
(2007) 01 RAJ CK 0104
In the Rajasthan High Court

Zonal Manager, UCO Bank

APPELLANT

Vs

Ram Prakash Prajapati

RESPONDENT

Date of Decision : 19-01-2007

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2007) 114 FLR 314 : (2007) 2 LLJ 664 : (2007) 1 RLW 579

Hon'ble Judges : S.N. Jha, C.J;P.S. Asopa, J

Bench : Division Bench

Judgement

P.S. Asopa, J.—By this appeal appellant UCO Bank (hereinafter referred to as "the Management") has challenged order of the learned Single Judge dated 8.5.2006 dismissing SB Civil Writ Petition No. 259/2001 filed by the Management challenging Award dated 27.12.1999 passed by the Central Industrial Tribunal (hereinafter referred to as "the Tribunal") whereby the respondent Ram Prakash Prajapati (hereinafter referred to as "the Workman") has been ordered to be reinstated with full back wages.

2. The facts, in brief, as per the Management are that the Workman was engaged as part time casual worker at the rate of Rs. 12/- per day on 6.6.1986 for 1 hour and a half in the evening. However, the Workman filed the statement of claim before the Tribunal claiming himself to be full time daily rated worker. The services of the Workman were dispensed with on 18.3.1988 after following the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). Against the said termination order, a dispute was referred to the Tribunal. After hearing the parties, the Tribunal passed Award on 30.3.1992 holding that the provisions of Section 25F of the Act were not complied with and therefore, held the Workman entitled to reinstatement with back wages. In compliance to the aforesaid Award, the Workman joined duty on 18.6.1992. However, on the same very day, again retrenchment order was passed and services of the Workman were dispensed with after complying with the provisions of Section 25F of the Act by giving Rs. 1260/- as notice pay and compensation. The matter was

again referred by the appropriate government to the Tribunal and again, vide Award dated 27.12.1999 it was held by the Tribunal that the provisions of Section 25F of the Act had not been followed while calculating wages of the Workman and consequently compensation fell short. Therefore, the Workman was held entitled for reinstatement with continuity of service and full back wages. However, liberty was given by the Tribunal to the Management to dispense with the services of the Workman after complying with the provisions of Section 25F of the Act.

3. The aforesaid Award dated 27.12.1999 was challenged by the Management by filing S.B. Civil Writ Petition No. 259/2001 on the ground that the Workman was a part time worker and due compliance of worker and due compliance of the provisions of the Act was made. Learned Single Judge dismissed the writ petition on 8.5.2006 holding that the Tribunal on the basis of evidence and material on record rightly came to the conclusion and recorded a finding that there had been clear violation of provisions of Section 25F of the Act. The Management has preferred the present special appeal against the Award dated 27.12.1999 passed by the Tribunal, as affirmed by order dated 8.5.2006 passed by the learned Single Judge.

4. The workman has filed reply to the writ petition wherein it has been submitted that he was engaged on work of regular nature i.e. Class V category of work. It has been further submitted that the poor Workman was dragged into long litigation which amounts to harassment. In the additional pleas, it has been submitted that the Workman is entitled to wages at the rate of Rs. 41/- per day and the Tribunal has rightly given finding that the calculation of compensation at the rate of Rs. 12/- per day is illegal. The Workman supported the Award and further submitted that the Tribunal has not committed any error while passing Awards.

5. Submission of the counsel for the Management is that in case this Court comes to the conclusion that retrenchment was not valid, then also, in the facts and circumstances of the case, the Workman, who was working on part time casual basis and because of long lapse of time and further non-availability of work, the Tribunal ought not to have granted relief of reinstatement and in lieu of reinstatement, compensation ought to have been awarded. Counsel for the Management has further submitted that even if this Court comes to the conclusion that the reinstatement with full back wages is valid, then the Management, which has been granted liberty by the Tribunal to pass retrenchment order again, be allowed to ask the Workman total amount i.e. one month's notice pay and retrenchment compensation which the Management is ready and willing to pay before passing order of retrenchment order.

