
(1997) 09 MAD CK 0043

In the Madras High Court

Case No : Writ Petition No's. 5820 of 1994 and Others

Vinobha H.B. and Others

APPELLANT

Vs

Hindustan Photo Films and Another

RESPONDENT

Date of Decision : 12-09-1997

Acts Referred:

Constitution of India, 1950 — Article 16
Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1999) 3 LLJ 60 : (1998) 1 MLJ 168

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : N.R. Chandran and R. Natarajan, for the Appellant; P. Raghunatha Reddy, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Since all the petitioners are challenging the order of termination of their services, passed by the respondents by the

following common order all the writ petitions may be disposed of.

2. For the convenience, I shall refer the facts in W.P.No. 5820 of 1994. The said petition is filed by persons numbering about 40, all working at

Hindustan Photo Films, Indu Nagar, Ootacamund. According to them, all of them were appointed as trainees (helpers). The Hindustan Photo

Films is a Government of India undertaking and it is an instrumentality of the State. It is amenable to the jurisdiction of this Court, hence, the writ

petitions against the respondents are maintainable. It is further contended that even though they were appointed as trainees, the petitioners are

performing various clerical work, skilled, unskilled, manual and, technical. They would come within the term "employee" as defined in the Standing

Orders applicable to the petitioners. The petitioners are workmen, as defined in the Industrial Disputes Act, 1947 (hereinafter referred to as "The

Act"). They had worked more than 240 days in a calendar year. The petitioners are described as trainees, trainee searcher, trainee office

Assistant, etc. But, they are discharging regular duties as regular employees. Some of the trainees had been absorbed and the respondents do not

have any specific programme or rules as to how the trainee should be absorbed and it is mostly left to the whims and fancies of the respondents.

Suddenly, the respondents decided to terminate the services of several trainees, which include both management executive and worker trainees. It

is further contended that the action of the respondents is opposed to provisions of the Act and in any event, the services of the petitioners cannot

be terminated without giving an opportunity to put forth their case. Since similar contentions were raised in all the above writ petitions, I am not

referring the same.

3. The respondents filed a counter-affidavit disputing various averments made by the petitioners. The case of the respondents as seen from the

counter-affidavit is briefly stated hereunder :- The respondent company is a Government of India undertaking and is engaged in manufacture and

marketing of photo-sensitized products. It has a factory for manufacturing purpose at "Indu Nagar", Ootacamund, Nilgiris District, Tamil Nadu. A

little over 3,300 persons were employed in various categories. Due to financial crisis, the respondent company Board passed a resolution

requesting the Board for Industrial and Financial Reconstruction (BIFR) for declaring the respondent company as a sick industry. Further, it is

submitted that the respondent company does not have any vacancy to be filled up. It is also contended that the present writ petitions are not

maintainable, since the General Secretary of the Indu Employees' Progressive Union, have raised an industrial dispute on March 15, 1994,

espousing the cause of trainees and the same is pending for adjudication before the Labour Officer at Ootacamund, regarding their alleged

termination. It is further submitted that apart from the Indu Progressive Socialist Centre, HPF, affiliated with AITUC, HPF also have raised an

industrial dispute and the same is pending before the Labour Officer, Ootacamund. In such circumstances, without pursuing, the said remedy and

without deciding the matter, namely, whether the trainees are entitled to the benefits under the provisions of the Act, the same cannot be considered, while exercising the extraordinary jurisdiction under Article 226 of the Constitution of India in these writ petitions. It is further contended that the writ petitioners were engaged as trainees on specific terms and conditions of contract. They were paid a consolidated stipend of Rs. 800 for a specific period and it was made clear in the engagement letter that it was purely temporary and will not make them eligible for permanent employment or continuous employment in the respondent company. Hence, non-renewal of contract of temporary service of the petitioners as trainees squarely falls within the ambit of Section 2(oo)(bb) of the Act. The writ petitioners were not appointed against any post or in any vacancy. The company has adopted some measures to relieve the regular employees by offering voluntary retirement as suggested by the Manpower Study Committee. Hence, in the absence of any vacancy or post, the respondents cannot be compelled, either to regularise or to continue the petitioners as trainees. If the petitioners have any grievance, it is open to them to approach the appropriate forum under the provisions of the Act. The period of training is purely temporary and for a fixed term. In such circumstance, there is no merit in either of the writ petitions and the respondents pray for, dismissal of all the writ petitions.

