IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No./203/91
T.A. No.

DATE OF DECISION 5-5-1994

Shri Mohmed Arif Hasanbhai Belim Petitioner

Mr.B.B.Gogia Advocate for the Petitioner(s)

Versus

Union of India & others Respondent

Mr.Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. V.Radhakrishnan Member (A)

The Hon'ble Dr.R.K.Saxena Memver (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

Mohmed Arif Hasambhai Belim
Kumbharwada Main Road,
Near Alka Masjid,
14, Kumbharwada Corner,
Rajkot. Applicant

Advocate Mr. B.B. Gogia

Versus

1. Union of India
Through: Its Secretary
Telecom. Department
Government of India,
New Delhi

2. Shri N.A. Chauhan or his
successor in the office,
Central Industrail Tribunal
Multi-storeyed Building
Lal Darwaja
Ahmedabad.

3. Secretary
Ministry of Labour
Government of India,
New Delhi

4. Asst. Engineer Phones
External (East),
Income Tax Buildings,
Rajkot. Respondents

Advocate Mr. Akil Kureshi

JUDGMENT
In
O.A. 203/ 1991

Date: 5-5-94

Per Hon'ble Dr. R.K. Saxena Member (J)

This application has been presented by Shri Mohmed Arif Hasambhai Belim challenging the award dated 4-10-90 Central Industrial Tribunal, Ahmedabad whereby relieving the applicant from service without payment of retrenchment compensation, was held illegal; and one year's pay in place of reinstatement, was allowed to

...3...

be paid as compensation.

2. Briefly stated the facts of the case are that Shri Mohmed Arif Hasambhai Belim had joined as casual labourer in Telecommunications Department at Rajkot on 01-09-1986, and thereafter his services were termintated with effect from fore-noon of 31st July, 1987/before-noon of 1st August, 1987 vide order dated 01-07-1987. The applicant had worked in the said department for 298 days in the year 1986-87 starting from September 1986 to July 1987. In support of it, the copies of the certificate Annexure A-1 which runs in four pages, have been filed. The contention of the applicant is also to the effect that the respondent No.4 violated section 25 F of the Industrial Disputes Act, 1947 in as much as that compensation which was obligatory to be paid at the time of retrenchment, was not paid. The order of termination being illegal, was challenged before the Industrial Tribunal which held the order illegal but at the same time reinstatement was not ordered and, therefore, this application before the Tribunal was moved.

3. On behalf of the respondents, Shri H.K.Ambani A.E.(Legal), has filed counter-reply in which it was pleaded that the applicant was engaged as casual labourer for specific work of laying the

under-ground cables. It was admitted that the applicant was continued during that period from September 1986 to March 1987 and during that period, the total number of working days were 207 which included weekly off days. There were 28 days on which no wages were paid and on their exclusion the total number of working days comes to 179 only. Similarly, in the year 1987-88 the total working days were 117 and after excluding weekly off days, the number of which was 16, the net working days were 101 only. It was, therefore, contended that the applicant had not completed 240 days in any of the financial year. It was further contended that the notice of one month, as required, was given on 01-07-1987 informing that the applicant would not be engaged after 01-08-1987. So far as the question of compensation is concerned, the applicant is denied to be entitled because the total number of working days were less than 240 days.

4. The applicant filed rejoinder affidavit in which the points raised by the respondents were contradicted and it was specifically averred that the applicant had completed the period of 240 days.

5. We have heard the learned counsel for the applicant and the respondents. There is no dispute that the applicant was engaged as a casual

labourer and he started doing work in the said capacity from September 1986 and continued working in the same capacity till July 1987. This fact finds corroboration not only from Annexure A-1 filed by the applicant but also from the counter-affidavit filed on behalf of the respondents. The contention of the respondents is that the applicant had not completed 240 days in one financial year. Before we deal with this argument, it would be necessary to go through the requirement of Section 25 F of the Industrial Disputes Act, 1947. The Section reads as follow :

> 25 F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until.—
>
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
>
> (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay (for every completed year of continuous service) or any part thereof in excess of six months ; and

6.....

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be speci--fied by the appropriate Government by notification in the Official Gazette)

6. The perusal of Section 25 F quoted above makes it clear tht the workman should remain employed in continuous service for not less than one year under the employer, and if this period is completed, the said workman cannot be retrenched unless one month's notice in writing indicating the reasons for retrenchment, has been given and the period of notice has expired or in lieu thereof, wages for the period of notice had been given. The second condition is that the workman should be paid at the time of retrenchment compensation which shall be equivalent to 15 days average pay. The term "continuous service" has been defined under section 25 B (2) (a) of the Act and continuous service for a period of one year means 240 days. It, nowhere, says that the workman should complete 240 days in financial year. The year shall be counted from the date the workman was engaged. The Department of Telecommunication has issued the copies of Annex. A-1 ~~and~~ but were filed by the applicant in which continuous work--ing days starting from September 1986 to July 1987, have been given; and their aggregate comes to 290 days. It is true that it has been averred on behalf of the respondents in the counter affidavit that the off days have not been excluded ; and if they are excluded the total number of days comes to 179 only. It is not clear -

as to what is the basis of calculating 179 days particularly when the certificate issued by the Department mentioned 237 days from Septemebr 1986 to April 1987, 31 days in May, '87 30 days in June 1987 and 26 days in July 1987, the total of which is 298 days. In the light of this documentary evidence filed by the applicant and which is given by nobody else but by the Department itself, it is clear that the applicant had worked for more than 240 days in a year and thus the provision of Section 25-F of Industrial Disputes Act, 1947 is very much attracted. The same view was taken by the Industrial Tribunal.

7. The next question arises if the workman had worked for more than 240 days and retrenchment compensation has not been paid to him, whether the workman may be ordered to be paid compensation in place of his being reinstated. ~~The~~ The Industrial Tribunal in the impugned order adopted the way of awarding compensation equivalent to one year's salary than reinstating him on the ground that the retrenchment compensation was not paid by the Department on mistaken belief that it was not payable, and that the applicant was only a daily wager and, therefore, it was decided to pay compen--sation. The learned Counsel for the applicant vehemently argued that the order of payment of compensation in place of reinstatement was illegal particularly when violation of Section 25-F of the Act was established and held by the Industrial Tribunal as well. The reliance has been placed

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on the decision in the case of M.P. Ramanandi Vs. Gujarat State Warehousing Corporation 1985 GLH 421 in which it was held that as the preconditions of valid retrenchment have not been satisfied, the termination of service was ab initio was void. In this case reliance was placed on the decisions in the cases of Mohanlal Vs. The Manage--ment of M/s. Bharat Electronics Ltd. AIR 1981 SC 1253 and The Management of Karnataka State Road Transport Corporation, Banglore Vs. M. Boraiah and Another AIR 1983 SC 1320.

8. In view of the facts mentioned above and the law discussed earlier, it is quite clear that the order of termination of the service of the applicant was passed ignoring the compliance of Section 25 F of the Act. The Counsel for the applicant argued that once the order of termination of service is held illegal, there remains no other way but to reinstate the applicant in service with full back-wages. It is further averred that the Industrial Tribunal was in error in allowing compensation to the applicant by way of only one year's salary. We have given our considerable thought to this problem. It is not necessary that in all cases of violation of Section 25 F of the Act, the reinstatement of the employee should be ordered with full back-wages. The Hon'ble Supreme Court in the case of Rollston John Vs. Central Industrial Tribunal cum Labour Court and others, AIR 1994 Sc 131 held that over staying of leave period without proper explanation by the employee and termination of his services without following the procedure under Section 25 F of the Act amounted to retrenchment which was not valid. Their -

..9..

Lordships of Supreme Court had not allowed reinstatement but granted compensation of Rs.50,000/-. It is, therefore, clear that if the mandate of Section 25 F of the Act has not been complied with, the compensation in place of reinstatement may be awarded. The Industrial Tribunal in the matter awarded compensation equivalent to one year's salary to the applicant. The compensation must be such as may commensurate with the earining of the employee. By way of reinstatement from the date of the order of termination and with back-wages he would have got much more than what was actually awarded. However, looking to the facts and circumstances of the case and also to meet the ends of justice, it would be proper if the applicant is ordered to be reinstated along with 50 % back-wages.

9. The case is disposed of accordingly.

No order as to costs.

5/5/94

(Dr.R.K.Saxena)
Member (J)

(V.Radhakrishnan)
Member (A)

AS

S.60/95

Central Administrative Tribunal
Ahmedabad Bench.
Inward No. 1205
Date 13/11

Recd
DR(A)
10-11-95

14

SOCJ)

D.NO. 1124/94/SEC.XV
SUPREME COURT OF INDIA,
NEW DELHI-110 001.

DATED 21st October, 1995

From:

Assistant Registrar,
Supreme Court of India.

To

The Registrar,
Central Administrative Tribunal,
Ahmedabad Bench,
Ahmedabad.

CIVIL APPEAL NO. 9460 OF 1995
(~~Writ Petition~~ CAT No. O.A. 203/91)

Asstt.Engineer Phones,Rajkot ...Appellant

Versus

Mohd.Arif Haŗambhai Belim and Ors. ...Respondent

Sir,

I am directed to transmit herewith under Rule 6 of Order XIII of the Supreme Court Rules, 1966, a certified copy of the ~~Judgment~~ Signed Order of this Court dated the 12th October,1995 in the appeal above-mentioned, Certified Copy of the Decree and the original Records, if any, in the aforesaid matter will be sent in due course.

Please acknowledge receipt.

Yours faithfully,

ASSISTANT REGISTRAR

For perusal please:-
(1) Hon'ble Vice Chairman 17/30/XI.
(2) Hon'ble V. Radhakrishnan, Member (A)
(3) Hon'ble R. Ramanujam, Member (A)

*MW.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9460 OF 1995
(Arising out of S.L.P. No. 15512/94)

30886

Asst. Engineer Phones, Rajkot ... Appellant

- Versus -

Mohd. Arif Hasanbhai Belim & Ors. ... Respondents

ORDER

Leave granted.

After hearing learned counsel for the parties we dispose of this appeal, modifying the impugned order by directing the appellant to pay to respondent No.1 two years' salary on the bais of salary or emoluments he was receiving at the time of termination of his service. Besides such payment, the respondent will be re-instated in service as a casual labour. Such payment of back wages will have to be made within a period of eight weeks from today. The appeal is disposed of accordingly.

Sd/-
.....J.
(G.N. RAY)

Sd/-
.....J.
(S.B. MAJMUDAR)

New Delhi
October 12,1995

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 1995

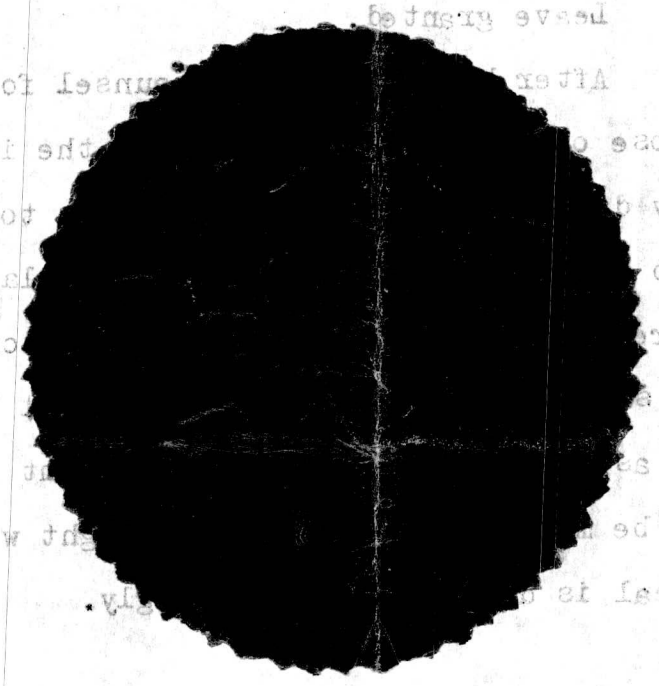
(Arising out of S.L.P. No. 15512/94)

Asst. Engineer Rhones, Rajkot ... Appellant

- Versus -

Mohd. Arif Hasanbhai Saiim & Ors. ... Respondents

O R D E R



SEALED IN MY PRESENCE

All communications should be addressed to the Registrar. Supreme Court, by designation. NOT by name
Telegraphic address :—
"SUPREMECO"

D. No. 1124/94/Sec.XV.

SUPREME COURT INDIA

Dated New Delhi, the 30th November, 1995. 19xx

FROM The Registrar(Judicial),
Supreme Court of India,
New Delhi.

Central Administrative Tribunal
Ahmedabad Bench.
Inward No. 1313
Date 15/12/95

TO The Registrar,
Central Administrative Tribunal,
Ahmedabad Bench, Ahmedabad.

CIVIL APPEAL NO.9460 OF 1995.

Asst. Engineer Phones, Rajkot. ...Appellant.

Versus.

Mohd. Arif Hasanbhai Belim & Ors. ...Respondents.

Sir,

In continuation of this Registry's letter of even number dated the 21st October, 1995, I am directed to transmit herewith for necessary action a certified copy of the Decree dated the 12th October, 1995, of the Supreme Court in the appeal above-mentioned.

Please acknowledge receipt.

Yours faithfully,

for Registrar(Judicial).

Sup. C. 52

IN THE SUPREME COURT OF INDIA

~~xxxxxxxx~~CRIMINAL/CIVIL APPELLATE JURISDICTION

32552

Certified to be true copy
Assistant Registrar (Judl.)
3-11-1995
Supreme Court of India

~~xxxNo.xxx~~ ~~xxRxxx~~

CIVIL APPEAL NO.9460 OF 1995.

(Appeal by Special Leave granted by this Court by its Order dated the 12th October, 1995 in Petition for Special Leave to Appeal(Civil) No.15512 of 1994 from the Judgment and Order dated the 5th May, 1994 of the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad in O.A.No.203 of 1991).

Asst. Engineer Phones
External (East) Income Tax
Buildings, Rajkot, Gujarat. ...Appellant.

Versus.

1. Mohmed Arif Hasambhai Belim
Kumbharwada Main Road,
Near Alka Masjid, 14, Kumbharwada corner,
Rajkot.

2. Shri N.A.Chauhan or his successor in
the Office, Central Industrial Tribunal
Multi-storeyed Building, Lal Darwaja,
Ahmedabad.

3. Secretary, Ministry of Labour,
Government of India, New Delhi.

4. Union of India Through: Its Secretary
Telecom, Department Government of India,
New Delhi. ...Respondents.

12th October, 1995.

CORAM:
HON'BLE MR. JUSTICE G.N.RAY
HON'BLE MR. JUSTICE S.B.MAJMUDAR

For the Appellant: M/s. Raju Ramachandran, Joseph Pookkatt and Ashok Mathur, Advocates.

For Respondent No.1: Ms. Shirin Khajuria, Advocate.

The Appeal above-mentioned being called on for hearing before this Court on the 12th day of October, 1995, UPON perusing the record and hearing counsel for the appearing parties above-mentioned, THIS COURT DOTH while disposing of

...2/-

the appeal PASS the following ORDER:

> "we dispose of this appeal, modifying the impugned order by directing the appellant to pay to respondent No.1 two years' salary on the basis of salary or emoluments he was receiving at the time of termination of his service. Besides such payment, the respondent will be re-instated in service as a casual labour. Such payment of back wages will have to be made within a period of eight weeks from today."

AND THIS COURT DOTH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon'ble Shri Aziz Mushabber Ahmadi, Chief Justice of India, at the Supreme Court, New Delhi, dated this the 12th day of October, 1995.

Sd/-

(MANJU GOEL)
REGISTRAR(VIGILANCE).

SUPREME COURT

CRIMINAL/CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9460 OF 1995.

Asst. Engineer Phones, Rajkot — Appellant

Versus

Mohd. Arif Hasanbhai Belim & Ors. — Respondent s.

CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH, AHMEDABAD.
(O.A.No.203 of 1991).

DECREE DISPOSING OF THE APPEAL .

Dated the 12th day of October, 1995.

Ashok Mathur,

Advocate on Record for the Appellant.

Compared with

SHRI Ms. Indu Malhotra,

No. of folios

Advocate on Record for Respondent No.1.

SEALED IN MY PRESENCE

All communications should be addressed to the Registrar, Supreme Court, by designation, NOT by name.
Telegraphic address :—
"SUPREMECO"

D.No. 1124/94/ XI A

SUPREME COURT INDIA

FROM

Vinod Kumar, B.A.,B.G.L.,
Assistant Registrar

To

The Registrar
Central Administrative Tribunal,
Ahmedabad Bench,
Ahmedabad.

Dated New Delhi, the 30th September, 1994

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 15512 OF 1994

WITH

INTERLOCUTORY APPLICATION NO. 1
(Application for ex-parte Stay)

Asstt. Engineer Phones, Rajkot ....Petitioner

Versus

Mohd. Arif Hasanbhai Belim & Ors. ....Respondents

Sir,

I am directed to forward herewith for your information and necessary action a certified copy of the order dated the 23rd September, 1994, of this Court, passed in the matter above-mentioned.

Please acknowledge receipt.

Yours faithfully,

ASSISTANT REGISTRAR

Sup. C. 52

IN THE SUPREME COURT OF INDIA

CRIMINAL/CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 15512 OF 1994
(Petition under Article 136 of the Constitution of India for Special Leave to Appeal from the judgment and order dated 5th May, 1994 of the Central Administrative Tribunal Ahmedabad Bench, Ahmedabad, in O.A.NO. 203 of 1991).

WITH

INTERLOCUTORY APPLICATION NO. 1 541769
(Application for Stay with a prayer for an ex-parte Order)

Assistant Engineer Phones
External (East)
Income Tax Buildings,
Rajkot
GUJARAT

.....Petitioner

Versus

1. Mohmed Afif Hasambhai Belim,
Kumbharwada Main Road,
Near Alka Masjid,
14, Kumbharwada Corner,
RAJKOT.

2. N.A.Chauhan or his
successor in the office
Central Industrial Tribunal
Multi-storeyed Building
Lal Darwaja
Ahmedabad.

3. Secretary
Ministry of Labour
Government of India,
New Delhi.

4. Union of India
Through Its Secretary,
Telecom Department
Government of India,
New Delhi.

.....Respondents

Certified to be a true copy
Assistant Registrar (Judl.)
3.....1994
Supreme Court of India

23rd September, 1994

CORAM:

HON'BLE MR. JUSTICE P.B.SAWANT
HON'BLE MR. JUSTICE G.N.RAY

For the Petitioner : M/s. R.Ramachandran, Sukumar Pattjoshi, B.C.Mehta and Ashok Mathur, Advocates

THE PETITION FOR SPECIAL LEAVE TO APPEAL ALONGWITH THE APPLICATION FOR STAY above-mentioned being called on for

...2/-

hearing before this Court on the 23rd day of September, 1994 UPON perusing the papers and hearing counsel for the Petitioner herein, THIS COURT while directing issue of Notice to the respondents herein to show cause why special leave be not granted to the petitioner herein to appeal to this Court against the judgment and order of the Central Administrative Tribunal above-mentioned, DOTH ORDER that in the meanwhile the impugned Judgment ~~of~~ and order dated the 5th May, 1994 of the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad, in O.A. NO. 203 of 1991 be and is hereby stayed;

AND THIS COURT DOTH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon'ble Shri Manepalli Narayanarao Venkatachaliah, Chief Justice of India, at the Supreme Court, New Delhi, dated this the 23rd day of September, 1994.

(SUBHASH MALIK)
DEPUTY REGISTRAR (JUDL.)

SUPREME COURT

CRIMINAL/CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 15512 OF 1994

WITH

INTERLOCUTORY APPLICATION NO. 1 of 199
(Application for ex-parte stay)

Asstt. Engineer Phones, Rajkot — ~~Appellant~~ Petitioner

Versus

Mohd. Arif Hasanbhai Belim & Ors. — Respondents

ORDER DIRECTING ISSUE OF SHOW CAUSE NOTICE AND GRANTING INTERIM STAY

[redacted] the 23rd day of September, 1994.

Engrossed by SHRI Ashok Mathur

Examined by *Advocate on Record for* the Petitioner

Compared with SHRI

No. of folios *Advocate on Record for*

SEALED IN MY PRESENCE

23/9/94

AHMEDABAD BENCH

Application No. 04/203/91 of 19

Transfer Application No. _____ Old w.Pett.No

CERTIFICATE

Certified that no further action is required tobe taken and the case is fit for consignment to the Record Room (Decided).

