

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1103 OF 2000

1. M/s. Rohini S. Kurghode,]
(Mrs. Rohini K. Butte)]
Chendani, Koliwada, Kerubai]
Thanekar Chawl,]
Thane (W) 400 601.]
2. Miss. Veena S. Pimpalwadkar]
(Mrs. Veena K. Sardeshmukh)]
32, R. S. road, Vinayak Bhavan]
Chendani, Thane 400 601.]
3. Miss. Sadhana R. Pote]
(Mrs. Sadhana A. Kokate)]
B.17, Laxman Nagar, Near]
Aradhana Cinema, Thane 2.]
4. Miss. Nutan Pingulkar,]
(Mrs. Nutan S. Chikalikar)]
C.6/14/01. Sector 18, CIDCO]
Colony Panvel, Raigad.]
5. Miss. Kalpana G. Waghmare]
Waldhuni, Shivaji Nagar,]
Shindewadi, Kalyan,]
Dist. Thane.]
6. Miss. Kalpana P. Mankame]
Joshi Wada No.2,]
Tembhi Naka, Thane.]
7. Miss. Pushpa C. Tange,]
At & Post Palaspe,]
Tal. Panvel, District Thane.]
8. Miss. Vanshri Y. Bagade]
(Mrs. Vanashri V. Kalaskar)]
C-3/102, Narmada,]

- Lokgram Kalyan Dist. Thane.]
9. Miss. Arundhati M. Marathe,]
(Mrs. Vasudha V. Patankar)]
35/13, Near M.P.P. Ground,]
Ambernath, Dist. Thane.]
10. Miss. Sandhya H. Singansane]
(Mrs. Sandhya S. Vanage)]
Ganesh-Ashish Building,]
Block No.1, Vadavli,]
Ambernath (East).]
11. Miss. Sunanda S. Badrika,]
A.59/10, Sector 13, CIDCO]
Colony, New Panvel,]
Dist. Raigad-410 206.]
12. Miss. Nalini Shankar Mokal]
(Mrs. Nalini Ashok Patil)]
At Kanthavli, Post. Dighode]
Tal. Uran, District Raigad.]
13. Miss. Sandhya Sadashiv Chavan,]
Amol Co-Op. Housing Society,]
Bhusar Lane, At & Post Kalwa,]
Thane 400605.]
14. Miss. Arti Lahu Sawant]
C/o S. S. Rane, PL 6/20,]
Room No.9, CIDCO Colony,]
New Panvel.]
15. Miss. J. D. Mayekar]
(Mrs. J. Ansurkar)]
KL2/1215, Sector 5/E,]
Kalamboli, New Bombay.]
16. Miss. Savitri H. Patil,]
(Mrs. Savitri Pradip Patil)]
At Vindhane, Post Dighoda,]
Tal. Uran, Raigad.]..Petitioners

Versus

- | | |
|---|----------------------------|
| 1. M/s. E. Merck (I) Limited, |] |
| Plot No.1, MIDC Estate, |] |
| Taloja, Panvel, Dist Raigad. |] |
|
2. Mr. H. G. Broots |
] |
| Managing Director |] |
| M/s. E-Merck (I) Limited |] |
| Plot No.1 MIDC Estate, |] |
| Taloja, Panvel, Dist. Raigad |] |
| Maharashtra. |] ..Respondents |

Shri. Y. M. Pendse for the Petitioners.

Shri. S. K. Talsania, Senior Advocate i/by Shri. R. V. Paranjape for the Respondents.

CORAM : R. M. SAVANT, J.

JUDGMENT RESERVED ON : 19/09/2016

JUDGMENT PRONOUNCED ON : 26/10/2016

JUDGMENT

1 The writ jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the judgment and order dated 23.12.1999 passed by the Learned Member of the Industrial Court, Thane, by which, the Revision Applications being Revision Application (ULP) Nos.13 to 22 of 1998 and 42 to 46 of 1998 and 56 of 1999 were dismissed and resultantly, the judgment and order dated 08.09.1997 passed by the Learned Judge of the Labour Court, Thane, dismissing the Complaints in question came to be confirmed.

2 The facts necessary to be cited for the adjudication of the

above Petition can in brief be stated thus :-

The Petitioners herein are the original Complainants who had filed Complaints (ULP) invoking Items 1(a), (b), (d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practices Act, 1971 (For short “the MRTU & PULP Act”). The Petitioners had filed separate Complaints being Complaints (ULP) Nos.124 to 135, 148 to 153 and 158 of 1995. Since the Petitioners were all identically situated, the Complaints were identical in nature and were seeking the same relief. The said Complaints were therefore heard together by the Learned Judge of the Labour Court.

The Petitioners would be referred to as the Complainants/ Petitioners and Respondents, though the Respondent No.2 has been deleted would be referred to as the Respondents.

3 The facts which would be narrated hereinafter would be in respect of one such Complaint in respect of the Petitioner No.3 Sadhana R. Pote whose case was alluded to by the Respondents whilst filing their written statement as also the facts relating to Mrs. Kokate and Miss. A. M. Marathe who have deposed in favour of the Complainants. It was the case of the Petitioners in the said Complaints that they are in service of

the Respondents as packers since 27.08.1985 continuously and that their last drawn wages were Rs.1700/- per month, though the other persons doing identical job were getting 3500/- per month and other benefits. It was the case of the Petitioners that they have been kept temporary for years together without giving them the benefit of permanency and were thereby denied all other benefits and facilities such as sick leave, casual leave, medical allowance, house rent allowance to which the permanent employees were entitled to. It was the case of the Petitioners that the posts in which they were working were permanent posts and that the work discharged was permanent in nature. It was the case of the Petitioners that the Respondents were intentionally giving them artificial breaks though the work was existing and continuing. It was the case of the Petitioners that such artificial breaks were given with a view to deny the status of permanency to them. It was their case that when the Petitioners approached the Respondents with a request to make them permanent, the same was not liked and resulted in the termination of the Petitioners from 28.07.1994. It was the case of the Petitioners that whilst issuing the termination letter the Respondents promised that they would employ them again and kept on giving false assurance. It is the case of the Petitioners that in January 1995 the Respondents assured that they would be positively provided work from 22.03.1995. However, on the

said day when the Petitioners approached the Respondent, the Respondent flatly refused any employment to the Petitioners. It was therefore the case of the Petitioners that the termination of the Petitioners was illegal by way of victimisation and for patently false reasons. The Petitioners therefore sought the relief by way of a direction against the Respondents to reinstate them with full backwages with effect from 28.07.1994 with continuity of service and to direct the Respondents to extend all benefits privileges, allowances etc. which their counterparts are being paid. A further direction was sought against the Respondents to temporarily withdraw the termination letter dated 28.07.1994, in the alternative the Petitioners prayed that they be paid full months wages and all other allowances in the event the Respondents do not utilise their services. It was also prayed that the Respondents be restrained from engaging fresh hands including juniors until preference of employment is given to the Petitioners.

