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IN THE HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No.4937 of 1999**

Simplex Castings Limited, Unit-I, Bhilai, through its Senior Manager, Personnel, Y.M. Dave, son of Late Shri Mukund Dave, resident of 183/13, Shantinagar, Bhilai (M.P.)(Now C.G.)

---Petitioner**Versus**

1. Pragatisheel Engineering Shramik Sangh, Industrial Estate, Nandini Road, Bhilai, through its General Secretary
2. Presiding Officer, State Industrial Court, Bench at Raipur, Krishna Sadan, 16 HIG Shankarnagar, Raipur
3. State of Madhya Pradesh through the Secretary, Department of Labour, Bhopal.

---Respondents

For Petitioner : Mr. Prashant Jaiswal, Senior Advocate with Mr. K. S. Khanuja, Mr. Himanshu Sinha, Mr. Ashutosh Shukla and Mr. Yashwant Shrivastava, Advocates.

For Respondent No.1 : Mr. Anup Mazumdar & Mr. Varun Sharma, Advocates.

For Respondent No.2 : None.

For Respondent No.3 : Mr. Dhiraj Kumar Wankhede, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**C A V ORDER****11/05/2016**

1. The instant writ petition has been preferred by the second party/employer namely Simplex Castings Limited against the part of the impugned award granting compensation of ₹ 20,000/- to the employee attached with Reference made by appropriate

Government.

[For sake of convenience Pragatisheel Engineering Shramik Sangh herein will be referred as Workmen-Union-first party and Simplex Castings Limited will be referred as second party as their status before the Industrial Court.]

BRIEF FACTS AND TERMS OF REFERENCE

2. The present writ petition arises out of Reference Case No. 11/1996 referred by appropriate Government to the Industrial Court for adjudication and answered by impugned award dated 16.10.1999.

3. The aforesaid challenge has been made by the second party/employer questioning the legality, validity and correctness of the part of award on following factual back drop :-

3.1 The appropriate Government (erstwhile State of Madhya Pradesh) by reference order dated 26.02.1993 referred the following disputes for adjudication to the Industrial Court, Madhya Pradesh Bench at Raipur for adjudication, which state as under:-

1. क्या वेतन एवं भत्तों के पुनरीक्षण का औचित्य है? यदि हाँ तो वेतन, मंहगाई भत्ता एवं अन्य भत्तों की क्या योजना होना चाहिये एवं इस संबंध में **नियोजक** को क्या निर्देश दिये जाना चाहिए?
2. क्या प्रतिवर्ष 15 दिन का आकस्मिक अवकाश, 10 दिन का त्यौहारी अवकाश तथा 30 दिन का चिकित्सा अवकाश दिये जाने का औचित्य है? यदि हाँ तो इस संबंध में **नियोजक** को क्या निर्देश दिये जाना चाहिए?
3. क्या संलग्न परिशिष्ट में उल्लेखित **एम्पलाईज** का सेवा पृथकीकरण वैध एवं

उचित है? यदि नहीं तो इस सम्बन्ध में नियोजक को क्या निर्देश दिये जाना चाहिये?

3.2 Subsequently, vide order No.6-1/93/16-A dated 31.07.1995, the Government has referred the following terms of reference also by adding to the earlier three terms of reference thus making the total four.

4. क्या अनुक्रमांक 3 के संलग्न परिशिष्ट में उल्लेखित सेवा से पृथक किये एम्पलाईज को विवाद के निराकरण होने तक अंतरिम राहत प्रदान करने का औचित्य है? यदि हाँ तो इस संबंध में नियोजक को क्या निर्देश दिया जाना चाहिये?

3.3 The second party/employer raised preliminary objection questioning the competency of reference particularly to the terms of Reference No.3. These objections were decided by the Division Bench of the Madhya Pradesh Industrial Court, Indore by order dated 31.05.1995 rejecting the objection so raised and the matter was remanded to the Industrial Court, Raipur for adjudication on merits, but thereafter, the matter was referred to the Full Bench of the High Court of Madhya Pradesh to decide the said question. The Full Bench of High Court of Madhya Pradesh by order dated 06.04.1999 directed the Industrial Court, Raipur to decide the reference so made on merits as per law on hearing the parties.

3.4 Upon notice being issued by the Industrial Court, Raipur, the first party/Workmen Union filed its statement of claim before the said court making their claim with reference to all four terms of the

reference separately as under:-

- (i) In respect of terms of reference No.1 it was claimed that they are entitled for pay scale, darkness allowance, cycle allowances, house rent allowances and shift allowance.
- (ii) In respect of terms of reference No.2, it was claimed that they are entitled for 15 days casual leave, 10 days festival holidays and 30 days medical leave.
- (iii) In respect of terms of reference No.3, it was claimed that the concerned workers (414) detailed in the Reference were in the employment of the second party/employer. It was further pleaded that the M.P.I.R. Act, 1960 & the Standard Standing Orders were applicable to members of first party/Union and those workers (414) were not issued any charge-sheet and no enquiry whatsoever was conducted before terminating their services and even the termination orders were not passed and not communicated to the concerned workers; they were neither paid any retrenchment compensation nor one month's notice or notice pay was paid to them. It was also pleaded that junior workers than the workers covered in the Reference were retained and they are still in the employment of the second party/employer and new employees were also recruited, and the action of the second party/employer is wholly illegal being in contravention of the Certified Standing Order. The workers were and

are always willing to work from whom they have been and are being deprived illegally and unjustifiably; and it was prayed that they be reinstated in services along with all benefits/wages/compensation.

(iv) In respect of terms of reference No.4, they may be granted interim relief till pendency of the reference before the Industrial Court.

Prayer was made for answering the references in favour of first party/union by granting reinstatement in service along with full back wages and consequential benefits.

