* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 16.05.2013

% **Judgment delivered on: 01.07.2013**

\+ **W.P.(C) 5311/2000 and C.M. Appln. No. 19796/2012**
(Arising out of I.D. No.725/91 decided by the Labour Court on 07.10.1999)

MAHESH CHAND ..... Petitioner
Through: Mr. Anuj Aggarwal, Advocate.

versus

MGT.OF M/S.LE MERIDIEN ..... Respondent
Through: Mr. Kailash Vasdev, Senior Advocate along with Mr. Sanjay K. Shandilya, Advocate.

\+ **W.P.(C) 5312/2000 and C.M. No. 314/2013**
(Arising out of I.D. No.726/91 decided by the Labour Court on 07.10.1999)

SRI NIWAS ..... Petitioner
Through: Mr. Anuj Aggarwal, Advocate.

versus

MGT.OF M/S.LE MERIDIEN ..... Respondent
Through: Mr. Kailash Vasdev, Senior Advocate along with Mr. Sanjay K. Shandilya, Advocate.

+ **W.P.(C) 5345/2000 and C.M. No. 318/2013**
(Arising out of I.D. No.727/91 decided by the Labour Court on 07.10.1999)

RAMESH CHAND ..... Petitioner
Through: Mr. Anuj Aggarwal, Advocate.

versus

MGT.OF M/S.LE MERIDIEN & ANR ..... Respondents
Through: Mr. Kailash Vasdev, Senior Advocate along with Mr. Sanjay K. Shandilya, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. This batch of writ petitions has been preferred to assail the awards passed by the Labour Court in respect of each of the petitioners, the details whereof have been mentioned hereinabove. By the impugned awards, the references made in respect of each of the workmen-with regard to termination of their services, have been answered against the petitioner workmen. The basis of the impugned awards is that the services of the petitioners, who were admittedly on probation, have been terminated in terms of the appointment condition; during the period of probation, and; that their discharge simplicitor is not stigmatic, or by way of punishment. It has been held that the termination of the services of the petitioners does not tantamount to retrenchment as defined in Section 2(oo) of the Industrial

Disputes Act, 1947 (the Act), since it is covered by clause (bb) of the said provision.

2. The petitioners placed reliance on the Division Bench judgment of this Court in ***Delhi Cantonment Board Vs. Central Government Industrial Tribunal & Others***, 2006 (88) DRJ 75 (D.B.) in support of their plea that even a probationer is a "workman" and upon termination of the services of the probationer, Section 25-F of the Act has necessarily to be complied with, else the termination would be *void ab initio*.

3. When the petitions were taken up for hearing before this Court on 10.05.2013, this Court brought to the notice of the parties the earlier judgments of the Supreme Court in ***Kalyani Sharp India Ltd. Vs. Labour Court No.1 Gwalior & Anr.***, (2002) 9 SCC 655, ***Escorts Limited Vs. Presiding Officer & Anr.***, (1997) 11 SCC 521, ***M. Venugopal Vs. Divisional Manager, Life Insurance Corporation of India, Machilipatnam, A.P. and Anr.***, (1994) 2 SCC 323, and a Division Bench decision of this Court in ***Management of Apparel Export Promotion Council Vs. Surya Prakash***, (2011) III LLJ 335 (Delhi), which had not been taken note of by the Court in the decision in ***Delhi Cantonment Board*** (supra). The matters were adjourned for 16.05.2013 to enable the parties to examine the issue further – when further arguments were heard and judgments reserved.

4. Learned counsel for the petitioners has strongly placed reliance on the decision of the Constitution Bench judgment of the Supreme Court in ***Punjab Land Development and Reclamation Corporation Limited, Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh & Others***,

(1990) 3 SCC 682 to submit that the termination of a probationer is covered by the definition of retrenchment. The Supreme Court was dealing with cases wherein the respondent workmen, who were on probation, were sought to be terminated on account of unsatisfactory service. The terminations were innocuous and not stigmatic. The Labour Court took the view that even in the case of probationers the requirements of Section 25-F of the Act were necessarily required to be complied with and, on account of non-compliance of the said provision, relief was granted to the workmen. The appeals of the management were dismissed. Mr. Aggarwal, therefore, submits that ***Punjab Land Development*** (supra) is an authority for the proposition that the termination of the services of a probationer during the period of probation also tantamounts to retrenchment within the meaning of section 2(oo) of the Act.

5. Mr. Aggarwal submits that this Constitution Bench judgment of the Supreme Court has not been considered in later decisions of the Supreme Court – either in ***Kalyani Sharp India Ltd.*** (supra), or in ***Escorts Limited*** (supra), or in ***M. Venugopal*** (supra), or even in the Division Bench decision of this Court in ***Management of Apparel Export Promotion Council*** (supra).