4. In the light of the above pleadings, I have heard Mr. N.R. Chandran, learned senior counsel for all the petitioners except in W.P.No. 9684 of 1994, Mr. R. Natarajan, learned counsel for the petitioner in W.P.No. 9684 of 1994 and Mr. Raghunatha Reddy, learned counsel for the respondents in all the writ petitions.

5. Mr. N.R. Chandran, learned senior counsel has raised the following submissions :- (1) The petitioners are workmen working under the HPF for more than 240 days in a calendar year, hence, the order of termination without notice and without giving retrenchment compensation is illegal and in violation of Section 25-F of the Act. (2) Since the termination of, the services of the petitioners involves civil consequences, it should conform to the principles of natural justice. (3) Even though the petitioners were initially appointed as trainees for a particular period, since they were allowed to continue even after expiry of the contract, the respondents ought to have

regularised their services. In support of the above propositions, he relied on the following decisions:

(1) Rajendran v. The Director (Personnel) The Project and Equipment Corporation of India Ltd., 1991 W.L.R. 644, (2) Malaichamy v. T.N.WS.

and D.B., ILR 1996 Mad 1094, (3) Ilango v. Union of India, ILR 1996 Mad. 1116, (4) P. Shanmuganathan v. The Registrar, Tamil University,

Thanjavur, 1997 W.L.R. 180, (5) Dilip Manmitrao v. Zilla Parishad 1989 II LLJ 590, (6) 1987 2 Lab.I.C. 1259, (7) D.K. Yadav Vs. J.M.A.

Industries Ltd., , (8) Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh

and Others, , (9) Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, , (10) Bhagwati Prasad

Vs. Delhi State Mineral Development Corporation, ,(11) The Employees" State Insurance Corporation and Another Vs. The Tata Engineering and

Locomotive Co. Ltd. and Another, , (12) The President, Srirangam Co-operative Urban Bank Ltd. Vs. The Presiding Officer, Labour Court and

K. Nagarajan, , (13) The Director Small Industries Service, Madras v. Mumtaz Banu, ILR 1996 Mad 1257.

6. Mr.Natarajan, learned counsel for the petitioner in W.P.No. 9684 of 1994 after highlighting his case, adopted the arguments of the learned senior counsel.

7. On the other hand, Mr. P. Raghunatha Reddy, learned counsel appearing for the respondents, raised the following contentions :- (1) The writ

petitions are not maintainable, since the petitioners have other effective remedy under Industrial Disputes Act. (2) Disputed questions of fact cannot

be decided in the writ proceedings and in view of conciliation proceeding pending before the Labour Officer, all the writ petitions are liable to be

dismissed. (3) All the petitioners were appointed under a contract for a specific period and for specific terms, after expiry of the period, they are

entitled to terminate the services of the petitioners u/s 2(oo)(bb) of the Industrial Disputes Act. In support of his contentions, he has relied on the

following decisions:

(1) Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, , (2) Banarsi Das v. Labour Court, 1995 I L.L.J.190. (3)

State of Rajasthan and others Vs. Rameshwar Lal Gahlot, , (4) Delhi

Development Horticulture Employees" Union Vs. Delhi Administration, Delhi and others, , (5) State of Haryana and others Vs. Piara Singh and others etc. etc., , (6) Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc., , (7) Zilla Contractors Workers Union v. G.M.A. T. Pariyojna, (1993) II LLJ 464 (AP) (9) Achyutanand Singh v. Union of India, 1996 I L.L.J.213.