6. In support of its case, counsel for the Management has cited following judgments:

(i) Rattan Singh v. Union of India, (1997) 11 SCC 396

(ii) Haryana Tourism Corporation Ltd. Vs. Fakir Chand, etc. etc.,

(iii) Resident Engineer, Housing Board, Kota v. Lokhpat and Anr. 2003(3)WLC 564 : RLW 2003(4) Raj. 2509

7. Submission of the counsel for the Workman is that the work of Class IV employee is of regular nature and daily wage or casual or temporary workers are being absorbed as per the Settlement, therefore, the Tribunal has not committed any error in passing the Award directing reinstatement of the Workman with full back wages which has been rightly upheld by the learned Single Judge. Counsel further submits that the Management cannot be allowed to take the plea of long lapse of time because the wrong was committed on the part of the Management in not allowing the Workman to perform his duty as his services were again terminated on the same day i.e. 18.6.1992 after the first Award and further the Workman is presently in service in view of the court order dated 6.9.2005 wherein the Management has shown its willingness to reinstate the workman. Mr. Kashyap, counsel for the Workman has also submitted that passing the second retrenchment order on the same day of joining the workman in compliance with the Award passed by the Tribunal, is covered by unfair labour practice.

8. In support of his contentions, counsel has cited following decisions:

(i) Vikramaditya Pandey v. Industrial Tribunal, Lucknow and Anr. (2001) 2 SCC 423

(ii) Om Prakash Raigar Vs. State of Rajasthan,

(iii) Dhari Gram Panchayat v. Saurashtra Mazdoor Mahajan Sangh and Anr. 1987 2 LLN 875

(iv) Surendra Kumar Verma etc. v. The Central Government Industrial Tribunal cum Labour Court, New Delhi and Anr. 1980 (41) FLR 351

(v) Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd. And Ors. 1978 F.J.R. 14

(vi) Western India Match Co. Ltd. Vs. The Third Industrial Tribunal, West Bengal and Others,

9. On the basis of submissions of the parties, the issues which arise before us, are-

(i) Whether second retrenchment of the Workman is valid?

(ii) Even if second retrenchment is valid, then also, present case is of the nature where compensation in lieu of retrenchment is to be paid?

(iii) In case liberty is given to the Management then whether the Workman can be asked to calculate notice pay and retrenchment compensation?

10. We have gone through the submissions of the counsel for both the parties and considered record of the case.

11. Before proceeding further, it would be worthwhile to quote Section 25F of the Act which reads as under:

25-F. Conditions precedent to retrenchment of workman.

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

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

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate government or such authority as may be specified by the appropriate government by notification in the Official Gazette.

12. In Haryana Tourism Corporation Ltd. Vs. Fakir Chand, etc. etc., the Supreme Court has laid down many relevant facts to be considered for awarding retrenchment compensation viz., daily wager, not recruited through the employment exchange or any other accepted mode of selection, not regularized, nature of work. In facts of that case, the Supreme Court awarded Rs. 70,000/- as compensation to the Workman in lieu of reinstatement. Paras 4 to 7 of the aforesaid judgment read as under:

4. The respondents herein were engaged to work on daily wage basis. They were not recruited through the employment exchange or through any other accepted mode of selection. It is also not known whether there was any advertisement calling for applications for appointment of these respondents. None of the respondents was regularized in service. All of them continued as daily wage employees and their services were terminated as early as 1991.

5. It is submitted on behalf of the appellant Corporation that some of the food centres and tourist complexes of the appellant Corporation are still being run by incurring losses and that there are a large number of workers already available for running them. It was submitted that if these respondents are directed to be reinstated, it would only lead to excess manpower, disproportionate to the actual requirement. It is, however, to be noted that these respondents had obtained an award for reinstatement as the appellant Corporation did not raise appropriate contention before the Labour Court. However, it is clear that in other cases the Labour Court accepted the plea raised by the appellant Corporation. These respondents, as stated earlier, were mostly

working as cook, cleaner, sweeper and gardener etc. and by the nature of their work, they must have been doing similar work elsewhere if not regularly, at least intermittently after their services were terminated.

6. Having regard to the above facts, we do not think that the direction to reinstate them would be a just and equitable solution at this distance of time.

7. In the above circumstances and taking into account the amount of daily wages that were being paid by them, we feel that the appellant Corporation can be directed to pay a sum of Rs. 70,000/- to each of these respondents by way of compensation in lieu of reinstatement. We direct that the said amount of compensation shall be paid within a period of two months, failing which the award passed by the Labour Court for reinstatement would revive and these respondents would be at liberty to enforce the same. With these directions, the appeals are disposed of. There will be no order as to costs.

