf of the corporation for the first time during the course of arguments and over turn an otherwise well reasoned award passed by the Labour Court and deprive the appellant of what may be the only source of his own sustenance and that of his family.

12. Another serious....

13. It is true that in the writ petition filed by it, the corporation did plead that the dispute raised by the appellant was not an industrial dispute because he had not worked continuously for a period of 240 days, the learned Single Judge rightly refused to entertain the same because no such argument was advanced before him and also because that plea is falsified by the averments contained in para 2 of the reply filed on behalf of the corporation to the statement of claim wherein it was admitted that the appellant was engaged as work charge Motor Mate for construction work on 5.3.1986 and he worked in that capacity and also as Work Munshi from 5.3.1986 to 3.10.1987 and, as mentioned above, even after expiry of the period of three months" specified in order dated 5.2.1987, the appellant continued to work till 5.7.1988 when first notice of retrenchment was issued by the Managing Director of the corporation. Therefore, it was not open for the corporation to contend that the appellant had not completed 240 days service. Moreover, it is settled law that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of

240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of "last come first go" without any tangible reason. In *Central Bank of India Vs. S. Satyam and others*, this Court considered an analogous issue in the context of Section 25-H of the Act, which casts a duty upon the employer to give an opportunity to the retrenched workmen to offer themselves for re-employment on a preferential basis. It was argued on behalf of the bank that an offer of re-employment envisaged in Section 25-H should be confined only to that category of retrenched workmen who are covered by Section 25-F and a restricted meaning should be given to the term "retrenchment" as defined in Section 2(oo). While rejecting the argument, this Court analysed Section 25-F, 25-H, Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1957, referred to Section 25-G and held:

Section 25-H then provides for re-employment of retrenched workmen. It says that when the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons. Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1957 prescribe the mode of re-employment. Rule 77 requires maintenance of seniority list of all workmen in a particular category from which retrenchment is contemplated arranged according to seniority of their service in that category and publication of that list. Rule 78 prescribes the mode of re-employment of retrenched workmen. The requirement in Rule 78 is of notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for re-employment. Shri Pai contends that Rules 77 and 78 are unworkable unless the application of Section 25-H is confined to the category of retrenched workmen to whom Section 25-F applies. We are unable to accept this contention.

Rule 77 requires the employer to maintain a seniority list of workmen in that particular category from which retrenchment is contemplated arranged according to the seniority of their service. The category of workmen to whom Section 25-F applies is distinct from those to whom it is inapplicable. There is no practical difficulty in maintenance of seniority list of workmen with reference to the particular category to which they belong. Rule 77, therefore, does not present any difficulty. Rule 78 speaks of retrenched workmen eligible to be considered for filling the vacancies and here also the distinction based on the category of workmen can be maintained because those falling in the category of Section 25-F are entitled to be placed higher than those who do not fall in that category. It is no doubt true that persons who have been retrenched after a longer period of service which places them higher in the seniority list are entitled to be considered for re-employment earlier than those placed lower because of a lesser period of service. In this manner a workman falling in the lower category because of not being covered by Section 25-F can claim consideration for re-

employment only if an eligible workman above him in the seniority list is not available. Application of Section 25-H to the other retrenched workmen not covered by Section 25-F does not, in any manner, prejudice those covered by Section 25-F because the question of consideration of any retrenched workman not covered by Section 25-F would arise only, if and when, no retrenched workman covered by Section 25-F is available for re-employment. There is, thus, no reason to curtail the ordinary meaning of "retrenched workmen" in Section 25-H because of Rules 77 and 78, even assuming the rules framed under the Act could have that effect.

The plain language of Section 25-H speaks only of re-employment of "retrenched workmen". The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning of "retrenchment" given in Section 2(oo). Section 25-F also uses the word "retrenchment" but qualifies it by use of the further words "workman...who has been in continuous service for not less than one year". Thus, Section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman...who has been in continuous service for not less than one year". It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25-F."

14. The ratio of the above noted judgment was reiterated in *Samishta Dube Vs. City Board, Etawah and Another*, In that case, the Court interpreted Section 6-P of the U.P. Industrial Disputes Act, 1947, which is *pari materia* to Section 25-G of the Act, and held:

Now this provision is not controlled by conditions as to length of service contained in Section 6-N (which corresponds to Section 25-F of the Industrial Disputes Act, 1947). Section 6-P does not require any particular period of continuous service as required by Section 6-N. In *Kamlesh Singh v. Presiding Officer* in a matter which arose under this very Section 6-P of the U.P. Act, it was so held. Hence the High Court was wrong in relying on the fact that the appellant had put in only three and a half months of service and in denying relief. See also in this connection *Central Bank of India v. S. Satyam*.