Dated: 12/05/94

Countersigned :

Signature of the Dealing Assistant.

Section officer/Court officer.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT AHMEDABAD BENCH

INDEX SHEET

CAUSE TITLE 04/203/91 OF 19

NAME OF THE PARTIES MR. M. A.H. Belim

VERSUS

U-O-I. & Ors.

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CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD

Submitted ; C.A.T./JUDICIAL SECTION.

Original Petition No.: 203 of 91.

Miscellaneous Petition No.: — of —.

Shri Mohmed Arif Hasanbhai Bolim Petitioner(s).

Versus.

Union of India & Ors Respondent(s).

This application has been submitted to the Tribunal by Shri *B B Gogia

Under Section 19 of the Administrative Tribunal Act, 1985.

It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The Applications has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant may be advised to rectify the same within 14 days/draft letter is placed below for signature. One spare copy has, English version of pages 24 to 29, We may inform accordingly.

Asstt. :

S.O(J) :

D.R. (J):

7/2/91

7/2/91

C/41090/- 21/2/91 S.O (J) D.R (J)

We may issue objection letter 7/2/91.

O/C & A/C signed by DR(J)

ANNEXURE - I.

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

APPLICANT (S) Mohmed Arif Hasumbhai Balim

RESPONDENT(S) Union of India & Ors.

PARTICULARS TO BE EXAMINED	ENDORSEMENT AS TO RESULT OF EXAMINATION.
1. Is the application competent ?	✓
2. (A) Is the application in the prescribed form ?	✓
(B) Is the application in paper book form ?	✓
(C) Have prescribed number complete sets of the application been filed ?	✓
3. Is the application in time ?	✓
If not, by how many days is it beyond time ?	—
Has sufficient cause for not making the application in time stated ?	—
4. Has the document of authorisation/ Vakalat Nama been filed ?	✓
5. Is the application accompained by D.D./I.P.O. for Rs.50/-. ? Number ~~fax~~ of D.D./I.P.O. to be recorded.	DD 230156
6. Has the copy/copies of the order(s) against which the application is made, been filed.?	Ys (Annex A-5 P 22)
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed. ?	✓
(b) Have the documents referred to in (a) above duly attested and numbered accordingly ?	✓
(c) Are the documents referred to in (a) above neatly typed in double space ?	✓
8. Has the index of documents has been filed and has the paging been done properly ?	✓

..2..

PARTICULARS TO BE EXAMINED.	ENDORSEMENT TO BE RESULT OF EXAMINATION.
9. Have the chronological details of representations made and the outcome of such representation been indicated in the application.?	
10. Is the matter raised ihm the application pending before any court of law or any other Bench of the Tribunal ?	
11. Are the application/duplicate copy/spare copies signed.?	
12. Are extra copies of the application with annexures filed.? (a) Identical with the Original. (b) Defective. (c) Wanting in Annexures No. _____ Page Nos. _____ ? (d) Distinctly Typed ?	
13. Have full size envelopes bearing full address of the respondents been filed ?	
14. Are the given addressed, the registered addressed ?	
15. Do the names of the parties stated in the copies, tally with Name(s) those indicated in the application ?	
16. Are the transations certified to be true or supported by an affidavit affirming that they are true ?	
17. Are the facts for the cases mentioned under item No.6 of the application ? (a) Concise ? (b) Under Distinct heads (c) Numbered consecutively ? (d) Typed in double space on one side of the paper ?	
18. Have the particulars for interim order prayed for, stated with reasons.?	

7/12/91

Alb
5-2-91

To,
Dy Registrar.
CAT, Alb.

5619/91
5491

Sub:- OA /91
Mohd Asif Vs
U.O.I.

Sir,

The applicant in the matter seeks urgent relief. It is prayed that the matter may please be fixed at the earliest.

Thanking You
Yours faithfully
Mohd M.
Advocate.

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD

ORIGINAL APPLICATION NO: 203 /91

Mohmed Arif Hasambhai Belim,
Kumbharwada Main Road,
Near Alka Masjid,
14, Kumbharwada Corner,
RAJKOT :: APPLICANT

V/s

Union of India & 3 others :: RESPONDENTS

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Rajkot/Ahmedabad
Date: 5-2-1991

BELIM MAHOMAD ARIF HASAMBHAI
(APPLICANT)

For use in Tribunal's office

Date of filing
or
Date of receipt by post
Registration No.

Signature
for Registrar

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD

ORIGINAL APPLICATION NO: 203 /91

Mohmed Arif Hasambhai Belim,
Aged about 27 Yrs. Occ: Unemployed,
Address: Kumbharwada Main Road,
Near Alka Masjid,
14, Kumbharwada Corner
~~AHMEDABAD~~ RAJKOT :: APPLICANT

Versus

1. Union of India,
Through: Its Secretary,
Telecom. Department,
Government of India,
NEW DELHI

2. Shri N.A.Chauhan or his
successor in the office,
Central Industrial Tribunal,
Multi-storeyed Building,
Lal Darvaja,
Ahmedabad.

3. Secretary,
Ministry of Labour,
Government of India,
NEW DELHI

4. Asst.Engineer Phones
External (East),
Income Tax Buildings,
RAJKOT :: RESPONDENTS

DETAILS OF APPLICATION

1. Particulars of the order against which the application is made.

Award dated 4.9.1990 published by the Ministry of Labour, Government of India, in terms of its No.I-40012/110/88-D.II (B) dated 18.12.1990 given by Industrial Tribunal, Ahmedabad in the industrial dispute between the management of Asst. Engineer Phones Maintenance Rajkot and Mohmed Arif H Belim over the matter of his termination.

2. Jurisdiction of the Tribunal

The applicant declares that the subject matter of the order against which he wants redressal

.....2

is within the jurisdiction of the Tribunal.

3. Limitation

The applicant further declares that the application is within the limitation period prescribed in section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case

The applicant respectfully begs to submit as under:-

i) The applicant joined as a Casual Labour in Telephone Department at Rajkot under Respondent No.4 from 1st September 1986. He continued in the service upto 31st July 1987 and his services were terminated with effect from the Afternoon of 31st July 1987 / Beforenoon of 1st August 1987. The applicant in support of his working in the department produces herewith xerox copies of different certificates issued to him by Respondent No.4 as Annexure A/1 cumulatively in 4 pages. As can be seen from these certificates the applicant had worked for more than 240 days in the preceding 12 months from 31st July 1987.

A/1

.....3.

ii) The applicant submits that his services were terminated without following the conditions precedent under Sectio n 25(F) of the Industrial Disputes Act by Respondent No.4 in terms his No. A-2/CL/Selection/87-88/16 dated 1.7.1987 with information to him that his services were no more required on muster roll/on receipt of daily wages as casual labour with effect from the After-noon of 31st July 1987 i.e. from 1.8.1987. Copy of letter dated 1.7.1987 from D.E.Phones Extl(E) Rajkot is annexed herewith as annexure A/2. The applicant submits that he was neither given one month's notice nor one months pay in lieu of the notice of one month, nor retrenchment compensation was paid at the time of termination as required to be done before such termination under section 25(F) of the I.D.Act. Section 25(F) of I.D. Act is reproduced below for the ready reference of the honourable Tribunal.

A/2

"25-F Conditions precedent to retrenchment of workmen

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

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

.....4.

(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 for such authority as may be specified by the appropriate government by notification in the official gazette.

The applicant submits that all the above three conditions were not complied with in the matter by Respondent No.4. Thus the applicant had no alternative but to move the Assistant Labour Commissioner (Central) Adipur, Kutch by his representation dated 19.4.1988 with a complaint in necessary form. Copy of the complaint dated 19.4.1988 is annexed herewith as Annexure A/3. A/3 On this the Assistant Labour Commissioner(Central) had arranged for conciliation proceedings, which resulted in failure and thus a reference was made by Respondent No.3 to Respondent No.2 for its adjudication vide order dated 24.3.1989, copy of which is annexed herewith as Annexure A/4. A/4 The Industrial Tribunal after hearing the parties give the award dated 4.9.1990 and sent it to the Government of India, Labour Ministry, who has published the same by notice dated 18.12.1990. A copy of the said publication notification along with award is annexed as Annexure A/5 cumulatively. A/5.

iii) The applicant submits that the said award of the learned judge of Industrial Tribunal has come to the conclusion and has given findings that the concerned workman i.e. the Applicant has worked for more than 240 days in a year and section 25(F) is not complied with and that there has been violation of 25(H) of I.D.Act. However, the learned ~~Central~~ Central Industrial Tribunal despite of that, has not granted the workman the relief of reinstatement with back wages on the grounds that he was a casual labour and that whenever there was need he would be called. The Central Industrial Tribunal has held that it was a bonafide mistake on the part of the deptt. in not paying him the retrenchment compensation. Therefore the Industrial Tribunal giving such reasonings has held in the order portion that the termination of the applicant is in violation of section 25 F and thus is illegal and unjust, but the applicant is ordered to be granted only one year's salary instead of reinstatement.

iv) The applicant submits that the decision of the Central Industrial Tribunal not granting the applicant the reinstatement with full back wages is without jurisdiction and illegal. In the humble

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submission of the applicant the section 25(F) contains pre-conditions for the legal retrenchment/termination. If the pre-conditions are not complied with the termination from service is in-effective and nulity and it is not legally valid. It is without jurisdiction on the part of the honourable Centra l Industrial Tribunal to refuse the reinstatement and backwages and grant the salary of only one year in lieu of reinstatement in spite of the fact that it holds that there is violation of section 25 F of I.D.Act. It is a well settled position that if there is violation of section 25-F of I.D.Act there is no alternative but to reinstate the workman with full back wages. In the present case the applicant had been denied both on irrelevant and erroneous reasons. The applicant relies in support of his x humble contention the decision of the honourable Gujarat High Court reported in 1985 GLH page 421. The relevant portion is as under:-

> 2 Industrial Disputes Act, 1947-S.25F-conditions precedent to retrenchment of workmen-Those conditions are not followed before the discharge was effected in the present case - If precondition of a valid retrenchment has not been satisfied, the termination of service is ab initio void. The person whose services have been terminated, must be deemed to be in continuous service-Held that the respondent did not follow the conditions requisite for terminating the service of the petitioner and therefore the order of termination was ab initio void. Further held that the Labour Court was in error when it accepted the order of termination and directed payment of retrenchment compensation as only

relief the petitioner was entitled to have - Such an order of Labour Court was without jurisdiction

v) The applicant also submits that the Central Industrial Tribunal was also required to grant him back wages since there was no plea or proof on the part of the Respondent No.4 that the Workman was ga-infully employed during the period of his unemployment. The applicant relies upon the judgement of honourable Supreme Court of India reported in 1986 Labour Industrial cases page 374 and 1986 (3) SLJ page 32, wherein even in the case of small earnings during the period of unemployment are held to be not set off against back wages and has been held that if the employee during the forced absence due to termination order was helping his father-in-law in his coal depot and was living with him cannot be said to be gainful employment and if that has to be said so, begging will also be considered as gainful employment and in both the above referred cases the honourable Supreme Court of India allowed full back wages. The applicant thus pray that this honourable tribunal may please be set aside the award and te rmination order under challenge and the respondents may please be ordered to reinstate the applicant with full back wages.

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The relevant portion of judgement of the honourable Supreme Court of India reported in page 374 of 1986 Labour Industrial cases and 1986 (3) SLJ page 32 are as given below:-

1986 LAB I.C. 374

Civil Appeal No.2386 of 1987 D/- 27.9.84
Rajender Kumar Kindra - Appellant
V/s
Delhi Administration - Respondents

Para.21

It was next contended on behalf of the appellant that reinstatement with full backwages awarded to him. Mr. P.K.Jain, learned counsel for the employer countered urging that there is evidence to show that the appellant was gainfully employed since the termination of service and therefore he was not entitled to backwages. In support of this submission Mr.Jain pointed out that the appellant in his cross-examination has admitted that during his forced absence from employment since the date of termination of his service, he was maintaining his family by helping his father-in-law, Tara Chand who owns a coal-depot and that he and the members of his family lived with his father-in-law and that he had no alternative source of maintenance. If this gainful is employment, the employer can contend that the dismissed employee in order to keep his body and soul together had taken to begging and that would as well be a gainful employment. The gross perversity with which the employer had approached this case had left us stunned. If the employer after an utterly unsustainable termination order of service wants to deny backwages on the ground that the appellant and the members of his family were staying with the father-in-law of the appellant as there was no alternative source of maintenance and during this period appellant was helping his father-in-law Tara Chand who had a coal depot, it cannot be said that the appellant was gainfully employed. This was the only evidence in support of the submission that during his forced absence from service he was gainfully employed. This cannot be said to be gainful employment so as to reject the claim for backwages. There is no evidence on the record to show that the appellant was gainfully employed during the period of his absence from service. Therefore, the appellant would be entitled to full backwages and all consequential benefits."

1986(3) SLJ page 29

Para 24 It was lastly submitted that several employees must have taken up alternative employment during the intervening period between the date of the closure of the Churchgate Division and the hearing of this appeal and an enquiry therefore should be directed to be made into the amounts received by them from such alternative employment so as to set off the amounts so received against the backwages and future salary payable to them.

It is difficult to see why these eighty four workmen should be put to further harrassment for the wrongful act of the Company. It is possible that rather than starve while awaiting the final decision in their Complaint some of these workmen may have taken alternative employment. The period which has elapsed is, however, too short for the moneys received by such workmen from the alternative employment taken by them to aggregate to any sizeable amount, and it would be fair to let the workmen to retain such amount by way of solatium for the shock of having their services terminated, the anxiety and agony caused, thereby and the endeavours, perhaps often fruitless, to find alternative employment.

Para 25. It was also submitted that most of the workmen have already accepted the retrenchment compensation offered by the Company and cannot receive full back wages or future salary till the amount of such compensation received by them is adjusted. Learned Counsel for the Union has very failure conceded that the workmen cannot retain the retrenchment compensation and also claim full back wages as also future salary in full and that the amount of retrenchment compensation received by the workmen should be adjusted against the back wages and future salary. There would be no difficulty in adjusting ~~xgainstxthexbackxwagesxandxfuturex~~ the amount of back wages against the amount of retrenchment compensation received by the concerned workmen but if thereafter there is still any balance of retrenchment compensation remaining to the adjusted, it would be too harsh to direct that such workmen should continue in service and work for the Company without receiving any salary until the balance of retrenchment compensation stands fully adjusted, and therefore, so far as future salary is concerned, only a part of it can be adjusted against the balance of the retrenchment compensation, provided there is any such balance left after setting off the back wages."

5. Grounds for relief with legal provisions

i) The order ~~x~~ of termination as well as the Central Industrial Tribunal are without jurisdictionand ~~xxxx~~ illegal.

ii) The award of the Industrial Tribunal is without jurisdictions for the reasons and grounds stated herein above.

.....10

6. Details of the remedies exhausted

The applicant submits that he has no remedies according to the statutory rules of the Respondents for the redressal of his grievances.

7. Matters not previously filed or pending with any court.

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application, wr it petition or suit isnpending before any of them.

8. Reliefs sought

A) It may be declared that the award in reference ITC No.40/89 decided by the Central Industrial Tribunal Ahmedabad at Annexure A/5 is illegal and without jurisdiction with further directives to the Respondents to treat the applicant in continuous service from the date of his termination with full back wages and other consequential benefits of continuity of services etc.

.....11

B) Any other better relief/reliefs as the honourable Tribunal may deem just and proper looking to the circumstances of the case may please be granted to the applicant.

C) The cost of the petition may kindly be granted to the applicant from the respondents.

9. Interim order, if any prayed for

In view of the legal position as stated above in para 4 it is prayed that till admission and final disposal of the matter the respondents may kindly be directed to permit the applicant to discharge his duties and allow him to draw the salaries, allowances etc.

10. In the event of application being sent by registered post, it may be stated whether the applicant desires to have oral hearing at the admission stage and if so, he shall attach a self-addressed post card or inland letter, at which intimation regarding the date of hearing could be sent to him.

"NOT APPLICABLE"

.....12

11. Postal Order filed in respect of the application fee.

1. Number of Indian Postal Order(s) : DD 230157
2. Name of the issuing post office : Mochi Bazar Rajkot
3. Date of issue of Postal Order(s) : 28-1-91.
4. Post office at which payable : Ahmd.

12. List of enclosures

1. Postal order as per para 11 above
2. Vakalatnama
3. Documents at annexure A/1 to A/5

VERIFICATION

I, Mohmed Arif Hasambhai Belim, son of Shri Hasambhai, aged about 27 years, working as UNEMPLOYED AT PRESENT, resident of Rajkot do hereby verify that the contents of paras 1 to 3 and 6 to 12 are true to my personal knowledge and paras ~~XXXX~~ 4 to 5 believed to be true on legal advice and that I have not suppressed any material fact.

Rajkot/Ahmedabad

Date: 5-2-1991.

BELIM MAHOMAD ARIF HASAMBHAI

(Applicant)

Through:

Shri B.B.Gogia,
Advocate,
RAJKOT

Filed by Mr. B.B. Gogia
Learned Advocate for Petitioners with second set & ...1.... spares copies copy served/not served to other side

Dt. 5/2/91

Dy. Registrar C.A.T.(J)
Ahmedabad Bench

A/1

(13)

Indian Telecommunications Department

E.P. A... / RAJKOT

CERTIFICATE

NO A-2/M.R/87-88/82 Dated 8-7-1987.

This is to certify that Shri Belim Mahomed Arif Hasambhai has worked as a casual Labour in this Sub Dn on muster roll shown below:

SL No	M.R. No	NAME OF S.I.P	MONTH	RATE	DA[YS]
1	13-139	SHRI H. H. Balim Lm	SEP-86	13-10	26
2	21-1410	do	OCT-86	13-60	31
3	02-1414	do	NOV-86	13-60	30
4	12-1414	do	DEC-86	"	31
5	04-7776	do	JAN-87	"	31
6	11-7776	do	FEB-87	"	28
7	23-7776 5-7778	do	MAR-87	"	30
8	13-7778	do	APRI-87	"	30

TOTAL WORKING DAYS } 23[7]

TOTAL WORKING DAYS Two hundred thirty sev[en] on[ly]

True Copy
(signature)
Advocate

(signature)
S.D.P. A... / RAJKOT

(14)

:: INDIAN POSTS AND TELEGRAPHS DEPARTMENT ::

OFFICE OF THE
ASSISTANT ENGINEER
PHONES EXTERNAL WEST
RAJKOT-360 001.

No. A-2/MR/Certificate/180 Dated at Rajkot the 9/7/1987.

This is to certify that Shri Md. Arif H. Belim HAS WORKED AS Casual Labour in this Sub-division On MUSTER ROLLS as detailed below. He has been selected as Casual Labour through Employment Exchange, Rajkot.

SR.	NAME OF S.I.PHONES.	M.R.NO.	MONTH	DAYS	Rate
1.	Shri H H Belim	8421/13	may.87	31	13.60

TOTAL 31

TOTAL WORKING DAYS Thirty one only.

ASSTT. ENGINEER PHONES
EXTERNAL (WEST), RAJKOT.

*kjp.

True Copy

( )
Advocate

(15)

***** DEPARTMENT OF TELECOMMUNICATIONS *****

OFFICE OF THE : A.E.PHONES External,(East),
RAJKOT.

NO : A-2/M.R./87-88/10 Dated at Rajkot the 16-7-1987.

This is to certify that Shri. MAHOMADARIF HASAMBHAI BELIM has worked as a Casual Labour in this Sub-Division on MUSTER ROLLS as - - detailed below. ~~He has been selected as Casual Labour through Employment Exchange, Rajkot.~~ 13.60

SL No.	NAME OF S.I.PHONES.	M.R.NO.	MONTH.	DAYS.
1.	Shri Abhaysingh	17/8422	June'87	30
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				

TOTAL 30

Total working DAYS 30 (only Thirty)

16/7/87

A.E.PHONES, EXTERNAL, (EAST),
RAJKOT.

A. E. Phones, Extl (E.)
RAJKOT

PSD/

17.7

True Copy

Advocate

:: DEPARTMENT OF TELECOMMUNICATION ::

(16)

Office of the
Assistant Engineer Phones
External (East), Rajkot.

No. A-17/MR/Selection/ 75 Dated at Rajkot.. 17.. 1 1989.