8. I have carefully considered the rival submissions.

9. All the petitioners were appointed as trainees for a particular period and based on certain terms and conditions. In order to appreciate the case

of both parties, it is better to look into the appointment order. The appointment order of one V. Mohan dated September 21, 1992 is hereby

extracted :

Hindustan Photo Films Manufacturing Co.Ltd.

Regd. Office,

Indu Nagar

Ootacamund 643 005

Dated 21.9.1992

Shri V. Mohan,

S/o. K. Viswanathan,

C. No. 1399

Wood Work Shop

HPF/Ooty

Ref. No.pl/8/8

Sir,

We are pleased to offer you an appointment as Trainee (Helper-Security) on the following terms and conditions:

(i). You will be paid a consolidated stipend of Rs.800 p.m. for a period of one year. During the above period, your services are liable to be terminated at any time without any notice.

(ii.) You should note that the temporary appointment will not make you eligible to claim any right for any permanent job or for continuous employment in this company.

(iii.) During the period of your temporary appointment in the company, you will be governed by the rules and regulations of the company which may be amended or altered or extended from time to time.

(iv.)

2.

...

...

...

Yours faithfully,

Sd/-

(Chief Manager)

Human Resources Development.

The reading of the above appointment order shows that all the petitioners were initially appointed as Trainees in various sections of the respondent

Factory. The period of training is one year and they were paid consolidated stipend of Rs. 800 per month for the said period. Apart from this, the

respondents made it clear that the temporary appointment will not make the petitioners eligible to claim any right for any permanent job or for

continuing employment in the respondent company. They also made it clear that they will be governed by the rules and regulations of the Company.

There is no dispute that all the petitioners have accepted the above terms and conditions and were appointed as trainees in the respondent

company.

10. Now, I shall refer the order of termination. Though the petitioners have not approached this Court to quash the said order of termination, since,

according to them, they were not served with the termination order, they couched the prayer for mandamus directing the respondents to revoke the

order of termination passed by the respondents. I hereby extract the order of termination passed and given in the typed set of W.P.No. 5820 of

1994 :

Ref:pl/8/8 HRD Division

Dated 4-2-1994

NOTE

The temporary engagement of the trainees as per list attached is no longer required and they are relieved of their training with effect from 7-2-1994

A.N.

Sd/

GENERAL MANAGER.

Even though the petitioners were appointed in the year 1992 for a period of one year, they were relieved of their training only with effect from

February 7, 1994. Similar orders have been passed in all the cases.

11. It is the vehement contention of the learned senior counsel for the petitioners that even though the petitioners were appointed as trainees, after expiry of the term, they were not terminated from their services and on the other hand, they were asked to work all types of works similar to what

the regular permanent employees were doing. In such circumstance, according to the learned senior counsel, the petitioners are workmen within

the definition of Section 2(s) of the Industrial Disputes Act as well as the Standing Orders applicable to the petitioners. If the above contention is

accepted and the fact that they had worked more than 240 days is proved, their services cannot be terminated without following the mandatory

provision u/s 25-F of the Act. Even otherwise, as alternative point, the learned senior counsel submitted that by virtue of their long service,

terminating their appointments without giving any opportunity is violative of principles of natural justice.

12. Before analysing the decisions referred to by both counsel, I shall discuss some of the factual position. It is contended by the respondents that

in view of financial crisis, the Manpower Study Committee consisting of senior officials of the company, which assessed the man power of the

respondent company, suggested for reduction of the man power for which the respondent company has also introduced Voluntary Retirement

Scheme and has been relieving the regular employees in batches as approved by the Government of India. These measures are taken to reduce

financial loss incurred by the respondent company and to make the company viable. In such circumstance, it is the claim of the respondents that in

the absence of any vacancy or post, the respondents cannot be compelled either to regularise or to continue the writ petitioners as trainees.

Further, the action of the respondents in relieving the petitioners is for bonafide

reasons and therefore, the action of the respondents is fully justified.