4. The second party/employer filed their written statement before the Industrial Court denying the averments made in the statement of claim raised by the first party/Union. It is submitted that out of 414 persons detailed in reference, only 32 persons, as annexed in Annexure – A of the written statement, had only been employed by the second party/employer. It was also pleaded that the second party had awarded the job contract to different contractors for doing the job of fabrication, turning, machining, painting, packing etc.. It was the sole responsibility of the concerned contractors to engage their own labour/workers to carry out the contract work/job. It was also their responsibility to pay wages/salaries to such respective employees engaged by them and all other employees except 32 persons mentioned in the list attached with the statement of claim (w.s.) and there was no privity of contract between the second party/

employer and the first party/union except 32 employees. It was also pleaded that three employees whose names appearing at Serial Nos. 10, 11 & 12 of Annexure – A and at Serial Nos. 73, 47 & 74 of the list attached with the reference were issued separate charge sheets for grave misconducts. Enquiries were also held against them. They were found guilty in the enquiry and, therefore, they have rightly been dismissed from services by orders dated 26.11.1991 and 21.09.1991, respectively. It has also been pleaded that there is no relationship of employee and employer exists between the parties; and the services of employees except 32 employees had not been terminated by the second party/employer and also pleaded that out of 32 employees, 3 employees were dismissed from service after holding domestic enquiry, two have joined duty after interim order of the Labour Court, five employees have taken their final wages and rest of them did not report to the duty even after notice and order of the Labour Court as they have abandoned their services and as such, reference petition deserves to be answered holding that the workers as per list attached with reference are not entitled for any relief including reinstatement with back wages.

5. During the course of trial of reference, first party/Union examined solitary witness namely Shri Manik Lal Sahu and exhibited documents **Ex.P-1** to **Ex. P-14** i.e. PF slips of the workers to prove their case, whereas on behalf of second party/employer three

witnesses namely Shri Kranti Gupta (DW-1), Shri Nirmal Singh (DW-2) and Shri Yogesh Mukund Prasad Dave (DW-2) were examined in support of their case and documents Ex. **D-1 to Ex.D-135C** were brought on record to prove their case.

FINDINGS OF THE INDUSTRIAL COURT

6. Upon appropriation of oral and documentary evidence on record, the Industrial Court, by its impugned award dated 16.10.1999 answered the terms of reference as under:-

(i) The first party/Union has failed to establish by leading appropriate legal evidence that they are entitled for the pay scale, allowances and for grant of leaves as per terms of reference No.1 and 2.

(ii) With reference to terms of reference No.3 it was held that the first party/Union has failed to establish the existence of employee/ employer relationship between them and further failed to establish that the services of workers (414) of first party/Union were terminated by the second party/employer, but since the second party/employer has failed to establish that the workers of the first party/Union as per list attached with the reference were the labourers of the contractors employed by the second party/employer and second party/employer also failed to justify their termination, therefore each of worker of the Union as per list total 414 workers will be entitled for compensation to the extent of ₹ 20,000/-.

(iv) With reference to terms of reference No.4 no order was passed as it relates to grant of interim relief during the pendency of the reference petition.

WRIT PETITIONS AND RETURN

7. Feeling aggrieved and questioning the legality and validity of the award granting compensation to the first party/Union, the second party/employer has filed this writ petition stating *inter alia* that the Industrial Court having held that the existence of Employer and Employee relationship is not established between the parties, the Industrial Court committed legal error in shifting the burden upon the second party/employer to prove the existence of relationship between the parties and thereby holding that the second party/employer has failed to establish that workers (414) of the first party/Union were the employees of the contractors engaged by the second party/employer and further committed legal error in holding that the second party/employer has failed to justify termination of workers (414) of first party/Union and thereby committed a jurisdictional error in granting ₹ 20,000/- to each of the worker (414) as per list attached with reference and therefore that part of the award granting compensation deserves to be set aside with cost(s).

8. Return has been filed by the first party/Union opposing the writ petition stating *inter alia* that the workers (414) as per list

attached with reference are entitled for reinstatement and back wages rightly granted by the Industrial Court and prayer has been made for dismissal of the writ petition as it is substanceless and having no merit.

SUBMISSION OF THE PARTIES

9. Mr. Prashant Jaiswal learned Senior counsel appearing for the second party/employer while assailing the award granting compensation to the tune of ₹ 20,000/- would submit as under:-

(i) That the initial burden to prove that relationship of employer and employee existed was upon the first party/Union representing the workmen. The first party/Union examined solitary witness Shri Manik Lal Sahu to prove their case, whereas it is case of first party that services of 414 workers had been terminated by the second party/employer as such the first party/Union has failed to discharge its burden of proving the existence of relationship of employer and employee, therefore the first party/Union is not entitled for any relief and finding of the Industrial Court in this regard granting ₹ 20,000/- as compensation is perverse and liable to be set aside.

(ii) That, the Industrial Court having held categorically in the impugned award that the first party/Union has failed to prove the existence of relationship of employer-employee between the parties thereby leading cogent and reliable evidence, committed grave legal

error in further holding in paragraph 53 of the award in contradiction to its earlier finding by holding that the second party/employer has failed to establish the fact that 414 workers attached with list with the reference were the employees of their contractors engaged by them and further committed legal error in holding that second party/employer has failed to justify the termination of those 414 workers.

(iii) That, since no evidence was led by the first party/Union to establish their case except self-serving statement of Shri Manik Lal Sahu. Other workers have not entered into witness box to prove their case nor first party/Union has taken any steps on their behalf to prove their case and as such, the writ petition filed by the second party/employer deserves to be allowed and order granting compensation to the tune of ₹ 20,000/- be set aside.

10. Mr. Anup Mazumdar & Mr. Varun Sharma learned counsel appearing for the first party/Union while supporting the award would submit as under:-

10.1 That, onus to prove and to justify the removal of workers of first party/Union was upon the second party/Employer and second party/Employer had absolutely failed to discharge its burden and therefore, the Industrial Court is absolutely justified in holding (para 20 of the award) that second party-Employer has failed to establish that workers of first party/Union were employees as per list attached

with reference of the contractors of the second party-employer and further failed to establish that their termination was justified and relied upon the judgment of the Supreme Court in the matter **Amar Chakravarty and others v. Muruti Suzuki India Limited**¹ to bring home his submission.