13. In *Resident Engineer, Housing Board, Kola v. Lokhpat and Anr.* 2003(3) WLC 564, where the services of the Workman were terminated in the year 1983 and it was not possible to hold that the workman remained unemployed for all these twenty years, Division Bench of this Court awarded compensation of Rs. 75,000/-, Paras 5 and 7 of the judgment read as under:

5. The Labour Court as well as the learned Single Judge, however, over looked the fact that the services of the respondent-workman were terminated in the year 1983. He worked in the department for a short period of 19 months. The gap from the year 1983, when his services were terminated, till the date of passing of the award, viz., 3.1.95, was a long one. Even between the date of the termination of the services of the respondent- workman and as of now, twenty years have elapsed. If he is to be reinstated, he could only be reinstated on daily wages basis, on the minimum of the wages. The possibility of the respondent-workman remaining employed elsewhere during this period of twenty years, cannot be ruled out altogether and his reinstatement may resolution further complications and administrative difficulties as that post might have been manned by some other person. In a case, where a workman has remained not in touch with the job for such a long period of time, it may not be expedient to order reinstatement while setting aside the order of his termination. In such a case, compensation, in lieu of reinstatement, ought to be ordered."

"7. Keeping in view, the aforesaid decisions, we consider it appropriate to direct payment of Rs. 75,000/- as compensation, to the respondent workman, in lieu of reinstatement and back wages. The appellant shall make the payment of Rs. 75,000/- to the respondent workman, within a period of four weeks.

14. In *Rattan Singh v. Union of India*, (1997) 11 SCC 396 , the Supreme Court has awarded Rs. 25,000/- as compensation to the workman after twenty long years having elapsed since termination instead of directing reinstatement. Para 3 of the judgment read as under:

3. We find merit in the said submission of Shri Ashri. From the dates mentioned in the judgment of the first appellate Court dated 22.1.1985, it appears that the appellant had continuously worked for more than 240 days in a year. Since he was a workman, he was entitled to the protection of Section 25F of the Act and the said protection could not be denied to him on the ground that he was a daily-rated worker. It is not the case of the respondents that the provisions of Section 25F of the Act were complied with while terminating the services of the appellant. In these circumstances, the termination of services of the appellant cannot be upheld and has to be set aside. The services of the appellant were terminated in the year 1976. Nearly 20 years have elapsed since then. In these circumstances, we are not inclined to direct reinstatement of the appellant. But having regard to the facts and circumstances of the case, we direct that a consolidated sum of Rs. 25,000/- be paid to the appellant in lieu of compensation for back wages as well as reinstatement. This amount is being paid in full and final settlement of all the claims of the appellant. The said amount shall be paid within two months. The appeal is disposed of accordingly. No costs.

15. Now, we proceed to consider and appreciate the decision cited by the counsel for the Workman.

16. In *Vikramaditya Pandey v. Industrial Tribunal, Lucknow and Anr.* (2001) 2 SCC 423 it has been held that once termination of service of an employee is held to be wrongful or illegal, the normal relief of reinstatement with full back wages shall be available to an employee. It has further been observed that it is open to the employer to specifically plead and establish that there were special circumstances which warrant either non-reinstatement or non-payment of the retrenchment compensation. Paras 6 and 7 of the above judgment read as under:

6. We have carefully considered the respective contentions made on behalf of the parties. It is not in dispute that the award passed by the Tribunal was not challenged by the Back. The Tribunal as well as the High Court have concurrently found that the case of the appellant was one of retrenchment and that the appellant was working between the period 4.12.1981 to 19.7.1985 with small motivated breaks and that in any case he worked for more than 240 days in a year before termination of services. The Tribunal in para 5 of its award has stated thus:

It is however evident that he worked for much more than 240 days in any year before his service ceased. It is also clear that breaks were given and ad hoc appointment was made every time for 90 days or less. This was evidently done to stick to the letter of the law regarding the authority of the Bank in regard to making appointments only for limited periods in ad hoc or temporary arrangement, as specified in the Service Regulations, 1975. It is however, clear that services of the workman were needed as the work was available but a continuing temporary appointment was not made even though under Regulation 5(iii) of the Service Regulations such longer term stopgap appointment (and not only for 90 days) can be made with prior approval of the competent authority

(the Board). It would thus, appear that attempt was made conforming to the letter of law and not its spirit insofar as provisions regarding retrenchment under the Industrial Disputes Act go.