On the other hand, it is the definite contention of the petitioners that even after the expiry of the one year term, they were asked to do all types of

work along with regular employees. They are performing various clerical work skilled or unskilled, manual, technical and clerical work. They

would come within the term ""employee"" as defined in the Standing Order. The petitioners are workmen, as defined in Section 2(s) of Industrial

Disputes Act. The term ""employee"" defined in the Standing Orders and u/s 2(3) of the I.D.Act is as follows :

Employee"" means any person (including an apprentice) employed in the Company to do any skilled or unskilled, manual, supervisory, technical or

clerical work for hire or reward, whether the terms of employment be expressed or implied but excludes any such person who is employed mainly

in a managerial or administrative capacity or on confidential work, or who being employed in a supervisory capacity draws wages exceeding Rs.

500 p.m. or exercises, either by the nature of the duties attached to the office held by him or by reason of the powers vested in him, functions,

mainly of a managerial nature.

13. Rajendran, K. v. The Director (Personnel) The Project and Equipment Corporation of India Limited, (supra) decided by

SOMASUNDARAM, J., is a case where termination of service of a worker on the ground of non-renewal of his contract, even though the work

for which he was employed subsists, the conduct of the employer resorting to contractual employment for a limited period is held as a device to

take it out of Section 2(oo). In that case, the respondent therein selected the petitioner for the post of ""messenger"" for its Madras Office by the

letter dated March 24, 1983 and appointed the petitioner therein for the post of messenger for a period of 44 days. After expiry of the said period,

after keeping the petitioner for sometime, ultimately the respondent informed the petitioner that his service is no longer required after the expiry of

his tenure and terminated his service immediately. The said order was impugned in that writ petition. The case of the petitioner in that case is that it

amounts to Section 2(oo) of the Act. On the other hand, it is the contention of the Management that it amounts to Section 2(bb) of the Act. The

learned Judge after considering the earlier case laws elaborately on this subject,

ultimately came to the conclusion that "the termination of the service of the petitioner in that case amounts to retrenchment within the meaning of Section 2(oo) of the Act and the Management has not complied with the mandatory provision of Section 25-F of the Act by paying the retrenchment compensation to the petitioner" and, therefore, quashed the impugned order of termination in that case. The learned Judge has apprised that in spite of terminating the service of the petitioner, the respondent Management in that case attempted to induct fresh persons to do the same work. In such situation, the learned Judge after holding that when the regular work is in existence, the termination is bad without following Section 25-F of the Act. In our case also even though the respondents have explained in the counter-affidavit regarding the financial position after passing the order of termination they attempted to induct new hands in their place. In such a situation the conclusion of SOMASUNDARAM, J., is squarely applicable, to our cases.

14. In *Malaichamy v. T.N.W.S. and D.B.*, (supra) LAKSHMANAN, J., has held that "any termination without following the procedure established by law would violate Article 21 of the Constitution of India." If an employee is terminated without fulfilling Section 25-F of the Act, certainly the order of termination is liable to be set aside. In our case since all the petitioners were allowed to work in various sections along with regular employees till the date of termination, they cannot be termed as "trainees" and hence any order contrary to Section 25-F of the I.D. Act is vitiated.

15. In *Ilango v. Union of India*, (supra), it is held by this Court that the principle of "last come first go" must be observed. Since, in the said decision, the persons appointed earlier were terminated and juniors to them were retained by applying the said principle, the learned Judge granted relief in favour of the petitioners. In our case, specific averments have been made to the effect that "several juniors to the petitioners had been absorbed whereas the petitioners are continued as trainees." Further the order of appointment itself clearly states that the petitioners would be governed by the Rules and Regulations of the Company.

16. In *P. Shanmuganathan v. The Registrar, Tamil University, Thanjavur* (supra), Division Bench of this Court reiterated that non-compliance of

Section 25-F vitiates the termination order. In that case, the petitioner therein was engaged by the respondent for a particular period and also

extended subsequently for a limited period and thereafter his service was terminated without following Section 25-F. In our case in view of

continuous employment even after expiry of the term non-compliance of Section 25-F vitiates the termination order.