This is to Certify that Shri [redacted] H BELIA has worked as a Casual Labour in this Sub-Division on Muster Rolls as shown below. He has been selected/not selected through the Employment Exchange, Rajkot. No

Sr.	Name of S.I.Phones	M.R.No.	Month	Days.
1.	Shri Abhesingh R	24/8422	July'87	26
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				
22.				
23.				
24.				

Totsl Working days. Twentysix days.....Total..26....
.only..Below..22.....

True Copy

(Advocate)

A. E. Phones Extl. (East)
RAJKOT — 360 001

A/2

(17)

:-:: DEPARTMENT OF TELECOMMUNICATIONS ::-

2fice of the :-
isistnat Engineer Phones
xtl.(West) Rajkot.

To Shri Mohd. Prof Hasan Selim Clk % Junior Engineer O/O-D. Rajkot 360001

Memo No. :- A-2/CL./Selection/87-88/15 Dtd. at Rajkot the 01/07/1987.

Since, your service are no more requiredonn Muster Roll/~~A/C-17~~ receipt on daily wages as a Casual Labour with effect from A/N of 07/1987, i.e. from Dated 1-6-1987 and onwards,

D. E. Phones Extl. (E.)
(D. V. MAKADIA)
RAJKOT

Shri ..... Jr. Engineer JE O/O-D. Casual Labour. through The D.E.Phones O/D .... Rajkot. He is instructed to deliver the id Memo the above mentioned Casual Labour under proper receipt which y please be forwarded to U/S immediately.

Copy to :- D.E.Phones Extl.(Mtce) Rajkot for information please. This is to in responce to TDM - Rajkot DO No. E-208/GENL/IV/60 Dtd. 29/6/87.

END *

True Copy

( )
Advocate

(18)

To:

The Assistant Labour Commissioner,
(Central), Old S.R.C. Building,
ADIPUR. (Kutch).

1.	Industries	:	Telecommunication Department
2.	Area	:	Rajkot
3.	Complaint's Name	:	Shri Mahmad Arif Hasanbhai Balim
4.	Complaint's Address	:	Kumbhar Wada, Main Road, Near Alkaba Masjid, 14-Kumbhar Wada, RAJKOT.
5.	Name of Employer	:	Assistant Engineer Phones, External (East) C/o. T.D.M. Income Tax Building, RAJKOT.
6.	Address of Employer.	:	As above
7.	Name of Association	:	NIL
8.	Designation	:	Casual Labour
9.	Duration of Service	:	Eleven Months i.e. September-'86 to July-1987.
10.	Salary	:	
11.	Date of dismissal from service.	:	01-08-1987
12.	Nature of complaint	:	Industrial Dispute
13.	No. of employers in employers institution.	:	So many
14.	Date of Demand	:	07-04-1988

Contd...2/-

(19)

15. : I was given an appointment in September, 1986 and was served with a lottor dated 1-7-1987 that your service is terminated with immediate effect. That prior to the dismissal, neither I have been served with proper notice nor paid any notice pay or retrenchment compensation etc., hence action in respect of dismissal of my service on the employer is wholly illegal, unfair, unjustice, unconstituational against the principal of natural justice and provisions of Industrial Dispute Act. That I have come to know that after my dismissal, fresh candidate has been interviewed for recruitment to the post of retrenched Casual Labour, as then by I have been victimised. Some fresh appointment has also been given in daily wages basis, it is therefore, requested that employer may be asked to reinstate me in service with continuouty of service and back wages and if my employer fails to reinstate we in service, then Industrial Dispute may please be ordered to be raised and proposal to make reference to the Labour Court/Tribunal for the adjudication according to law. A copy of the Demand Notice in 6 (SIX) copies are sent herewith.

True Copy

( )

Advocate

RAJKOT.

DATE :

MAHMADARIF HASANBHAI
BELIM

भारत सरकार

श्रम मंत्रालय

आदेश नइँ दिल्हो दिनांक 24मेइँ 1989

संख्या-एल-40012 /110 /88/83कि/-2हूवा 8:केन्दोय सरकार कि राय है । कि इससे उपरूधी अनूसूचोत में विनिदिष्ट विषय के बारे में आसिस्टेट इजोनियर फोन्स एक्सटर्नल इस्ट राजकोट के प्रबधक के सम्बध एक औधोगिक विवाद नियोजको ओर उनके कर्मकारो के बोचविधमान है,

ओर केन्दोय सरकार उक्त विवाद को न्याय निर्णयन के लिए निर्देशित करना वांछनीय समजतो है,

अतःस्व . औधोगिक विवाद अधिनियम , 19478/1947 का 148§ को ध धारा 10 को उप धरा 1§§के खंड §घ§ दारा प्रवत्त शाक्तिके का प्रयोग करते हुए, केन्दोय सरकार उक्त विवाद को उक्त अधिनियम को धारा 7-क के अधोन गठित केन्दोय सरकार औधोगिक अधिकरण / अहमदाबाद

को न्यायनिर्णयन हेतु इस विवाद निर्देशन के साथ निर्देसित करतो है कि उक्त अधिकरण उक्त विवाद में उक्त अधिनियम को धारा दस को उप धारा §2-क§ के अनूसार अपना पंचाट 3 महोनों कि अवधि के अन्दर देगा ।

अनुसूचो

" Whether the action of the management of assistant Engineer, phones, External (East), Rajkot in termination of the services of Shri mohmed Arif H. balim casual labour w.e.f. 1/8/88 is justified? If not, to what relief the workman is entitled ?

§ हरो सिंह §

डेस्क अधिकारो

प्रतिलिप निम्नलिखित का आवश्यक कार्यवाही हेतु प्रेषित ।

× पाठसोन, अधिकारी केन्द्रीय सरकार, औद्योगिक अधिकरण - अहमदाबाद

× 2. असिस्टेंट इंजीनीयर, फोनल , एक्सटर्नल § इस्ट § इन्कम टैक्स बिल्डींग राजकोट.

×3. मोहम्मद आरिफ एच. बेलीम, कुम्भार वाडा, मेन रोड, अल्काबा मस्जिद के पास , 14 कुम्भार वाडा राजकोट - 360001 /

औद्योगिक विवाद § के0 § नियम, 1957 के नियम 10-ख के अधीन की गई व्यवस्था के अनुसार, ~~विवाद अनुसार~~ , विवाद उठाने वाले पक्ष को सलाह दी जाती है कि वह दावों का विवरण, जो संगत दस्तावेजों सहित पूरा हो , अवलम्बों § रिलायंस § तथा गवाहों की सूची इस निर्देशन आदेश की प्राप्ति के 15 दिनों के अन्दर अधिकरण के पास दायर करे और ऐसे विवरणों की एक प्रति इस विवाद में अंतर्ग्रस्त प्रत्येक विपक्षी पक्षकार को भेजे ।

§ हरी सिंह §
डेस्क अधिकारी

प्रतिलिपि निम्नलिखित को सूचनार्थ प्रेषित : -

1. दूर संचार विभाग , नई दिल्ली ।
2. क्षेत्रीय श्रमायुक्त § के § अहमदाबाद
3. सहायक श्रमायुक्त § के § आदिपुर को उनकी फाइल सं0 ए. एल. सी. §आई जे § 1§11§ §6§88 - 1§12§88 के संदर्भ में ।
4. न्यायनिर्णयन फोल्डर ।

§ हरी सिंह §
डेस्क अधिकारी

True Copy

Advocate

(22)

A/5

*BY REGISTERED POST

MOST IMMEDIATE

No. L- 40012/110/88-D.II(B)
Government of India
(Bharat Sarkar)
Ministry of Labour
.....

New Delhi, dated the 18/12/90

To

*The Secretary
Industrial Tribunal, Gujarat,
B-4, M.S. Building,
Lal Darwaja,
Ahmedabad - 380 001.

Subject: Reference (ITC) No. 40/89 - Award of the Industrial Tribunal, Ahmedabad in the industrial dispute between the management of Asstt. Engineer, Phone Maintenance Rajkot and Mohammed Arif H. Balim over the matter of his termination -

.....

Sir,

I am directed to refer to your letter No. 15013 dated 13.11.90 forwarding therewith six copies of the Award in the above mentioned reference (received on 19.11.90) and to say that the Award is in Gujarati, but there are no arrangements in the Government of India Press for publishing the Award in Gujarati. In view of this, it is not possible to publish the Award in Official Gazette. As you are aware failure to publish the Award would amount to violation of Section 17 of the Industrial Disputes Act, 1947. In the circumstances, I am to request you to kindly take steps to publish the Award in an appropriate manner for the information of All concerned, so as to meet the requirements of Section 17 of the Industrial Disputes Act. A copy of the Award is sent herewith for doing the needful. A confirmation regarding publication of the Award may kindly be sent to this Ministry immediately. Meanwhile, copies of the Award are being sent to the management, union and other concerned authorities for their information.

This may kindly be treated as most immediate.

Yours faithfully,

(K.V.B. Unny)

Desk Officer

Copy for information and necessary action, with a copy of award to:

*1. The Asstt. Engineer, Phones, External (East), Income Tax Building, Rajkot -

True Copy

Advocate

23

*2. Sh. Mohmed Arif H. Balim, Kumbhar Wada, Main Road, Near Alkaba Masjid, 14-Kumbharwada, Rajkot -

~~3. The Deptt. of Telecommunication, New Delhi.~~

4. The CLC(C), New Delhi.

5. The Regional Labour Commissioner (C), Ahmedabad

Copy without a copy of award to:

1. The Deptt. of Telecommunicatdon, New Delhi.
2. The Asstt. Labour Commissioner (C), Adipur (Kutch)
3. Adjudication folder.

(K.V.B. Unny)
Desk Officer

(24)

શ્રી એન.જે.ચૌહાણ, કેન્દ્રીય ઔધોગિક ન્યાયધીશ, અમદાવાદ સમક્ષ.

રેફરન્સ (આઇટીની) નં. ૪૦/૮૯.

આસી.એન્જીનીયર, ફોન્સ, એક્ટર્નલ,
(ઇસ્ટ), રાજકોટ ...પ્રથમ પક્ષકાર

અને

તેના કામદારો વચ્ચે. ...દ્વિતીય પક્ષકાર

શ્રી મહંમદ આરીફ એન.જેલીમને તા.૧-૮-૮૭થી નોકરીમાંથી દૂર કરવા બાબતનું
પ્રથમ પક્ષકારનું પગલું વાજબી છે કે કેમ તે અંગે.

પ્રથમ પક્ષકાર તરફે શરૂઆતમાં વકીલ શ્રી સૈયદ અને પાછળથી ગેરહાજર.
દ્વિતીય પક્ષકાર તરફે વકીલ શ્રી વી.કે.મલર.

ચુ કા દો

૧. હાલનો રેફરન્સ ઔધોગિક તકરાર અધિનિયમ, ૧૯૪૭ કહે છે
પછીથી ૧૯૪૭ના અધિનિયમ તરીકે ઓળખવામાં આવશે તેની કલમ ૧૦(૧)
(ઘ) મુજબ, ભારત સરકારના શ્રમ મંત્રાલય, નવી દિલ્હીના તા.૨-૫-૮૯
ના હુકમ ક્રમાંક:એલ-૪૦૦૧૨/૧૧૦/૮૮-ડી-૨.(બી)થી પક્ષકારો વચ્ચેની
ઔધોગિક તકરારનો ન્યાય નિર્ણય કરવા માટે અમદાવાદ ખાતેના ઔધોગિક
ન્યાયધીશને સુપરત કરવામાં આવેલ, જે રેફરન્સ ચલાવવા માટે અમોને
કામ સોંપવામાં આવેલ છે.

૨. પક્ષકારો વચ્ચેની જે ઔધોગિક તકરારનો ન્યાય નિર્ણય કરવાનો
છે તે મુજબની છે કે, પ્રથમ પક્ષકાર ભારત સરકારના ટેલીફોન ખાતાના
રાજકોટ વિભાગમાં કામદાર તરીકે કામ કરતાં મહંમદ આરીફ જેલીમને
તા.૧-૮-૮૭ના રોજથી નોકરીમાંથી છુટા કરવામાં આવેલા છે તે પગલું
વાજબી છે કે કેમ અને જો તે વાજબી ન હોય તો, સદરહુ કર્મચારી શું
દાદ મેળવવા માટે હકદાર છે ?

૩. પ્રથમ પક્ષકાર ભારત સરકારનો એક ભાગ છે અને રાજકોટ શહેરમાં
ટેલીફોન વિતરણ વગેરેની સુવિધાઓ પુરી પાડવાની કામગીરી કરે છે.
સદર વિભાગમાં સંબંધિત કર્મચારી શ્રી મહંમદ આરીફ જેલીમ કે જે હવે
પછીથી સંબંધિત કામદાર તરીકે ઓળખવામાં આવશે તેઓ સપ્ટેમ્બર-૮૬થી

English translation of these pages is kept behind on page 24/1

કેજ્યુઅલ લેબરર તરીકે રોજના રૂા.૧૩-૬૦ પૈસા વેતનથી કામ કરતા હતા. ઓગષ્ટ-૮૭થી તેઓને નોકરીમાં કામે લેવામાં આવેલા ન હતા માટે તેઓએ હાલની ઔદ્યોગિક તકરાર ઉપસ્થિત કરેલી છે.

૪. સંબંધિત કામદારે આંક-૯ મુજબનું માંગણાનું નિવેદન રજુ કરીને જણાવેલ છે કે, તેઓ રાજકોટમાં આવેલ આસી. એન્જીનીયર, ડી-૧, એક્ષટર્નલ, પુર્વ વિભાગની ઓફિસમાં ૮૬ના સપ્ટેમ્બરથી ૮૭ના જુલાઇ મહીના સુધી કેજ્યુઅલ લેબરર તરીકે કામદાર તરીકે કામ કરતા હતા અને તેઓને રોજના રૂા.૧૩-૬૦ પૈસા લેખે વેતન માસોમાસ ચૂકવાતું હતું. જુલાઇ મહીનામાં તેઓને સુચના આપીને જણાવવામાં આવેલ હતું કે પહેલી ઓગષ્ટથી તેમની નોકરીની તેઓને જરુર નથી પરંતુ તેઓને કોઇ છટણી વળતર ચુકવવામાં આવેલ ન હતું તેમજ તેઓને વાસ્તવમાં કાયમી કરવા જોઇતા હતા પરંતુ કાયમી કરેલા ન હતા માટે તેઓને નોકરીમાંથી છુટા કરવું પગલું ગેરકાયદેસર છે માટે તેઓને નોકરીમાં પડેલા દિવસોના પગાર સાથે પુનઃસ્થાપિત કરવા જોઇએ.

૫. દ્વિતીય પક્ષકારે આંક-૧૨ મુજબનો લેખીત જવાબ રજુ કરીને જણાવેલ છે કે, કામ ન હોવાને કારણે રોજમદાર કામદાર શ્રી બેલીમ હોવાથી તેઓને છુટા કરેલા હતા અને તેઓ કોઇ છટણી વળતર મેળવવા માટે હકદાર નથી, કારણ કે તેઓએ છેવટના વર્ષમાં ૨૪૦ દિવસ કામ કરેલ ન હતું.

૬. સંબંધિત કામદારે પોતાની રજુઆતના સમર્થનમાં પોતાની જાતને આંક-૧૮થી તપાસેલા છે. જ્યારે પ્રથમ પક્ષકારે કોઇ મૌખિક પુરાવો રજુ કરેલો નથી, કારણ કે સંબંધિત કામદાર તરફથી તેઓએ કેટલા દિવસ કામ કરેલ હતું તે બાબતનો જે પુરાવો રજુ કરેલો છે તે બાબતમાં પ્રથમ પક્ષકારને કોઇ તકરાર નથી.

૭. પ્રથમ પક્ષકાર ભારત સરકારનું એક ખાતું છે પરંતુ પ્રથમ પક્ષકાર ખાતા તરફથી જે કામકાજ કરવામાં આવે છે તે બંધારણની જોગવાઇ મુજબ

ભારત સરકાર કરવા માટે બંધાયેલ નથી અને બીજા કિસ્સામાં જે કરજીવાન કામગીરી રાજ્ય સરકારે કે ભારત સરકારે બજાવવાની હોય તે કામગીરી જે ખાતું બજાવતું હોય તેને જ ૧૯૪૭ના અધિનિયમમાંથી મુક્તિ મળે પરંતુ પ્રથમ પક્ષકારનું ખાતું વૅડ ટેલીફોનની સુવિધા પુરી પાડવાની પ્રવૃત્તિ કરે છે માટે ૧૯૪૭ના અધિનિયમનાં ઉપયોગની જે વ્યાખ્યા આપવામાં આવેલ છે તેમાં તેનો સમાવેશ થાય તેમજ સંબંધિત કામદારનો પણ તે જ અધિનિયમની જોગવાઇઓ પુરજા કામદારની જે વ્યાખ્યા આપવામાં આવેલ છે તેમાં તેનો સમાવેશ થાય છે માટે પ્રશ્ન એ નડતો કરવાનો રહે છે કે, સંબંધિત કામદારને છુટા કરવામાં આવ્યા અગર તા. ૧-૮-૮૭ના રોજથી નોકરીમાં ચાલુ ન રાખવામા આવ્યા તેમાં ૧૯૪૭ના અધિનિયમની જોગવાઇઓનો ક્યાં ભંગ કરવામાં આવેલ છે કે કેમ ? સામાન્ય રીતે પ્રથમ પક્ષકાર તરફથી એવી તકરાર લેવામાં આવી છે કે, ૧૯૪૭નો અધિનિયમ તેને લાગુ પડતો નથી. પરંતુ ઉપર જણાવેલા કારણો પર ભારત સરકારના ટેલીફોન ખાતાના સંબંધિત અધિકારીનો કામદારની વ્યાખ્યામાં સમાવેશ થતો હોવાથી અને ટેલીફોન ખાતાનો ઉદ્યોગની વ્યાખ્યામાં સમાવેશ થતો હોવાથી ૧૯૪૭ના અધિનિયમની જોગવાઇઓ લક્ષમાં લઇને સંબંધિત કામદારને નોકરીમાંથી દુર કર્યા અગર નોકરીમાં ચાલુ રાખ્યા નહીં તેમાં કંઇ ગેરવાજબીપણું છે કે કેમ ?