4 The Respondents filed their written statement which was numbered as Exh.15. The Respondents at the outset took an objection to the maintainability of the Complaints on the ground that the same are barred in view of the settlement dated 08.02.1994 entered into between the Respondent No.1 and the E. Merck Employees Union which was the recognized union of employees working in the E. Merck (I) Ltd. The

Respondent No.1 also took a stand that the relief sought does not fall within the sweep and mischief of Item No.1 of Schedule IV of the MRTU & PULP Act and therefore the Complaints as filed for the relief sought were beyond the jurisdiction of the Labour Court. The Respondents also took an objection that having regard to the nature of the Complaints the cause of the employees was to be espoused only through the recognized employees union i.e. E. Merck Employees Union. It was the case of the Respondents that the Model Standing Orders 4-C and 4-D are not applicable to the instant case in view of the fact that in the instant case, at all times and at the time of every engagement as a temporary employee a specific contract of employment was entered into by the employee with the Respondent No.1. It was the case of the Respondent No.1 that the manufacturing activities and business activities of the Respondent No.1 are prone to fluctuations thereby entailing engagement of a few temporary hands for specific duration on account of temporary increase in the manufacturing activities and the work load and some times reduction in the work force on account of the decline in the manufacturing activities. It was therefore the case of the Respondents that as the Respondents were required to engage temporary hands on account of temporary increase in the work as also reduce the temporary hands as and when there was decline in the manufacturing activities. The

Respondents alluded to the case of the said Sadhana R. Pote and contended that the said employee was employed between 22.03.1994 and 28.07.1994 and during the said tenure of temporary employment, the said Petitioner i.e. the Complainant had not put in 240 days of actual work with the Respondent No.1. It was the case of the Respondent No.1 that the settlement dated 08.02.1994 is binding on all the employees. The said settlement contains Clause No.30 which relates to grant of permanency and since the said settlement contemplates grant of permanency to only 13 employees mentioned therein, the Petitioners were not entitled to claim permanency. It was also the case of the Respondents that the Petitioners are not entitled to the terms and conditions applicable to permanent employees in a Complaint of this nature. As indicated above, the Respondents questioned the maintainability of the Complaints on the aforesaid grounds and contended that the Labour Court did not have the jurisdiction to try and entertain the Complaints. On the basis of the pleadings of the parties, the Learned Judge of the Labour Court framed the following issues :-

- “1. Whether the Complainant proves the alleged unfair labour practice under item 1(a) (b) (d) & (f) of Sch. IV of the MRTU & PULP Act, 1971 ?
2. Whether the Complainants are entitled for the reliefs claimed ?

3. Whether the Respondents prove that the termination is proper and legal ?
4. What Order ?”

5 The parties led evidence in support of their respective cases. The Petitioners filed pursis for leading common evidence in all the Complaints. Accordingly two of the Petitioners i.e. Mrs. Kokate and Miss. A. M. Marathe deposed in respect of all the Petitioners i.e. the original Complainants. On behalf of the Respondents, the Plant Manager Shri. Raman Raghunath Kole was examined as also Shri. Ratnakar was examined. The Learned Judge of the Labour Court proceeded to consider the said Complaints on the basis of the material that had come on record. The Labour Court recorded findings having regard to the evidence that had come on record on behalf of the Complainants as also the appointment letters issued from time to time that the Complaints would not lie under Item 1 of Schedule IV and would have to be one under Item 6 of Schedule IV before the Industrial Court. The Learned Judge of the Labour Court held that the contention raised on behalf of the Complainants that on account of completion of 240 days of service they have become permanent and therefore the termination is in violation of Section 25-F of the Industrial Disputes Act, 1947 (For short “the I. D. Act”) is illegal, could not be accepted in view of the fact that the Complainants were engaged under a specific contract which is admitted

by the Complainants and only the last termination on 28.07.1994 was challenged. The Learned Judge of the Labour Court has referred to the judgment of the Apex Court reported in (1994) 2 SCC 323 in the matter of M. Venugopal Vs. LIC of India, Machilipatnam, A.P. & others. The Learned Judge of the Labour Court has also adverted to the fact that after the termination of the Complainants, no fresh appointment has taken place. The Learned Judge of the Labour Court also did not accept the case of the Complainants that they had completed 240 days in the preceding calendar year as in the instant case, each contract was for three months and the contract came to an end by efflux of time stipulated in the contract. The Learned Judge has also adverted to the admission which has come on behalf of the Complainants through their witness that she has not completed 240 days of service during the last contract. The Learned Judge therefore held that the termination being on account of the contract coming to an end, it was not retrenchment falling within the meaning of Section 2(oo) of the I. D. Act. The Learned Judge further held that the termination of the Complainants falls under Section 2(oo)(bb) of the I. D. Act and therefore the rule of continuous aggregate service as defined in Model Standing Order 4-C is not applicable. The Learned Judge however held that the settlement dated 08.02.1994 is not binding on the Complainants in so far as Item 1 of Schedule IV is concerned,

having regard to the category of employees covered by the said settlement. The Learned Judge of the Labour Court however held that the Complainants failed to prove the alleged unfair labour practice under Items 1(a), (b), (d) and (f) of Schedule IV of the MRTU & PULP Act. The gist of the reasoning if one can say of the Learned Judge of the Labour Court is therefore based on Section 2(oo)(bb) of the I. D. Act which carves out an exception in so far as retrenchment is concerned if the conditions therein are satisfied. The Learned Judge of the Labour Court accordingly by judgment and order dated 08.09.1997 dismissed the Complaints.