10.2 That, workers as per list attached with reference were employees of second party-Principal Employer and not of their contractor(s) as the second party-employer has selectively chosen 32 out of 414 to be their employees.

10.3 That, the finding of the Industrial Court holding that workers of first party/Union (414) were employees of second party/employer is the finding based on evidence and therefore, no interference is called for in exercise of jurisdiction under Article 227 of the Constitution of India and they are neither perverse nor illegal and relied upon the judgments of the Supreme Court in the matters of **General Manager, Oil and Natural Gas Commission, Silchar v. Oil and Natural Gas Commission Contractual workers Union**² and **Mukund Ltd v. Mukund Staff & Officers Association**³.

QUESTIONS INVOLVED

11. Upon hearing learned counsel for the parties and after going

1 (2010) 14 SCC 471

2 (2008) 12 SCC 275

3 (2004) 10 SCC 460

through the record the following questions would emerge for consideration:-

(A) Whether there is relationship of employee and employer existed between the workers as per list attached with reference and second party/employer except 32 employees with whom relationship of employer-employee is admitted by the second party/Employer and finding in this regard by the Industrial Court is justified or liable to be interfered with being perverse to the record?

(B) Whether the second party/Employer has justified the termination of 32 employees with whom relationship is admitted as per list attached with written statement and whether finding recorded in that regard is justified or liable to be interfered with being perverse to the record?

And

What relief/relief(s) the parties are entitled?

12. I have heard learned counsel for the parties at length and considered their rival submissions made herein and gone through the record of the Industrial Court with utmost circumspection.

CONSIDERATION / DISCUSSION

Re-question No.1 [Whether there is relationship of employee and employer existed between the workers as per list attached with reference and second party/employer except 32 employees with whom relationship is admitted by the second party/employer and finding in this regard by the Industrial Court is justified or liable to be

interfered with being perverse to the record?]

13. In order to consider the plea raised at the Bar and to determine the existence of employer-employee relationship, it would be appropriate to notice the relevant judgments of the Supreme Court on the subject as it is no longer res-integra and stand settled by authoritative judgments of the Supreme Court, which may be gainfully noticed herein below:-

13.1 The Supreme Court in the matter of **General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lal and another**⁴ held that it was for the employee to establish the existence of employer-employee relationship by averring and to prove the said fact by leading reliable legal evidence. Paragraphs 10 to 13 of the report states as under:-

“10. It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. Two of the well-recognised tests to find out whether the contract labourers are the direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first respondent is a direct employee of the appellant.

4 (2011) 1 SCC 635

11. On a careful consideration, we are of the view that the Industrial Court committed a serious error in arriving at those findings. In regard to the first test as to who pays the salary, it placed the onus wrongly upon the appellant. It is for the employee to aver and prove that he was paid salary directly by the principal employer and not the contractor. The first respondent did not discharge this onus. Even in regard to the second test, the employee did not establish that he was working under the direct control and supervision of the principal employer. The Industrial Court misconstrued the meaning of the terms “control and supervision” and held that as the officers of the appellant were giving some instructions to the first respondent working as a guard, he was deemed to be working under the control and supervision of the appellant.

12. The expression “control and supervision” in the context of contract labour was explained by this Court in *International Airport Authority of India v. International Air Cargo Workers’ Union*⁵ thus: (SCC p. 388, paras 38-39)

“38. ... if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.”

5 (2009) 13 SCC 374

13. Therefore, we are of the view that the Industrial Court ought to have held that the first respondent was not a direct employee of the appellant, and rejected the application of the first respondent.”

13.2 In the matter of **Balwant Rai Saluja and another v. AIR India Limited and others**⁶, Their Lordships of the Supreme Court having discussed almost all previous judgments on the subject and after referring the judgment in the matter of **National Aluminium Co. Ltd. v. Ananta Kishore Rout**⁷, which pertains to employees of the school established by Nalco, held (in **Balwant Rai Saluja**) (supra) in paragraphs 62 to 65 as under:-

“62. A recent decision concerned with the employer-employee relationship was that of Nalco case(supra). In this case, the appellant had established two schools for the benefit of the wards of its employees. The writ petitions were filed by the employees of each school for a declaration that they be treated as the employees of the appellant company on grounds of, inter alia, real control and supervision by the latter. This Court, while answering the issue canvassed was of the opinion that the proper approach would be to ascertain whether there was complete control and supervision by the appellant therein. In this regard, reference was made to ***Dharangadhra Chemical Works*** case {AIR 1957 SC 264} wherein this Court had observed that: (Nalco case(supra), SCC pp. 768-69, para 22)

“22. ‘14. The principle which emerges from these authorities is that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at p. 23 in ***Mersey Docks and***

6 (2014) 9 SCC 407

7 (2014) 6 SCC 756

Harbour Board v. Coggins & Griffith (Liverpool) Ltd., {(1946) 2 All ER 345 (HL)} “The proper test is whether or not the hirer had authority to control the manner of execution of the act in question”.’ (Dharangadhra Chemical Works case³⁸, AIR p. 268, para 14)”

63. The Nalco case¹⁶ further made reference to **Workmen of Nilgiri Coop. Mktg. Society Ltd. v. State of T.N.**{(2004) 3 SCC 514}, wherein this Court had observed as follows: (Nalco case¹⁶, SCC p. 771, para 27)

“27. ‘37. The control test and the organisation test, therefore, are not the only factors which can be said to be decisive. With a view to elicit the answer, the court is required to consider several factors which would have a bearing on the result: (a) who is the appointing authority; (b) who is the paymaster; (c) who can dismiss; (d) how long alternative service lasts; (e) the extent of control and supervision; (f) the nature of the job e.g. whether it is professional or skilled work; (g) nature of establishment; (h) the right to reject.