૮. સંબંધિત કામદારે રજુ કરેલા દસ્તાવેજો પુરાવા ઉપરથી સ્પષ્ટ છે કે, સપ્ટેમ્બર-૮૬થી તેમને કામે રાખવામાં આવેલા હતા અને એપ્રિલ-૮૭ સુધી તેઓને ૨૩૭ દિવસ પુર્વ વિભાગમાં કામ કરેલ હતું. ત્યાર બાદ મે-૮૭ માં તેમણે ૩૧ દિવસ વેસ્ટ રીજનમાં કામ કરેલ હતું. ત્યાર બાદ જુનમાં ૩૦ દિવસ પુર્વ વિભાગમાં કામ કરેલ હતું તેમજ જુલાઇમાં પણ પુર્વ વિભાગમાં કામ કરેલ હતું એટલે મે-૮૭ દરમ્યાન તેમને આસી.એન્જીનીયર, ફોન્સ, વેસ્ટર્નાની પરિયમ વિભાગની શાખામાં કામ કરેલ હતું તે સિવાયના બાકીના સમય દરમ્યાન તેમણે ઉપર જણાવ્યા મુજબ પુર્વ વિભાગમાં જ કામ કરેલ છે. એટલે તેમને તા. ૧-૮-૮૭ના રોજથી છુટા કરવામાં આવ્યા ત્યાં સુધી

આસી. એન્જીનિયર, ફોન્સ, એક્ટર્નલની પુર્વ વિભાગની ઓફિસમાં ૨૪૦ ડરતાં વધુ દિવસ કામ કરેલ હતું માટે તેમને છુટા કરતા પહેલાં તેમને એક મહીનાની મુચના આપવી જોઇતી હતી અને કલમ ૨૫-એફ મુજબ એક વર્ષની નોકરી બદલ મળવાપાત્ર છટણી વળતર ચુકવી આપવું જોઇતું હતું. પરંતુ કારોબારી વચ્ચે તકરાર નથી કે, સંબંધિત કામદારને પહેલી જુલાઇ,૮૭ના રોજ મુચના આપીને જણાવવામાં આવેલ હતું કે તેમના કામની તા.૧-૮-૮૭ ના રોજથી જરૂર પડશે નહીં એટલે એમ કહી શકાય કે તેમને એક મહીનાની મુચના છુટા કરતા પહેલાં આપવામાં આવેલ હતી પરંતુ એક વર્ષ તેમણે કામ કરેલ હતું તે બદલનું છટણી વળતર ચુકવવામાં આવેલ ન હતું માટે તેમને તા.૧-૮-૮૭ના રોજથી છુટા કરવાનું પગલું ૧૯૪૭ના અધિનિયમની કલમ ૨૫-એફની જોગવાઇ મુજબ ગેરકાયદેસર ગણાય. આ સંજોગ ઉપર આધાર રાખીને શ્રી મશરની રજુઆત એવી છે કે, સંબંધિત કામદારને પડેલા દિવસોના પગાર સહ નોકરીમાં પુનઃસ્થાપિત કરવા જોઇએ. સર્વોચ્ચ અદાલતના નિર્ણય મુજબ, કલમ ૨૫-એફ ની જોગવાઇઓનું પાલન કર્યા વગર કોઇ કામદારને નોકરીમાંથી છુટા કરવા માં આવે ત્યારે તેણે નોકરીમાંથી છુટા કરતો હુકમ થયો જ નથી એમ ગણીને સંબંધિત કામદાર સાધારણ સંજોગોમાં નોકરીમાં પુનઃસ્થાપિત થવા માટે હકદાર બને છે. શ્રી મશરની રજુઆત એવી છે કે, તે જ પ્રમાણે સંબંધિત કામદારને પડેલા દિવસોના પગાર સાથે નોકરીમાં પુનઃસ્થાપિત કરવા જોઇએ. પરંતુ આ રજુઆત સાથે સહમત થઇ શકાય તેમ નથી કારણ કે મજૂરે તકરારમાં લેવાની જરૂર છે કે, સંબંધિત કામદાર રોજમદાર હતા, તેમને જરૂર હોય ત્યારે જ કામે રાખવામાં આવતા હતા અને તેમને છુટા કરતા પહેલાં એક મહીનાની મુચના આપવામાં આવેલ છે માટે તેમને છુટા કરવામાં આવેલ છે તે કૃત્ય શુધ્ધ બુધ્ધિનું છે. મજૂરે નોંધ લેવાની જરૂર છે કે, ટેલીફોન ખાતાની કામગીરી એવા પ્રકારની છે કે જ્યારે તેઓને નવી લાઇનો નાખવાની હોય ત્યારે વધુ મજુરોની જરૂર પડે અને તે માટે તેઓને મજૂર રોકવા પડે. અને આ પ્રકારની કામગીરી પુર્ણ થયેથી તેઓને આ કામ માટે રાખવામાં આવેલ મજુરોની જરૂર રહે નહીં અને તેથી તેમને છુટા કરવા પડે. આ રીતે રોકવામાં

મજુરોને છુટા કરવામાં આવે તો તે તેમને છુટા કરવા માટેનું પગલું શુધ્ધ બુધ્ધ વગરનું છે એમ કહી શકાય નહીં. આપણા કિસ્સામાં પણ ટેલીફોન લાઈન મેઈન્ટેનન્સ માટે સંબંધિત કામદારને રોકવામાં આવેલા હતા તે કર્મચારી કામગીરી બધ થયેથી સંબંધિત કામદારને ચોકકસ મુદતના અગાઉથી જણાવવામાં આવેલ હતું કે, તેમની પહેલી તારીખ પછીથી જરૂર પડશે નહીં પરંતુ ટેલીફોન ખાતાની ભૂલ એ થઇ કે તેઓએ એક વર્ષની નોકરી કરેલ હતી એટલે તે લક્ષમાં લઇને એક વર્ષની નોકરીના પ્રમાણમાં તેમને છટણી વળતર ચૂકવવું જોઇતું હતું. સર્વોચ્ચ અદાલતે "સ્ટેટ બેન્ક ઓફ ઇન્ડીયા વિરુધ્ધ મો. મુંદરમણી" ના કામમાં આપેલો એક ચુકાદો, કે જે ચુકાદો ૧૯૭૬ના એ.આઇ.આર.ના સુપ્રિમ કોર્ટના પાન નં. ૧૧૧૧ ઉપર પ્રસિધ્ધ થયેલો છે તેમાં સર્વોચ્ચ અદાલતે કર્મચારી મુંદરમણીને છટણી વળતર આપેલ ન હતું માટે તેમને નોકરીમાંથી છુટા કરતો હુકમ ગેરકાયદેસર ઠરાવેલ હતો પરંતુ છટણી વળતર ચુકવાનનાને કારણે આપવામાં આવેલ નથી એવા નિર્ણય ઉપર સદરહુ કામદારને નોકરીમાં પુનઃસ્થાપિત થવાના લાભને બદલે તેના અવેજીમાં વળતર અપાવેલ હતું. આપણા કિસ્સામાં પણ ઉપરોકત બંધારણ મુજબ છટણી વળતર મેળવવા માટે હકકદાર છે નહીં એમ માનીને તેમને છટણી વળતર આપેલ નથી તેથી જ તેમને છુટા કરતો હુકમ ગેરકાયદેસર અને અયોગ્ય ઠરાવવામાં આવેલ છે. આ સંજોગોમાં સંબંધિત કામદારને નોકરીમાં પુનઃસ્થાપિત થવાની દાદની અવેજીમાં વળતર અપાવવામાં આવે તો પક્ષકારોને ન્યાય થયેલો ગણાશે. સંબંધિત કામદારને છુટક રોજમદાર કામદાર તરીકે રાખવામાં આવેલા હતા. કામ હોય ત્યારે જ તેમને કામે રાખવામાં આવતા હતા. અને આ રીતે ટેલીફોન ખાતાએ શુધ્ધબુધ્ધ પુર્વક વર્તન કરેલ છે. પુર્વ વિભાગમાં કામ ન હોય ત્યારે પશ્ચિમ વિભાગમાં કામ આપેલ છે અને જ્યારે કામ પુરું થયું છે ત્યારે તે આઠ એક મહીનાની નુચના આપીને છુટા કરેલા છે. કસુર છટણી વળતર ચૂકવ્યું નથી તેમાં જ થયેલ છે. આ સંજોગ લક્ષમાં લેવામાં આવે તો સદરહુ કામદારને નોકરીમાં પુનઃસ્થાપિત થવાની દાદ જો અપાવવામાં આવે તો તે ગેરવાજબી ગણાશે. સંબંધિત કામદારે લગભગ ૧ વર્ષ જેટલી જ

છુટક રોજમદાર તરીકે જ નોકરી કરેલી છે. તે જાણતા હતા કે આ સંસ્થામાં તેમને જ્યારે કામ હોય ત્યારે જ કામે રાખવામાં આવેલા છે. એટલે તેઓને નોકરીમાં પુનઃસ્થાપિત થવા અંગેનો હુકમ આપવામાં આવે તો તે વાજબી ગણાશે નહીં. પરિણામે અમોને એમ લાગે છે કે, એક વર્ષનું વેતન જો તેમને અપાવવામાં આવશે તો બંને પક્ષકારોને ન્યાય થયેલો ગણાશે. પરિણામે આ રેફરન્સમાં નીચે મુજબનો હુકમ કરવામાં આવે છે.

-: હુકમ :-

૧. સંબંધિત કામદાર શ્રી મહંમદ આરીફ અેટીમને તા. ૧-૮-૮૭ના રોજથી નોકરીમાંથી છટણી વળતર ચુકવ્યા વગર દૂર કરેલા હતા તેથી તેમને નોકરીમાં ચાલુ ન રાખવાનું પગલું ગેરવાજબી ઠરાવવામાં આવે છે. પરંતુ તેઓને નોકરીમાં પુનઃસ્થાપિત કરવાને બદલે તેઓને એક વર્ષનું વેતન ચુકવી આપવા માટે પ્રથમ પક્ષકારને આથી આદેશ આપવામાં આવે છે. ઉપરાંત આ રેફરન્સના ખર્ચ પેટે પણ સંબંધિત કામદારને પ્રથમ પક્ષકારે રૂ. ૨૦૦ ચુકવી આપવાના રહેશે.

સહી/ નારણસિંહ ચૌહાણ
કેન્દ્રીય ઔદ્યોગિક ન્યાયપંચ.
૭/૭/૯૦

ખરી નકલ
સેક્રેટરી.
અમદાવાદ.
તા. 7-8-૧૯૯૦.

True Copy
for Secretary,
Industrial Tribunal
Gujarat.

True Copy
( )
Advocate

English translation of
Page 24 to 29

(24)

Before Shri N. A. Chauhan,

Central Industrial Tribunal,

Ahmedabad.

Reference (ITC) No. 40/89

Assistant Engineer,
Phones, External (East)
RAJKOT. ..... First Party.

AND

Between their Employees. ..... Second Party.

Re : Whether action taken by the First Party releving Shri Mohmed Asif H. Bailim from service from 1-8-87 is proper or not.

Shri Syed, Advocate for First Party in the begining and thereafter absent.

Shri V. K. Mashru , Advocate for Second Party.

JUDGMENT

This reference has been made to the Industrial Tribunal , Ahmedabad by the Central Government Labour Secretariat, Delhi, vide their order Sr. No. L-40012/110/88-D-2(B) dated: 2-5-89 under the provisions of

10(1)(Dh) of the Industrial Disputes ordinance,1947 (which will be hereinafter called as ordinance of 1947) for giving decision of the disputes between the parties, which reference, in turn, has been referred to us for trial.

2. The disputes between the parties for which decision is to be taken, is such that the First Party, Mohmed Asif Belim who was serving as an employee in the Telephone Department of the India Government at Rajkot, has been relieved from service with effect from 1-8-87, whether that kind of action was just or not ? If not, then what kind of relief this employee is entitiled to ?

3. The First party is a part of the Government of India, and it does the work of distributing the Telephones facilities, etc. in Rajkot.Shri Mohmed Asif Belim, the concerned employee (who will be called as the concerned employee) was serving as casual labour at the rate of Rs. 13-60 ps per day in this department from September, 1986 . He was not taken in service work from August, 1987, and hence he has arisen the

present industrial dispute.

4. The concerned employee by filing his representation vide Exh. 9 has stated that he was working as casual labour in the office of the Assistant Engineer, Phones, External, Eastern Division from September, 1986 to July 1987 and he was paid Rs.13.60 per diem as salary. That in the month of July, he was informed by giving instructions that his services are no longer required from 1st of August, but he was not paid any retrenchment compensation. In fact, he was required to be made permanent, but it was not done so. Hence action taken for discharging him from service, being illegal, he may be reinstated in service by paying the back wages of the days broken.

5. The second party by filing his written statement vide Exh. 12, has stated that there being no work, Shri Belim being the casual labour on daily wages, was relieved, and he is not also entitled to get retrenchment compensation, because that he had not worked for 240 days in the last year.

6. The concerned causal labour employee has been

examined vide Ex. 18 in support of his representation, while the First Party has not given any oral evidence ~~xxx xxx xxxxx xxx~~ because the said First Party has no any dispute about the evidence produced by the concerned party for the days he has worked.

7. The First Party is one of the departments of the Government of India, but whatever the works are being done by the First Party, the Government of India is not bound to do the same according to the provisions of Constitution, and whatever the compulsory works are required to be carried out by the State Government or the Government of India under Constitution and if such type of works are being performed by the concerned department, then the said department can get exemption from the ordinance of 1947. But as the department of First Party is doing /facilities of telephones, it falls under the activities of providing /the defination of Industries in ordinance of 1947. Hence it includes therein, and the concerned, employee-casual labour also being fallen under the defination of employers in the provisions of rodinance, he is also included

therein. Therefore question to be decided is whether in relieving the concerned casual labour or not keeping him continued in service from 1-8-87 contravenes any - provisions of Ordinance, 1947 or not ? Ordinarily, the dispute of the First Party has been so taken that Ordinance of 1947 does not apply to him. But due to the reasons mentioned above, the employees of the Telephone Department having been fallen under the definition of workers and the Telephone Department being also falen in definition of Industry and therefore keeping in view the provisions contained in Oridinance-1947 whether there is any reasonableness either in relieving the concerned employee from - service or keeping him continued in service.

8. On the contrary documentory evidence produced by the concern ed casual labour that it is found explicitely clear that he was taken up in service from Septmber, 1986 and was retained in service, and he accordingly worked for 237 days in Eastern region. Thereafter he worked for 31 days in May, 1987 in the Western Region and thereafter he worked for 30 days in June in Eastern

...6/..

region and had worked in July also in Eastern Region. Means that during May -87, he had worked in the Branch of Asstt. Engineer, Phones, External , and in all other remaining days, he had worked in the Western Region as stated above . Means that he had worked for more than 240 days in the Western Region of Asstt. Engineer,Phones, External region upto date 1-8-87 on which he was relieved,. Therefore he ought to have given one months instruction before making him relieved, and he was also required to be paid one months retrenchment compensation for his service of one year under Sec. 25-F . There is no dispute between the parties that the concerned casual labour was relieved after giving him the instructions on 1st of July-87 stating that his services were not required from 1-8-87. It therefore can be saidthat he was given one months instruction before his relief, but the retrenchment compensation for one year's service was not paid to him , and hence the steps taken of relieving him in service from 1-8-87, was illegal under the provisions of Sec. 25-F of the Ordinance-1947. Relying on these circumstances, it is submissionof Shri Mashru that he concerned casual labour should be

re-instated in service by paying the salary of back wages According to the decision of the Supreme Court, and without observing the provisions of Sec. 25-F , if any employee is relieved from service then he shouldbe treated, believing that the order of his relief is not issued even, and the said concerned employee is entitled to be re-instated inservice in ordinary circumstances. The submission of Shri Mashru is such that the concerned casual labour should be re-instated in service with the payment of salary of back wages. But it is not possible to coinside with this submission, but it is to be kept in mind here that the concerned employee was a casual labour. He was taken up in work when the necessity arisen, and he is given one months instruction before he was relieved. Hence action taken for relieving from service is bonafide. It may be noted here that the working of the Telephone Department is such that when they have to place new line, more labourers are required, and they have to engage the labourers at that time, and after the work is finished, there may be no necessity of the labourers, and hence they are relieved, If such engaged labourers are relieved, then the steps taken to relieve them, cannot be called as malafide. In our case also,

The concerned labourers were engaged for extension of Telephone Line, and no sooner the work was over, the concerned labourers were relieved after informing them before one month. But the Telephone Department committed a mistake that, rentrenchment compensation for one month was required to be paid to them, keeping in view there one years service put by them,. The Supreme Court has given a decision in the matter of 'State Bank of India Vs. N. Sundarmani, which decision is published in A. I. R. 1976 Supreme Court Page No. 1111 wherein as the Surendermani, the employeewwas not paid - rentrenchment compensation, the orderof his relief from service, was declared as illegal. But it was decided that the retrenchment compensation was not paid due to unawareness, the employee instead of granting benefit of re-instatement, the compensation was paid to him via it. In our case on belief that casual labour is not entitled to demand for retrenchment compensation , he was not paid the same, and hence order of his dismissal is declared as illegal and improper. In view of these circumstances, granting the compensation to the employeed instead of his relief of re-instatment in service, it will be justifiable to the parties . The concerned ex

employee was engaged as retailed labourer on daily wages. he was keeping on work, when there was work, and in this way the Telephone Department has acted bonafidely. When there was no work in the Eastern Region, then he was given in the Western Region and when the work is finished then he is relieved giving the instruction before one month. Mereby it is found that he has not been paid retrenchment compensation. If these circumstance are taken into account then if the relief of the concerned labour to re-instate him in service is granted then it will be illegal. The concerned worker has put in services of abour one year as retailed daily wages. He was knowing that this department was engaging him in service when there was work, and hence if he is given order of his re-instatement in service, then it will be considered not proper. In the result if the said worker is granted compensation for one year, then it will be justifiable to both the parties. In the result I pass the following order in this Reference.

-: ORDER :-

As the concerned worker Shri Mohmad Arif Belim was relieved from service from 1-8-87 without paying him the retrenchment compensation, the action not

keeping him continued in service is decided to be illegal , but the First Party is hereby ordered to pay the one years compensation to the said worker, Instead of re-instating him in the service. Besides this the First Party shall pay Rs. 200/- to the concerned worker towards the cost of this Reference.

Sd/- G. J. Dave,
Secretary,
Ahmedabad.
Date: 5-10-1990.

Sd/- Narsinh Chauhan
Central Industrial Judge,
4-10-90.

Petition-Writer,
S.C. Court, Rajkot.

True Copy

(Advocate)

does not provide for a public notice. It merely provides for notice to creditors in the manner as may be prescribed. Rule 24 framed by the Bombay High Court (which applies to Gujarat State) prescribes public notice. As held by the Division Bench the insolvency court has discretion first to issue personal notice to the debtor and after hearing him, decide the question whether or not to issue public notice. It is not obligatory that once insolvency petition is admitted, public notice has merely to follow. The Division Bench clearly negatived such an argument in the following words:

"We are not in Agreement with the observation of the learned trial Judge that these provisions specifically negative the court's power to hear the debtor before issuing a public notice, as has been thought by the learned Judge. However, for want of anything contrary, express or implied, in the language of Section 19 of the Act, we say that the concerned court of insolvency may, in its discretion, issue a notice to the concerned debtor and hear him and if the court finds that the application *prima facie* does not make out any act of insolvency, it may not proceed with the matter further and in such cases it would not be necessary for the court to issue a public notice contemplated."

7. In view of the discretion of the trial court not to issue public notice before hearing the debtor the lower appellate court was not at all justified in facts or in law, to reverse the order of the trial court postponing the issuance of the public notice. The lower appellate court has committed material illegality and irregularity and it has erroneously directed public notice to issue before hearing the debtors.

8. In the result, the Revision Application succeeds and the order of the lower appellate court is quashed and set aside and that of the trial court is restored. Since this matter has become very old on the preliminary question the trial court is directed to dispose of this matter as expeditiously as possible and in any case before 30th June, 1984. Rule made absolute with costs.

(DMT) Order accordingly

1985 G.L.H. 421

P. R. GOKULAKRISHNAN C. J. AND S. B. MAJMUDAR, J.

(Shri) M. P. Ramanandi ...Petitioner

Versus

Gujarat State Warehousing Corporation ...Respondent

Special Civil Application No. 5793 of 1984

D/- 28-3-1985*

Industrial Disputes Act, 1947 — S. 25F — Conditions precedent to retrenchment of workmen — Those conditions not followed before the discharge was effected in the present case — If precondition of a valid retrenchment has not been satisfied, the termination of service is ab initio void — The person whose services have been terminated, must be deemed to be in continuous service — Held that the responent did not follow the condition requisite for terminating the service of the petitioner and therefore the order of termination was ab initio void — Further held that the Labour Court was in error when it accepted the order of termination

*Application praying to issue writ of certiorari etc. setting aside the award of the Labour Court at Ahmedabad passed on 29/29-6-84 in Ref. LCA No. 810/77 to the extent prayed for etc.

and directed the payment of retrenchment compensation as the only relief the petitioner was entitled to have — Such an order of Labour Court was without jurisdiction.

Held that the termination of the service of the Petitioner-Workman was *ab initio* void and inoperative and declaration was made that he continued to be in service with all consequential benefits, namely, back wages and other benefits, if any. Case remitted back to Labour Court to make appropriate award. (Paras 2, 3, 4)

Cases Referred :

1. Mohan Lal v. The Management of M/s. Bharat Electronics Ltd. AIR 1981 SC 1253 (Para 2)
2. Management of Karnataka State Road Transport Corporation, Bangalore v. M. Boraiah and Another, AIR 1983 SC 1320 (Para 2)

Appearances

Mr. G. M. Joshi, Advocate, for the Petitioner.

Mr. M. A. Trivedi, Advocate, for the Respondent.

PER GOKULAKRISHNAN, C. J. :—

1. The petitioner in this Special Civil Application has come forward with this Special Application under Articles 226 and 227 of the Constitution of India for quashing and setting aside the Award and order of the Labour Court at Ahmedabad passed on 28/29 June, 1984 in Reference LCA No. 810 of 1971 to the extent that it does not award reinstatement with full back wages and all consequential benefits to the petitioner and also for issuing a writ of mandamus to reinstate the petitioner on his original post with full back wages and with all the consequential benefits as if he has continued in service throughout.