Nor was the High Court correct in stating that no rule of seniority was applicable to daily-wagers. There is no such restriction in Section 6-P of the U.P. Act read with Section 2(z) of the U.P. Act which defines "workman".

It is true that the rule of "first come, last go" in Section 6-P could be deviated from by an employer because the section uses the word "ordinarily". It is, therefore, permissible for the employer to deviate from the rule in cases of lack of efficiency or loss of confidence, etc., as held in *Swadesamitran Ltd. v. Workmen*. But the burden will then be on the employer to justify the deviation. No such attempt has been made in the present case. Hence, it is clear that there is clear violation of Section 6-P of the U.P. Act.

15. The distinction between Sections 25-F and 25-G of the Act was recently reiterated in *Bhogpur Coop. Sugar Mills Ltd. v. Harmesh Kumar* (2006) 13 SCC 28, in the following words:

We are not oblivious of the distinction in regard to the legality of the order of termination in a case where Section 25-F of the Act applies on the one hand, and a situation where Section 25-G thereof applies on the other. Whereas in a case where Section 25-F of the Act applies the workman is bound to prove that he had been in continuous service of 240 days during twelve months preceding the order of termination; in a case where he invokes the provisions of Sections 25-G and 25-H thereof he may not have to establish the said fact. See: *Central Bank of India v. S. Satyam*, *Samishta Dube v. City Board, Etawah*, *SBI v. Rakesh Kumar Tewari* and *Jaipur Development Authority v. Ram Sahai*.

16. In view of....

17. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub-serve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J, opined that "the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State" - *The State of Mysore Vs. The Workers of Gold Mines*,

18. In *Y.A. Mamarde and Nine Ors. and Ghanshyam and Others Vs. Authority under the Minimum Wages Act (Small Causes Court) Nagpur and Another*, this Court, while interpreting the provisions of Minimum Wages Act, 1948, observed:

The anxiety on the part of the society for improving the general economic condition of some of its less favoured members appears to be in supersession of the old principle of absolute freedom of contract and the doctrine of *laissez faire* and in recognition of the new principles of social welfare and common good. Prior

to our Constitution this principle was advocated by the movement for liberal employment in civilised countries and the Act which is a pre-constitution measure was the offspring of that movement. Under our present Constitution the State is now expressly directed to endeavour to secure to all workers (whether agricultural, industrial or otherwise) not only bare physical subsistence but a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure. This Directive Principle of State Policy being conducive to the general interest of the nation as a whole, merely lays down the foundation for appropriate social structure in which the labour will find its place of dignity, legitimately due to it in lieu of its contribution to the progress of national economic prosperity.

19. The preamble and various Articles contained in Part IV of the Constitution promote social justice so that life of every individual becomes meaningful and he is able to live with human dignity. The concept of social justice engrafted in the Constitution consists of diverse principles essentially for the orderly growth and development of personality of every citizen. Social justice is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic devise to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation of every section of the society. In a developing society like ours which is full of unbridgeable and ever widening gaps of inequality in status and of opportunity, law is a catalyst to reach the ladder of justice. The philosophy of welfare State and social justice is amply reflected in large number of judgments of this Court, various High Courts, National and State Industrial Tribunals involving interpretation of the provisions of the Industrial Disputes Act, Indian Factories Act, Payment of Wages Act, Minimum Wages Act, Payment of Bonus Act, Workmen's Compensation Act, the Employees Insurance Act, the Employees Provident Fund and Miscellaneous Provisions Act and the Shops and Commercial Establishments Act enacted by different States.

36. Therefore, it is clearly the duty of the judiciary to promote a social order in which justice, economic and political informs all the institution of the national life. This was also made clear in *Kesavananda Bharati* (supra) by Justice Mathew at para 1728, p. 1952 and His Lordship held that the Directive Principles nevertheless are:

&fundamental in the governance of the country and all the organs of the State, including the judiciary are bound to enforce those directives. The Fundamental Rights themselves have no fixed content; most of them are mere empty vessels into which each generation must pour its content in the light of its experience.