17. In Dilip Hanumantrao Shirke and others Vs. Zilla Parishad Yavatmal and others, , the learned single Judge of the Bombay High Court, while

interpreting Section 2(oo)(bb) of the Act, has held that the sub-clause (bb) would apply only to such cases where the work ceases with

employment or the post itself ceases to exist or such other analogous cases where the contract of employment is found to be fair, proper and

bonafide. When the petitioners were asked to work in various sections even after expiry of the one year term it clearly shows that it falsifies the

case of the management for revoking Section 2(oo)(bb) of the Act.

18. In D. Chenniah v. Divisional Manager, A.P.S.T. Corporation, 1987 Lab.I C. 1259, the learned single Judge of the Andhra Pradesh High

Court has set aside the order of termination which was passed without notice and without any reasons. In that case, the petitioner was appointed

as a conductor on a contract basis. After selection, the petitioner in that case was allotted to the appropriate Depot in the time-scale of Rs. 440-

15-575-20-715 plus usual allowances as per rules. During his employment an allegation was made that he committed certain irregularities. After

issuing a charge memo, on the same day the impugned order of termination was passed and the same was challenged before the Andhra Pradesh

High Court. In such circumstances, the learned single Judge of that High Court has held that the petitioner's termination amounts to retrenchment

and inasmuch as he has admittedly put in a service of more than 240 days he is entitled to the benefit of Section 25-F of the Act. Even if the

appointment is on "contract basis" and in spite of the fact that certain "charges" were pending against him termination without following mandatory provisions is bad.

19. In D.K.Yadav v. J.M.A. Industries Ltd.,(supra), their Lordships of the Supreme Court have observed that an order involving civil

consequences ought to conform with the principles of natural justice and

accordingly, the affected person must be given an opportunity. Here also after keeping the petitioners in the employment for a period of two years, the impugned order of termination without notice violates the principles of natural justice.

20. In *Punjab L.D. and R.C. Ltd. v. P.C. Lab. Court*, (supra), Their Lordships of the Supreme Court have expressed that "the expression

"retrenchment" is not to be understood in its wider literal meaning to mean termination of service of workmen for any reason whatsoever". Their

Lordships have given wider meaning for the word "retrenchment". By applying various principles and precedents to the definition in Section 2(oo):

of the Act, Their Lordships further held that "retrenchment" means the termination by the employer of the service of a workman for any reason

whatsoever except those expressly excluded in the section.

21. The other two decisions, namely, *Daily R.C. P&T Departments. Union of India*, (supra) and *Bhagwati Prasad v. Delhi State Mineral*

Development Corporation (supra), show that persons serving for a long period have to be, regularised. Here, the factual position shows that even

though all the petitioners were appointed only as trainees for a fixed period they were not permitted after the expiry of the term. They were

assigned various work for the last 2 years prior to the impugned order. Hence the respondents are duty bound to consider the length of service.

22. Finally, by relying on the decision of the Apex Court in *E.S.I. Corporation v. Tata Engineering and Company*, (supra) the learned senior

counsel contended that "trainees" are called "apprentices", hence, in view of the definition of workman in Section 2(s) of the Act, the respondents

have to fulfil the conditions imposed in Section 25-F of the Act as well as to follow the principles of natural justice.

23. Now, I shall consider the decisions referred to by the learned counsel for the respondents. In *Director, Institute of Management Development*

v. Pushpa Srivastava, (supra), Their Lordships of the Supreme Court have observed thus at p. 193 :

Where the appointment is purely on ad hoc basis and is contractual and by efflux of time, the appointment comes to an end, the person holding

such post can have no right to continue in the post. This is so even if the person is continued from time to time on "ad hoc" basis for more than a

year. He cannot claim regularisation in service on the basis that he was appointed on ad hoc basis for more than a year.

In our case the respondents did not terminate the petitioners on the expiry of their term. On the other hand, they directed the petitioners to attend

all types of work along with regular workmen continuously. Hence the above decision is not applicable to our cases.