2. The short facts of the case are that the petitioner is a workman with the Gujarat State Warehousing Corporation. He was discharged from his service by the respondent as early as 9-3-1977 following Regulation 10 of the Gujarat State Warehousing Corporation Staff Regulations, 1971. The Labour Court which went into this question held that the termination order is quite legal and proper, but directed the respondent to pay retrenchment compensation to the workman. The respondent has, *inter alia* contended that the petitioner absented himself for number of months in spite of the fact his leave was refused by the respondent. Finally he was informed by the notice dated 13-1-1977 stating that if he did not report for duty and continued disobeying the instruction of the Corporation, it will be presumed that he is absent intentionally from duty. It is seen from the facts of the case that the respondent-Corporation had issued final show cause notice as per Regulation 10 of the Gujarat State Warehousing Corporation Staff Regulations, 1971 calling upon the petitioner herein to explain why his services should not be terminated as he had remained absent intentionally by disobeying the instructions of the Corporation. No doubt a reply was received from the petitioner to this final show cause notice stating that he was not able to report to duty as appointed and that he requires further leave to be sanctioned. The respondent, by its termination order which is marked as Ex. 30, terminated the services of the petitioner after following the procedure set up in Regulation 10 referred above. The respondent, in its reply affidavit filed in this Special Civil Application, has stated that the management was constrained to pass an order of discharge simpliciter against the petitioner herein since the petitioner has voluntarily abandoned the services of the Corporation by not joining at the place of duty in spite of several letters, telegrams, telephones and reminders to

him. Without much adverting to the further facts of the case, it is clear from the case put forth by the respondent as well as the case put forth by the petitioner herein that the procedure followed by the respondent in terminating the service of the petitioner was under Regulation 10 of the Gujarat State Warehousing Corporation Staff Regulations, 1971 and it is a discharge simpliciter and not dismissal of the petitioner herein.

Even the Labour Court in its order, which is impugned in this Special Application, has stated that the order is only a termination order passed by the respondent herein under Ex. 30 and that it is a retrenchment coming under the purview of Section 25F of the Industrial Disputes Act. The Labour Court has also stated that the petitioner is entitled to get the retrenchment compensation and that is why the Labour Court has directed the respondent to pay retrenchment compensation to the workman. Mr. G. M. Joshi, the learned counsel appearing for the petitioner, citing decisions reported in *Mohan Lal* v. *The Management of M/s. Bharat Electronics Ltd.* (AIR 1981 SC 1253) and *Management of Karnataka State Road Transport Corporation, Bangalore* v. *M. Boraiah and another* (AIR 1983 SC 320), submitted that the order passed under Ex. 30 is a retrenchment order simpliciter and such an order, without following the other conditions mentioned under Section 25F of the Act, is *ab initio* void. Hence, according to the learned counsel, the petitioner has to be reinstated in service with backwages and all benefits. Mr.M. A. Trivedi, the learned counsel appearing for the respondent, contended that the petitioner is not a workman since he is getting a salary of more than Rs. 500/- and his designation is "Warehouseman Class I", that the petitioner is not entitled to get the benefits under the Industrial Disputes Act since he is not a workman, that the benefits contemplated under Section 25F cannot be availed of by the petitioner herein since it does not satisfy the definition of "retrenchment" occurring under Section 2(00) of the Act and that this Court cannot interfere with the order passed by the Labour Court under Article 227 of the Constitution of India. As regards the contention of the learned counsel for the respondent that he is not a workman we have to straightaway reject that argument since the respondent approached the Labour Court and has also put forth its contentions before the Labour Court treating the petitioner as a "workman". Nowhere before the Labour Court, either in its statement or in its argument, was it contended that the petitioner was not a workman. In the absence of such a contention before the authority below, we are of the view that such a contention cannot be allowed to be raised at this stage since it is a mixed question of fact and law. Section 25F reads as follows :

"25F. 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 the 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.

Provided that no such notice shall be necessary, if the retrenchment is under an agreement which specifies a date for the termination of service;

(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

(33)

or such authority as may be specified by the appropriate Government under notification in the *Official Gazette*."

The marginal note of Section 25F clearly states "Conditions precedent to retrenchment of workmen". Admittedly those conditions have not been followed before the discharge was effected in this case. We have already held that this is a case of retrenchment and that position is accepted by the Labour Court. The respondent has to concede this position since the action initiated against the petitioner is under Regulation 10 of the Regulations referred above. In *Mohan Lal* v. *The Management of M/s. Bharat Electronics Ltd.* (AIR 1981 SC 1253) the Supreme Court has specifically held that where prerequisite for valid retrenchment as laid down in Section 25-F has not been complied with, retrenchment bringing about termination of service is *ab initio* void. Continuing the Supreme Court has held in paragraph 16 of its judgment:

"16. Appellant has thus satisfied both the eligibility qualifications prescribed in Section 25F for claiming retrenchment compensation. He has satisfactorily established that his case is not covered by any of the excepted or excluded categories and he has rendered continuous service for one year. Therefore, termination of his service would constitute retrenchment. As precondition for a valid retrenchment has not been satisfied the termination of service is *ab initio* void, invalid and inoperative. He must, therefore, be deemed to be in continuous service."

In yet another judgment of the Supreme Court reported in *Management of Karnataka State Road Transport Corporation, Bangalore* v. *M. Boraiah and Another* (AIR 1983 SC 1320) the Supreme Court had occasion to consider the retrenchment of a probationer. In that also the Supreme Court has held:

"13. Once the conclusion is reached that retrenchment as defined in Section 2 (oo) of the Disputes Act covers every case of termination of service except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment. Admittedly the requirements of Section 25-F of the Disputes Act had not been complied with in these cases. Counsel for the appellant did not very appropriately dispute before us that the necessary consequence of non-compliance of Section 25-F of the Disputes Act in a case where it applied made the order of termination void. The High Court, in our opinion, has, therefore, rightly come to the conclusion that in these cases the order of retrenchment was bad and consequently it upheld the Award of the Labour Court which set aside those orders and gave appropriate relief. These appeals are dismissed. There would be one set of costs. Consolidated hearing fee is assessed at Rs. 5,000/-."

Thus from the above said judgments it is clear that if the precondition for a valid retrenchment has not been satisfied, the termination of service is *ab initio* void, invalid and inoperative and that the persons whose services have been terminated, must be deemed to be in continuous service.

3. Inasmuch as we have already held that the respondent has not followed the condition requisite for terminating the service of the petitioner herein, the order of termination Exhibit 30 is *ab initio* void and hence the Labour Court is completely in error when it accepted the order of termination and directed the payment of retrenchment compensation as the only relief the petitioner is entitled to have. Such an order of the Labour Court, in our opinion, is without jurisdiction and contrary to the law laid down by the In-

dustrial Disputes Act and hence this Court has ample jurisdiction to interfere with such patently erroneous and illegal order for the purpose of giving relief to the petitioner herein. Mr. Trivedi submitted that the matter may be remanded to the Labour Court for the purpose of determining the amount payable as back wages. We do not think that this argument can be countenanced inasmuch as no contention has been taken in the written statement that he was actually engaged in some other job during this period and inasmuch as the order passed under Exhibit 30 is *ab initio* void.

4. For all these reasons the rule is made absolute and the Award is set aside. We hold that the termination of the service of the petitioner is *ab initio* void and inoperative and a declaration is made that he continues to be in service with all consequential benefits, namely, back wages and other benefits, if any. However, as the Award is to be made by the Labour Court, we remit the case back to the Labour Court to make an appropriate Award in the light of the findings of this Court. There will be no order as to costs.

(GDB) Rule made absolute.

1985 G.L.H. 425

J. P. DESAI, J.

Habibulla Kalyani ... Petitioner

Versus

The State of Gujarat ... Respondent

Criminal Revision Application No. 114 of 1985 (with Criminal Revision Application No. 127 of 1985)

D/- 9-4-1985*

Prevention of Corruption Act, 1947 — S. 6 (1) (b) and S. 6 (1) (c) — Scope and applicability — Constitution of India — Art. 166 — Gujarat Government Rules of Business, 1984 — Rr. 13 and 15 — Instructions regarding the Business of the Government issued under R. 15 of the Gujarat Government Rules of Business — Instructions 4 (1) (a) and 7 — Sanction for prosecution — Petitioner Habibulla Kalyani was serving as Class I Officer in Sales Tax Department — Petitioner Haribhai Patel was serving as Sales Tax Inspector — — Charge asgainst the petitioners was that they demanded illegal gratification from the original complainant and at the instance of the petitioner Habibulla, Petitioner Haribhai accepted the said amount — Sanction accorded in respect of both the petitioners by the State Government — Sanction was signed by Mr. Chandramauli, Additional Chief Secretary, Finance Department on behalf of the Governor of Gujarat — Question was whether sanction to prosecute the petitioner in each of the two matters was legal and valid?

Held on facts that sanction could be accorded by the State Government only and only the Finance Minister could act on behalf of the State Government for according sanction to prosecute the petitioner Habibulla Kalyani, a Class I Officer and that there was no material on record to show that the Finance Minister on behalf of the State Government accorded sanction offer appling his mind and sanction hence was not legal and valid as required by Section 6 (1) (b) of the Act. (Paras 2, 3, 4)

So far as the petitioner Haribhai Patel (Sales Tax Inspector) was con-

*Criminal Revision Application preferred by the original accused praying to set aside the order passedy by Special Judge, Ahmedabad in Special Case No. 19/84 and for other incidental reliefs.

12. Regarding C. M. A. 477/81 arising out of E. A. Case No. 20/80 the total members are 192. There are ten looms in the society. It is admitted by P. W. 1 that on an average 20 to 25 workers work on the looms. Three persons are employed on regular basis such an accountant, attender and sweeper, Ex. R-1 discloses that they were paid monthly salaries. It contains the list of members who were working since five years regularly and members who are termed as weaving contractors. It is further admitted by P. W. 1 that there are 35 piece rate workers. It is significant to note that P. W. 1 states that the society entrusts the work to expert members who in their turn train unskilled workmen. The skilled workmen who were entrusted with the work are called weaving contracts and the work is being done under their supervision and the remuneration is paid on piece rate. In view of the fact that the total number is 192 and the required members in a day is 20 to 25, the employment opportunity is restricted and all members cannot work in the same day. Once we see that the employment opportunity can be given by the contracting workmen, who are the skilled workmen and evidently they employ members who want to train themselves in the work of the unit. Ex. P. 11 is the job register for the period 10-3-75 to 7-10-1979 and Ex. P. 12 is the cash book of the petitioner-society showing the payment of salaries to non-members and piece rates to members.

13. In other respects the nature of the evidence in this case is the same as in the other case referred to above. Hence we are of the opinion that the working of these members in these societies though for remuneration would not make them employees of the societies. The view of the Insurance Court in this regard is correct and hence we dismiss the appeals. No costs.

Appeals dismissed.

1986 LAB. I. C. 374

= AIR 1984 Supreme Court 1805

(From : Delhi)

D. A. DESAI AND D. P. MADON, JJ.

Civil Appeal No. 2386 of 1984, D/- 27-9-1984.

Rajinder Kumar Kindra, Appellant v. Delhi Administration through Secretary (Labour) and others, Respondents.

(A) Industrial Disputes Act (14 of 1947), Sch. 2, Item 3 — Dismissal for misconduct — Dismissed employee keeping his personal account cheque book unattended — Misappropriation of employer's money by co-workman by using this cheque book — No participation by dismissed employee in conspiracy — Dismissed employee is not guilty of misconduct.

When a cheque book is issued to a holder of an account by the Bank, there is no law which requires him to keep his cheque book in safe custody. He may keep it in any manner and if in the process some one misuses the cheque and withdraws money from the account of the holder, the bank will be able to disown its liability pleading negligence of the holder of the account. A man can keep his cheque book anywhere he likes and even if it is not in safe custody he does so at his own peril. That is not the case here. The accusation is that the appellant employee kept his cheque book in such a manner as to be accessible to anyone and that some one unscrupulously removed the forms of cheques from the cheque book of the appellant and used them to withdraw money not from the appellant's account but from the employer's account. Some one so minded to forge cheque and to withdraw money from some one's account may use anybody's cheque book. In such a situation, the owner of the cheque book unless he has participated in the conspiracy in any manner for facilitating withdrawal of the amount cannot be attributed any misconduct for keeping his cheque book unattended or not in safe custody. Held, on facts that in the instant case the appellant employee was not guilty of misconduct. (Paras 10, 15)

JB/JB/1933/84/MVJ

(36)

SUPREME COURT OF INDIA

C.A. 830 of 1986 (U.L.P. No. 1273 of 1984 by Industrial Court, Maharashtra)
Decided on 3-4-1986

CORAM

The Hon'ble Mr. Justice O. Chinnappa Reddy
The Hon'ble Mr. Justice D.P. Madon

S.G. Chemical & Dyes Trading Employees' Union ...*Appellant*

Versus

S.G. Chemicals & Dyes Trading Limited and another ...*Respondents*

(i) Constitution of India—Article 136—Party coming direct to Supreme Court for permission to file appeal from decision of Labour Court without first appealing to High Corut—Powers of the Supreme Court—Circumstances taken into account and permission granted.

Held that the Union has directly come to this Court in appeal against the said order of the Industrial Court without first approaching the High Court under Article 226 or 227 of the Constitution for the purpose of challenging the said order. The powers of this Court under Article 136 are very wide but as clause(1) of that Article itself states, the grant of special leave to appeal is in the discretion of the Court. Article 136 is, therefore, not designed to permit direct access to this Court where other equally efficacious remedy is available and where the question is not of public importance. Today, when the dockets of this Court are over-crowded, nay-almost choked, with the flood, or rather the avalanche, of work pouring into the Court, threatening to sweep away the present system of administration of justice itself, the Court should be extremely vigilant in exercising its discretion under Article 136. The reason stated at the Bar for not first approaching the High Court to get the same relief was that in view of the judgment of learned Single Judge of the High Court in *Maharashtra General Kamgar Union* v. *Glass Containers Pvt. Ltd. and another* (1983) I Lab. L.J. 326, if a writ petition were filed in the High Court, it would certainly have been dismissed, forcing the employees through the Union to come to this Court in appeal against the order of High Court. When we consider that here are eighty-four workmen who have been thrown out of employment and can ill-afford the luxury of fighting from court to court and that some of the questions arising in the case are of considerable importance both to the employers and the employees, the reason given for directly coming to this Court must be held to be valid and this must be considered to be a fit case for this Court to exercise its discretion and grant Special Leave to Appeal. (Para 6)

(ii) Factories Act—Section 2(m)—Factory—Meaning of—Manufacturing unit and marketing unit operating from different premises, is it a "factory" (Yes).

Held that the first thing to notice about clause (m) of section 2 of the Factories Act is that it defines a "factory" as meaning "any premises including the precincts thereof" and it does not define it as meaning "any one premises including the precincts thereof". Under this definition, therefore, it is not

required that the industrial establishment must be situate in any one premises only. In the modern industrial world it is often not possible for all processes which ultimately result in the finished product to be carried out at one place and by reason of the complexity and number of such processes and the acute shortage of accommodation in many cities, several of these processes are often carried out in different buildings situate at different places. Further, in many cases these functions are distributed amongst different departments and divisions of a factory and such departments and divisions are housed in different buildings. That a factory can be housed in more than one buildings, is also clear from section 4 of the Factories Act. (Paras 12 & 13)

(iii) Industrial Disputes Act, 1947—Section 25-O—"Undertaking" meaning of—Word not defined anywhere though used in many sections—It will be taken in its ordinary meaning. (Para 16)

(iv) Industrial Disputes Act, 1947—Sections 25-O and 25FFA—One establishment meaning of—Test to determine where functions divided in various units, departments etc.

Held that the evidence clearly establishes that the functions of the Churchgate Division and the Trombay factory were neither separate nor independent but were so integrally connected as to constitute the Churchgate Division and the Trombay factory into one establishment. Until 1965 the Company had its various departments, such as pharmaceutical sales, dyes and chemicals, sales laboratory (Which is now in the Trombay factory), accounts, purchases, personnel and administration and other departments housed in Express Building, Churchgate, while its factory was situate at Tardeo. In 1965 the factory as also the laboratory were shifted to Trombay and in 1971 the Pharmaceutical Sales Division was shifted to Worli. Even after the Company began carrying out its operation at three separate places, namely, at Worli, Churchgate and Trombay, all the purchases of raw materials required for the Trombay factory were made by the Churchgate Division. The Churchgate Division also looked after the marketing and sales of the goods manufactured and processed at the Trombay factory. The statistical work of the Company, namely, productwise sales statistics, industrywise sales statistics, partywise sales statistics, monthly sales performance statistics, sales forecast statistics, collection forecast statistics, sales out standing statistics and other statististical work, was also done in the Churchgate Division. The orders for processing of dyes and instructions in respect thereof were issued from the Churchgate Division to the Trombay Factory. The work of making payment of salaries, overtime, conveyance allowances, medical expenses, leave travel allowance, statutory deductions such as for provident fund, income-tax, professional tax, etc., in respect of the workmen working at the Trombay factory was also done in the Churchgate Division and an employee from the Churchgate Division used to go to the Trombay factory on the last day of each month for actually making payment of salaries etc. The work of purchasing statutory items, printing forms, etc., for the Trombay factory and the Worli Division was also done by the Churchgate Division and the maintenance of the Express Building at Churchgate and of the factory at Trombay was done by personnel in the Churchgate Division. The Churchgate Division also purchased uniforms, rain coats and umbrellas for the workmen working in the Trombay factory in addition to the workmen working in the Express Building. The services of the workmen working in the Trombay factory were transferable and workmen were in fact transferred from the

Trombay factory to the Churchgate Division. While the Union examined eight witnesses, P.S. Raman, Executive (Administration) of the Company was the only witness examined by the Company. Raman has admitted in his evidence that the marketing and sales operations of the dyes processed at the Trombay factory were done in the Churchgate Division, that personnel from the Churchgate Division were sent to the Trombay factory in connection with the technical matters relating to the factory, that the procurement of raw materials and the work of technical advice on processing and standardization of goods manufactured and processed at the Trombay factory as also the final marketing of the finished products of the Trombay factory were all done by the Churchgate Division. He has further admitted that the supply of stationery to the Trombay factory was largely done from the Churchgate Division and that the ultimate decisions with regard to the workload, assignment of job, etc. were taken by the top management of the Company at the Head Office of the Company in Express Building. Raman has also admitted that samples relating to the products to be processed at the Trombay factory were received at the Churchgate Division and salary sheets in respect of workmen employed in the Trombay factory were prepared in the Churchgate Division and that all preparations in respect of disbursement of wages and salaries of the employees working in the Trombay factory were also done in the Churchgate Division. Raman's evidence further shows that there were no accountants at the Trombay factory and all the work relating to the accounts of the Trombay factory was done at the Head Office and Raman himself had to go to Trombay sometimes in connection with the work of the factory. It is thus clear from the evidence on the record that the Trombay factory could never have functioned independently without the Churchgate Division being there. A factory cannot produce or process goods unless raw materials required for that purpose are purchased. Equally, there cannot be a factory manufacturing or processing goods unless the goods so manufactured or processed are marketed and sold. The one without the other is a practical impossibility. Similarly, no factory can run unless salaries and other employment benefits are paid to the workmen nor can a factory function without the necessary accounting and statistical data being prepared. These are integral parts of the manufacturing activities of a factory. All these factors existed in the present case and there can be no doubt that the Trombay factory and the Churchgate Division constituted one establishment. The fact that, according to the Company, a major part of the work of the Churchgate Division was that of marketing and selling the products of the Ranoli factory belonging to Ambalal Sarabhai Enterprises Limited is irrelevant. The Trombay factory could not have conveniently existed and functioned without the Churchgate Division and the evidence shows a complete functional integrality between the Trombay factory and the Churchgate Division of the Company. The total number of workmen employed at the relevant time in the Trombay factory and the Churchgate Division was one hundred and fifty and, therefore, if the Company wanted to close down its Churchgate Division the section of the Industrial Disputes Act which applied was section 25-O and not section 25-FFA. (Paras 17 & 18)

(v) Industrial Disputes Act, 1947—Section 25-O—One unit registered under Factories Act, other under Shops and Establishments Act—Whether they can not form one establishment in view of definition of "Commercial Establishment" given in Section 2(4) of Bombay Shops and Establishments Act—Held it can be one establishment.