38. With a view to find out reasonable solution in a problematic case of this nature, what is needed is an integrated approach meaning thereby integration of the relevant tests wherefor it may be necessary to examine as to whether the workman concerned was fully integrated into the employer’s concern meaning thereby independent of the concern although attached therewith to some extent.’ (Workmen of Nilgiri Coop. Mktg. Society case, SCC p. 529, paras 37-38)”

64. It was concluded by this Court in Nalco case¹⁶ that there may have been some element of control with Nalco because its officials were nominated to the Managing Committee of the said schools. However, it was observed that the abovesaid fact was only to ensure that the schools run smoothly and properly. In this regard, the Court observed as follows: (SCC p. 772, para 30)

“30. ... However, this kind of ‘remote control’ would not make Nalco the employer of these workers. This only shows that since Nalco is shouldering and meeting financial deficits, it wants to ensure that the money is spent for the rightful purposes.”

65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

- (i) who appoints the workers;
- (ii) who pays the salary/remuneration;
- (iii) who has the authority to dismiss;
- (iv) who can take disciplinary action;
- (v) whether there is continuity of service; and
- (vi) extent of control and supervision i.e. whether there exists complete control and supervision.

As regards extent of control and supervision, we have already taken note of the observations in **Bengal Nagpur Cotton Mills** case {(2011) 1 SCC 635}, **International Airport Authority of India** case {(2009) 13 SCC 374} and Nalco case {(2014) 6 SCC 756}.”

14. To judge the legality and correctness of the impugned award, it is appropriate to consider the applicability of the provisions of the Evidence Act to Industrial adjudication. It is well settled law that provisions of the Evidence Act, 1872 *per se* are not applicable in an Industrial adjudication, however, its general principles do apply in proceeding before the Industrial Tribunal. The Constitution Bench of the Supreme Court in the matter of **Union of India v. T.R. Varma**⁸ while considering the applicability of Evidence Act to the Tribunal held as under:-

10. Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground that the

8 AIR 1957 SC 882

procedure followed was not in accordance with that, which obtains in a Court of law.

Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.

If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed. Vide the recent decision of this Court in *New Prakash Transport Co. v. New Suwarna Transport Co.*, 1957 SCR 98: ((S) AIR 1957 SC 232) (C) where this question is discussed.

15. Likewise, in the matter of **Municipal Corporation, Faridabad v. Siri Niwas**⁹, the Supreme Court has held that provisions of Evidence Act, 1872 *per se* are not applicable in Industrial adjudication, but the general principles are applicable. It has also been held that it is imperative for the Industrial Tribunal to see that principles of natural justice are complied with. The principle laid down in **Municipal Corporation, Faridabad** (supra) has been followed with approval by the Supreme Court in the matter of **Amar Chakravarty** (supra).

16. In the matter of **Municipal Corporation, Faridabad** (supra), it has been held by the Supreme Court that burden of proof

⁹ (2004) 8 SCC 195

lies upon the workman to show that he had worked continuously for 240 days in the preceding one year prior to his retrenchment and observed as under:-

“14..... As noticed hereinbefore, the burden of proof was on the workman. From the award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25-B of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the appellant herein including the muster rolls. It is improbable that a person working in a local authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. He did not even examine any other witness in support of his case.”

17. In the matter of **Amar Chakravarty** (supra) it has been held that in any proceeding above the burden of proving a fact lies upon a party who substantially asserts it. It has further been held that when employer asserts misconduct of workman, then it was for him to prove that fact by leading evidence and observed as under:-

“12. In any proceeding, the burden of proving a fact lies on the party that substantially asserts the affirmative of the issue, and not on the party who denies it. (See *Anil Rishi v. Gurbaksh Singh*¹⁰, SCC p. 561, para 9.) Therefore, it follows that where an employer asserts misconduct on the part of the workman and dismisses or discharges him on that ground, it is for him to prove misconduct by the workman before the Industrial Tribunal or the Labour

10 (2006) 5 SCC 558

Court, as the case may be, by leading relevant evidence before it and it is open to the workman to adduce evidence contra. In the first instance, a workman cannot be asked to prove that he has not committed any act tantamounting to misconduct.”

18. In the matter of **R.M. Yellatti v. Asstt. Executive Engineer**¹¹, Their Lordships of the Supreme Court have held that provisions of the Evidence Act in terms do not apply to the proceeding under Section 10 of Industrial Disputes Act and held as under:-

“17. Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per

11 (2006) 1 SCC 106

se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case.”

19. The decision rendered by the Supreme Court in **R.M. Yellatti** (supra) has been followed with approval in **ONGC Ltd. and another v. Shyamlal Chandra Bhowmik**¹² and further in the matter of **Chief Engineer, Ranjit Sagar Dam and another v. Sham Lal**¹³.

20. The Supreme Court in the matter of **General Manager, Oil and Natural Gas Commission, Silchar v. Oil and Natural Gas Commission Contractual Workers Union**¹⁴ laid down the parameters for judicial review of award of the Industrial Tribunal clearly indicating the grounds for interfering in the award. The relevant paragraph of the report as under:-

15..... It will be seen therefore that the interference would be limited to a few cases and as already noted above, in the case of a patent illegality or perversity. On the contrary, Mr.Sanyal's reliance on Sadhu Ram Case is more appropriate to the circumstances herein. It has been observed as under:- (SCC p.158, para3)

“3.....The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason, it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate court over tribunals constituted under special legislations to resolve

12 (2006) 1 SCC 337

13 (2006) 9 SCC 124

14 (2008) 12 SCC 275

disputes of a kind qualitatively different from ordinary civil disputes and to readjudicate upon questions of fact decided by those tribunals. That the questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High Court may be justified in interfering. But where the Tribunal gets jurisdiction only if a reference is made and it is therefore impossible ever to say that the Tribunal has clutched at jurisdiction, we do not think that it was proper for the High Court to substitute its judgment for that of the Labour Court and hold that the workman had raised no demand with the management.”