6 The Petitioners aggrieved by the said judgment and order dated 08.09.1997 passed by the Labour Court challenged the same by filing Revisions (ULP) being Nos.13 to 22 of 1998, 42 to 46 of 1998 and 56 of 1999. The Learned Member of the Industrial Court reiterated the findings of the Labour Court that on account of the contract of the employment which was for a period of three months, the Complainants had not completed 240 days of service, as also on account of the fact that the termination was on account of the contracts coming to an end, Section 2(oo) of the I. D. Act is not attracted. The Learned Member of the Industrial Court also adverted to the case of *M. Venugopal (supra)*. The Learned Member in the said process did not accept the contention raised

on behalf of the Complainants that even if there is contract of employment and it is likely to come to an end after a stipulated period then also the provisions of the Industrial Court Employment Standing Orders would be applicable. The Learned Member observed that the substantive provision as contained in the I. D. Act i.e. Section 2(o)(bb) would override the provisions of the Industrial Court Employment Standing Orders and especially Standing Order 4-C thereof. The Learned Member of the Industrial Court accordingly confirmed the finding of the Labour Court that the instant case is covered by Section 2(o)(bb) of the I. D. Act and therefore is not a case of retrenchment. The Learned Member of the Industrial Court accordingly upheld the finding of the Labour Court that the Respondents have not committed any unfair labour practice under Item 1(b) of Schedule IV of the MRTU & PULP Act and accordingly dismissed the Revision Applications. As indicated above, it is the said judgment and order dated 23.12.1999 passed by the Learned Member of the Industrial Court which is taken exception to by way of the above Petition.

7 Submissions by the Learned Counsel Shri. Y. M. Pendse on behalf of the Petitioners :-

A) That the Courts below have erred in reckoning the service tendered by the Petitioners only preceding the twelve months prior to the last

appointment and thereby erroneously have not taken into consideration that the Petitioners had worked intermittently for the last ten years prior to their services being terminated.

B) That the Courts below failed to appreciate that though the Petitioners were shown as temporary they had worked for more than 240 days and therefore were entitled to be treated as permanent in terms of Standing Order 4-C of the Model Standing Orders.

C) That since the Petitioners had attained the status of being permanent workmen, their termination without following the provisions of Section 25-F, 25-G and 25-N of the I. D. Act was illegal and therefore the Petitioners were entitled to reinstatement with continuity of service and backwages.

D) That the provisions of Section 2(o)(bb) of the I. D. Act cannot be construed to deprive the workman of permanency if he has completed 240 days of service if having regard to the nature of the work and the length of service tendered by the workman, would indicate that the work was continuous and of a permanent nature. In support of the said contention reliance is placed on the judgments of the Apex Court reported in (2006) 9 SCC 434 in the matter of Haryana State

Electricity Development Corporation Ltd. vs. Mamni, (2014) 11 SCC 85 in the matter of Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Limited, 1996-III-(Suppl) LLJ-1126 Bhikku Ram v. Presiding Officer, Industrial Tribunal-Cum-Labour Court, Rohtak and unreported judgment of a Learned Single Judge of this Court sitting at Aurangabad dated 09.02.2006 in Writ Petition No.4557 of 2014 in the matter of Dattu Babu Bhokare Vs. Mahatma Phule Krishi Vidyapith.

E) That Section 2(oo)(bb) of the I. D. Act would have no application since the pre-requisites for the same have not been complied in the instant case. Reliance is placed on the judgment of the Apex Court reported in (2003) 4 SCC 27 in the matter of S. M. Nilajkar Vs. Telecom District Manager.

F) That the Courts below erred in not appreciating that the Petitioners were engaged for years together by issuing appointment letters with notional breaks given in between so as to deprive the Petitioners of permanency and to get out of the clutches of Section 25-F of the I. D. Act.

G) That the Courts below erred in not taking into consideration that the appointment letters do not disclose that there was any increase of work because of which the Petitioners were required to be appointed and

hence the conclusion that was required to be reached was that the work was of a permanent nature and the Petitioners were therefore entitled to permanency having regard to Standing Order 4-C having completed 240 days of continuous service.

H) That the termination of the services of the Petitioners were by way of victimisation and in colourable exercise of the rights of employer to terminate the services of the employee by relying upon the clause in the letter of appointment.

I) That having regard to the fact that Section 2(oo)(bb) is part of the I. D. Act which is a social welfare legislation. The said provision would have to be reasonably construed and on such construction, it would have to be held that it would not override the provisions of Standing Order 4-C.

8 Submissions on behalf of the Respondents by the Learned Senior Counsel Shri. S. K. Talsania :-

I) That it has come in the evidence of the witnesses examined on behalf of the Petitioners that they were challenging the last termination which has taken effect from 28.07.1994 and that there was no relation between the earlier termination and the termination challenged in the present Complaints, and hence the Petitioners have admittedly not

completed 240 days since the said termination.

II) That the Petitioners are now estopped from claiming permanency etc. in the present Complaints as the Petitioners have advisedly filed the Complaints under Item 1 of Schedule IV of the MRTU & PULP Act challenging their last termination on the expiry of their contract of employment. Reliance is placed on the judgment of the Apex Court reported in (2005) 5 SCC 91 in the matter of Haryana State Co-operative Land Development Bank Vs. Neelam.

III) That the relief of permanency sought by the Petitioners cannot be granted in Complaints filed under Item 1 of Schedule IV of the said Act.

IV) That by accepting the fact that on 22.03.1995 the Respondents refused to re-employ the Petitioners, the Petitioners have implicitly accepted the practice of appointment for a fixed term under a contract.

V) That there are no pleadings to the effect that by operation of Standing Order 4-C of the Model Standing Orders, the Petitioners had become permanent on some date in the past. In fact the cause of action for filing the Complaints is shown as 28.07.1994 and 22.03.1995 i.e. the dates when the Petitioners were terminated, and the date on which the Petitioners were refused reappointment.

VI) That assuming Standing Order 4-C applies the same cannot operate in derogation of Section 2(oo)(bb) of the I. D. Act as the Standing Orders have no force in law and are in fact statutorily imposed service conditions, but they are not statutory in nature. Reliance is placed on the judgments of the Apex Court reported in (1995) 5 SCC 75 in the matter of Rajasthan State Road Transport Corporation and another Vs. Krishnakant and others followed by (2004) 4 SCC 268 in the matter of U. P. State Bridge Corporation Ltd. Vs. U. P. Rajya Setu Nigam S. Karmachari Sangh and again in (2010) 6 SCC 697 in the matter of Rajasthan State Road Transport Corporation and others Vs. Deen Dayal Sharma.

VII) That the substantive provisions of law i.e. Section 2(oo)(bb) of the I. D. Act will prevail over the Standing Orders in the case of conflict between the two.

VIII) That the appointments of the Petitioners were temporary for a fixed period and coming to an end upon the expiry of the period of contract of employment, the case of the Petitioners is therefore governed by Section 2(oo)(bb) of the I. D. Act and therefore is an exception to retrenchment. Reliance is placed on the judgment of the Apex Court in *M. Venugopal's case (supra)*, (1997) 11 SCC 521 in the matter of Escorts.