6. Mr. Aggarwal submits that the expression 'workman' is defined in Section 2(s) of the Act to mean any person, including an apprentice employed in any industry to do manual, unskilled, skilled, technical, operational, clerical or supervisory work. He submits that the intention of the Parliament could not have been to exclude a probationer -when even an apprentice, i.e., a trainee is included within the meaning of that term to

accord the benefits and protections provided under the Act. He submits that the purpose of Section 25-F is merely to grant immediate succor to the workman whose services were retrenched. The right of the employer to terminate the services of the probationer by an innocuous termination order is preserved. However, he must comply with the provisions of Section 25-F as well while terminating the services of the probationer.

7. Mr. Aggarwal submits that clause (bb) of Section 2(oo) can be invoked only when the work is of temporary nature, i.e., where the workman is employed in a project or scheme of temporary nature. In this regard, he places reliance on the judgment of the Supreme Court in ***S.M. Nilajkar Vs. Telecom District Manager, Karnataka***, (2003) 4 SCC 27. Mr. Aggarwal submits that in case of a probationer there is no deemed confirmation. This means that an employer may continue to extend the probation from time to time for any length of time so as to avoid vesting rights in the employee, and if the interpretation advanced by the respondent were to be accepted, it would mean that services of the workman could be terminated even after a lengthy service - without any compensation to him.

8. Mr. Aggarwal submits that such conduct of the employee would tantamount to an unfair labour practice as defined in Section 2 (ra) of the Act read with entry at Sl. No.10 to the 5th Schedule to the Act. He places reliance on the judgment of the Supreme Court in ***Head Master, Lawrence School Lovedale Vs. Jayanthi Raghu & Another***, AIR 2012 SC 1571.

9. Mr. Aggarwal also places reliance on Section 25-J which provides that the provisions of Chapter V-A of the Act - which deals with "Lay-Off

and Retrenchment", shall have effect notwithstanding anything inconsistent therewith contained in any other law, including the Standing Orders made under the Industrial Employment (Standing Orders) Act, 1946. The proviso to Section 25-J(1) makes it clear that *"where under the provisions of any other Act rules, orders or notifications issued thereunder or under any Standing Orders or any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under the Act"*. Mr. Aggarwal submits that the employer cannot contract out of the Section 25-F of the Act and any such contract would be hit by Section 23 of the Indian Contract Act, 1872 which forbids the making of a contract which, if permitted, would defeat the provisions of any law.

10. Reference is also made to the decision of this Court in ***Union of India vs. Presiding Officer, CGIT & Another,*** 2011 (I) LLJ 753 Delhi. In this case the Court was concerned with termination of the services of a workman under Section 5 of the CCS (Temporary Service) Rules, 1965. The question arose whether the provisions of Section 25-F of the Act would come into play even though the said termination was under the rules which have statutory force, as they are framed under Article 309 of the Constitution of India. The Court answered the said question by holding that Section 25-F needs to be complied with even in such cases of termination. Paragraph 4 from its decision reads as follows:

"4. The question is no longer res- integra . The Supreme Court in Management of MCD Vs. Prem Chand Gupta AIR 2000 SC 454 has held that the provision of Section 25F are to be complied with even while terminating employment of a temporary employee in exercise of powers under Rule 5 of CCS (Temporary Service) Rules, 1965. I may notice that a Division Bench of the Patna High Court in Mahabir Vs. D.K. Mittal MANU/BH/0171/1978 held that in view of Section 25J of the ID Act, notwithstanding Rule 5 (supra), the provisions of Section 25F of the ID Act have to be complied with. Similarly, in Union of India Vs. Presiding Officer, CGIT 1995(71) FLR 20, the Madhya Pradesh High Court held that Rule 5 (supra) is not inconsistent with Section 25F and both can be made applicable and are supplementary to each other. The Division Bench of this Court also in Delhi Cantonment Board Vs. CGIT 129 (2006) DLT 610 held that in industrial law, there is no distinction between a permanent and a temporary employee. A Division Bench of the Bombay High Court in Union of India Vs. The Presiding Officer, CGIT MANU/MH/1204/2004 however held that a reference under Section 10 of the ID Act on a dispute emanating from termination of service under Rule 5 (supra) is required to be disposed of on the basis of said Rule only framed under Article 309 of the Constitution and not with reference to Section 25F of the ID Act. Prem Chand Gupta (supra) was sought to be distinguished as relying on cases of corporation , company or undertaking of Central Government and not of Government itself and to whom the Rules aforesaid applied. I am, with respect, W.P.(C) No.4870/1998 Page 4 of 9 unable to accept the view of the Bombay High Court. The reasoning in Prem Chand Gupta that even while terminating service of a temporary employee, provisions of Section 25F have to be complied was not dependent on whether the employment was under Government or MCD."