24. In *Banarsi Das v. Labour Court*, (supra), the Division Bench of the Punjab and Haryana High Court after referring Section 2(oo)(bb) of the

Act has held that if the service of workman is no longer required and the workman is terminated, it cannot be termed as retrenchment u/s 2(oo) of

the Act. In our case, as stated earlier, the petitioners were asked to work in various sections along with the other permanent employees even after

the expiry of the term, hence the said decision is not helpful to the respondents' case.

25. The following observation in the decision of the Apex Court reported in *State of Rajasthan v. Rameshwar Lal Gahlot*, (1996) 1 LLJ 888

(supra) is pressed into service by the respondents at p. 889:

When the appointment is for a fixed period, unless there is finding that power under clause (bb) of Section 2(oo) was misused or vitiated by its

mala fide exercise, it cannot be held that the termination is illegal.

In our case, the petitioners have already demonstrated that their services were utilised even after the expiry of the prescribed term and they are

doing all kinds of work along with the regular employees. As a matter of fact, it is also brought to my notice that by retaining juniors, the

respondents terminated the petitioners who are seniors. In view of the uncontroverted factual position in the affidavit the said decision is also not

applicable to our cases.

26. In *D.D.M. Employees Union v. Delhi Administration*, (supra). Their Lordships of the Supreme Court have observed that persons employed

under the Scheme cannot claim regularisation merely because they have put in more than 240 days service. Admittedly none of the petitioners were

appointed for any particular Scheme, hence the principle laid down in that decision is not applicable to our cases.

27. The following passage in a decision of the Apex Court reported in *State of Haryana v. Piara Singh* (supra), has been relied on by the

respondents at p. 950 :

It is difficult to sustain the direction that all those ad hoc temporary employees who have continued for more than one year should be regularised.

This direction is given without reference to the existence of vacancies. In effect, this direction means that every adhoc temporary employee who

has been continued for one year should be regularised even though (a) no vacancy is available, (b) he was not sponsored by Employment

Exchange nor was he appointed in pursuance of a notification calling for application, (c) he was not eligible and/or qualified for the post at the time

of his appointment and (d) his service record is not satisfactory. There can be no rule of thumb in such matters. Relief must be moulded in each

case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. Judged from this stand

point, the impugned directions must be held to be totally untenable and unsustainable.

As stated earlier, in all these cases without any objection the petitioners were asked to continue all types of work even after expiry of the term

along with the regular employees. Even though the respondents say there is some financial crisis, the petitioners have specifically averred in their

affidavit that by terminating the services of the petitioners the respondents have taken all efforts to recruit new hands. In such a situation, I am of the

view that the decision of the Apex Court referred to above is not helpful to the respondents" case.

28. By relying on a decision of the Supreme Court reported in Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others, , the

respondents contended that the petitioners have effective remedy under the Industrial Disputes Act, hence the matter cannot be considered under

Article 226 of the Constitution of India. It is true that one of the Unions has raised the issue with the management. However, it is contended by the

petitioners that none of them are members of the said Union. In view of the fact that work is available in the respondents" company and having

allowed the petitioners to work in various sections for more than two years without reference to the contract and without giving any reason, by the

impugned order the respondents have terminated the services of the petitioners, hence in the light of the violation of the mandatory provisions of the

Industrial Disputes Act and of the fact that violation of principles of natural justice, the petitioners are entitled to approach this Court. In the

peculiar circumstances of these cases the said decision of the Apex Court is also not helpful to the respondents. For the same reason, the decision

of Allahabad High Court rendered in *Zilla Contractors Workers Union v. G.M.A.T. Pariyoina* (supra), is distinguishable.

29. By relying on a decision of Patna High Court reported in *Achyutanand Singh v. Union of India*, (supra), the learned counsel for the

respondents submitted that a writ Court should not ordinarily entertain a writ application on the ground of alleged violation of the provisions of the

Industrial Disputes Act as a writ Court cannot convert itself into an Industrial Court. This Court as well as the Apex Court in many decisions have

held that if there is a violation of the mandatory provisions of the Industrial Disputes Act as well as violation of the principles of natural justice, it is

always open to the aggrieved workman to approach this Court under Article 226 of the Constitution of India. Hence with great respect, I am

unable to share the view expressed in the said decision of the Patna High Court.