Ltd. Vs. Presiding Officer and another, (2006) 3 SCC 81 in the matter of **Municipal Council, Samrala Vs. Raj Kumar.**

IX) That the judgment of the Apex Court *S. M. Nilajkar's case (supra)* that the application of the judgment is restricted only to the employment in project or scheme has been clarified by the Apex Court holding that the judgment in *S. M. Nilajkar's case (supra)* is not an authority for the proposition that apart from a project or scheme of temporary duration Section 2(o)(bb) of the I. D. Act will have no application.

X) That in view of the settlement dated 08.12.1994 with the recognized Union, by which settlement, it was agreed to regularise the services of 27 employees amongst whom were 12 packers, the Petitioners were not entitled to claim permanency beyond that contemplated by the settlement and that they were bound by the said settlement. The Complaints filed for the said relief were therefore not maintainable. Reliance is placed on the Division Bench judgment of this Court reported in **2006(3) ALL MR 449** in the matter of **Pune Municipal Corporation and others Vs. Shri. Dhananjay Prabhakar Gokhale.**

XI) That the judgments cited on behalf of the Petitioners are all under the I. D. Act rendered in References where the scope of enquiry is much

wider and are therefore clearly distinguishable.

CONSIDERATION

9 Before proceeding further, it would be necessary to refer to the provisions in contention. Section 2(oo)(bb) of the I. D. Act and Standing Order 4-C of the Model Standing Orders are reproduced hereinunder :-

“(oo) “**retrenchment**” means the 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, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or”

Standing Order

“4-C. A *badli* or temporary workman who has put in 190 days' uninterrupted service in the aggregate in any establishment of seasonal nature or 240 days “uninterrupted service” in the aggregate in any other establishment, during a period of preceding twelve calendar months, shall be made permanent in that

establishment by order in writing signed by the Manager, or any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the establishment throughout the period of the said twelve calendar months.”

10 To consider whether the termination of the services of the Complainants would amount to retrenchment within the meaning of Section 2(oo) of the I. D. Act or whether the Complainants are entitled to the grant of the relief of permanency, the facts involved in the above Petition would have to be revisited. As indicated above, the Complaints in question filed by the Complainants have been filed challenging their termination dated 28.07.1994 under Items 1(a), (b) (d) and (f) of Schedule IV of the MRTU & PULP Act. It was the case of the Complainants that they had been engaged as packers since the year 1985 and that they use to be given artificial breaks in between despite of work being available with the Respondents. It was further alleged that the Complainants were kept temporary for years together without getting any benefits of permanency as well as denial of other facilities which their counterparts who are permanent use to get. The termination was therefore challenged on the ground of violation of Section 25-F, 25-G and 25-N of the I. D. Act. This was on the basis that the Complainants had completed 240 days of service and therefore were deemed to be permanent and therefore their services were terminated without

following the procedure i.e. payment of retrenchment, compensation etc. As indicated above, the factual matrix involved in each of the Complaints filed by the Complainants was identical. However it is required to be noted that it was not the case of the Complainants in the Complaints that they had become permanent on the application of Standing Order 4-C of the Model Standing Orders. It is also required to be noted that it was the case of the Complainants that the Respondents had committed unfair labour practice on or from 28.07.1994 and 22.03.1995. In so far as the date 28.07.1994 is concerned, it was the date of termination of the services of the Complainants upon the expiry of the contract of employment. In so far as the date 22.03.1995 is concerned, it is the date on which the Complainants alleged that they were told by the Respondents that they would not be re-employed.

11 In so far as the Respondents are concerned, they filed their written statement and an objection was raised to the maintainability of the Complaint on the ground that the relief sought in the Complaint by way of permanency would be outside the scope of Item 1 of Schedule IV of the MRTU & PULP Act and would be beyond the jurisdiction of the Labour Court. It was the case of the Respondents that the Complainants were appointed on a fixed term contract and stood terminated upon expiry of the contract period. The employment of the Complainants for

the new term was by a separate contract. It was also the case of the Respondents that the recognized union had raised a charter of demands amongst which was the demand of seeking permanency for temporary employees. The said recognized union and the Respondents had entered into a settlement dated 08.02.1994 whereby certain temporary employees which include some packers numbering 13 were made permanent. It was also the case of the Respondents that after the settlement, no temporaries were engaged. It was also the case of the Respondents that the Petitioners had not completed 240 days in a calender year.

12 At this stage, it would be apposite to refer to a sample appointment letter and sample termination letter in respect of one of the Complainants Miss. A. M. Marathe, which for the sake of ready reference is reproduced hereinunder :-

“To
Miss. A. M. Marathe
Pharma Pkg,
Taloja.

Madam,
We are pleased to appoint you as a packer purely on temporary basis in our Taloja Plant with effect from 22.3.94.

The work for which you have been appointed is upto and including 28.7.94 during which period you will receive a consolidated Salary of Rs.1700/- per month. No other

allowance will be paid to you except the above consolidated salary during this period.

This temporary appointment may be terminated by either of us, without assigning any reason, by giving one day's notice.

You will be governed by the rules and regulations of the Company that may be in force from time to time.

You will make your own arrangements for travel to and from your place of work.

Please return the copy of this letter duly signed by you in token of acceptance of the terms and conditions.

Sd/-
Personnel Executive

I accept

Marathe A. M.

Exh. 28 last termination letter

To,
Miss A. M. Marathe,
Pharma pkg. Dept.
Taloja.

Madam,
Further to our letter of temporary appointment No.PER: RRK: 94 dated 22.03.94 your temporary appointment stands terminated from the close of working hours on 28.7.94.

Please collect your dues if any, from our Accounts Department, Taloja.

Thanking you,

Sd/-
Personnel Executive”

13 In the context of the pleadings and the documents as above

the evidence led on behalf of the Complainants would have to be seen. The Complainants had examined Mrs. Kokate being Complainant in Complaint (ULP) No.124 of 1995 and Miss. A. M. Marathe being Complainant in Complaint (ULP) No.125 of 1995. In so far as Mrs. Kokate is concerned, she has deposed on behalf of all other Complainants. In so far as her evidence is concerned, it would be relevant to note that in her cross-examination she has admitted to the following :-

- “1) That as per the appointment letter she was appointed on a temporary basis as packer for specific duration for three months;
- 2) That the Company did not engage any fresh temporary employee after termination of her services with effect from 28.07.1994;
- 3) That she and others had not completed 240 days of service.”

14 In so far as Miss. A. M. Marathe is concerned, she has admitted in her cross-examination to the following :-

- “A) That in the present Complaint she was challenging her

termination of services with effect from 28.07.1994;

B) That she had come to the Court challenging her last termination and there is no relation between the earlier termination and the termination challenged in the present Complaint;

C) That whenever she was appointed, it was by way of fresh appointment;

D) That during the period 22.03.1994 i.e. from the date of appointment till my termination on 28.07.1994, I have not put in 240 days of work and it is true that this position remains the same always;

E) It is true that whenever I was appointed, I was appointed as a fresh packer;

F) In so far as the temporary adhoc appointments which were given for specific period as per the various appointment letters between the years 1985-1986 to 1994, the same were filed as Exhs. 27 Colly and Exh.29.”