The only issue before the High Court was whether the appellant was entitled to reinstatement in service with back wages, once the termination of his services had been held to be illegal and more so when the same was not challenged. Ordinarily, once the termination of service of an employee is held to be wrongful or illegal the normal relief of reinstatement with full back wages shall be available to an employee; it is open to the employer to specifically plead and establish that there were special circumstances which warranted either non-reinstatement or non-payment of back wages. In this case we do not find any such pleading of special circumstances either before the Tribunal or before the High Court. Since Regulation 103 of the Regulations is referred to in the order of the Tribunal as well as in the High Court and it has bearing in deciding the controversy, the focus is needed on it. It reads:

103. The provisions of these Regulations to the extent of their inconsistency with any of the provisions of the Industrial Disputes Act, 1947, U.P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962, Workmen's Compensation Act, 1923 and any other labour laws for the time being in force, if applicable to any cooperative society or 'class of cooperative societies, shall be deemed to be inoperative.

By a plain reading of the said Regulation it is clear that in case of inconsistency between the Regulations and provisions of the Industrial Disputes Act, 1947, the State Act, the Workmen's Compensation Act, 1923 and any other labour laws for the time being in force, if applicable to any cooperative society or class of cooperative societies, to that extent the Regulations shall be deemed to be inoperative. In other words, the inconsistent provisions contained in the Regulations shall be inoperative, not the provisions of the other statutes mentioned in Regulation 103. The Tribunal in this regard correctly understood the Regulation but wrongly refused the relief on the ground that no reinstatement can be ordered on a regular employment in view of the provisions contained in the said Regulations. But the High Court read the regulations otherwise and plainly misunderstood it in saying that if there is any inconsistency between the Regulations and the Industrial Disputes Act, 1947 and other labour laws for the time being in force the Regulations will prevail and the Industrial Disputes Act, 1947 and other labour laws shall be deemed to be inoperative. This misreading and wrong approach of the High Court resulted in the wrong conclusion. In the view it took as regards Regulation 103 the High Court proceeded to state that even if there was retrenchment in view of Regulation 5 of the Regulations the Labour Court was not competent to direct reinstatement of the appellant who was not recruited in terms of Regulation 5 because the Labour Court had to act within the ambit of law having regard to the Regulations by which the workman was governed. In this view the High Court declined relief to the appellant which in our view cannot be sustained. The Tribunal felt difficulty in ordering

reinstatement as the appellant was not a regular employee. The appellant ought to have been ordered to be reinstated in service once it was found that his services were illegally terminated in the post he was holding including its nature. Thus in our opinion both the Tribunal as well as the High Court were not right and justified on facts and in law in refusing the relief of reinstatement of the appellant in service with back wages. But, however, having regard to the facts and circumstances of the case and taking note of the fact that the order of termination dates back to 19.7.1985 we think it just and appropriate in the interest of justice to grant back wages only to the extent of 50%.

7. In the result for what is stated above, we set aside the award of the Tribunal and order of the High Court in regard to denial of relief of reinstatement of the appellant with back wages and direct his reinstatement in service as he then was on the date of termination of his services with 50 back wages. This appeal is allowed accordingly in the terms stated above. The parties to bear their own costs.

17. A division bench of this Court in Om Prakash Raigar Vs. State of Rajasthan, set aside directions of the learned Single Judge to make payment of compensation in lieu of reinstatement on ground of causing some hardship to employer. Paras 3 and 6 of the judgment read as under:

3. In view of the aforesaid settled legal position, we fail to understand how a workman could be told that he would be paid Rs. 25,000/- in lieu of reinstatement in service and back wages. The learned Single Judge did hold that there was non-compliance of Section 25F of the Act and the services of the workman were terminated. Thus, in view of this finding the conclusion was inescapable that the termination of service was ab-initio void. The workman has got to be reinstated and has got to be awarded all the benefits of back wages and continuity in service as if he has all throughout continued in service. Simply because it may cause some hardship to the respondent employer, the workman cannot be denied his legitimate rights and benefits."