Held that according to the Industrial Court, this fact of registration under two different Acts constituted the Trombay factory and the Churchgate Division into two separate legal entities. It is as difficult to follow this contention of the Company as it is to understand the conclusion reached by the Industrial Court. Merely because registration is required to be obtained under a particular statute, it does not make the business or undertaking or industry so registered a separate legal entity except where a regitsration of incorporation is obtained under the Companies Act. The Factories Act and the Bombay Shops and Establishments Act are regulatory statutes and the registration under both these Acts is compulsory for providing certain benefits to the workmen employed in the factory or the establishment, as the case may be. (Para 19)

(vi) Industrial Disputes-Act, 1947 As amended by Section 28 of Maharashtra Act item 9 Schedule IV—Closure of Establishment without following requirements of Section 25-O constitutes an Unfair Labour Practice. (Para 23)

(vii) Closure of establishment without complying with S. 25-O of Industrial Disputes Act in August 1984—Appeal decided by Supreme Court in April 1986, Retrenchment compensation paid while retrenching—Supreme Court holding employees eligible for full wages from date of termination—Allegation that amount earned by employees while working elsewhere in the period should be set off—Court not agreed to it on the plea of "Solatium for Shock".

Held that it was lastly submitted that several employees must have taken up alternative employment during the intervening period between the date of the closure of the Churchgate Division and the hearing of this Appeal and an inquiry, therefore, should be directed to be made into the amounts received by them from such alternative employment so as to set off the amounts, so received against the back wages and future salary payable to them. It is difficult to see why these eighty-four workmen should be put to further harassment for the wrongful act of the Company. It is possible that rather than starve while awaiting the final decision on their complaint some of these workmen may have taken alternative employment. The period which has elapsed is, however, too short for the moneys received by such workmen from the alternative employment taken by them to aggregate to any sizeable amount, and it would be fair to the workmen retain such amount by way of solatium for the shock of having their services terminated, the anxiety and agony caused thereby, and the endeavours, perhaps often fruitless, to find alternative employment. (Para 24)

(viii) Solatium for Shock—Services of employees terminated illegal—They earned something till the Court decided in their favour rather than starve—The amount so earned not allowed to be set off. (Para 24)

Cases Referred :

1. Maharashtra General Kamgar Union v. Glass Containers Pvt. Ltd. and another, 1983(1) L.L.J. 326.
2. The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani v. Their Workmen, 1960(1) S.C.R. 703 S.C. ; 1960 (1) Lab.L.J. 497.

3. Management of Hindustan Steel Limited v. The Workmen and others, 1973 (3) S.C.R. 303.

4. Workmen of the Straw Board Manufacturing Company Limited v. M/s. Straw Board Manufacturing Company Limited, 1975 S.L.J. 115 (S.C.)

5. South India Millowners' Association and others v. Coimbatore District Textile Workers' Union and others, 1962 (1) Lab. L.J. 223 (S.C.)

6. Western India Match Co. Ltd. v. Their Workmen, 1964 (3) S.C.R. 560 (S.C.) ; 1963 (2) Lab. L.J. 459.

Advocates :

For the Appellants : Dr. Y.S. Chitale and Mrs. S. Ramachandran, Advocates.

For the Respondents : Mr. Mahesh Bhatt, Mr. P.H. Parekh and Miss Indu Malhotra, Advocates.

IMPORTANT POINT

To form one Establishment, it is not necessary that whole of the establishment should either be within the same premises, or be registered under the same Act. Closure of Establishment with following Section 29(O) is an Unfair Labour Practice under the Maharashtra Act.

JUDGEMENT

Madon, J. This is an appeal by Special Leave granted by this Court against the order of the Industrial Court, Maharashtra, dismissing a complaint filed by the Appellant Union under section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (Maharashtra Act No. 1 of 1972) complaining of an unfair labour practice on the part of the First Respondent Company, namely, a failure to implement the Settlement dated February 1, 1979, entered into between the Appellant Union and the first Respondent Company. This Act will hereinafter be referred to in short as "the Maharashtra Act".

2. The First Respondent Company, S.G. Chemicals and Dyes Trading Limited (hereinafter referred to as "the Company") is a wholly owned subsidiary of Ambalal Sarabhai Enterprises Limited and carries on the business of pharmaceuticals, pigments and chemicals. The Second Respondent is the General Manager (Marketing) of the Company. The Appellant Union, S.G. Chemicals and Dyes Trading Employees' Union (hereinafter referred to as "the Union") is a trade union registered under the Trade Unions Act, 1926 (Act No. 16 of 1926) representing the employees of the Company. In 1984 the Company was operating in Bombay through three divisions, namely, the Pharmaceuticals Division at Worli, the Laboratory and Dyes Division at Trombay and the Marketing and Sales Division at Express Building, Churchgate. The Registered Office of the Company was also situate in the same place as the Marketing Division,

namely, in Express Building. Ambalal Sarabhai Enterprises Limited is also the owner of a chemicals and dyes factory called S.G. Chemicals and Dyes, Situate at Ranoli in Baroda District in the States of Gujarat.

3. By a notice dated July 16, 1984, given in Form XXIV-B prescribed by Rule 82-A of the Industrial Disputes (Bombay) Rules, 1957, the Company signing itself as "SG Chemicals & Dyes Trading Limited (Chemicals & Dyes Division)", intimated to the Secretary, Government of Maharashtra, Industries and Labour Department, Bombay, that in accordance with the provisions of sub-section (1) of section 25FFA of the Industrial Disputes Act, 1947 (Act No. 14 of 1947), it intended to close down "the Undertaking/Establishment/ Office of Chemicals & Dyes Division, located at Express Building, 14 'E' Road, Churchgate, Bombay-400020, with effect from 17th September 1984". In the said notice the number of workmen on the roll was stated to be ninety, the name of "the Undertaking (and the Establishment proposed to be closed)" was given as "Chemicals & Dyes Division Office of SG Chemicals & Dyes Trading Limited". The 'Industry' was described in the said notice as "Marketing and Sales operations of Chemicals and Dyes". In the Statement of Reasons annexed to the said notice it was stated as follows :

> "Ambalal Sarabhai Enterprises Ltd., have agreed to sell its business and Undertaking known as SG Chemicals and Dyes, situated at Ranoli to M/s. Indian Dyestuff Industries Ltd., Bombay, with effect from 25-6-1984. Chemicals & Dyes Division of SG Chemicals and Dyes Trading Limited was rendering staff and other services to SG Chemicals and Dyes as also to their Marketing Companies who handled the sale of SG Chemicals & Dyes products. Indian Dyestuff Industries Ltd., propose to handle the future sale of SG Chemicals & Dyes products through their own distribution channels. SG Chemicals & Dyes and the Marketing Companies have informed us that the staff services offered by us to them would no longer be required by them resulting in there being no work for the staff working at Express Building office of Chemicals & Dyes Division of SG Chemicals and Dyes Trading Limited. The Management has, therefore, no other alternative but to close down their office operations of Chemicals & Dyes situated at Express Building, 14 'E' Road, Churchgate, Bombay 400 020."

Copies of the said notice were sent to the Commissioner of Labour, Maharashtra, the Deputy Commissioner of Labour, Maharashtra, and the Union.

4. By its letter dated July 16, 1984, addressed to the Company, the Union raised a demand not to terminate the services of the employees pursuant to the said notice dated July 16, 1984. The Company nonetheless closed down the said Division at Churchgate with effect from September 17, 1984. The Company detained only six employees who, according to it, were to attend to the work consequent upon such closure. The Company did not pay to the eighty-four employees whose services were terminated any salary after September 17, 1984. According to its counter affidavit filed in reply to the Petition for Special Leave to Appeal, the Company has, however, offered to those eighty-four employees retrenchment compensation under section 25FFF of the Industrial Disputes Act aggregating to Rs. 22,02,670 and eighty-two out of these eighty-four employees have accepted such compensation aggregating to Rs. 22,00,162.

5. The Union filed on October 8, 1984, before the Industrial Court Maharashtra, Bombay a Complaint, being Complaint (ULP) No. 1273 of 1984, under section 28 of the Maharashtra Act read with Item 9 of Schedule IV thereto. The contention of the Union in the said Complaint was that the closure of the Churchgate Division was contrary to the provisions of section 25-O of the Industrial Disputes Act, and therefore, the employees continued to be in the service of the Company notwithstanding the said notice of closure and were entitled to full wages and all allowances as provided in the Settlement dated February 1, 1979, entered into between the Company and the Union, which were not paid to them and, therefore, the Company had committed an unfair labour practice under Item 9 of Schedule IV to the Maharashtra Act. Under section 26 of the Maharashtra Act, unfair labour practices mean any of the practices listed in Schedules II, III and IV to the Maharashtra Act. Under section 27, no employer or trade union and no employees are to engage in any unfair labour practice. Under section 28, where any person has engaged in or is engaging in any unfair labour practice, then any trade union or any employee or any employer or any Investigating Officer appointed under section 8 of the Maharashtra Act may, within ninety days of the occurrence of such unfair labour practice, file a complaint before the court competent to deal with such complaint. The competent court in the present case was the Industrial Court. Schedule IV to the Maharashtra Act lists what would constitute "General Unfair Labour Practices on the part of employers". Item No. 9 of Schedule IV is as follows :

> "9. Failure to implement award, settlement or agreement."

It was the case of the Union that the aggregate number of workmen employed in the three Divisions of the Company exceeded one hundred and, therefore, for the purposes of the said section 25-O, it was the aggregate strength of the workmen of the Company employed in all its three Divisions which was to be taken into account as there was functional integrality amongst all the three Divisions, and, therefore, under section 25-O of the Industrial Disputes Act, the Company was bound to apply to the appropriate Government for prior permission for such closure at least ninety days before the date on which such closure was to become effective. According to the Union, as such prior permission was not applied for, the closure of the Chemicals and Dyes Division Office of the Company at Churchgate was illegal and such closure, therefore, amounted to an unfair labour practice as it amounted to a failure to implement the said Settlement dated February 1, 1979. On the examination of the evidence led before it, the Industrial Court held :

> "There can be no doubt that part of the work done at the head office at Churchgate was in connection with or incidental to the Trombay factory and there does appear some functional integrality between the factory and the head office, but in my view, this fact is irrelevant in this complaint."

The reason why the Industrial Court considered the functional integrality between the Trombay factory and the Churchgate office as irrelevant was that according to it before section 25-O could apply, the number of workmen employed in an industrial establishment as defined by section 25-L of the Industrial Disputes Act should not be less than one hundred and that admittedly at no time had the number of workmen at the Trombay Factory been one

hundred or more. The Industrial Court further held that the Churchgate office was not in legal parlance a part of the Trombay factory and the Company was not bound to follow the procedure prescribed by section 25-O for by no stretch of imagination could the Churchgate Division be held to be "an undertaking of an industrial establishment" within the meaning of Chapter V-B of the Industrial Disputes Act. The Industrial Court also held that the Head Office of the Company located at Churchgate was governed by the Bombay Shops and Establishments Act, 1948 (Bombay Act No. 79 of 1948) while the establishment at Trombay was a factory as defined in the Factories Act, 1948 (Act No. 63 of 1948), and, therefore, these were two separate legal entities governed by the provisions of two independent and separate Acts. Further, according to the Industrial Court assuming section 25-O was attracted, the violation of that section would not constitute an act of unfair labour practices under Item No. 9 of Schedule IV to the Maharashtra Act. For reaching this conclusion, the Industrial Court relied upon the decision of a learned Single Judge of the Bombay High Court in *Maharashtra General Kamgar Union* v. *Glass Containers Pvt. Ltd. and another*[1] in which the learned Single Judge had held that non-compliance with any statutory provision such as section 25FFA of the Industrial Disputes Act cannot be regarded as a failure by the employer to implement an award, settlement or agreement. The Industrial Court consequently dismissed the said Complaint by its order dated July 26, 1985. It is against the said order of the Industrial Court that the present Appeal by Special Leave granted by this Court has been filed.

6. The Union has directly come to this Court in appeal against the said order of the Industrial Court without first approaching the High Court under Article 226 or 227 of the Constitution for the purpose of challenging the said order. The powers of this Court under Article 136 are very wide but as clause (1) of that Article itself states, the grant of special leave to appeal is in the discretion of the Court. Article 136 is, therefore, not designed to permit direct access to this Court where other equally efficacious remedy is available and where the question is not of public importance. Today, when the dockets of this Court are over-crowded, nay—almost choked, with the flood, or rather the avalanche, of work pouring into the Court, threatening to sweep away the present system of administration of justice itself, the Court should be extremely vigilant in exercising its discretion under Article 136. The reason stated at the Bar for not first approaching the High Court to get the same relief was that in view of the judgment of the learned Single Judge of the High Court in *Maharashtra General Kamgar Union* v. *Glass Containers Pvt. Ltd. and another* (supra) if a writ petition were filed in the High Court, it would certainly have been dismissed, forcing the employees through the Union to come to this Court in appeal against the order of the High Court. When we consider that here are eighty-four workmen who have been thrown out of employment and can ill-afford the luxury of fighting from court to court and that some of the questions arising in the case are of considerable importance both to the employers and the employees, the reason given for directly coming to this Court must be held to be valid and this must be considered to be a fit case for this Court to exercise its discretion and grant Special Leave to Appeal.

7. Turning now to the merits of this Appeal, the first question which falls to be considered is whether section 25-O of the Industrial Disputes Act

1. 1983(1) L.L.J. 326.

applied to the closure of the Churchgate Office, According to the Union, the case was governed by section 25-O while according to the Company, it was section 25FFA which applied to the case. Under section 25FFA(1), an employer who intends to close down an undertaking is to give, at least sixty days before the date on which the intended closure is to become effective, a notice in the prescribed manner to the appropriate Government stating clearly the reasons for the intended closure of the undertaking. The proviso to the said sub-section (1) provides that section 25FFA shall not apply *inter alia* to "an undertaking in which (i) less than fifty workmen are employed, or (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months." The other exclusion from the application of section 25FFA is irrelevant for the purpose of this Appeal. Thus, where an employer intends to close down an undertaking in which 50 workmen or more are employed, he is to give at least sixty days' notice in the prescribed manner to the Government stating the reasons for the intended closure of the undertaking and under section 25FFF(1), where an undertaking is closed down for any reason whatsoever every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure, is to be entitled to notice and compensation in accordance with the provisions of section 25F as if the workman had been retrenched.

8. Section 25-O features in Chapter V-B of the Industrial Disputes Act. This Chapter was inserted in the Industrial Disputes Act by the Industrial Disputes (Amendment) Act, 1976 (Act No. 32 of 1976), with effect from March 5, 1976, and contains sections 25K to 25S. Section 25(O) as originally enacted was substituted by section 14 of the Industrial Disputes (Amendment) Act, 1982 (Act No. 46 of 1982). Under section 1(2) of the Amendment Act, 1982, the said Act was to come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. The Industrial Disputes Act as also the Amendment Act, 1982, were further amended by the Industrial Disputes (Amendment) Act, 1984 (Act No. 49 of 1984). By section 7 of the Amendment Act, 1984, sub-section (2) of section 1 of the Amendment Act, 1982, was amended by inserting the words "and different dates may be appointed for different provisions of this Act" after the words "by notification in the Official Gazette, appoint". Under section 1(2) of the Amendment Act, 1984, the said Act was to come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of the said Act. By Ministry of Labour and Rehabilitation (Department of Labour) Notification No. S.O. 605(E), dated August 18, 1984, published in the Gazette of India, Extraordinary, Part II, Section 3(ii), dated August 18, 1984, at page 2, the whole of the Amendment Act, 1984, was brought into force with effect from August 18, 1984. By Ministry of Labour and Rehabilitation (Department of Labour) Notification No. S.O. 606(E), dated August 21, 1984, published in the Gazette of India Extraordinary, Part II, Section 3(ii) dated August 21, 1984, at page 2, several sections of the Amendment Act, 1982, including section 14 which substituted section 25-O of the Industrial Disputes Act, were brought into force on August 21, 1984. Sub-section (1) of section 25-O as substituted provides as follows :

"25-O. Procedure for closing down an undertaking :—

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the

prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner :

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work."

Under sub-section (2) of section 25-O, where an application for permission to close down an undertaking of an industrial establishment has been made, the appropriate Government is to make such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure, it may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order is to be communicated to the employer and the workmen. Under sub-section (3), where the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application was made, the permission applied for is to be deemed to have been granted on the expiration of the said period of sixty days. The other sub-sections of section 25-O are not relevant except sub-sections (6) and (8) which are as follows :

"(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive 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".

Section 25K(1) specifies the industrial establishments to which Chapter V-B applies. Section 25K(1) is as follows :

"25K. Application of Chapter VB :—

(1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less

than one hundred workmen were employed on an average per working day for the preceding twelve months."

The words "one hundred" were substituted for the words "three hundred" in section 25K by section 12 of the Amendment Act, 1982, which section was also brought into force on August 21, 1984. Section 25L defines the expression "industrial establishment" for the purposes of Chapter V-B and is in the following terms :

"25L. Definitions ;—

For the purposes of this Chapter :—

(a) 'industrial establishment' means :—

(i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 ;

(ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 ; or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 ;

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of section 2 :—

(i) in relation to any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or

(ii) in relation to any corporation not being a corporation referred to in sub-clause (i) of clause (a) of section 2 established by or under any law made by Parliament,

the Central Government shall be the appropriate Government."

The definition given in section 25L is for the purposes of Chapter V-B only. In addition thereto, a new clause, namely, clause (ka) was inserted in section 2 of the Industrial Disputes Act to define the expression "industrial establishment or undertaking" by clause (d) of section 2 of the Amendment Act, 1982. The relevant provisions of the said clause (ka) are as follows :

" ka) 'industrial establishment or undertaking' means an establishment or undertaking in which any industry is carried on :

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undetaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking".

Clause (b) of section 2 of the Amendment Act, 1982, also inserted a new clause, namely, clause (cc) defining the term "closure". The said clause (cc) is as follows :

"(cc) 'closure, means the permanent closing down of a place of employment or part thereof".

Clauses (b) and (d) of section 2 of the Amendment Act, 1982, were brought into force on August 21, 1984. Clause (j) of section 2 of the Industrial Disputes Act defines the term "industry" as follows :

"(j) 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen".

By clause (c) of section 2 of the Amendment Act, 1982, the definition of "industry given in clause (j) of section 2 of the Industrial Disputes Act was substituted. Clause (c) of section 2 of the Amendment Act, 1982, does not however, appear to have been brought into force yet and in any event was not in force when the Company gave the notice of closure as also when it closed down its Churchgate Division. It is therefore, unnecessary to reproduce the definition of "industry" as substituted by the Amendment Act, 1982.

9. At the date when the Company gave the notice of closure, namely, on July 16, 1984, the section in force was section 25-O, as originally enacted by the Industrial Disputes (Amendment) Act, 1976. In the case of the State of Maharashtra the original section 25-O was substituted by a new section by the Industrial Disputes (Maharashtra Amendment) Ordinance, 1981 (Maharashtra Ordinance No. 16 of 1981), which Ordinance was repealed by the Industrial Disputes (Maharashtra Amendment) Act, 1981 (Maharashtra Act No. 3 of 1982), The said Act came into force with retrospective effect on October 27, 1981, namely, the date of the promulgation of the said Ordinance. Both the said Ordinance and the said Act had received the assent of the President. It was, therefore, section 25-O as in force in the State of Maharashtra which was applicable when the Company gave the notice of closure. It is, however, unnecessary to set out the provisions of either the original section 25-O or of that section as applicable in the State of Maharashtra for under both of them the provisions for giving a notice seeking permission of the government for the intended closure at least ninety days before the date on which the intended closure was to become effective and the consequences of not obtaining such prior permission were the same as in section 25-O as substituted by the Amendment Act, 1982. What is, however, material is that at the date of the giving of

the notice of closure, section 25(k) required not less than three hundred workmen to be employed in an industrial establishment. The said Maharashtra Act of 1982 which replaced the said Ordinance had inserted a new sub-section (1A) in section 25(k) of the Industrial Disputes Act. The said sub-section (1A) was as follows :

> "(1A) Without prejudice to the provisions of sub-section (1), the appropriate Government may, from time to time, by notification in the Official Gazette, apply the provisions of section 25-O and section 25(r) in so far as it relates to contravention of sub-section (1) or (2) of section 25-O, also to an industrial establishment (not being) an establishment of a seasonal character or in which work is performed only intermittently) in which such number of workmen, which may be less than three hundred but not less than one hundred, as may be specified in the notification, were employed on an average per working day for the preceding twelve months".