11. Lastly, learned counsel for the petitioner submits that the petitioners should be directed to be reinstated in service with full back wages. He submits that, in any event, the petitioners would be entitled to compensation in lieu of reinstatement. Reliance is placed on ***Sunder Singh Vs. P.O. Industrial Tribunal-I & Anr.*** decided by this Court on 08.02.2013, W.P.(C.) No. 5454/1998: MANU/DE/0391/2013.

12. On the other hand, the submission of Mr. Vasdev, learned senior counsel for the respondent management is that the decision of the Constitution Bench in ***Punjab Land Development*** (supra) does not advance the petitioners' case since, all that is held by the Supreme Court in that decision is – that the "retrenchment" means termination by the employer of the services of a workman for any reason whatsoever except those expressly excluded in the Section. He submits that the termination of the services of a probationer tantamounts to termination which is expressly excluded in the Section since it is covered by clause (bb) of Section 2(oo). He submits that the Supreme Court in the Constitution Bench judgment in ***Punjab Land Development and Reclamation Corporation Limited*** (supra) did not examine the purport of the exclusion clause (bb) of Section 2(oo). He, therefore, submits that the termination of the services of the probationer does not constitute "retrenchment" and the provisions contained in Section 25-F do not apply to such termination.

13. The cornerstone of the submission of Mr. Anuj Aggarwal, learned counsel for the petitioner is the Constitution Bench judgment (Five Judges) of the Supreme Court in ***Punjab Land Development*** (supra). Mr. Aggarwal submits by placing reliance on the said decision that the termination of the

services of a probationer also tantamounts to retrenchment within the meaning of section 2(oo) of the Act. He submits that this Constitution Bench judgment not having been considered in the aforesaid subsequent decisions of the Supreme Court, the said decisions would be of no avail, and they are *per incuriam*.

14. The decision in ***Punjab Land Development*** (supra) shows that the Constitution Bench of the Supreme Court dealt with 17 appeals by special leave and a special leave petition, since a common question of law was involved in those cases. Of the said appeals, only in three appeals the workman concerned was/were probationer(s). In C.A. No.686 (NL) of 1982, the respondent was an employee of the appellant Corporation since 1972. He was taken on probation in 1975 for one year, which was extended from time to time, and lastly from 01.09.1977 to 31.10.1977. His services not being found satisfactory, were terminated with effect from 01.11.1977 under Regulation 44(b) of the State Transport Employees Service Regulations of the appellant Corporation. The Labour Court took the view that the termination amounted to retrenchment and, consequently, section 25-F of the Act was applicable. The appellants' writ petition was dismissed by the High Court. That is how the matter came before the Supreme Court.

15. The second appeal, wherein the employee was a probationer was C.A. No.1817/1982. The respondent had been employed by the appellant bank on 03.10.1962 as a clerk and was put on probation for six months. On account of alleged lack of confidence in the workman, his services were terminated on 27.07.1974 on payment of three months salary. Once again, the industrial adjudicator held that section 25F was applicable, which had not

been complied with. This means that it was held that the termination tantamounted to retrenchment within the meaning of Section 2(oo) of the Act.

16. The third appeal wherein the workman was a probationer was C.A. No.1898/1982. In this case, the respondent workmen were employed on probation on 12.06.1975. Some of them assaulted the supervisor and remained absent from 29.03.1976 onwards and abandoned their jobs. Their services were terminated. One of them stopped attending duties from 09.08.1975 and he left the service on his own accord. In the industrial dispute that was referred to the Labour Court, it was held that the termination amounted to retrenchment, which was found to be illegal for non compliance of section 25-F of the Act. The managements challenge before the High Court being unsuccessful, the appeal was preferred before the Supreme Court.

17. All the others were cases of termination of the workman for other reasons. Pertinently, in all these cases, the definition of "retrenchment" contained in section 2(oo), prior to its amendment by the amending Act of 49 of 1984 – whereby clause (bb) was inserted with effect from 18.08.1984, was applicable. Therefore, clause (bb) of Section 2(oo) - with which we are concerned in the present cases, was not even the subject matter in any of the appeals before the Supreme Court, though – I may observe, the Supreme Court did notice the said amendment in para 61 of the judgment.