"6. In the result, the appeal is allowed. The judgment and order passed by the learned Single Judge directing the respondents to pay Rs. 25,000/- in lieu of reinstatement of the workman, is quashed and . set aside. It is directed that the petitioner-appellant shall be reinstated in service with 5% of the back wages. The amount of 55% back wages shall be calculated on the basis that the workman was continuously in service and has earned all consequential benefits as if the order of termination was never passed. The calculation of the amount of back wages and other benefits as indicated herein above shall be made by the respondents within a period of two months from today i.e. latest by November 6, 1995. The amount payable to the petitioner- appellant shall be paid to him latest by November 25, 1995. If the amount is not paid by the aforesaid date, it shall carry interest at the rate of 15% per annum from the date of this judgment till the amount is paid. The direction as regards reinstatement of the workman shall be complied with by the respondents and particularly by respondent No. 2 latest

by September 30, 1995. If the workman is not actually reinstated in service by September 30, 1995 he shall be entitled to claim full wages from October 1, 1995 and respondent No. 2 shall pay full amount of wages to him from October 1, 1995.

18. In Dhari Gram Panchayat v. Saurashtra Mazdodr Mahajan Sangh and Anr. 1987 (2) LLN 875 whereby a consent order of the High Court the Workmen were reinstated in service but on the same day they were retrenched, the same were held male fide. The judgment reads as under:

The services of ten clerks working in the octroi Section of the Gram Panchayat of Dhari were terminated by notices, dated 25 September, 1967, with effect from 1 November 1967. An industrial dispute was referred by the Government of Gujarat to the Special Labour Court. By an award, dated 13 November 1968, the Special Labour Court directed the re-absorption of the ten clerks in future vacancies. The workmen filed a writ petition in the High Court of Gujarat. By a consent order, dated 18 June 1969, made in the writ petition, the ten workmen were directed to be reinstated and an amount equivalent to two thirds of their back wages was also directed to be paid to them. The workmen were reinstated on 1 July 1969. But later, on the same day, they were retrenched from service. The workmen questioned the retrenchment and the dispute was once again referred for adjudication to the Special Labour Court. This time an objection was raised by the Gram Panchayat that the octroi department of the Panchayat was not an industry within the meaning of Section 2(j) of the Industrial Disputes Act. The Labour Court found on merits that the action of the Panchayat was mala fide but all the same held that the reference was incompetent as the octroi department was not an industry. On a writ petition filed by the workmen, the High Court upheld the finding that the action of the Panchayat was male fide. The High Court also found that the octroi department was an industry within the meaning of Section 2(j) of the Industrial Disputes Act. On these findings, the High Court allowed the writ petition and directed reinstatement of the workmen with back wages. In this civil appeal under Article 136 of the Constitution, it was argued on behalf of the Panchayat that levy and collection of octroi duty was a sovereign function and, therefore, the octroi department of the Panchayat was not an industry within the meaning of Section 2(j) of the Act. We do not propose to express any opinion on this question since we are of the view that, on the finding that the action of the Panchayat was mala fide, the High Court could have directly interfered with retrenchment of the workmen under Article 226 of the Constitution as the workmen had straightaway the High Court without raising an industrial dispute. Merely because they raised an industrial dispute and the Labour Court took the view that the octroi department was not an industry, the workmen are not disentitled to the relief ultimately given to them by the High Court. We therefore, uphold the judgment of the High Court. In regard to back wages, having regard to the long period that has elapsed since the resolution of retrenchment, the fact that the workmen appear to have been gainfully employed in the meanwhile and poor finances of the Panchayat, which we are

satisfied, we think that in peculiar circumstances of the case, requirements of justice will be sufficient if we give a direction that each of the workmen shall be paid one third of the back wages up to date and that they shall be reinstated forthwith. They will be entitled to full wages from 1 September 1987. In other respect, the judgment of the High Court is confirmed. The workman are entitled to their costs.

19. In *Surendra Kumar Verma etc. v. The Central Government Industrial Tribunal cum Labour Court, New Delhi* and Anr. 1980 (41) FLR 351, exceptional circumstances have been laid down by the Supreme Court i.e. the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on; and it has been held that relief of compensation instead of reinstatement may be granted. Relevant observations made by the Supreme Court in this case at page 354 are quoted as under:

Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The Court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the Court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.