30. To sum up, I have already extracted the definition of the term "workman" in Industrial Disputes Act, Section 2(s) of the Act which includes an

apprentice and therefore an apprentice is covered and comes within the definition of workman. This aspect has been considered by the Apex

Court in a decision reported in *E.S.I. Corporation v. Tata Engineering and Company*, (supra). In that case, the question was whether an

apprentice is a workman under the Employees' State Insurance Act. Their Lordships of the Supreme Court in the said decision have held that an

apprentice is a trainee and that in the Employees' State Insurance Act the definition of workman does not include an apprentice as in the case of

Industrial Disputes Act and therefore, not a workman. The relevant observations are as follows :

Again we find that where the legislature intends to include apprentice in the definition of a worker it has expressly done so. For example, the

Industrial Disputes Act, 1947, which is a piece of beneficial labour welfare legislation of considerable amplitude defines "workmen" u/s 2(s) of that

Act and includes apprentice in express terms. It is significant that although the legislature was aware of this definition u/s 2(s) under the Industrial

Disputes Act, 1947, the very following year while passing the Employees' State Insurance Act, 1948, it did not choose to include apprentice while defining the word "employee" u/s 2(9) of the Employees' State, Insurance Act, 1948. Such a deliberate omission on the part of the legislature can be only attributed to the well-known concept, of apprenticeship which the legislature assumed and took note of, for the purpose of the Act. This is not to say that if the legislature intended it could not have enlarged the definition of the word "employee" even to include the "apprentice" but the legislature did not choose to do so.

In view of the express definition u/s 2(s) of the Industrial Disputes Act, the contention of the respondents that the petitioners are not workmen cannot be accepted. Hence I hold that the petitioners who are trainees initially for a period of one year and continued to work for by the respondents for more than two years are workmen within the meaning of Industrial Disputes Act. I have already discussed whether the order of termination is a retrenchment. The Supreme Court in a decision reported in Punjab L.D. and R.C. Ltd. v. P.C. Lab. Court (supra), reiterated the principles that any order of termination will be retrenchment. It is not disputed by the management that the petitioners herein have worked for more than 240 days. Therefore, Chapter V-A of the Industrial Disputes Act would apply and the management is bound to follow Section 25-F of the Act. In other words, they are bound to pay the compensation prescribed under the Act before passing the order of termination. Any order in violation of Section 25-F is void ab initio. The case of the management is that the order of termination even though a retrenchment would be saved by Section 2(oo)(bb) of the Industrial Disputes Act, Section 2(oo)(bb) reads as follows:

(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

The abovesaid contention of the management is not acceptable since the order of termination does not refer to contingencies mentioned in Section 2(oo)(bb) of the Act. Further, the learned counsel for the petitioners demonstrated by producing various orders issued by the respondents to the

effect that even though the petitioners were appointed for a specific term, they are permitted to work even after the expiry of the term. As a matter

of fact, those particulars have been found in the typed-set of papers filed by the petitioners. Finally it is not the case that initially the contract is

being terminated. In this context, the observation of the Andhra Pradesh High Court by HON"BLE mr. jUSTICE JEEVAN REDDY (as he then

was) reported in D. Chenniah v. Divisional Manager, A.P.S.T. Corporation (supra), is relevant. I hereby extract the relevant observation made by

His Lordship in the said judgment:

I am unable to agree with the learned counsel for the corporation that the stipulation in the order of appointment to the effect that ""the services are

liable to be terminated at any time without any notice and without assigning any reasons"" and the termination purporting to be in exercise of that

power is a stipulation in the contract contemplated in Clause (bb). The said clause contemplates a contract which expressly provides for certain

circumstances, or situation (or situations) in which the contract can be terminated. The objects and reasons appended to the Bill (which became

Industrial Disputes (Amendment) Act (49 of 1984) also do not disclose that the said clause was intended to provide for or save such unilateral

clauses imposed by the employer. In the present day realities, such a clause cannot be given too great a sanctity. In my opinion, therefore, the said

clause does not take in the unilateral right reserved by the employer to terminate at any time that too without any notice and without any reason.