21. After having noticed the principles governing the determination of employee-employer relationship, taking note of the applicability of the provisions of the Evidence Act to the Industrial adjudication and also taking note of the scope of interference in Industrial award, I would now turn to the question as to whether existence of relationship of employer and employee has been established between the parties.

22. In order to consider the plea raised at the Bar, it would be appropriate to reiterate the respective pleas of the parties. It is the case of the first party that the services of 414 workers of the first party-Union were terminated by the second party-employer as mentioned in the list annexed with the reference order without having served any charge-sheet and without holding any departmental enquiry and therefore termination of their services is invalid and improper and they are entitled for reinstatement along with back-

wages, whereas it is the case of the second party that out of 414 workers referred in the reference order, only 32 workers named in the list annexed with the written statement were their employees and rest of the employees i.e. $414 - 32 = 382$ were not their employees. It is the further case of the second party that out of 32 workers, 5 workers had taken their final payment leaving their job finally and 6 workers had not completed 240 days and therefore, they are not entitled for reinstatement and back-wages whereas, Tumnath and Mishrilal Chandrakar have joined back their services and continued, thereafter, Tumnath absented himself without any reasonable cause and rest of the 19 workers by their own accord relinquished their services, as they did not report to duty even after the prohibitory order of the Labour Court directing them to resume their duty and therefore their contract of service came to an end by the principle of “abandonment of service”.

23. In order to prove that the relationship of employer-employee existed between the first party-union and the second party-employer, burden lies upon the first party-union to aver and prove by leading appropriate legal evidence that the relationship exists.

24. In order to prove relationship, the twin tests laid down in **Bengal Nagpur Cotton Mills** (supra) are relevant. First test is who pays the salary and second test is whether the principal employer /

second party controls and supervises the work of the employee. In **Balwant Rai Saluja** (supra), relevant factors to be taken into consideration to establish such a relationship is who appoints the workers, payment of salary, authority to dismiss and to take disciplinary action, exercise of control and supervises have been included.

25. In this case, in order to discharge the burden, which admittedly lies upon the first party-union who represents workmen. Chapter IV of the Industrial Relations Act, 1960 (hereinafter called as “the Act of 1960”) provides for representatives of employers and employees and also provides for appearance on their behalf. Section 27 of the Act of 1960 provides for representation of employees. Section 27 of the Act of 1960 provides as under:-

The following shall be entitled to act and appear in the order of preference specified below as the representative of the employees in an industry in any local area:-

- (i) a Representative Union for such Industry;
- (ii) any union of which the employee of such Industry is a member;
- (iii) Labour Officer.

Rule 60 of the Chhattisgarh Industrial Relations Rules, 1961 provides as under:-

60. A party or its representative in any proceeding before a Labour Court, the Industrial Court, or a

Board, shall have the right of examination, cross-examination and re-examination of the witnesses called for by any such party or the opposite party as the case may be.

26. In order to prove the existence of such relationship, burden lies upon the first party workmen-union. On behalf of workmen, the solitary witness Maniklal Sahu was examined. He states before the Tribunal on oath that he was employed with the second party on the post of Moulder since 1980 with ₹ 1,010/- monthly wage, payment is made in the Time Office and work is allotted by the Supervisor of the Company. He also knows other 413 workers who were listed in the reference order and he has been restrained to work on 26-10-1990. He has proved his provident fund slips Exs.P-1 & P-2 and also proved the provident fund slips Exs.P-3 to P-14 of other 12 workers. He has clearly stated that he has not been authorized by other workers who were listed in the reference. He has admitted his acquaintance with the contractor B.B. Singh.

27. A careful perusal of the statement of the aforesaid witness would show that he was not authorized on behalf of the Union as per the provisions contained in Section 27 of the Act of 1960 read with Rule 60 of the Rules of 1961. He has not stated anything about the appointment and also stated that he was appointed by the second party or payment is made by the second party or any termination has been made by the second party/employer. No material information

has been brought on record by this star witness of the workmen/union to prove the existence of relationship between 382 workers of the first party with the second party/employer. Perusal of the entire statement of the aforesaid witness would show that he has failed to bring evidence in line with the six relevant factors as laid down by Their Lordships of the Supreme Court in *Balwant Rai Saluja* (supra), particularly the test of effective control by the second party-employer. No other person including the other 381 workers have stepped in the witness box to say that they were appointed, paid and dismissed by the second party, and the second party was having complete control over them and has exercised effective control and supervision over their work. No person in terms of Section 27 of the Act of 1960 read with Rule 60 of the Rules of 1961 has been examined on behalf of the first party-Union.

28. The Supreme Court in the matter of **R.M. Yellati** (supra) has categorically held that burden is to be discharged upon the workmen by adducing cogent evidence, both oral and documentary, and mere affidavit or self-serving statement by the claimant workmen will not suffice in the matter of discharge of burden by law on the workmen and to prove the said fact of existence of relationship between employer and employee. No prayer was made before the Industrial Court for summoning the record from the office of the second party/employer to establish the existence of such relationship.

29. On the other hand, on behalf of the second party, witness Y.M. Dave – officer of the second party, has been examined. He has clearly stated that except the workers shown in the list annexed with the written statement who are 32 in numbers, others were never employed by the second party Management, they were not workers of the second party-employer. He has also filed supporting documents.

30. Applying the law laid down by the Supreme Court in the matters of **Bengal Nagpur Cotton Mills, Rajnandgaon** (supra) and **Balwant Rai Saluja** (supra) to the facts of the present case, it is apparent that there is no evidence on record to hold that 382 workers were appointed by the second party, there is no evidence brought on behalf of the first party Union that they were employed by the second party and their salary at any point of time was paid by the second party. There is no evidence on record that at any point of time, the second party exercised direct and effective control and supervision over those 382 workers of the first party Union and they have been dismissed by the second party-employer except self-serving statement of Haldhar Kumar Tarun.