In the cases before us we are unable to see any special impediment in the way of awarding the relief. The Labour Court appears to have thought that the award of the relief of reinstatement with full back wages would put these workmen on a par with those who had qualified for permanent absorption by passing the prescribed test and that would create dissatisfaction amongst the latter. First, they can never be on par since reinstatement would not qualify them for permanent absorption. They would continue to be temporary, liable to be retrenched. Second, there is a shred of evidence to suggest that their reinstatement would be a cause for dissatisfaction to anyone.

Held: In the result all the appeals are allowed and the workmen-appellants are

directed to be reinstated with full back wages. We, however, super-impose the condition that the salary on reinstatement of the workmen will be the salary which they were drawing when they were retrenched (subject of course to any revision of scales that might have been made in the meanwhile) and the period from the date of retrenchment to the date of reinstatement will not be taken into account for the purpose of reckoning seniority of the workmen among temporary employees.

20. In *Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd. and Ors.* 1978 F.J.R. 14 the Supreme Court has laid down that where the financial condition of the Management is not sound, both the management and the workman have to make sacrifice while awarding back wages. Relevant observations made in the judgment at page 21 read as under:

Now, if a sacrifice is necessary in the overall interest of the industry or a particular undertaking, it would be both unfair and iniquitous to expect only one partner of the industry to make the sacrifice. Pragmatism compels common sacrifice on the part of both. The sacrifice must come from both the partners and we need not state that obvious that the labour is a weaker partner who is more often called upon to make the sacrifice. Sacrifice for the survival of an industrial undertaking cannot be an unilateral action. It must be a two way traffic. The management need not have merry time to itself making the workmen the sacrificial goat. If sacrifice is necessary, those who can afford and have the cushion and the capacity must bear the greater brunt making the shock of sacrifice as less poignant as possible for those who keep body and soul together with utmost difficulty.

The appellant wants us to give something less than full back wages in this case which the Labour Court has awarded. There is nothing to show whether the managing director has made any sacrifice; whether his salary and perks have been adversely affected; whether the managerial coterie has reduced some expenses on itself. If there is no such material on record, how do we expect the workmen, the less affording of the weaker segment of the society, to make the sacrifice, because sacrifice on their part is denial of the very means of livelihood.

21. In *Western India Match Co. Ltd. Vs. The Third Industrial Tribunal, West Bengal and Others*, the Supreme Court has held that ordinary rule is reinstatement. The relevant portion of the judgment reads as under:

Even so, the further question arises as to whether the employee should be recompensated with full wages and other benefits until the date of reinstatement. We have to be realistic in this jurisdiction although in industrial law when termination of service is found to be illegal, the ordinarily rule is reinstatement. We direct reinstatement in affirmance of the order passed by the High Court and the Industrial Tribunal. But the High Court as well as the Industrial Tribunal have also awarded full wages and other benefits during the period the employee's service had stood terminated. It is right for us to

remember., and Shri Sen Gupta has reminded us of proposition., that sitting in appeal under Article 136 against an order of the High Court passed under Article 226 we should not lightly interfere with the direction made in the judgment of the High Court unless there is some substantial error, manifest injustice or exceptional circumstance. None having been pointed out, we affirm the finding of the High Court regarding payment of back wages and other benefits up to the date the High Court passed its final order in Division Bench, viz., 30th November, 1971.

(1) whether second retrenchment of the Workman is valid?

22. The parties have not much disputed the fact that there has been violation of Section 25F of the Act while passing the second retrenchment order dated 18.6.1992, therefore, second award dated 27.12.1999 and the judgment of the learned Single Judge dated 8.5.2006 so far as they relate to holding the retrenchment to be illegal, are upheld.

(2) Even if second retrenchment is valid, then also, present case is of the nature where compensation in lieu of retrenchment is to be paid?

23. As discussed above, it is settled position of law that in case of violation of mandatory provisions like Section 25F of the Act, reinstatement is the normal rule and deviation from the same can only be justified when there exists exceptional circumstances. Some of the exceptional circumstances which have been laid down by the various courts are as follows:

(a) when the employer takes plea of loss of confidence and trust;

(b) daily rated worker and long lapse of time between retrenchment and reinstatement;

(c) non-availability of work/post;

(d) not recruited through any accepted mode of selection i.e. advertisement/employment exchange.

(e) Neither regularized nor any possibility of being regularized.

(f) Nature of job is such that they must have been doing similar work.