15 Both the witnesses i.e. Mrs. Kokate and Miss. A. M. Marathe have admitted that at the time of their last termination letter i.e. on 28.07.1994 they had not put in 240 days of continuous service. Both the witnesses have also admitted that they have come to Court against their last termination on 28.07.1994. It is in the light of the aforesaid material, it would have to be considered whether the case of retrenchment under Section 2(bb) has been made out by the Complainants in so far as their termination is concerned. It cannot be lost sight of that the termination of the services of the workmen was in terms of the contract of employment entered into with them. The Complainants accepted their appointments on the said basis and therefore the question arises as to whether they can now be heard to complain against the manner in which they were appointed. The question also arises whether the Complainants are now estopped from claiming the relief sought vide said Complaints on the ground of acquiescence and waiver as also whether the Complaints claiming the nature of the reliefs claimed would lie under Item 1 of Schedule IV of the MRTU & PULP Act.

16 In so far as the first issue as to whether the termination of services of the Complainants amounts to retrenchment under Section 2(bb) of the I. D. Act is concerned, it is required to be noted that the contracts of employment have been entered from time to time from the

year 1985-1986 to the year 1994. The said contracts were of specific duration. The same was sought to be justified through the evidence of the witness of the Company wherein he had deposed that the packing department was chiefly manned by permanent employees in the category of packers and appointment of non-permanent employees in the category of packers under a specific contract only intermittently due to temporary increase in work load and after closure of the Syrup and Allergology Departments and the consequent curtailment in the work-load the Respondents are not required to engage any temporary employees in the category of packers. It has also come in the evidence of Mrs. Kokate that after their termination on 28.07.1994, the Company i.e. Respondents herein did not engage any fresh temporary hands. The termination of the Respondents on their contracts coming to an end is therefore covered by Section 2(oo)(bb) of the I. D. Act.

The said issue has also to be answered in the context of the fact whether the Complainants had completed 240 days of continuous service in the preceding 12 calendar months. In so far as the said aspect is concerned, it is required to be noted that the Complainant Miss. A. M. Marathe has also admitted that she has not worked for 240 days during her last tenure starting on 22.03.1994. It would have to be borne in mind that the Complainants never made any grievance as regards their earlier

appointments and termination. In fact as indicated above the cause for filing the Complaints was that on 22.03.1995 the Respondents refused to appoint them. It has also come in the evidence of the Complainants that they are challenging their last termination on 28.07.1994. Hence, the benefit of the number of days for which they worked under the earlier contracts would not be available to the Complainants.

17 Hence the conclusion would be that the Complainants having not worked for 240 days in the preceding 12 calendar months prior to their last termination, it therefore cannot be said that the termination amounts to retrenchment within the meaning of Section 2(oo) of the I. D. Act. In so far as the maintainability of the Complaint under Item 1 of Schedule IV of the MRTU & PULP Act is concerned, it is required to be noted that the Complainants have claimed the relief of permanency and benefit on par with the permanent employees, such a Complaint would obviously not lie under Item 1 of Schedule IV of the MRTU & PULP Act and would have to be filed under Item 6 of Schedule IV of the MRTU & PULP Act and the same would have to be filed before the Industrial Court. The Complainants are also now estopped from challenging their appointments on the basis of the contracts entered into from time to time as the Complainants by accepting such appointments have acquiesced in them and have waived their right for seeking the

reliefs which they have now sought vide the instant Complaints. A reference could be made to the judgment of the Apex Court reported in *Haryana State Co-operative Land Development Bank's case (supra)*, wherein the Apex Court has held that the procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings.

18 The next question that arises is whether the Complainants can claim the benefit of Standing Order 4-C of the Model Standing Orders so as to claim permanency, or whether the case of the Complainants is covered by Section 2(o)(bb) of the I. D. Act. In so far as Section 2(o)(bb) of the I. D. Act is concerned, the same was inserted in the I. D. Act on 18.08.1984. The said section carves out an exception to retrenchment. In the instant case, there is no dispute about the fact that the Complainants were appointed in terms of the contract for a fixed duration and were terminated after the duration of the contract came to an end. Last of such contracts is dated 22.03.1994 and the contract came to an end on 28.07.1994 on which day, the services of the Complainants came to be terminated. It has come in the evidence adduced on behalf of the Complainants that after their termination no temporaries were appointed by the Respondents. It has also come in the evidence of the Respondents that packers were required to be appointed for a short

duration on account of the temporary increase in demand of the products. In the context of the applicability of Section 2(oo)(bb) of the I. D. Act, it would be relevant to refer to the judgments of the Apex Court relating to the said provision.

19 In *M. Venugopal's* case (*supra*), the termination of a probationer who was appointed for a fixed term for not complying with the requirement of the target fixed by the LIC was held to be covered by Section 2(oo)(bb) of the I. D. Act. Paragraph 9 of the said judgment is material and is reproduced hereinunder :-

“9. Regulation 14 aforesaid has to be read as a statutory term of the contract of employment between the Corporation and the appellant. The order of appointment had fixed a target in respect of the performance of the appellant which admittedly the appellant failed to achieve within the period of probation which was extended up to two years. As such the Corporation was entitled not to confirm the appellant in terms of the order of appointment and to terminate his service during the period of probation without any notice in terms of Regulation 14(4) aforesaid. Clauses 10 and 11 of the order of appointment along with Regulation 14 shall be deemed to be stipulations of the contract of employment under which the service of the appellant has been terminated. Any such termination, even if the provisions of the Industrial Disputes Act were applicable in the case of the appellant, shall not be deemed to be "retrenchment" within the meaning of Section 2(oo), having been covered by exception (bb). Before the introduction of clause (bb) in Section 2(oo), there were only three exceptions so far as termination of the service of the workman was concerned, which had been excluded from the ambit of retrenchment - (a) voluntary retirement;

(b) retirement on reaching the age of superannuation; and (c) on ground of continued ill-health. This Court from time to time held that the definition of "retrenchment" being very wide and comprehensive in nature shall cover, within its ambit termination of service in any manner and for any reason, otherwise than as a punishment inflicted by way of disciplinary action. The result was that even discharge simpliciter was held to fall within the purview of the definition of "retrenchment". ([State Bank of India v. N. Sundara Money](#) [(1976) 1 SCC 822: 1976 SCC (L&S) 132 : AIR 1976 SC 1111], [Santosh Gupta v. State Bank of Patiala](#) [(1980) 3 SCC 340 : 1980 SCC (L&S) 409 : AIR 1980 SC 1219]). Now with introduction of one more exception to Section 2(oo), under clause (bb) the legislature has excluded from the purview of "retrenchment" (i) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry; (ii) such contract being terminated under a stipulation in that behalf contained in contract of employment. It need not be impressed that if in the contract of employment no such stipulation is provided or prescribed, then such contract shall not be covered by clause (bb) of Section 2(oo). In the present case, the termination of service of the appellant is as a result of the contract of employment having been terminated under the stipulations specifically provided under Regulation 14 and the order of the appointment of the appellant. In this background, the non-compliance of the requirement of Section 25-F shall not vitiate or nullify the order of termination of the appellant."