31. Thus, this Court is of the considered opinion that the first party has absolutely failed to prove and establish the existence of employer-employee relationship or master-servant relationship

between 382 workers of the first party and the second party by leading appropriate legal evidence. In the opinion of this Court, such a finding recorded by the Industrial Court is perverse and contrary to the record as it has been held that the first party has failed to lead any legal evidence to prove the existence of relationship of employer-employee between them and failed to discharge the burden which lies upon them to establish the existence of such relationship. The Industrial Court has also failed to consider and to take note of the fact that the second party has already admitted 32 employees as per the list annexed with the written statement Annexure-A to be their employees. It is held that the first party/ employee have failed to establish by leading evidence the existence of relationship of employer-employee between the first party-union and the second party-employer of their 382 workers.

Answer to the re-question No.2: -

33. The second party-employer has clearly and unequivocally admitted in the written statement filed before the Industrial Court that 32 workers out of 414 workers listed in the reference order were their employees and took a defence that five workers namely Roshan Kumar Sahu, Prakash Meshram, Vishnu Prasad, Prakash Mathew & Venkateshwar Lal took their final payment and thereby severed the relationship of employer-employee whereas, six of its workers namely

Faiyyaz Ahmed, Chander Singh, Manthir Ram Sahu, Mathura Prasad, Parameshwar Prasad & Surjeet Kumar Sharma did not complete 240 days in their service in one calendar year, therefore, they were not entitled for reinstatement with back-wages, whereas the two workers namely Tumnath and Mishrilal Chandrakar after notice rejoined the service with the second party/employer. The second party-employer further took a stand that remaining 19 workers of their company in spite of notice having been served vide Exs.D-13 to D-31 and despite the order of the Labour Court directing them to report to duty, did not join the services and remained absent for fairly long time for years together amounting to their voluntary abandonment of service and therefore their contract of service came to an end automatically and no further orders were required to be passed terminating their services, as such their terminations are justified.

34. In order to justify the said stand, Mr. Yogesh Mukund Prasad Dave has been examined. He has clearly stated that in the Casting Unit, moulding, machining, fabrication and assembling work is done by the second party-employer through contractors and it is the responsibility of the contractors to employ labours and payment is made by the contractor. He has also supported the stand of the company with regard to 32 employees who are admittedly, employees of the second party. He has stated that Prakash

Meshram, Vishnu Prasad, Prakash Mathew and Venkateshwar Lal after service of the order of the Labour Court, took final payment and left the job with the second party vide Exs.D-32 to D-35D. A bare perusal of those documents would prove the case of the second party that they took their final payments and relinquished the job by severing their relationship with the second party-employer and there was no need to hold departmental enquiry against them. Though it has been pleaded on behalf of the second party that Roshan Sahu had also took final payment pursuant to the order of the Labour Court and left the job, but there is no evidence adduced on behalf of the employer to establish that Roshan Sahu has left the job of the second party-employer after taking final payment. Likewise, the second party had took the plea that Tumnath and Mishrilal Chandrakar, both have joined after the prohibitory order of the Labour Court in mandatory form directing them to resume duty, but Tumnath thereafter, absented himself and therefore he was treated to have relinquished the service. There is no evidence led on behalf of the second party-employer to establish the fact that his unauthorized absence amounted to misconduct and he was subjected to any domestic enquiry and after that he was removed from service and as such, award granted in his favour by the Industrial Court is upheld. Likewise, the second party did not lead any evidence to establish that Faiyyaz Ahmed and five other workers mentioned in the above stated paragraph have not

completed 240 days. It is their assertion that they have not completed 240 days of service in one calendar year and therefore the second party/employer was obliged to lead evidence and to establish the said fact strictly.

35. In the case of **Amar Chakravarty** (supra), Their Lordships of the Supreme Court have held that when employer asserts misconduct of workman then it was for him to prove that fact by leading cogent evidence and workman has opportunity of leading rebuttal evidence by observing as under: -

“..... Therefore, it follows that where an employer asserts misconduct on the part of the workman and dismisses or discharges him on that ground, it is for him to prove misconduct by the workman before the Industrial Tribunal or the Labour Court, as the case may be, by leading relevant evidence before it and it is open to the workman to adduce evidence contra. In the first instance, a workman cannot be asked to prove that he has not committed any act tantamounting to misconduct.”

36. The second party has asserted that the above six employees namely Faiyyaz Ahmed, Chander Singh, Manthir Ram Sahu, Mathura Prasad, Parameshwar Prasad & Surjeet Kumar Sharma have not completed 240 days in one calendar year and therefore they are not entitled for reinstatement and back-wages, but failed to lead evidence to discharge their burden in light of decision in the case of **Amar Chakravarty** (supra). Therefore, in the considered opinion of this Court, the second party/employer has failed to justify

their termination as it has not been demonstrated that services of the above-stated six persons were terminated in accordance with law after following the principles of natural justice.

37. Now, I would come to termination of rest of 19 workers who are deemed to have abandoned their job by not complying the prohibitory order of the Labour Court in mandatory form issued on 29-10-1990 directing them to join duty. It is the case of the second party/ employer that they were served with the order of the Labour Court directing them to join duty with notice Exs.D-13 to D-31 and Ex.D-31A is their postal receipt with acknowledgement, but they did not report back to duty and remain unauthorizedly absent amounting to voluntary “abandonment of service” requiring no order of termination to be passed, and severing the relationship automatically.