(g) Industry is not in a sound financial position for which employer and employee both have to make sacrifice.

(h) The workman, who is in regular employment is about to reach the superannuation age.

24. Adverting to the facts of the present case, the workman was reinstated on 18.6.1992 but on the same very day, he was again retrenched which according to the Management was brought about because his services were not required but according to the Workman the same was mala fide action. Then again, the Workman was taken in service on 14.9.2005 as per order of this Court dated

6.9.2005. This short duration of work during the intervening period of 1988-2006 will not give any right to the Workman for reinstatement. As regards the benefit of regularisation is concerned, the Tribunal in its first Award dated 30.3.1992 produced by the counsel for the Workman has not given categorical finding on the issue of nature of initial appointment of the Workman while discussing statement of MW Gopi Chand and has turned to the fact that even if it is assumed that the Workman was part time employee, then also, he is a workman. The counsel for the workman has also not been able to show that the workman was recruited through any accepted mode of recruitment. Neither any specific plea was raised in both the references nor the workman contended before the learned Single Judge that the said plea of regularisation is flowing from both the Awards. Therefore, the said plea cannot be entertained for the first time at the appellate stage before his Division Bench. The plea with regard to accrual of right of regularization has also not been taken in the reply to the writ petition. Hence, in our opinion, the Workman could not be treated as regular employee nor he is entitled to regularization.

25. Alternatively, Mr. Kashyap has cited a judgment of Supreme Court in case of Shriram Refrigeration Industries V/s. Industrial Tribunal, Hyderabad and others, (2002) 9 SCC 708 where the workman was working as Security Guard and the plea taken by the Management was that it has lost all confidence in respondent workman. Since element of confidence is necessary so far as Security Guard is concerned, the Supreme Court considered the said plea and further considered the fact that only 3 years of service was left, awarded compensation of Rs. 2.25 lacs to a workman drawing salary of Rs. 3,045/-. Para 3 & 4 of the said judgment are as follows:

3. This appeal impugns the order of the High Court on a writ petition. The High Court dismissed the writ petition but affirmed the right of the appellant management to hold a disciplinary enquiry after fresh notice to the respondent workman. The Labour Court in its award, which was impugned before the High Court, had ordered reinstatement. The respondent workman had been working as a Security Guard. The plea before us was that the appellant management had lost all confidence in the respondent workman. Since the element of confidence is necessary insofar as a Security Guard is concerned, notice was issued on the SLP limited to the question of compensation to the respondent workman in lieu of his reinstatement.

4. From time to time the matter was adjourned to enable the parties to try and work out what that compensation should be. But they have failed to do so. Having regard to the fact that the respondent workman had been engaged on 7.7.1982, only three years of service were left and he was drawing Rs. 3045 per month, we are of the view that the compensation in lieu of reinstatement should be fixed at Rs. 2,25,000 (Rupees two lakhs and twenty five thousand). The amount shall be paid within six weeks.

26. From the contents of the said judgment, it appears that the workman, who

was to retire after 3 years was regular workman and the present case is of a casual worker, therefore, the said parameter will not apply.

27. In the aforesaid facts and circumstances of the case, the workman is only a casual daily rated employee who is not entitled to regularization for whom the work is also not available with the Management and there is long lapse of twenty years from first retrenchment in the year 1986 and his working for a day, and further continuation under the order dated 6.9.2005 of the High Court from 14.9.2005 till date is also not an order/direction issued by this Court during pendency of writ petition and the same is of no avail, therefore, considering the aforesaid exceptional circumstance, instead of reinstatement, the Workman is entitled to retrenchment compensation which is quantified at Rs. 1,00,000/- (Rupees one lac).

(iii) In case liberty is given to the Management then whether the Workman can be asked to calculate notice pay and retrenchment compensation?

28. In view of the aforesaid finding on Issue No. (ii), Issue No. (iii) becomes redundant. Otherwise also, it is not for the workman to make calculation. It is the legal duty of the management to make calculation in respect of the notice pay and retrenchment compensation.

29. In the result, the appeal is allowed in part, Award of the Tribunal dated 27.12.1999 and the order dated 8.5.2006 passed by the learned Single Judge are modified to the extent that in lieu of reinstatement, the Workman shall be entitled only to retrenchment compensation which is quantified at Rs. 1,00,000/- (Rupees one lac).