20 The judgment of the Apex Court in M. Venugopal's case (supra) was followed by the Apex Court in Escorts Ltd. (supra). Paragraph 4 of the said judgment is material and is reproduced hereinunder :-

"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(00) “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.”

21 The view taken in *M. Venugopal's* case (*supra*) and *Escorts Ltd's* case (*supra*) was reiterated by the Apex Court in *Municipal Council, Samrala's* case (*supra*). Paragraph 10 of the said judgment is material and

is reproduced hereinunder :-

“10. Clause (oo)(bb) of Section 2 contains an exception. It is in two parts. The first part contemplates termination of service of the workman as a result of the non-renewal of the contract of employment or on its expiry; whereas the second part postulates termination of such contract of employment in terms of stipulation contained in that behalf. The learned Presiding Officer of the Labour Court as also the High Court arrived at their respective findings upon taking into consideration the first part of Section 2(oo)(bb) and not the second part thereof. The circumstances in which the respondent came to be appointed have been noticed by us hereinbefore.”

22 However on behalf of the Petitioners i.e. the original Complainants reliance was sought to be placed on the judgment of the Apex Court in *S. M. Nilajkar's case (supra)* to contend that Section 2(oo)(bb) of the I. D. Act operates only in respect of appointments made on projects which appointments come to an end on the projects coming to an end. The said judgment in *S. M. Nilajkar's case (supra)* was clarified by the Apex Court in *Municipal Council, Samrala's case (supra)* by holding that the judgment in *S. M. Nilajkar's case (supra)* is not an authority for the proposition that Section 2(oo)(bb) of the I. D. Act would apply only to a project or a scheme of temporary duration. Paragraph 14 of the judgment in *Municipal Council, Samrala's case (supra)* is material and is reproduced hereinunder :-

“14. The decision of this Court is not an authority for the proposition that apart from a project or a scheme of temporary duration, Section 2(oo)(bb) of the Industrial Disputes Act will have no application. Furthermore, in the instant case, as has been noticed by this Court in S. M. Nilajkar [(2003) 4 SCC 27 : 2003 SCC (L&S) 380] itself, the respondent was categorically informed that as per the terms of the contract, the same was a short-lived one and would be liable to termination as and when the appellant thought it fit or proper or necessary to do so. Yet again, this Court in view of the facts and circumstances prevailing therein had no occasion to consider the second part of Section (oo)(bb) of the said Act.”

23 It would be significant to note that in *Municipal Council, Samrala's case (supra)*, the stipulation in the appointment letter was to the following effect :-

“his services will be availed till it is considered as fit, proper and necessary, after that the services will be dispensed with.”

The Apex Court held that the termination pursuant to the clause as above would be covered by Section 2(oo)(bb) of the I. D. Act.

A reference could also be made to the judgment of a Learned Single Judge of this Court in **Bajaj Auto Ltd. Vs. Shrikant Vinayak Yogi (Writ Petition No.1100/1998) 2015 SCC Online Bom. 8292**. In the said case after considering the judgment of the Apex Court in *Municipal Council, Samrala's case (supra)*, the Learned Single Judge held that all the concerned employees in the matter were covered by Section 2(oo)

(bb) of the I. D. Act. Paragraph 43 of the said judgment is material and is therefore reproduced hereinunder for the sake of ready reference :-

“43. When the facts of the present case are seen in the light of the above decisions, there can be no doubt that they fit into the exception in sub-clause (bb) to take the termination out of the definition of retrenchment. To repeat the facts, the respondents-employees were engaged as temporary worker for several years. They were engaged for a fixed period of 7 months. Their services were terminated on the expiry of the fixed period and they were not re-employed. The reason for termination and no re-employment was non-availability of work, which is established by evidence. Under the settlement dated 3rd September, 1990 arrived at in the complaints filed by the employees, they agreed for temporary employment for a period of seven months with suitable breaks thereafter. The Company had agreed to absorb them into permanency depending upon seniority amongst them, conduct, behaviour, fitness, attendance and the requirement of the Company. Since the requirement of the Company was not there due to unavailability of work, they were not re-employed. Mr. Deo, relying upon the subsequent settlements of the years 1998, 2003, 2008 and 2014 sought to submit that non-availability of the work claimed by the Company is a myth. Undoubtedly, there are settlements arrived at with the permanent workers. It has not been the case of the Company that, there is no work whatsoever available to it. It's claim is that, the spurt in the business at the relevant time, which was the reason for employing temporary workers, having died down, there is no availability of work for the respondents. In any case, the following recital in the settlement of the year 2008 speaks for itself.....”

24 The aforesaid judgments therefore lay down that where the termination is on account of non-renewal of the contract of employment on its expiry or such contract being terminated under a stipulation

contained in the contract of employment the said termination would be covered by Section 2(oo)(bb) of the I. D. Act. In fact in *Municipal Council, Samrala's* case (*supra*), the clause in question did not have any stipulation as regards when the appointment would come to an end, the termination even under such a clause was held to be covered by Section 2(oo)(bb) of the I. D. Act.

25 Now coming to the judgments cited on behalf of the Petitioners by the Learned Counsel Shri. Y. M. Pendse in support of his contention that the benefits of permanency under Standing Order 4-C cannot be deprived of on the basis of the provisions of Section 2(oo)(bb) of the I. D. Act.

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Chemicals and Fertilizers Limited reported in **2000(4) Mh.L.J. 382**. In the said case, a Learned Single Judge of this Court held that even if the termination of the casual labour cannot be termed as retrenchment under Section 25-F of the I. D. Act because appointment was for a fixed period. They had as per the Standing Order 4-B automatically become permanent and could not be terminated without one months notice. The said judgment was rendered by the Learned Single Judge in a matter of arising out of an Award passed under the I. D. Act where the jurisdiction

of the Court is wider than the jurisdiction under Item 1 of Schedule IV of the MRTU & PULP Act. The said judgment can be said to be per-incurium as it did not notice the provisions of law and especially the effect of Section 2(oo)(bb) of the I. D. Act.