38. In order to judge the correctness of the above-stated plea raised at bar it would appropriate to notice the applicable certified standing order to find out whether the employer/management could terminate the services of their employee on the ground of abandonment of service on account of strike for acceptance of their demands. The applicable standing order is the Chhattisgarh Industrial Employment (Standing orders) Rules, 1963. Rule 12(1) (p) provides as under:-

“12. Disciplinary action for misconduct. (1) The following acts or omissions on the part of an employee shall amount to

a major misconduct :

xxx

xxx

xxx

(p) unauthorized absence from duty for more than ten consecutive days;

39. Procedure for imposing punishment has been prescribed in sub-rule (4) of Rule 12 of certified standing order indicating the manner in which enquiry has to be conducted before inflicting penalty. There is no such provision in the above-stated standing order by virtue of which management is authorized to terminate the service of their employees on the ground of abandonment of service.

40. The question for consideration would be whether employer is competent to terminate the services of their employee in absence any provision for abandonment of service in the applicable certified standing order.

41. The Supreme Court in the matter of **Express Newspaper Pvt. Ltd. v. Michael Mark and others**¹⁵, has held that where the employees absent themselves from work for acceptance of their demands, it will not amount to abandonment of service. Paragraph five of the report states as under:-

“5..... All that we want to say is that where the employees absent themselves from work because they have gone on strike with the specific object of enforcing the acceptance of their demands they cannot be deemed to have abandoned their employment.”

15 A.I.R. 1963 SC 1141

42. The law laid down in the matter of **Express Newspaper (P) Limited** (supra) was subsequently followed by the Supreme Court in **G. T. Lad and others v. Chemical and Fibres of India Limited**¹⁶ in which their Lordships have defined the nature and true meaning of expression “abandonment of service” by holding as under:-

5a. Re. Question No. 1: In the Act, we do not find any definition of the expression 'abandonment of service'. In the absence of any clue as to the meaning of the said expression, we have to depend on meaning assigned to it in the dictionary of English language. In the unabridged edition of the Random House Dictionary, the word 'abandon' has been explained as meaning 'to leave completely and finally; forsake utterly; to relinquish, renounce; to give up all concern in something'. According to the Dictionary of English Law by Earl Jowitt (1959 edition) 'abandonment' means 'relinquishment of an interest or claim'. According to Black's Law Dictionary 'abandonment' when used in relation to an office means 'voluntary relinquishment'. It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties pertaining to the office must be with actual or imputed intention, on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Temporary absence is not ordinarily sufficient to constitute an 'abandonment of office'.

6. From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham & Carnatic Co. v. Venkatiah and Ors.¹⁷, it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate

¹⁶ (1979) 1 SCC 590

¹⁷ AIR 1964 SC 1272

evidence in that behalf. Thus, whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”

Their Lordships further observed in paragraph seven as under:-

“7.Their absence from duty was purely temporary and could, by no stretch of imagination, be construed as voluntary abandonment by them of the Company’s service. In *Express Newspapers (P) Limited v. Michael Mark*, which is on all fours with the present case, it was held that if the employees absent themselves from the work because of strike in enforcement of their demands, there can be no question of abandonment of employment by them. In the present case also the appellants’ absence from duty was because of their peaceful strike to enforce their demand. Accordingly, we are of the view that there was no abandonment of service on the part of appellants.”

Their Lordships finally concluded by holding that management cannot by imposing new term of employment, unilaterally convert the absence of work in to the abandonment of service in absence of any such provision in the certified standing order as under:-

“8.....Thus, there being no provision in the certified standing orders by virtue of which the Company could have terminated the services of the appellants in the aforesaid circumstances, in impugned action on the part of the Company clearly amounted to a change in the conditions of service of the appellants during the admitted pendency of the industrial dispute before the labour Court which adversely affected them and could not be countenanced. We are fortified in this view by the aforesaid decision of this Court in **Express Newspaper (P) Limited v. Michael Mark**, where repelling an identical contention to the effect that the failure of the workmen to return to work by a notified date clearly implied abandonment of their employment, it was held that the management cannot, by imposing a new term of employment, unilaterally convert the absence of work into abandonment of employment. It was further held in that decision that if the strike was in fact illegal, the management could take disciplinary action against the employees under

the standing orders and dismiss them. If that were done, the strikers would not have been entitled to any compensation under standing orders but that was not what the appellants purported to do and the respondents were, therefore, entitled to relief.”

43. Applying the law laid down by Their Lordships of the Supreme Court in the above-stated judgments to the facts of the case it would appear that 19 employees of the second party/employer are stated to have abandoned their services. It is a case of the second party/employer that they were served with the notice with the prohibitory order of the Labour Court in mandatory form directing them to resume duty but despite notice they did not resume their duty and remained absent unauthorizedly for fairly long time which resulted in their abandonment of service and for which no domestic enquiries were required to be held and the contract of service has come to an end automatically. Whereas, it was a case of the first party/Union that on 25.10.1990 the employees have raised a dispute with a revision of wages for better service conditions and they made representations and due to firing on 01.07.1991 there was Industrial unrest in Industrial Area, Bhilai and meeting was also held by the State Government with the management but no agreement was reached and the consequently reference was made by the appropriate government to the Industrial Court for adjudication of the industrial dispute. In this background, it has to be considered as to whether these employees (19) have abandoned their service by their

unauthorized absent and whether principles of natural justice have been followed. The second party/employer has examined Mr. Yogesh Dave and documents have been brought on record to prove service of notice to them. From the perusal of the record it would appear that out of 19 employees who are stated to have abandoned their service no notice to resume work was issued to (1) Sonit Kumar Sahu (2) Phool Chand Ram (3) Bhanu Prasad Das (4) Budheru Ram (5) G. Fakira (6) Jalam Singh Sahu (7) Jassa Singh (8) Jogeshwar Ram Sahu (9) Khomlal Ganda. Apart from this no notice was issued to employee Mr. Manoj Sharma and notice was issued to his father Mr. Bhagwat Prasad Sharma (Ex.D-107) and also to the father of Mr. Yashwant Singh Nayak employee vide Ex.D-118, likewise notice issued to Mr. Dhal Chand vide Ex.D-128, Mr. Ashok Gadewal vide Ex.D-124, Mr. Narayan Sahu vide Ex.D-119, Mr. P. Nageshwar Rao vide Ex.D-122, Mr. Radhe Lal vide Ex.D-120, Mr. Ramawadh Rajbhoir vide Ex.D-129, Mr. Ramji Dondey vide Ex.D-121 and Mr. Sadharam Nishad vide Ex.D-130 have returned unserved and as such it would appear that none of 19 employees were served with the notice to resume the duty by the second party/employer.