18. It is pertinent to take note of the precise question considered in the said set of appeals. A perusal of the judgment shows that the

Supreme Court was really grappling with the issue – whether the expression "retrenchment" defined in section 2(oo) of the Act means termination by the employer of the services of a workman, who is surplus labour or, whether it means termination by the employer of service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and those cases which are expressly excluded by the definition. In other words, the question to be decided was whether the word "retrenchment" has to be understood in its narrow and natural sense, or in its wider meaning. The Supreme Court sets out the issue raised before it in the said batch of appeals in paragraphs 13 and 14 of the report, which read as follows:

> "*13. On the above diverse facts two rival contentions are raised by the parties. The learned counsel for the employers contend that the word 'retrenchment' as defined in Section 2(oo) of the Act means termination of service of a workman only by way of surplus labour for any reason whatsoever. The learned counsel representing the workmen contend that 'retrenchment' means termination of the service of a workman for any reason whatsoever, other than those expressly excluded by the definition in Section 2(oo) of the Act.*
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> *14. The precise question to be decided, therefore, is whether on a proper construction of the definition of "retrenchment" in Section 2(oo) of the Act, it means termination by the employer of the service of a workman as surplus labour for any reason whatsoever, or it means termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and those expressly excluded by the definition. In other words, the question to be decided is whether the word "retrenchment" in the definition has to be understood in its narrow, natural and contextual meaning or in its wider literal meaning.*"

19. It would, therefore, be seen that the issue as to whether, or not, termination of the service of a probationer fall within clause (bb) of section 2(oo) was not an issue which arose for consideration before the Supreme Court in ***Punjab Land Development*** (supra).

20. In paragraphs 61 and 71 of its decision, the Constitution Bench observed as follows:

> "*61. When we analyse the mental process in drafting the definition of "retrenchment" in Section 2(oo) of the Act we find that firstly it is to mean the termination by the employer of the service of a workman for any reason whatsoever. Having said so the Parliament proceeded to limit it by excluding certain types of termination, namely, termination as a punishment inflicted by way of disciplinary action. The other types of termination excluded were (a) voluntary retrenchment; or (b) retrenchment of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation on that behalf; or (c) termination of service of a workman on the ground of continued ill health.* ***Had the Parliament envisaged only the question of termination of surplus labour alone in mind, there would arise no question of excluding (a), (b) and (c) above. The same mental process was evident when Section 2(oo) was amended inserting another exclusion clause (bb) by the Amending Act 49 of 1984, with effect from August 18, 1984, "termination of the service of workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry of such contract being terminated under a stipulation in that behalf contained therein****".*
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> *71. Analysing the definition of retrenchment in Section 2(oo) we find that termination by the employer of the service of a*

> *workman would not otherwise have covered the cases excluded in (a) and (b), namely, voluntary retirement and retirement on reaching the stipulated age of retirement. There would be no volitional element of the employer. Their express exclusion implies that those would otherwise have been included. Again if those cases were to be included, termination on abandonment of service, or on efflux of time, and on failure to qualify, although only consequential or resultant, would be included as those have not been excluded.* ***Thus, there appears to be a gap between the first part and the exclusion part. Mr Venugopal, on this basis, points out that cases of voluntary retirement, superannuation and tenure appointment are not cases of termination 'by the employer' and would, therefore, in any event, be outside the scope of the main provisions and are not really provisos***."
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> (emphasis supplied)

21. ***Punjab Land Development*** (supra) is an authority for the proposition that it is the ratio decidendi of the judgment rendered by a superior court which is binding. Reference was made to ***F.A. & A.B. Ltd. v. Lupton (Inspector of Taxes)***, 1972 AC 634 : (1971) 3 All ER 948, wherein the House of Lords observed:

> "*...what constitutes binding precedent is the ratio decidendi of a case, and this is almost always to be ascertained by an analysis of the material facts of the case—that is, generally, those facts which the tribunal whose decision is in question itself holds, expressly or implicitly, to be material*."

22. Reference was also made to ***Osborne v. Rowlatt***, (1880) 13 Ch D 774, wherein Sir George Jessel remarked that the only thing in a Judge's decision is binding as an authority upon a subsequent Judge, is the principle upon which the case was decided. The Supreme Court also referred to ***Quinn v. Leatham***, 1901 AC 495, wherein at page 506, Lord Halsbury observed:

> "*...every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides*."

23. Keeping in view the aforesaid principles, it cannot be said that the ratio of the judgment of the Constitution Bench of the Supreme Court in ***Punjab Land Development*** (supra) is that the termination simplicitor of the services of a probationer, during the period of probation, even after the introduction of clause (bb) in Section 2(oo) of the Act, tantamounts to retrenchment.