No notification under the said sub-section (1A) which would apply the Company has been brought to the notice of this Court. Even assuming that there was no such notification, by the Amendment Act, 1982, with effect from August 21, 1984, the requirement of not less than three hundred workmen was substituted by a requirement of not less than one hundred workmen. Thus, at the date of closure, which is the material date for the purposes of this Appeal, section 25(k) as amended by the Amendment Act, 1982, was in force and was applicable to the Company along with section 25-O as substituted by the Amendment Act, 1982. The parties have also gone to trial on the footing that the requirement under section 25(k) was "not of less than one hundred workmen".

10. The Trombay factory of the Company carries on the work of manufacturing and processing dyes. It is not disputed that the Trombay factory is an industry within the meaning of that term as defined in clause (j) of section 2 of the Industrial Disputes Act. It is also not disputed that the Trombay factory is a factory as defined by clause (m) of section 2 of the Factories Act and is, therefore, an industrial establishment within the meaning of that expression as defined in section 25L of the Industrial Disputes Act. What was, however, disputed was that the Trombay factory is an industrial establishment to which Chapter V-B applies because at no time did it employ one hundred workmen. It was also disputed that the Churchgate Division of the Company was an undertaking of an industrial establishment inasmuch at the Churchgate Division was not a factory within the meaning of clause (m) of the Factories Act. The Company's contentions in that behalf found favour with the Industrial Court.

11. It is not possible to accept the above conclusions reached by the Industrial Court. Clause (m) of section 2 of the Factories Act, 1948, defines the term "factory" as follows :

> "(m) 'factory' means any premises including the precincts thereof—
>
> (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,—

but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952), or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place ;

Explanation :—For computing the number of workers for the purposes of this clause all the workers in different relays in a day shall be taken into account."

12. The first thing to notice about clause (m) of section 2 of the Factories Act is that it defines a "factory" as meaning "any premises including the precincts thereof" and it does not define it as meaning "any one premises including the precincts thereof". Under this definition, therefore, it is not required that the industrial establishment must be situate in any one premises only. The second thing to notice about clause (m) is that the premises must be such as in any part thereof a manufacturing process is being carried on. The expression "manufacturing process" is defined in clause (k) of section 2 of the Factories Act. The said clause (k) is as follows :

"(k) 'manufacturing process' means any process for—

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance *with a view to its use, sale, transport, delivery or disposal, or*

(ii) pumping oil, water, sewage or any other substance, or ;

(iii) generating, transforming or transmitting power, or

(iv) composing types for printing, printing by letter press, lithography, photogravure of other similar process or book binding ; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels ; or

(vi) preserving or storing any article in cold storage."

(Emphasis supplied)

Thus, the different processes set out in sub-clause (i) of clause (k) of section 2 must be with a view to the use, sale transport, delivery or disposal of the article or substances manufactured.

13. In the modern industrial world it is often not possible for all processes which ultimately result in the finished product to be carried out at one place and by reason of the complexity and number of such processes and the acute shortage of accommodation in many cities, several of these processes are often carried out in different buildings situate at different places. Further, in many cases these functions are distributed amongst different departments and

divisions of a factory and such departments and divisions are housed in different buildings. That a factory can be housed in more than one building is also clear from section 4 of the Factories Act which provides as follows :

> **"4. Power to declare different departments to be separate factories or two or more factories to be a single factory —**
>
> The State Government may, on an application made in this behalf by an occupier, direct, by an order in writing, that for all or any of the purposes of this Act different departments or branches of a factory of the occupier specified in the application shall be treated as separate factories or that two or more factories of the occupier specified in the application shall be treated as a single factory."

14. Section 25L is not the only section in the Industrial Disputes Act in which the expression "industrial establishment" is defined. This expression is also defined in the Explanation to section 25A in terms identical with clause (a) of Section 25L. While the definition given in section 25L is for the purposes of Chapter V-B, the definition given in the Explanation to section 25A is for the purposes of sections 25A, 25C, 25D and 25E. Under section 25C, if a workman in an industrial establishment has been laid off, subject to the other conditions set out in that section being satisfied, such workman is entitled to compensation as specified in that section. Under section 25E, no compensation is to be paid to a workman who has been laid off *inter alia* "If such laying-off is due to a strike or slowing down of production on the part of the workmen in another part of the establishment", this particular provision being contained in clause (iii) of section 25E. The meaning of the expression "another part of the establishment" occurring in clause (iii) of section 25E fell to be interpreted by this Court in *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani* v. *Their Workmen.*[2] The facts of that case were that the appellant company owned a factory which was situate in the State of Bihar. It also owned a limestone quarry which was situate about a mile and a half from the factory. Limestone being the principal raw material for the manufacture of cement, the factory depended exclusively for the supply of limestone on the said quarry. On behalf of the labourers in the limestone quarry certain demands were made on the management of the company but as they were rejected the labourers went on strike ; and on account of the non-supply of limestone due to the strike, the management had to close down certain sections of the factory and to lay-off the workers not required during the period of closure of the sections concerned. Subsequently, after the dispute between the management and the workers of the limestone quarry was settled and the strike came to an end, a demand was made on behalf of the workers of the factory who had been laid-off during the strike, for payment of lay-off compensation under section 25C of the Industrial Disputes Act, but the management refused the demand relying on clause (iii) of section 25E. The Industrial Tribunal took the view that the limestone quarry was not part of the establishment of the cement factory and that the workmen in the factory were not disentitled to lay-off compensation by reason of clause (iii) of section 25E.The company's appeal was allowed by this Court. On behalf of the workmen the Explanation to section 25A was relied upon. With reference to the said Explanation, this Court said (at pages 715-16) :

2. 1960(1) S.C.R. 703 (S.C.).

> "The Explanation only gives the meaning of the expression 'industrial establishment' for certain sections of the Act ; it does not purport to lay down any test as to what constitutes one 'establishment'. Let us take, for example, a factory which has different departments in which manufacturing processes are carried on with the aid of power, each department, if it employs ten or more workmen, is a factory within the meaning of cl. (m) of section 2 of the Factories Act, 1948 ; so is the entire factory where 1,000 workmen may be employed. The Explanation merely states that an undertaking of the nature of a factory as defined in cl. (m) of section 2 of the Factories Act, 1948, is an industrial establishment. It has no bearing on the question if in the example taken, the factory as a whole or each department thereof should be treated as one establishment. That question must be determined on other considerations, because the Explanation does not deal with the question of one establishment. in our view, the true scope and effect of the Explanation is that it explains what categories, factory, mine or plantation, come within the meaning of the expression 'industrial establishment' ; it does not deal with the question as to what constitutes one establishment and lays down no tests for determining that question."

15. Section 25-O applies to the closure of "an undertaking of an industrial establishment" and not to the closure of "an industrial establishment". Section 25L, however, defines only the expression "industrial establishment" and not the expression "an undertaking of an industrial establishment". It also does not define the term "undertaking". Section 25L does not require that "an undertaking of an industrial establishment should also be an "industrial establishment" or that it should be located in the same premises as the "industrial establishment". The term "undertaking" though it occurs in several sections of the Industrial Disputes Act, as for instance, sections 25FF, 25FFA and 25FFF, is not defined anywhere in the Act. Even the new clause (ka) which was inserted in section 2 by the Amendment Act, 1982, defines the expression "industrial establishment or undertaking" and not the term "undertaking" *simpliciter*. It would appear from the opening words of clause (ka), namely, "industrial establishment or undertaking' means an establishment or undertaking in which any industry is carried on", that the term "undertaking" in that definition applies to an industrial undertaking. It would thus appear that the words "undertaking" wherever it occurs in the Industrial Disputes Act, unless a specific meaning is given to that term by that particular provision, is to be understood in its ordinary meaning and sense. The term "undertaking" occurring in section 25FFF fell for interpretation by this Court in *Management of Hindustan Steel Limited* v. *The Workmen and others*.[3]. In that case, this Court held (at page 310) :

> "The word undertaking as used in sec. 25FFF seems to us to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking. It is not intended to cover the entire industry or business of the employer as was suggested on behalf of the respondent. Even closure or stoppage of a part of the business or activities of the employer would seen in law to be covered by this subsection. The question has indeed to be decided on the facts of each case."

3. 1973(3) S.C.R. 303.

The above passage was cited with approval and reiterated in *Workmen of the Straw Board Manufacturing Company Limited* v. *M/s Straw Board Manufacturing Company Limited.*[4]

16. It is thus clear that the word "undertaking" in the expression "an undertaking of an industrial establishment" in section 25-O means an undertaking in its ordinary meaning and sense as defined by this Court in the case of *Hindustan Steel Limited.* (supra) If an undertaking in its ordinary meaning and sense is a part of an industrial establishment so that both taken together constitute one establishment, section 25-O would apply to the closure of the undertaking provided the condition laid down in section 25K is fulfilled. The tests to determine what constitutes one establishment were laid down by this Court in *Associated Cement Company's Case.* (supra) The relevant passage is as follows :

> "What then is 'one establishment' in the ordinary industrial or business sense ? The question of unity of oneness presents difficulties when the industrial establishment consists of parts, units, departments, branches etc. If it is strictly unitary in the sense of having one location and one unit only, there is little difficulty in saying that it is one establishment. Where, however, the industrial undertaking has parts, branches, departments, units etc. with different locations, near or distant, the question arises what tests should be applied for determining what constitutes 'one establishment'. Several tests were referred to in the course of arguments before us, such as geographical proximity, unity of ownership, management and control, unity of employment and conditions of service, functional integrality, general unity of purpose etc...It is, perhaps, impossible to lay down any one test as an absolute invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, units etc. If in their true relation they constitute one integrated whole, we say that the establishment is one ; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the right of unemployment compensation and also prescribes disqualification therefor. Thus, in one case the unity of ownership, management and control may be the important test ; in another case functional integrality or general unity may be the important test ; and in still another case, the important test may be the unity of employment. Indeed, in a large number of cases several tests may fall for consideration at the same time."

These tests have been accepted and applied by this Court in different cases, for instance, in *South India Millowners' Association and others* v. *Coimbatore District Textile Workers' Union and others,*[5] *Western India Match Co. Ltd.* v. *Their Workmen*[6] and *Workmen of the Straw Board Manufacturing Company Limited* v. *M/s Straw Board Manufacturing Company Limited* (supra). *In Western India*

4. 1975 S.L.J. 115 (S.C.).
5. 1962(1) Lab. L.J. 223 (S.C.).
6. 1964(3) S.C.R. 560 (S.C.).

Match Company's Case (supra) the Court held on the facts that there was functional integrality and inter-dependence or community of financial control and management of the sales office and the factory in the appellant company and that the two must be considered part of one and the same unit of industrial production. In the *Straw Board Manufacturing Company's Case* (supra) the Court held (at page 713) :

> "The most important aspect in this particular case relating to closure, in our opinion, is whether one unit has such componental relation that closing of one must lead to the closing of the other or the one cannot reasonably exist without the other. Functional integrality will assume an added significance in a case of closure of a branch or unit."

17. What now falls to be ascertained is whether the undertaking of the Company, namely, the Churchgate Division, formed part of the industrial establishment of the Company, namely, the Trombay factory, so as to constitute the Trombay factory and the Churchgate Division one establishment. If they did and the total strength of the workmen employed in the Churchgate Division and at the Trombay factory was one hundred or more, then section 25(O) would apply. If they do not, then the section which would apply would be section 25FFA. This is a question of fact to be ascertained from the evidence led before the Industrial Court. At the relevant time the number of employees in the Worli Division was 110, in the Churchgate Division was 90 and in the Trombay Division was 60, aggregating in all to 260. The Worli Division does not fall for consideration in this appeal because the evidence in the case is confined to the Trombay factory and the Churchgate Division and does not refer to the Worli Division except in passing. The evidence clearly establishes that the functions of the Churchgate Division and the Trombay factory were neither separate nor independent but were so integrally connected as to constitute the Churchgate Division and the Trombay factory into one establishment. Until 1965 the Company had its various departments, such as pharmaceutical sales, dyes and chemicals sales, laboratory (which is now in the Trombay factory), accounts, purchases, personnel and administration and other departments housed in Express Building, Churchgate, while its factory was situate at Tardeo. In 1965 the factory as also the laboratory were shifted to Trombay and in 1971 the Pharmaceutical Sales Division was shifted to Worli. Even after the Company began carrying out its operation at three separate places, namely, at Worli, Churchgate and Trombay, all the purchases of raw materials required for the Trombay factory were made by the Churchgate Division. The Churchgate Division also looked after the marketing and sales of the goods manufactured and processed at the Trombay factory. The statistical work of the Company, namely, productwise sales statistics, industrywise sales statistics, partywise sales statistics, monthly sales performance statistics, sales forecast statistics, collection forecast statistics, sales outstanding statistics and other statistical work, was also done in the Churchgate Division. The orders for processing of dyes and instructions in respect thereof were issued from the Churchgate Division to the Trombay, factory. The work of making payment of salaries, overtime, conveyance allowances, medical expenses, leave travel allowance, statutory deductions such as for provident fund, income-tax, professional tax, etc., in respect of the workmen working at the Trombay factory was also done in the Churchgate Division and an employee from the Churchgate Division used to go to the Trombay factory on the last day of each month for actually making payment of

the salaries etc. The work of purchasing statutory items, printing forms, etc., for the Trombay factory and the Worli Division was also done by the Churchgate Division and the maintenance of the Express Building at Churchgate and of the factory at Trombay was done by personnel in the Churchgate Division. The Churchgate Division also purchased uniforms, rain coats and umbrellas for the workmen working in the Trombay factory in addition to the workmen working in the Express Building. The services of the workmen working in the Trombay factory were transferable and workmen were in fact transferred from the Trombay factory to the Churchgate Division.

18. While the Union examined eight witnesses, P.S. Raman, Executive (Administration) of the Company was the only witness examined by the Company. Raman has admitted in his evidence that the marketing and sales operations of the dyes processed at the Trombay factory were done in the Churchgate Division, that personnel from the Churchgate Division were sent to the Trombay factory in connection with the technical matters relating to the factory, that the procurement of raw materials and the work of technical advice on processing and standardization of goods manufactured and processed at the Trombay factory as also the final marketing of the finished products of the Trombay factory were all done by the Churchgate Division. He has further admitted that the supply of stationery to the Trombay factory was largely done from the Churchgate Division and that the ultimate decisions with regard to the workload, assignment of job, etc. were taken to the top management of the Company at the Head Office of the Company in Express Building. Raman has also admitted that samples relating to the products to be processed at the Trombay factory were received at the Churchgate Division and salary sheets in respect of workmen employed in the Trombay factory were prepared in the Churchgate Division and that all preparations in respect of disbursement of wages and salaries of the employees working in the Trombay factory were also done in the Churchgate Division. Raman's evidence further shows that there were no accountants at the Trombay factory and all the work relating to the accounts of the Trombay factory was done at the Head Office and Raman himself had to to go Trombay sometimes in connection with the work of the factory. It is thus clear from the evidence on the record that the Trombay factory could never have functioned independently without the Churchgate Division being there. A factory cannot produce or process goods unless raw materials required for that purpose are purchased. Equally, there cannot be a factory manufacturing processing goods unless the goods so manufactured or processed are marketed and sold. The one without the other is a practical impossibility. Similarly, no factory can run unless salaries and other employment benefits are paid to the workmen nor can a factory function without the necessary accounting and statistical data being prepared. These are integral parts of the manufacturing activities of a factory. All these factors existed in the present case and there can be no doubt that the Trombay factory and the Churchgate Division constituted one establishment. The fact that, according to the Company, a major part of the work of the Churchgate Division was that of marketing and selling the products of the Ranoli factory belonging to Ambalal Sarabhai Enterprises Limited is irrelevant. The Trombay factory could not have conveniently existed and functioned without the Churchgate Division and the evidence shows a complete functional integrality between the Trombay factory and the Churchgate Division of the Company. The total number of workmen employed at the relevant time in the Trombay factory and the Churchgate Division was one hundred and fifty and, therefore, if the Company wanted

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to close down its Churchgate Division, the section of the Industrial Disputes Act which applied was section 25-O and not section 25-FFA.

19. The next contention raised on behalf of the Company was that the Trombay factory was registered under the Factories Act while the Churchgate Division was registered as a commercial establishment under the Bombay Shops and Establishments Act and, therefore, they could not be treated as one. According to the Industrial Court, this fact of registration under two different Acts constituted the Trombay factory and the Churchgate Division into two separate legal entities. It is as difficult to follow this contention of the Company as it is to understand the conclusion reached by the Industrial Court. Merely because registration is required to be obtained under a particular statute, it does not make the business or undertaking or industry so registered a separate legal entity except where a registration of incorporation is obtained under the Companies Act. The Factories Act and the Bombay Shops and Establishments Act are regulatory statutes and the registration under both these Acts is compulsory for providing certain benefits to the workmen employed in the factory or the establishment, as the case may be. What was, however, relied upon was the definition of "commercial establishment" given in clause (4) of section 2 of the Bombay Shops and Establishment Act. The said clause (4) is as follows :

> "(4) 'Commercial establishment' means an establishment which carries on, any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession and includes establishment of any legal practitioner, medical practitioner, architect, engineer, accountant, tax consultant or any other technical or professional consultant and also includes a society registered under the Societies Registration Act, 1860, and a charitable or other trust, whether registered or not, which carries on whether for purposes of gain or not, any business, trade or profession or work in connection with or incidental or ancillary thereto *but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment*".
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> (Emphasis supplied.)

Clause (9) of section 2 of the said Act defines "factory" as meaning "any premises which is a factory within the meaning of clause (m) of section 2 of the Factories Act, 1948, or which is deemed to be a factory under section 85 of the said Act". The definition of "commercial establishment" in clause (4) of section 2 clearly shows that a commercial establishment is one of the categories of "establishment". "Establishment" is separately defined in clause (8) of section 2 as follows :

> "(8) 'Establishment' means a shop, commercial establishment, residential hotel, restaurant, eating house, theatre, or other place of public amusement or entertainment to which this Act applies and includes such other establishment as the State Government may, by notification in the Official Gazette, declare to be an establishment for the purposes of this Act".

It will be noticed that the word "factory" does not occur in the definition of "establishment" while a factory is expressly excluded from the definition of "commercial establishment". The reason is obvious. There are separate Chapters in the Bombay Shops and Establishment Act which provides for various matters such as opening and closing hours, daily and weekly hours of

work, interval for rest, holidays in a week, etc., in respect of different categories of establishment, such as shops and commercial establishments, residential hotels and restaurants and eating houses and theatres or other places of public amusement or entertainment. Under section 7(1) of the said Act, the employer of every establishment is to send to the Inspector of the local area concerned a statement in a prescribed form together with the prescribed fees containing various particulars including "the category of the establishment, i.e., whether it is a shop, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment". On receipt of such statement and the fees the Inspector, if satisfied about the correctness of the statement, is to register the establishment in the Register of Establishments. The form of the Register of Establishments is given in Form C appended to the Maharashtra Shops and Establishments Rules, 1961, made under section 67 of the Bombay Shops and Establishments Act. This Form shows that the Register is divided into five parts. Part I consists of shops ; Part II consists of commercial establishments ; Part III consists of residential hotels ; Part IV consists of restaurants and eating houses ; and Part V consists of theatres and other places of public amusement or entertainment.

20. A factory as defined in clause (m) of section 2 of the Factories Act is excluded from the definition of "commercial establishment" contained in clause (4) of section 2 of the Bombay Shops and Establishments Act, and is not mentioned in the list of establishments set out in the definition of "establishment" given in clause (8) of section 2 of the said Act because various matters in respect of which provision is made under the said Act are also provided for in the Factories Act. There is, however, nothing to prevent the State Government from declaring, under the latter part of clause (8) of section 2, a "factory" to be an establishment for the purposes of the Bombay Shops and Establishments Act.