44. From the aforesaid discussion it is *quite vivid* that 19 employees remained absent from work as they have raised demands regarding revision of wages and they have gone on strike for acceptance of their demands and pursuant to which on towards

incident have also happened for which there was industrial unrest and the meeting to resolve the dispute remained unsuccessful. The second party/employer has failed to demonstrate that the principles of natural justice have been observed by the second party/employer as no such opportunity appears to have been given to these employees informing the nature of complaint against them with an opportunity to state their case and second party/employer has further failed to show that second party/employer has acted in fair, reasonable and just manner. It is well settled that the relinquishment of service is question of intention and intention cannot be attributed to the employee without adequate evidence in that behalf. In the case in hand it is apparent that the above-stated 19 employee remained absent with the object of compelling the second party/employer to accept their demands which cannot be said to be the abandonment of service as held by Their Lordships of the Supreme Court in the matter of **Express Newspaper Pvt. Ltd.** (supra) and therefore the award passed by the Industrial Court in respect of these 19 employee cannot be said to be illegal warranting interference by this Court and exercise of jurisdiction under Article 226/227 of the Constitution of India.

45. The learned counsel for the second party/employer has relied upon two judgments, first is the **Vijay S. Sathaye v. Indian**

Airlines Limited and others¹⁸ in which Their Lordships of the Supreme Court have held that in order to constitute abandonment, absence must be for a very long period and held as under: -

“12. It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntary abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.”

The second judgment relied upon the learned counsel for second party/employer is **U.P. State Bridge Corporation Ltd. and others v. U.P. Rajya Setu Nigam S. Karamchari Sangh**¹⁹. This case is not applicable to the facts of present case as in that case certified standing order (L-2.12) clearly provides for abandonment of service, whereas there is no such provision in the certified standing order applicable herein, which is apparent from the following observation of the Supreme Court in that case.-

“21.....In *Express Newspapers* (supra) there was no condition of service similar to Certified Standing Order L-2.12. The fact of strike was also not in dispute.....

22. The fact of strike was also admitted in *G. T. Lad* (supra). Here again there was no condition of service similar to CSO L-2.12.”

18(2013) 10 SCC 253

19 (2004) 4 SCC 268

46. Thus, the decisions relied upon by learned counsel for the first party/Union are not applicable to the facts of the present case and are clearly distinguishable on facts, and the termination of the above-stated nineteen employees are held to be illegal, as they have not abandoned their service voluntarily.

CONCLUSION

47. That, the first party-Workmen-Union has failed to establish the existence of relationship between their 382 workers with that of second party-employer by leading appropriate legal evidence. The adverse finding recorded by the Industrial Court placing burden of proof on the second party-employer and granting compensation is contrary to law and perverse to the record therefore, award to that extent deserves to be set aside and is accordingly set aside.

(i) That, out of 32 employees, Shri Mishrilal Chandrakar has already joined back to service and award passed in his favour is hereby set aside.

(ii) Shri Prakash Meshram, Shri Vishnu Prasad, Shri Prakash Mathew, Shri Venkatwar have already taken their final payment, therefore there is no need to justify their termination and award passed in their favour is hereby set aside.

(iii) That, services of 19 employees namely Sonit Kumar Sahu, Phool Chand Ram, Dhal Chand, Ashok Gadewal, Bhanu Prasad Das,

Budheru Ram, G. Fakira, Jalam Singh Sahu, Jassa Singh, Jogeshwar Ram Sahu, Khomlal Ganda, Manoj Kumar Sharma, Narayan Sahu, P. Nageshwar Rao, Radhelal, Ramawadh Rajbhoir, Ramji Dondey, Sadhu Ram Nishad and Yashwant Nayak have been terminated illegally without following the due procedure of law.

(iv) Likewise, the second party has failed to justify the termination of Shri Faiyaz Ahmed, Shri Chandar Singh, Shri Manthar Ram, Shri Mathura Prasad, Shri Parameshwar Prasad, Shri Sujeet Kumar, Shri Roshan Sahy and Shri Tumnath.

(v) The award passed in their favour granting compensation to the extent of ₹ 20,000/- each is hereby maintained.

RELIEF AND COST(S):-

47. (A) As a fall out and consequence of above-stated discussion, the impugned award in part recording finding contrary to what has been held herein-above with regard to the existence of relationship of employer-employee between them except 27 employees mentioned in paras 47(iii) & (iv) of this order is hereby set aside and result to that, the order granting compensation to the extent of ₹ 20,000/- is hereby set aside in part. The second party/employer is directed to make payment of compensation ₹ 20,000/- to the above-stated twenty-seven employees within four weeks from today if not already paid and resultantly, Writ Petition No.4937/1999 filed by the second party-employer would stand allowed to the extent indicated herein-above.

- (B) It has been stated at the Bar that some monetary benefit has been extended to the workers of the workmen-union/first party pursuant to the interim order of this Court, keeping in view the long pendency of this petitions and they have been litigating for fairly long time since 1999, it would be appropriate to direct that such a benefits given to them shall not be recovered by the second party-employer in the interest of justice.
- (C) I shall make no order as to cost(s) leaving the parties to bear their cost(s).

Sd/-
(Sanjay K. Agrawal)
JUDGE

B/-