24. Mr. Aggarwal has placed great emphasis on the fact that the Supreme Court eventually dismissed the aforesaid three civil appeals i.e. C.A. No.686 (NL) of 1982, C.A. No.1817/1982 and C.A. No.1898/1982, the respondents wherein were probationers. The said dismissal of the civil appeals has to be viewed in the light of the definition of the expression 'retrenchment' examined by the Supreme Court, which did not contain clause (bb) at the relevant time. The gist of the interpretation advanced by the Constitution Bench to section 2(oo) was that it covers termination of all kinds – whether volitional on the part of the employer, or not, except those which are: by way of punishment as a disciplinary measure; on account of voluntary retirement; on account of retirement of the workman on reaching the age of superannuation in terms of a stipulation contained in the contract between the employer and the workman, and; termination of the service of a workman on the ground of continued ill-health.

25. The Supreme Court was not seized of, and did not consider the effect of introduction of clause (bb) in section 2(oo) – the result whereof was the narrowing of the scope of the expression "retrenchment" in the first part of the definition, to the extent that clause (bb) carved it out from the first part.

26. Mr. Aggarwal has sought to place heavy reliance on para 77 of the judgment in ***Punjab Land Development*** (supra), which reads as follows:

> *"77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by introduction of Sections 2(oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the affected workmen, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes —Stat pro ratione voluntas populi; the will of the people stands in place of a reason.*"

27. He submits that the right of the employer to resort to retrenchment is not taken away by treating the termination of the services of a probationer as retrenchment. All that the law requires is that the workman should be compensated for immediate tiding over of the financial difficulty that he would face on account of his being retrenched. Mr. Aggarwal submits that this is the social obligation the law imposes upon the employer.

28. I do not find merit in this submission, because to apply section 25-F in a given case of termination of service of the workman- it has, first, to be

established that the said termination tantamounts to retrenchment as defined in the Act. If it does not tantamount to retrenchment, obviously, section 25F would have no application, and there is no obligation on the employer to comply with the mandatory requirements thereof.

29. The Constitution Bench in para 82 came to the conclusion that:

> "*82. Applying the above reasonings, principles and precedents, to the definition in Section 2(oo) of the Act, we hold that "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever* ***except those expressly excluded in the section.***"
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> (emphasis supplied)

30. At the cost of repetition, I may observe that the Constitution Bench was not called upon to examine the issue whether the termination of the services of a probationer, in terms of a stipulation contained in the contract of employment, tantamounts to retrenchment within the meaning of section 2(oo) of the Act in the face of clause (bb) thereof. The decision in ***Punjab Land Development*** (supra), therefore, does not advance the petitioners case in any away. The said issue, namely, whether the termination of the services of a probationer amounts to retrenchment, or not, in the light of the definition of the expression "retrenchment" as is now contained in the Act, has squarely been considered and answered in ***Kalyani Sharp*** (supra), ***Escorts Ltd***. (supra), ***M. Venugopal*** (supra) and ***Management of Apparel Export Promotion Council*** (supra).

31. In ***M. Venugopal*** (supra) the services of the petitioner were terminated, while he was on extended probation, on account of non-

fulfillment of the condition of achieving minimum business target stipulated in the order of appointment. Termination was effected under the stipulation contained in the appointment letter, read with Regulation 14(4) of the L.I.C. of India (Staff) Regulations, 1960 – which provides for discharge during probation. Vide amendment introduced in Section 48 of the Life Insurance Corporation Act, 1956 (LIC Act), the provisions of the Act were excluded from application in so far as they are in conflict with the rules framed under Section 48(2) (cc) of the LIC Act. The result thereof was that termination of the services of the workman was not deemed to be "retrenchment" within the meaning of Section 2(oo) of the Act even in respect of the period prior to introduction of clause (bb) in Section 2(oo). The Supreme Court held that in termination – even if the provisions of the Act were applicable in the case of the appellant workman, was not "retrenchment" within the meaning of Section 2(oo), having been covered by the exception contained in clause (bb). The non-compliance of the requirements of Section 25-F was held not to vitiate or nullify the order of termination of appellant workman.

32. ***Escorts Limited*** (supra) was a case of temporary appointment for a specified period of two months. The terms of appointment enabled the employer to terminate the services at any stage without assigning any reason. The Supreme Court held that in such circumstances, the termination of services under the said terms – even though effected before the expiry of the specified period, did not amount to retrenchment. Consequently, Section 25-F and 25-G of the Act did not come into play. The Supreme Court in this decision observed as follows:

"4. We do not consider it necessary to go into the question whether the workman had worked for 240 days in a year and whether Sundays and other holidays should be counted, as has been done by the Labour Court, because, in our opinion, Shri Shetye is entitled to succeed on the other ground urged by him that the termination of services of the workman does not constitute retrenchment in view of clause (bb) in Section 2(oo) of the Act. Clause (bb) excludes from the ambit of the expression "retrenchment" as defined in the main part of Section 2(oo) "termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein". The said provision has been considered by this Court in M. Venugopal v. Divisional Manager, LIC [(1994) 2 SCC 323 : 1994 SCC (L&S) 664 : (1994) 27 ATC 84] . The appellant in that case had been appointed on probation for a period of one year from 23-5-1984 to 22-5-1985 and the said period of probation was extended for further period of one year from 23-5-1985 to 22-5-1986. Before the expiry of the said period of probation, his services were terminated on 9-5-1986. It was held that since the termination was in accordance with the terms of the contract though before the expiry of the period of probation it fell within the ambit of Section 2(oo)(bb) of the Act and did not constitute retrenchment. Here also the services of the workman were terminated on 13-2-1987, as per the terms of the contract of employment contained in the appointment letter dated 9-1-1987 which enabled the appellant to terminate the services of the workman at any stage without assigning any reason. Since the services of the workman were terminated as per the terms of the contract of employment, it does not amount to retrenchment under Section 2(oo) of the Act and the Labour Court was in error in holding that it constituted retrenchment and was protected by Sections 25-F and 25-G of the Act."

33. ***Kalyani Sharp*** (supra) was a case where the respondent workman was appointed as a Trainee Service Technician. He had to undergo training to the satisfaction of the appellant management and if his work was not found satisfactory during that period, the facility could be withdrawn at any time. He was to be regularized only on completion of his training, i.e, he was placed on probation. The services of the respondent workman were terminated before the expiry of the probationary period. The Labour Court as well as the High Court were of the view that Section 25-F was attracted as the termination amounted to retrenchment. The Supreme Court reversed the views of the Labour Court and the High Court. The Supreme Court, inter alia, observed as follows:

> *"6. The order of employment itself clearly sets out the terms thereafter which makes it clear that the facility of providing training to him could be put to an end at any time without assigning any reason whatsoever and his services could be regularised only on satisfactory completion of his training. If these clauses are read together, it is clear he was under probation during the relevant time and if his services are not satisfactory, the same could be put an end to. It is clear that the respondent had been appointed as a Trainee Service Technician and for a period he had to undergo the training to the satisfaction of the appellant and if his work was not satisfactory during that period the facility could be withdrawn at any time and he would be regularised only on completion of his training. Thus the respondent's services were terminated before expiry of the probationary period. In such a case, question of issue of notice before terminating the service as claimed by the respondent does not arise. Escorts case [(1997) 11 SCC 521 : 1998 SCC (L&S) 235] is identical with the present case. Following the said decision and for the reasons stated therein these appeals are allowed. The order made by the*

High Court affirming the award made by the Labour Court is set aside and the claim made by the respondent is dismissed."

34. From the above, it would be observed that the Supreme Court has consistently taken the view that the termination of the services of a probationer in terms of a stipulation contained in the contract of employment does not tantamount to "retrenchment" within the meaning of section 2(oo) of the Act, as it is covered by clause (bb) of section 2(oo).

35. Since the judgment in ***Punjab Land Development*** (supra) is not an authority for the proposition decided in ***Kalyani Sharp India Ltd*** (supra) , ***Escorts Limited*** (supra), ***M. Venugopal*** (supra)***, Management of Apparel Export Promotion Council*** (supra), the ratio of the judgment in ***Punjab Land Development*** (supra) does not render the subsequent decisions referred to above, *per incuriam*. It has already been noticed, ***Delhi Cantonment Board*** (supra) does not even refer to the judgments ***Kalyani Sharp India Ltd*** (supra), ***Escorts Limited*** (supra), ***M. Venugopal*** (supra)***, Management of Apparel Export Promotion Council*** (supra). I, therefore, prefer to follow the view taken in ***Kalyani Sharp India Ltd*** (supra) etc. over the view of the Division Bench in ***Delhi Cantonment Board*** (supra).

36. The submission of Mr. Aggarwal that since an apprentice is included in the definition of the expression "workman", as defined in section 2(s) of the Act, the intention of the Parliament could not have been to exclude a probationer – has no merit.

37. What is of relevance is the stipulation for termination contained in the contract of employment and not the capacity in which the workman is employed, i.e., whether as a trainee, apprentice, on casual basis or against a temporary or permanent post. Even an apprentice could be appointed on probation. The expression "apprentice" has not been defined in the Act. However, the said expression is defined in ***Shorter Oxford English Dictionary*** to mean *"a learner of a craft, bound to serve, and entitled to instruction from, his or her employer for a specified term"*. It is also defined to mean *"a beginner, a novice"*. Apprenticeship is defined to mean *"the position of an apprentice; service as an apprentice; initiatory training" and "the period for which an apprentice is bound"*. Therefore, it is the objective of employment, i.e., the employment of a learner of a craft or skill which distinguishes an "apprentice" from other workmen. If the appointment of apprentice is for a fixed term under the contract of employment, even that may fall under clause (bb) of Section 2(oo) and termination of the services of an apprentice – like that of any other workman working on a fixed term contract, would not amount to retrenchment.