Sarita S. Melwani Vs. Pallavi Talekar reported in 2008(1) Mh.L.J. 522 is concerned, the said judgment has no application as what was in contention before the Learned Single Judge of this Court is the correct computation of the retrenchment compensation to be payable under Section 25-F of the I. D. Act and not the issue of exception to retrenchment as postulated by Section 2(oo)(bb) of the I. D. Act.

Keru Kisan Rokade Vs. Geoffery Manners & Co. Ltd. reported in 2011(1) Mh.L.J. 115 is concerned. The said judgment is also arising out of an Award passed by the Labour Court under the I. D. Act. The Learned Single Judge noticed the judgment of the Apex Court in *M. Venugopal's case (supra)* and observed that in view of the said judgment an earlier judgment of this Court in the matter of *Dilip Hanumantrao. Shirke Vs. Zilla Parishad, Yavatmal* reported in 1990(I) LLJ 445 must be held to be impliedly overruled as held in *Maharashtra State Electricity Board Vs. Suresh Vaidyanath Pagar* reported in 1995 (II) CLR 1046. However the Learned Single Judge then relied upon the

judgment in *S. M. Nilajkar's case (supra)* and rejected the claim of the employer based on Section 2(oo)(bb) of the I. D. Act holding that the workman had been continued for many years by continuously issuing appointment letters for a month or two and that the evidence on record indicated that work was available with the employer and that the workman had completed 240 days in the preceding twelve months. However it appears that the attention of the Learned Single Judge was not drawn to the judgment of the Apex Court in *Municipal Council, Samrala's case (supra)* which has clarified the judgment in *S. M. Nilajkar's case (supra)* by holding that Nilajkar's case was not an authority for the proposition that Section 2(oo)(bb) of the I. D. Act applies only to schemes or projects. The said judgment was therefore rendered oblivious of the judgment in *Municipal Council, Samrala's case (supra)* and is therefore denuded of its efficacy.

In so far as *Bhuvnesh Kumar Dwivedi's case (supra)* is concerned, the said judgment of the Apex Court would have no application in the facts of the present case as the said case involved the UP Industrial Disputes Act and secondly, the fact that the concerned workman was appointed on a contractual basis was not made out.

In so far as *Dattu Bapu Bhokare's case (supra)* is concerned, a

Learned Single Judge of this Court had remitted the matter back to the Labour Court for a de-novo consideration as the Learned Single Judge in the facts of the said case where the workman had alleged that he was appointed on temporary basis though work was of a perennial nature had come to a conclusion that the consideration of the Labour Court as to whether the said case was covered by Section 2(oo)(bb) of the I. D. Act was not proper.

In ***Voltas Limited Vs. M. M. Kendrekar*** reported in ***1984(2) Bom.C.R. 15*** is concerned, the facts in the said case related to the period prior to insertion of Section 2(oo)(bb) of the I. D. Act which has been introduced with effect from 18.08.1984 and therefore the said judgment cannot have any application in so far as the applicability of Section 2(oo)(bb) of the I. D. Act is concerned.

26 Hence the judgments cited (*supra*) on behalf of the Petitioners and having regard to the facts of the present case which have been adverted to hereinabove, the said judgments do not impact the conclusion that the termination of the Complainants is covered by Section 2(oo)(bb) of the I. D. Act.

27 The question also arises as regards the efficacy of Standing

Order 4-C of the Model Standing Orders vis-a-vis the provisions of Section 2(o)(bb) of the I. D. Act. The Model Standing Orders have been prescribed by the State Government in exercise of powers conferred by Section 15 of the Industrial Employment Standing Orders Act. It is well settled that Standing Orders are not delegated or subordinate legislation and therefore have no statutory flavour. At best they can be said to be statutorily imposed service conditions. Reference could be made to the judgment of the Apex Court in *Rajasthan State Road Transport Corporation's case (supra)*. Paragraph 18 of the said judgment is material and is reproduced hereinunder :-

“18. It is evident from a perusal of the above decisions that while the first decision referred to the certified Standing Orders as constituting "the statutory terms of employment". they were described as "conditions of service in a statutory form" and as "binding on the parties at least as much, if not more, as private contracts embodying similar terms and conditions of service" in the second decision. The third decision, reiterated the holding in the first decision. So far as the two last-mentioned decisions are concerned, it is obvious, they only purport to set out the purport of the earlier decisions. Vaidialingam, J. used the very expression "part of the statutory terms and conditions of service", while K. Ramaswamy, J. stated more emphatically that "certified standing orders have statutory force". It must, however, be said that in the decision rendered by Ramaswamy, J., the question as to the nature and character of the certified Standing Orders did not arise for consideration; the said observation was made in another context. The consensus of these decisions is: the certified Standing Orders constitute statutory terms and conditions of service. Though we have some reservations as to the basis of the above dicta as

pointed out supra, we respectfully accept it both on the ground of stare decisis as well as judicial discipline. Even so, we are unable to say that they constitute "statutory provisions" within the meaning of the dicta in Sukhdev Singh [(1975) 1 SCC 421: 1975 SCC (L&S) 101: (1975) 3 SCR 619] where it was held: (SCC p. 447, para 67)

"(T)he employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions".

Indeed, if it is held that certified Standing Orders constitute statutory provisions or have statutory force, a writ petition would also lie for their enforcement just as in the case of violation of the Rules made under the proviso to Article 309 of the Constitution. Neither a suit would be necessary nor a reference under Industrial Disputes Act. We do not think the certified Standing Orders can be elevated to that status. It is one thing to say that they are statutorily imposed conditions of service and an altogether different thing to say that they constitute statutory provisions themselves."