21. Under section 4 of the Bombay Shops and Establishments Act, certain provisions of that Act set out in Schedule II to the said Act are not to apply to the establishments, employees and other persons mentioned in the said Schedule. Further, under section 4, the State Government has the power, by notification published in the Official Gazette, to add to, omit or alter any of the entries in Schedule II. Several of the entries set out in Schedule II show that a number of industrial establishments, using that expression in its ordinary sense, are covered by the term "establishment" such as, ice and ice-fruit manufacturing establishments (Entry 24) ; any establishment wherein a manufacturing process defined in clause (k) of section 2 of the Factories Act is carried on (Entry 34) ; dal manufacturing establishments (Entry 46) : establishments commonly known as general engineering works wherein the manufacturing process is carried on with the aid of power (Entry 54) ; such establishments manufacturing bricks as open earlier than 5.30 a.m. (Entry 96) ; establishment of Jayems Chemicals, Nashik Road, Deolali, Nashik (Entry 106) ; Biotech Laboratories, Poona (Entry 160) ; employees in Messrs. Manganese Ore (India) Ltd., Nagpur (Entry 183) ; employees in tanneries and leather manufactory (Entry 187) : ILAC Limited, Calico Chemicals Plasties and Fibres Division Premises, Anik Chembur, Bombay-400074 (Entry 208) : flour mills in Greater Bombay (Entry 220) ; and Trombay Thermal Power Station Construction Project, Unit 5, of the Tata Power Company Ltd., Bombay (Entry 243). It may be mentioned that while the laboratory of the Company was located in the Express Building before it was shifted to the Trombay factory, it was registered under the Bombay Shops and Establishments Act and not under the Factories Act.

22. The error made by the Industrial Court was in considering that an undertaking of an industrial establishment should itself be an industrial establishment, that is, a factory as defined in clause (m) of section 2 of the Factories Act. This supposition is not correct for, as already pointed out, there is no requirement contained in the Industrial Disputes Act that an undertaking of an industrial establishment should also be an industrial establishment.

23. The last contention on the merits which was raised on behalf of the Company was that though the Company might have acted in contravention of the provisions of section 25-O the Industrial Disputes Act, it none the less would not amount to a failure to implement the Settlement dated February 1, 1979, entered into between the Company and the Union and, therefore, the act of closing down the Churchgate Division was not an unfair labour practice under section 28 of the Maharashtra Act read with Item No. 9 of Schedule IV to the said Act. This contention too found favour with the Industrial Court. For reaching the conclusion that the closing down of the Churchgate Division was not an act of unfair labour practice on the part of the Company, the Industrial Court relied upon the decision of a learned Single Judge of the Bombay High Court in the case of *Maharashtra General Kamgar Union* v. *Glass Containers Pvt. Ltd. and another* (supra). The relevant passage in that judgment is as follows (at page 331):

> "It is difficult to accept the submission made on behalf of the Union that non-compliance with any statutory provisions such as S. 25-FFA must be regarded as failure by the employer to implement an award, settlement or agreement. The position might be different in relation to certain statutory provisions which are declared to hold the field until replaced by specific provisions applicable to certain specific undertakings. For example, the Model Standing Orders may govern a particular employer and his workmen till repulsed or substituted by certified Standing Orders specially framed for that employer and approved in the manner provided under the statute or the rules. This would not imply that provisions such as those contained in S. 25FFA or 25-FFF of the Industrial Disputes Act can be held or deemed to be a part of the contract of employment of every employee. Any such interpretation would be stretching the language of item 9 to an extent which is not justified by the language thereof".

It is not possible to accept as correct the view taken in the said case. It is an implied condition of every agreement, including a settlement, that the parties thereto will act in conformity with the law. Such a provision is not required to be expressly stated in any contract. If the services of a workmen are terminated in violation of any of the provisions of the Industrial Disputes Act, such termination is unlawful and ineffective and the workman would ordinarily be entitled to reinstatement and payment of full back wages. In the present case, there was a Settlement arrived at between the Company and the Union under which certain wages were to be paid by the Company to its workmen. The Company failed to pay such wages from September 18, 1984, to the eighty-four workmen whose services were terminated on the ground that it had closed down its Churchgate Division. As already held, the closing down of the Churchgate Division was illegal as it was in contravention of the provisions of section 25-O of the Industrial Disputes Act. Under sub-section (6) of section 25-O, where no application for permission under sub-section (1) of section 25-O is made, the closure of the undertaking is to be deemed to be illegal from the date of the closure and the workmen are to be entitled to all the benefits under any law for the time being in force, as if the undertaking had not been closed down. The eighty-four workmen were, there-

fore, in law entitled to receive from September 18, 1984, onwards their salary and all other benefits payable to them under the Settlement dated February 1, 1979. These not having been paid to them, there was a failure on the part of the Company to implement the said Settlement and consequently the Company was guilty of the unfair labour practice specified in Item 9 of Schedule IV to the Maharashtra Act, and the Union was justified in filing the Complaint under section 28 of the Maharashtra Act complaining of such unfair labour practice.

24. It was lastly submitted that several employees must have taken up alternative employment during the intervening period between the date of the closure of the Churchgate Division and the hearing of this Appeal and an inquiry, therefore, should be directed to be made into the amounts received by them from such alternative employment so as to set off the amounts so received against the back wages and future salary payable to them. It is difficult to see why these eighty-four workmen should be put to further harrassment for the wrongful act of the Company. It is possible that rather than starve while awaiting the final decision on their Complaint some of these workmen may have taken alternative employment. The period which has elapsed is, however, too short for the moneys received by such workmen from the alternative employment taken by them to aggregate to any sizeable amount, and it would be fair to let the workmen retain such amount by way of solatium for the shock of having their services terminated, the anxiety and agony caused, thereby and the endeavours, perhaps often fruitless, to find alternative employment.

25. It was also submitted that most of the workmen have already accepted the retrenchment compensation offered by the Company and cannot receive full back wages or future salary until the amount of such compensation received by them is adjusted. Learned Counsel for the Union has very failure conceded that the workmen cannot retain the retrenchment compensation and also claim full back wages as also future salary in full and that the amount of retrenchment compensation received by the workmen should be adjusted against the back wages and future salary. There would be no difficulty in adjusting the amount of back wages against the amount of retrenchment compensation received by the concerned workmen but if thereafter there is still any balance of retrenchment compensation remaining to be adjusted, it would be too harsh to direct that such workmen should continue in service and work for the Company without receiving any salary until the balance of the retrenchment compensation stands fully adjusted ; and, therefore, so far as future salary is concerned, only a part of it can be directed to be adjusted against the balance of the retrenchment compensation, provided there is any such balance left after setting off the back wages.

26. In the result, this Appeal must succeed and is allowed and the order dated July 26, 1985, passed by the Industrial Court, Maharashtra, Bombay, dismissing the Complaint (ULP) No. 1273 of 1984 filed by the Appellant Union against the Respondents is set aside and the said Complaint is allowed and it is declared that the closure of the Churchgate Division of S.G. Chemicals and Dyes Trading Limited was illegal and the workmen whose services were terminated on account of such illegal closure continued and are continuing in the employment of the Company on and from September 18, 1984, and are entitled to receive from the Company their full salary and all other benefits under the Settlement dated February 1, 1979, entered into between the Company and the Appellant Union, from September 18, 1984, until today and thereafter regularly until their services are lawfully terminated according to law. If any workman whose services were purported to be terminated by the closing down of the Churchgate Division of the Company has received retrenchment compensation

from the Company, the amount of back wages will be set of fagainst such ret renchment compensation and if after such setting off any balance of retrenchment compensation still remains, it will be adjusted by deducting twenty percent from the periodic salary payable to such workman.

27. The Respondent Company will pay to the appellant Union the costs of this Appeal.

SUPREME COURT OF INDIA

C.A. No. 801 of 1976 etc. (W.A. 288/1970)
Decided on 29-4-1986

CORAM

The Hon'ble Mr. Justice V. Balakrishna Eradi
The Hon'ble Mr. Justice Murari Mohan Dutt

Regional Director E.S.I., Madras —*Appellant*

Versus

South India Flour Mills Ltd. —*Respondent*

E.S.I. Act, 1948—Section 2 (9) 'Employee' who is—Whether casual labour are employees within the Act—Held yes.

Held, section 39(4) and section 42(3) clearly envisage the case of casual employees. In other words, it is the intention of the Legislature that the casual employees should also be brought within the purview of the Act. It is true that a casual employee may not be entitled to sickness benefit as pointed out in the case of *Gnanambikai Mills* (Supra). But, in our opinion, that cannot be a ground for the view that the intention of the Act is that casual employees should not be brought within the puview of the Act. Apart from sickness benefit there are other benefits under the Act including disablement benefit to which a casual employee will be entitled under section 51 of the Act. Section 51 does not lay down any benefit period or contribution period. There may again be cases when casual employees are employed over the contribution period and, in such cases, they will be entitled to even the sickness benefit. In the circumstances, we hold that casual employees come within the purview of the Act. (Para 10)

E.S.I. Act, 1948—Section 2(9)—Mill, whose main activity is weaving, constructing building for its expansion—Is construction activity "incidental to or preliminary to or connected with the work of the factory and its workers whether employees—Held in the affirmative.

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH AT AHMEDABAD.

ORIGINAL APPLICATION NO. 203 OF 1991

Mohd.Arif Hasanbhai Belim — Applicant

V/s.

Union of India and Ors. — Respondents

Written Reply on behalf of
the respondents.

I, H. K. AMBANI

working as A.E. (Legal) O/o. G.M.T.D.B. with the respondent No. 4 herein, do hereby state in reply to the aforesaid original application as under:

1. I have perused the relevant papers and files pertaining the application and I am conversant with the facts of the case and I am authorised to file this reply on behalf of the respondents. I am therefore, competent to file this reply on behalf of the respondents.

2. At the outset I say and submit that the application is misconceived, untenable and requires to be rejected.

3. At the outset I say and submit that no part of the application shall be deemed to have been admitted by the respondents unless specifically stated so by me hereinafter. All the statements, averments and allegations contained in the application shall be deemed to have been denied unless specifically admitted by me hereinafter.

4. In reply to para-4 of the application I say and submit that the applicant was engaged as a casual labourer for specific work of laying of the underground cables on daily rated basis which work was of purely casual nature. The applicant was engaged from September 1986 to March 1987 during which period the total number working days were 207 which includes weekly off, no work paid day i.e. total 28 days during 1986-87 are to be excluded from total working days. which comes to 179 net working days. Similarly, in the year 1987-88 from April to July the total number of working days wsere 117 and after deducting the weekly off, no work paid day, etc. which comes to 16 days, the net working days come to 101 only. Thus, I say and submit that it is very clear that the applicant has not completed 240 working days in each financial year as per the Circular of the Govt. of India.

5. In reply to para-4(ii) of the application

I say and submit that the contents of the same are not correct and I deny the same. I say that the applicant was informed well in advance by the respondents vide Ref.No.A-2/CL/Selection/87-88 dated 1.7.1987 i.e. one month in advance stating that due to completion of specified work and non-availability of work, no further engagement after 1.8.1987 will be accorded. Since the applicant was informed well in advance question of violation of Industrial Disputes Act does not arise. I say that the Industrial dispute case of the applicant filed in the Industrial Court at Ahmedabad has already been decided and award came to be passed by the Hon'ble Industrial Tribunal, Ahmedabd in I.T.C.No.40/89 dated 5.10.1990 after considering all the relevant facts. According to the directions given in the judgment the Telecom Department has to pay one year's compensation to him but certified copies of the said judgment along with legal opinion have not been received by this office and award granted could not be implemented due to non-receipt of certified copy of the judgment and the Govt. Pleader's opinion. However, Shri B.M. Joshi, A.G.P. is being requested to expedite the same.

6. In reply to para-4(iii) of the application I say that it is not correct to say that the applicant has completed 240 days in a particular year. During the year 1986-87 the applicant had worked ony for 179 days and during the year 1987-88 the applicant had worked only for 101 days. Under the circumstances the applicant is not entitled to get benefit of re-instatement in service because he did not fulfill the condition of minimum 240 days of work in a particular year for granting of temporary status as casual labourer.

7. In reply to para-8(A) of the application I say that under the provisions of Section 25F of the Industrial Disputes Act one month's pay is justified.

8. In view of the what has been stated above I say and submit that the application is misconceived, untenable and requires to be rejected.

Ahmedabad,
Dt 22 -7-1992.

H.K. AMBANI
A.E. (Legal)
O/o G.M.T.D. Rajkot

Verification

I, H.K. AMBANI
working as A.E. (Legal) O/o GMTD Rj with the

respondent No. 4 herein, do hereby verify and state that what is stated above is true to my knowledge, information and belief and I believe he same to be true.

Verified at Ahmedabad on this 22nd day of July 1992.

(H.K. AMBANI)
A.E.(Legal)
O/o General Manager
Telecom. Distt.
RAJKOT-360001.

Akil Kureshi
Adv.

Reply/Rejoinder/written submissions
filed by Mr. Akil Kureshi
learned advocate for petitioner/
Respondent with second set.
Copy served/not served to other side

Dt. 28/7/92

By Registrar C.A.T.
Ahmedabad Bench

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD.

ORIGINAL APPLICATION No: 203/1991.

Mohmed Arif Hasambhai Belim,
Adult,Occ:Unemployed,
Add:14 Kumbharwada Corner,
Near Alka Masjid,
Kumbharwada Main Road,
RAJKOT ::APPLICANT.

Versus

(1) Union of India,
Through: It's Secretary,
Telecom. Department,
Government of India,
NEW DELHI.

(2) Shri N.A. Chauhan or his
successor in the office,
Central Industrial Tribunal,
Multi-Storeyed Building,
Lal Darwaja,
AHMEDABAD.

(3) Secretary,
Ministry of Labour,
Government of India,
NEW DELHI.

(4) Asstt.Engineer Phones,
External (East),
Income Tax Building,
RAJKOT. ::RESPONDENTS.

REJOINDER-IN- AFFIDAVIT

I, Mohmed Arif Hasambhai Belim applicant in this case do hereby state on solemn affirmation as under :

1) That I have been read over and explained the written reply filed by the respondents and therefore I file the present Re-joinder in the matter.

2) At the outset I say and submit that the reply is misconceived with false facts and information and required to be rejected.

3) At the outset I say and submit that no part of the reply be deemed to have been admitted by the applicant unless specifically stated so by me hereinafter.

...2...

All the averments and allegations in the reply shall be deemed to have been denied unless specifically admitted by me in this re-joinder.

4) In reply to para-4 the statement made therein are not correctly stated and are denied hereby. It is denied that the applicant was engaged for specific work of laying of the underground cables on daily rated basis which work was of purely casual nature. It is denied that the applicant was engaged from September-1986 to March-1987 only or that his total number of working were 207 days, which includes weekly off or it comes to 179 days as mentioned therein. It is also denied that in the year 1987-88 from April to July the total number of working days were 117 and after deducting the weekly off it comes to 101 days. It is not true that the applicant has not completed 240 days working days in each financial year as mentioned therein.

5) In answer to para-5 of the reply statements made therein are not correct and not admitted. It is not true that the applicant was well in advance informed or one month in advance as stated therein. The rest of the statements made in the said para are not correctly stated and therefore are not admitted to be true. The applicant is yet not reinstated inspite of the award in his favour.

6) In reply to para-6 & 7, the statements made therein are not correct and are not admitted to be true.

7) The applicant submits that he has already produced alongwith petition various certificates issued by the officers of the respondents at Annexure A/1 from page 13 to 17. The certificate at Annexure A/1 page-13 has been issued by D.E.P.,Aji,BKNG-Rajkot where the name of SIP is shown as S.H. Balim, Lineman under whom the applicant was required to work for the period from September-1986 to April-1987 showing total working days, the applicant has worked for 237 days. The certificate

produced at page-14 has been issued by Asstt. Engineer(Phones),(External)(West),Rajkot wherein it is certified that the applicant has worked for 31 days during May-1987 under the same S.I.(Phones) shri H.H. Belif. Thus the applicant was kept attached alongwith H.H.Belif and he has to work wherever shri H.H. Belif was ordered to go and work from one beat of Asstt. Engineer to another beat of Asstt. Engineer. The next certificate on page-15 is issued by A.D.E.(Phones),External East,Rajkot on 16.7.1987 signed by him on 17.7.1987 for the month of June-= 1987, the applicant being worked for 30 days here too applicant was transferred under S.I.(Phones) shri Abhaysingh alongwith his other colleages. The further certificates on page-16 is of July-1987 issued by Asstt. Engineer Phones,External(East),Rajkot for July-1987 wherein the applicant has worked for 26 days and was continued to work under shri Abhaysingh S.I. (Phones) as can be seen from the certificate.

8) From the above facts and the copies of the certificates as produced by the applicant it is very clear that the applicant had worked for morethan 240 days as required under the provisions of I.D. Act. Therefore the statements made by the respondents are not true and xx are contrary to the record by their own.

9) It is also un-dispute that no notice or notice pay or retrenchment compensation under Section 25-F was given to the applicant.

I say the above facts on oath.

Rajkot/
Ahmedabad.
Dated: 07-9-1992.

Rajvinder

(APPLICANT)

Filed by Mr. ... Learned Advocate for Petitioners with second set & ... spares copies copy served/not served to other side

Identified by
(V.S. Jain)
Advocate
Dated 7/9/92.

on the

Dy. 8/9/92 Dy.Registrar C.A.T.
A'bad Bench

Diarised under
MA St. No 156 of 94

(66)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD.

O/T/A/MA/R/C/A No. 155/94 in 04/203/91

MR. Mohmed Arif Hasanbhai Belim
APPLICANT (S)

MR. B.B. Gogia
COUNSEL

VERSUS

U.O.I. & Ors.
RESPONDENT (S)

MR Akil Kureshi
COUNSEL

Date	Office Report	ORDERS
	Early Hearing	ADMD. Dismissed as on 28.3.94

PROFORMA FOR REGISTRY'S NOTE IN CONTEMPT CASES :

(1) Case No.C.A. No. in OA/TA
(2) Date of judgment
(3) Date of expiry of implementation of the judgment.
(4) Whether copy of judgment served on respondent or his advocate with date.
(5) Name and designation of the respondent to implement the order.
(6) Whether notice in Form-III issued with date.
(7) Whether above notice served with date of RPAD etc.
(8) Whether above notice served on the Advocate of the respondents.
(9) Whether Notice in Form-IV issued? If so with date.
(10) Name of the person asked to attend in FormIV and date of receipt of the notice in Form-IV by him.
(11) Reply to the Notice in Form IV if any.

7/29-3

(67)

Mt st 156/94

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD

Miscellaneous Application No. 155 of 1994.

IN

Original Application No. 203 of 1991.

Mohmed Arif Hasambhai
Belim,
Aged about 30 Years,
Occ: Unemployed,
Add: Kumbarwada MainRoad
Near Alka Masjid.
14, Kumbarwada Corner,
Rajkot. : Applicant.

Versus.

Read copy
Rikhaman
Clerk to
Mr Akil Qureshi
8/3/94 Ad

1. Union of India
Owning and Representing
through its Secretary,
Telecom Department,
Government of India,
New Delhi.

2. Shri N A Chauhan or
his Successor in office
Central Industrial Tribunal
Multi-storeyed Building,
Lal-Darwaja,
Ahmedabad.

3. The Secretary,
Ministry of Labour
Government of India,
New Delhi.

4. The Asstt. Engineer(Phones)
External East,
Incometax Buildings,
M G Road,
Rajkot - 360 001. : Respondents.

APPLICATION FOR EARLY HEARING IN THE MATTER.

The applicant begs to submit that the applicant is unemployed due to his wrong termination of services. The present matter is against the award of the Labour Court wherein it has been established that there is violation of Section 25(F) of the Industrial Dispute Act and inspite of that the Court has not agreedupon in reinstatement and back wages on illegal reasons.

Contd..2

(68)

: 2 :

It is submitted that the applicant is coming from too poor family and is in starving condition. The matter rests on a small legal point. It is prayed that ~~in~~ in the interest of service/justice, this matter may please be ~~hear~~ ordered to be heard at the earliest.

Dated at
Rajkot/Ahmedabad
the 8-3-1994

મોહમદ આરિફ હાસમભાઈ બેહીમ
Applicant.

VERIFICATION

I, Mohmed Arif Hasambhai Behim, son of Shri Hasambhai aged about 30 Years working as unemployed -resident of Rajkot do hereby verify that the contents of the above application are true to my personal knowledge, information and belief.

Dated at 8-3-94
Rajkot/Ahmedabad

મોહમદ આરિફ હાસમભાઈ બેહીમ
Applicant.

Through
Shri B B Gogia,
Advocate, Rajkot.

Advocate for the Applicant.

Submitted.

Application has been scrutinized and found to be in order. May be placed before Hon'ble Bench for necessary orders.

09.03.94

May be placed for orders on 22.3.94.

S/C(J)

9.3.94

DR(J) 9-3-94