38. I may also refer to the judgment of the Supreme Court in ***Mukesh K. Tripathi Vs. Senior Divisional Manager, LIC & Others***, 2004 (8) SCC 387, wherein the Supreme Court held that:

> *"27. The expression "apprentice" has been included in the definition of "workman" contained in Section 2(s) of the Industrial Disputes Act, 1947 but by reason of a subsequent parliamentary legislation, namely, the Apprentices Act, 1961 (the 1961 Act), the term "apprentice" has been defined in Section 2(aa) to mean "a person who is undergoing apprenticeship training in a designated trade in pursuance of a*

contract of apprenticeship". Section 18 of the 1961 Act provides that apprentices are trainees and not workers save as otherwise provided in the Act. Clauses (a) and (b) of Section 18 of the 1961 Act read thus:

> *"18. (a) every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker; and*
>
> *(b) the provisions of any law with respect to labour shall not apply to or in relation to such apprentice."*

28. The term "employee" under various labour laws has been defined by different expressions but Section 18 of the 1961 Act carves out an exception to the applicability of labour laws in the event the person concerned is an apprentice as contradistinguished from the expressions "worker", "employee" and "workman", used in different statutes.

29. "Apprentice" under the general law means a person who is bound by a legal agreement to serve an employer for an agreed period and the employer is bound to instruct him. In Halsbury's Laws of England, 4th Edn., Vol. 16, it is stated:

> *"586. Form and parties.—A contract of apprenticeship is unenforceable if it is not in writing. Usually the contract is effected by deed under which the apprentice is bound to serve a master faithfully in a trade or business for an agreed period and the master undertakes to give the apprentice instruction in it and either to maintain him or pay his wages. Technical words are not necessary.*
>
> *An apprentice cannot be bound without his own consent, and consent without execution of the instrument is insufficient. The instrument must be executed by the apprentice himself, for no one else*

has a right to bind him. In the case of a minor his father or mother or other guardian, although not necessary parties to the contract, usually execute it too in order to covenant for the apprentice's due performance of the contract since, in the absence of a local custom, an apprentice who is a minor cannot be sued on his own covenant. A contract of apprenticeship is binding on a minor only if it is on the whole beneficial to him.

It is not essential that the master should execute a deed of apprenticeship, but where a master had in fact executed one part of an instrument of apprenticeship, a recital in that part of the instrument that the apprentice had bound himself apprentice to the master is evidence against the master that the apprentice had executed the other part of the instrument. A corporation may take an apprentice."

30. "Apprentice", as noticed hereinbefore, is defined to mean a person who is undergoing apprenticeship training pursuant to a contract of apprenticeship. How a contract of apprenticeship would be entered into is to be found in sub-section (1) of Section 4 of the 1961 Act. The embargoes placed in this regard are: (i) entering into a contract of apprenticeship with a minor in which event the contract must be executed by his guardian; and (ii) on such terms or conditions which shall not be inconsistent with any provision of the Act or any rule framed thereunder.

31. Furthermore, the apprentice must satisfy the statutory requirements as regards qualification to be appointed as an apprentice.

32. Training of apprenticeship by reason of sub-section (2) of Section 4 shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into under sub-section (1) thereof.

x x x x x x x x x x

34. The definition of "workman" as contained in Section 2(s) of the Industrial Disputes Act, 1947 includes an apprentice, but a "workman" defined under the Industrial Disputes Act, 1947 must conform to the requirements laid down therein meaning thereby, inter alia, that he must be working in one or the other capacities mentioned therein and not otherwise."

39. Therefore, it is not that every apprentice enjoys the protection granted to a workman under the Act. The submission of Mr. Aggarwal that clause (bb) of Section 2(oo) can be invoked only when the work is of a temporary nature, i.e., where the workman is employed in a project or a scheme of temporary nature – also has no merit. He has placed reliance on paragraph 13 of the judgment in ***S.M. Nilajkar*** (supra) in support of this submission which reads as follows:

"13. The termination of service of a workman ***engaged in a scheme or project*** *may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:*

(i) that the workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project;

(iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and

(iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment."

(emphasis supplied)

40. A perusal of the aforesaid observation of the Supreme Court shows that the Supreme Court was specifically commenting on the aspect of termination of the service of a workman who is engaged in a scheme or a project. The Supreme Court observed that even such termination may not amount to retrenchment within the meaning of Section 2(oo), unless the conditions mentioned in the aforesaid paragraph are satisfied. ***S.M. Nilajkar*** (supra) is certainly not an authority to the proposition that only where the project or scheme is of a temporary duration, sub-clause (bb) of Section 2(oo) could be invoked.