Giving effect to the said contention would practically render the protection sought to be extended by the Act to workmen nugatory and it would

make it easy for an employer to insert or introduce such a clause in the contract of employment and on that basis defeat the rights of workman

conferred upon him by the Statute. A literal or liberal interpretation of Clause (bb) may well result in depriving the workmen of the protection

provided by the Act. The said clause has to be read and understood having regard to and in the light of the scheme and object of the Act. I am of

the considered opinion that a termination simpliciter purporting to have been made in pursuance of a clause of the above nature cannot be termed

as a termination under a stipulation contained in the contract within the meaning of Clause (bb). It therefore follows that the petitioner's termination

amounts to retrenchment and inasmuch as he has admittedly put in a service of more than 240 days he is entitled to the benefit of Section 25-F of

the Act. Indisputably, in this case the provisions of said section have not been satisfied. Accordingly it is held that the order of termination is bad.

31. I have also observed that even though the petitioners were called trainees, they are discharging regular work and their services are required

They have been paid over time allowances and increment also. Hence the termination when the work is available will be invalid. The above view of

mine is supported by a decision of this Court reported in *P. Shanmuganathan v. The Registrar, Tamil University, Thanjavur*, (supra).

32. Regarding the arbitrariness it is alleged that the respondents absorbed junior trainees without following the reasonable method of retaining the

seniors as apprentices and have discharged them. The allegations have been specifically pleaded in their affidavits and the same have been

unrebutted. This would violate Article 16 of the Constitution of India and in similar circumstance it has been held in *Ilango v. Union of India*, ILR

(supra) that such termination would offend Article 16 of the Constitution of India. Hence I hold that the order of termination passed by the

respondents is arbitrary and violative of Article 16 of the Constitution of India.

33. I have already considered the argument that such termination is invalid for want of prior notice before termination. In this context, a decision

reported in *D.K.Yadav v. J.M.A. Industries Ltd.*, (supra) was cited, wherein the Supreme Court took a view that any order involving civil

consequences must be preceded by a prior notice, otherwise the principles of natural justice will be violated. In this case, the Standing Order

enabled the employer to dispose with the services of the employee on the happening of a particular contingency. Their Lordships of the Supreme

Court even then took the view that before passing the order in terms of the Standing Order, an opportunity should be given. Finally I must consider

whether the petitioners are entitled to regularisation. In support of the above plea, the petitioners have already demonstrated that they are entitled

to regularisation. Since the petitioners are working for a long period and they are doing skilled and semi skilled manual work, the claim for

regularisation should be considered. In view of the decisions reported in *Daily R.C. Labour, P. & T. Dept. v. Union of India*, (supra) and *Bhagwati*

Prasad v. Delhi State Mineral Development Corporation (supra), which I have already referred in the earlier part of this judgment, I am of the view

that the claim of the petitioners have to be considered by the respondents.

34. Under these circumstances, I am in entire agreement with the arguments advanced by the learned counsel for the petitioners, consequently all

the petitioners are entitled to succeed. The order of the respondents terminating the services of the petitioners cannot be sustained (sic.) and

direction is issued to revoke the order of termination passed by them. As referred to in the last two decisions of the Apex Court, the respondents

are directed to consider the claim of the petitioners for absorption in Photo Films in the larger interest of the workmen as well as the respondents

concerned. In a country like ours where lakhs of labour force are available that too after giving proper training for a particular period and after

keeping them for several years extracting all types of works, it would not be fair on the part of a Public Sector Undertaking all of a sudden to

terminate their services which is contrary to the mandatory provisions of the Industrial Disputes Act as well as in violation of principles of natural

justice. With these words, all the writ petitions are allowed to the extent stated above. No costs.