37. In view of such clear enunciation of the legal principles, I am in clear agreement with Brother J. Singhvi that this Court has a duty to interpret statutes

with social welfare benefits in such a way as to further the statutory goal and not to frustrate it. In doing so this Court should make an effort to protect the rights of the weaker sections of the society in view of the clear constitutional mandate discussed above.

38. Thus, social justice, the very signature tune of our Constitution and being deeply embedded in our Constitutional ethos in a way is the arch of the Constitution which ensures rights of the common man to be interpreted in a meaningful way so that life can be lived with human dignity.

39. Commenting on the importance of Article 38 in the Constitutional scheme, this Court in *Sri Srinivasa Theatre and Others Vs. Government of Tamil Nadu and Others*, held that equality before law is a dynamic concept having many facets. One facet - the most commonly acknowledged - is that there shall be not be any privileged person or class and that none shall be above the law. This Court held that Article 38 contemplates an equal society [Para 10, pg. 651].

40. In *Indra Sawhney and Ors. v. Union of India and Ors.* 1992 Supp. (3) SCC 217, the Constitution Bench of the Supreme Court held that:

The content of the expression "equality before law" is illustrated not only by Articles 15 - 18 but also by the several articles in Part IV, in particular, Articles 38, 39, 39-A, 41 and 46.

[at Paras 643, pg. 633]

41. Therefore, the Judges of this Court are not mere phonographic recorders but are empirical social scientists and the interpreters of the social context in which they work. That is why it was said in *Authorised Officer, Thanjavur and Another Vs. S. Naganatha Ayyar and Others*, while interpreting the Land Reforms Act, that beneficial construction has to be given to welfare legislation. Justice Krishna Iyer, speaking for the Court, made it very clear that even though the judges are "constitutional invigilators and statutory interpreters" they should "also be responsive to part IV of the Constitution being "one of the trinity of the nation"s appointed instrumentalities in the transformation of the socio-economic order". The Learned Judge made it very clear that when the Judges when "decode social legislation, they must be animated by a goal oriented approach" and the Learned Judge opined, and if I may say so, unerringly, that in this country "the judiciary is not a mere umpire, as some assume, but an activist catalyst in the constitutional scheme." [Para 1, p. 468]

42. I am in entire agreement with the aforesaid view and I share the anxiety of my Lord Brother Justice Singhvi about a disturbing contrary trend which is discernible in recent times and which is sought to be justified in the name of globalisation and liberalisation of economy.

43. I am of the view that any attempt to dilute the constitutional imperatives in order to promote the so called trends of "Globalisation", may result in precarious consequences. Reports of suicidal deaths of farmers in thousands from all over

the country along with escalation of terrorism throw dangerous signal. Here if we may remember Tagore who several decades ago, in a slightly different context spoke of eventualities which may visit us in our mad rush to ape western ways of life. Here if I may quote the immortal words of Tagore:

We have for over a century been dragged by the prosperous West behind its chariot, choked by the dust, deafened by the noise, humbled by our own helplessness and overwhelmed by the speed. We agreed to acknowledge that this chariot-drive was progress, and the progress was civilization. If we ever ventured to ask "progress toward what, and progress for whom", it was considered to be peculiarly and ridiculously oriental to entertain such ideas about the absoluteness of progress. Of late, a voice has come to us to take count not only of the scientific perfection of the chariot but of the depth of the ditches lying in its path.

See Ramesh Kumar Vs. State of Haryana,

13. In view of above observations made by Apex Court and considering recent legal position and in absence of evidence from employer side, the evidence of workman must have to be accepted and on that basis if 240 days continuous service is established preceding 12 months from the date of termination and Section 25-F has not been complied then Labour Court is having jurisdiction and powers to grant appropriate relief considering the facts and circumstances of each case. Therefore, contention raised by learned advocate Mr. Sojitra cannot be accepted. According to my opinion each award has been passed by Labour Court with application of mind and findings given by Labour Court cannot be considered to be unreasonable or arbitrary. On the contrary, findings are based on legal evidence. Therefore, no error is committed by Labour Court while passing such award, which requires interference by this Court while exercising powers under Article 227 of Constitution of India. Hence, there is no substance in present petitions, therefore dismissed. Notice discharged.