41. There can be no quarrel with the proposition that where the employer resorts to repeated extension of the probation period only with a view to exploit the workman, it may tantamount to an unfair labour practice. However, that is a matter to be examined in the facts of each case and that exercise shall be undertaken a little later. But mere extension of the probationary period would not raise a presumption against the employer – that the employer has resorted to an unfair labour practice. The decision in ***Head Master, Lawrence School Lovedale Vs. Jayanthi Raghu & Another***, (supra) does not support the case of the petitioners in any way.

42. Reliance placed on Section 25-J of the Act, in my view, is of no avail. Section 25-J opens with the words *"The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any*

other law [including standing orders made under the Industrial Employment (Standing Orders) Act 1946 (20 of 1946)]". Therefore, the provisions of Chapter V-A have effect notwithstanding anything inconsistent therewith contained in any other law. The section does not say that the provisions of Chapter V-A will have overriding effect even in respect of the other provisions contained in the Act. Consequently, Section 2(oo) is applicable to Chapter V-A which contains Section 25-F as well.

43. Section 25-F specifically deals with the aspect of retrenchment of the workman by the employer in certain circumstances. The expression "retrenchment" used in Section 25-F, obviously, carries the meaning given to that expression in Section 2(oo). That being the position, a termination which does not tantamount to "retrenchment" within the meaning of Section 2(oo), would not attract Section 25-F of the Act.

44. The decision of this Court in ***Union of India vs. Presiding Officer, CGIT & Another*** (supra) too has no application in the facts of the present case. That was a case dealing with appointment on temporary basis under the CCS (Temporary Service) Rules, 1965. The services of the workman were terminated by resort to Rule 5 of the said rules. This Court, following the decision of the Supreme Court in ***Management of MCD Vs. Prem Chand Gupta,*** *AIR 2000 SC 454,* held that Section 25-F is attracted even while terminating employment of a temporary workman in exercise of powers contained under Rule 5 of the CCS (Temporary Service) Rules, 1965. There is no discussion in the judgment to indicate that the appointment made under the CCS (Temporary Service) Rules, 1965 was a fixed term appointment, or that the appointment was made on probation and

the termination of the service took place during probation. The present set of cases do not relate to appointment on temporary basis under the CCS (Temporary Service) Rules, 1965.

45. I now proceed to consider the submission of the petitioner that the continuation of the services of the petitioners on probation amounted to an unfair labour practice in the light of the facts of each of these cases. The dates of appointment on casual basis as houseman of each of the petitioners; the dates of appointment as Room Attendant on probation; the dates of termination in respect of each of the petitioners are tabulated hereinbelow:

Sl. No.	Petitioner's Name	I.D. No.	W.P.(C.) No.	Date of appointment (casual Houseman)	Date of appointment (Room Attendant on probation)	Date of termination
1.	Mahesh Chand	725/1991	5311/2000	01.03.1988	01.09.1988	22.07.1989
2.	Sri Niwas	726/1991	5312/2000	08.02.1988	01.09.1988	22.07.1989
3.	Ramesh Chand	727/1991	5345/2000	04.01.1988	01.09.1988	23.07.1989

46. The last pay drawn by each of the petitioners was Rs.750/- per month. The aforesaid tabulation clearly shows that each of the petitioners was initially appointed as casual Houseman. These appointments were on casual basis. Not long after the said initial appointment on casual basis, the petitioners were appointed as Room Attendants on probation on 01.09.1988. These appointments were made between 6 to less than 8 months of the initial

appointment on casual basis. Therefore, it cannot be said that the appointment as Room Attendant on probation was done so as to defeat any right that the petitioners may have got vested with – as causal Houseman. Within less than 11 months of the said appointment on probation, and during continuation of the probation, the services of the petitioners have been terminated. Their terminations have not been claimed by the petitioners to be stigmatic. The letters of appointment clearly state that the petitioners would be treated as under probation until such time the petitioners have been confirmed by a special order confirming them in service, irrespective of the expiry of the period of probation stipulated in the offer of appointment. The period of probation in the letters of appointment of each of the petitioners was stated to be one year. The termination of the petitioners has taken place within the initial period of probation itself. Consequently, there is no basis for the petitioners to claim that the respondent resorted to adoption of an unfair labour practice in the aforesaid factual background.

47. For all the aforesaid reasons, I find no merit in these writ petitions and dismiss the same leaving the parties to bear their respective Costs.

(VIPIN SANGHI)
JUDGE

JULY 01, 2013
BSR