(emphasis supplied)

28 The said view was reiterated by the Apex Court in the subsequent judgment in *U. P. State Bridge Corporation Ltd's case (supra)*. Paragraph 13 of the said judgment is material and is reproduced hereinunder :-

"13. There is another aspect of the matter. Certified Standing Orders have been held to constitute statutory terms and conditions of service – D. K. Yadav V. J.M.A. Industries Ltd. [(1993) 3 SCC 259: 1993 SCC (L&S) 723] Although this statement of the law was doubted in Rajasthan SRTC v. Krishna Kant [(1995) 5 SCC 75: 1995 SCC (L&S) 1207: (1995) 31 ATC 110] it was not deviated from. It was however made clear that Certified Standing

Orders do not constitute “standing provisions” in the sense that dismissal or removal of an employee in contravention of the Certified Standing Orders would be a contravention of statutory provisions enabling the workman to file a writ petition for their enforcement. This is what was said by this Court in *Rajasthan Transport Corpn.* [(1995) 5 SCC 75: 1995 SCC (L&S) 1207: (1995) 31 ATC 110]: (SCC p. 86, para 18)

“Indeed, if it is held that certified Standing Orders constitute statutory provisions or have statutory force, a writ petition would also lie for their enforcement just as in the case of violation of the Rules made under the proviso to Article 309 of the Constitution. Neither a suit would be necessary nor a reference under Industrial Disputes Act. We do not think the certified Standing Orders can be elevated to that status. It is one thing to say that they are statutorily imposed conditions of service and an altogether different thing to say that they constitute statutory provisions themselves.”

(emphasis supplied)

29 The same view has been reiterated by the Apex Court in the subsequent judgment in *Rajasthan State Road Transport Corporation's* case (*supra*), wherein the Apex Court again held that the Standing Orders are statutorily imposed conditions of service and binding both upon employers and employees, though do not amount to “statutory provisions” and any violation of these Standing Orders entitles an employee to seek appropriate relief either before the forum created under the Industrial Disputes Act or the Civil Court.

30 In the said context, it would also be relevant to take note of

Standing Order 32 of the Model Standing Orders which reads thus :-

“32. Nothing contained in these Standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right under a contract of service, custom or usage or an agreement, settlement or award applicable to the establishment.”

Hence a reading of the Standing Order 32 discloses that nothing contained in the Standing Orders shall operate in derogation of any law for the time being in force. The logical corollary to the same would therefore be that in case of any conflict between the substantive provision of law i.e. Section 2(oo)(bb) and Standing Orders, the substantive provision of law will prevail over the Standing Orders which are held to be not statutory in nature. Hence the conclusion would be that once the termination of the employment of the Complainants was covered by Section 2(oo)(bb) of the I. D. Act, the operation of the Model Standing Orders cannot have any impact.

31 On behalf of the Petitioners the Learned Counsel Shri. Y. M. Pendse made the following further submissions whilst rejoining the submissions made by the Learned Senior Counsel Shri. S. K. Talsania on behalf of the Respondents in reply :-

i) That the Apex Court in *Haryana State Electricity Development Corporation Ltd's* case (*supra*) has taken a different view though one of

the Learned Judges who was part of the Bench was a party to the judgment of the Apex Court in *Municipal Council, Samrala's case (supra)*.

ii) That in the event of conflict between Standing Order 4-C of the Model Standing Orders and Section 2(oo)(bb) of the I. D. Act, the benefit of the more beneficial provision should be granted to the Petitioners. Reliance is sought to be placed on the judgments of this Court reported in 1991(2) Bom.C.R. 184 in the matter of Indian Tobacco Company Vs. Industrial Court, Nagpur, 1996 III LLJ (Suppl) 666 in the matter of Philipos Babu Vs. Bajaj Tempo Ltd., 2010(6) Mh.L.J. 178 in the matter of Raymond UCO Denim Ltd. Vs. Praful Warade and others, 1996 III LLJ (Suppl) P & H HC in the matter of Bhikku Ram Vs. Presiding Officer Rohatak and 2003(1) Mh.L.J. 745 in the matter of Saudi Arabian Air Lines Vs. Ashok Panchal.

iii) That if the two provisions i.e. Standing Order 4-C and Section 2(oo)(bb) of the I. D. Act are read harmoniously, there is no conflict between the two.

iv) That the contracts on the basis of which the Petitioners were appointed were against public policy. Reliance was placed on the judgment of the Apex Court reported in (1986) 3 SCC 156 in the matter

of Central Inland Water Transport Company Vs. Brojonath Ganguly and another.

v) That the interpretation should be such as to confer benefits on the workman rather than denial of the same. Reliance is sought to be placed on the judgment of the Apex Court reported in (2001)7 SCC 1 in the matter of Steel Authority of India Vs. National Water Front Union.

32 Before dealing with the aforesaid submissions, at the cost of repetition, it would be apposite to revisit the facts in the instant case. As indicated hereinabove, the Petitioners challenged their termination dated 28.07.1994 and have shown the cause of action for filing the Complaint as 22.03.1995 as according to them on the said day they were informed by the Respondents that they would not be appointed anymore. It has come in the evidence which has been adduced on behalf of the Complainants that they have not completed 240 days of service preceding their last appointment. It has also come in their evidence that they are aggrieved by the act of the Respondents of informing them on 22.03.1995 that they would not be appointed. It has also come in their evidence that after their termination, the Respondents have not appointed any person on temporary basis. On behalf of the Respondents, it has come in their evidence that the cause for appointing persons like

the Petitioners on contract basis was the temporary increase in demand of its products.

33 The aforesaid is the gist of the factual background and therefore the contentions urged in rejoinder would have to be considered in the said context.

 In so far as the judgment in *Haryana State Electronic Development Corporation Ltd's* case (*supra*), the said judgment was delivered in the facts of the said case where the appointment of the workman concerned therein with one days break was found fault with and was held not to be covered by Section 2(oo)(bb) of the I. D. Act. However what is significant to note is that the Apex Court observed that even if the employee therein was reinstated she could not be regularized and therefore deemed it appropriate to award lump-sum compensation of Rs.25000/-. The said judgment was therefore rendered in the facts which can be distinguished from the facts of the instant case which have been adverted to hereinabove.

 In so far as the second submission is concerned, the instant case is not a case where the Petitioners are deprived of the benefit of a more beneficial provision, but is a case where the applicability of Section

2(oo)(bb) of the I. D. Act having regard to the nature of the contract is in contention. It is also not a case where there is material difference between the service conditions contemplated under the contract of employment and the service conditions stipulated by the Model Standing Orders and is a case where the issue is whether the substantive provisions would override the provisions of the Model Standing Orders. Once the termination is covered by Section 2(oo)(bb) the applicability of Standing Order 4-C is ruled out.

In so far as the judgment in *Bhikku Ram's case (supra)* is concerned, a Division Bench of the Punjab and Haryana High Court in the facts of the said case wherein juniors were retained, observed that the Labour Court had failed to appreciate the controversy in the proper perspective and therefore had remanded the matter back to the Labour Court for a de-novo consideration.

In *Saudi Arabian Air Lines's case (supra)*, it was held by a Learned Single Judge of this Court that the workman concerned was liable to be made permanent under the Model Standing Order 4-C since the job of the security guard was of a permanent nature and even after his termination the Petitioner i.e. Saudi Arabian Air Lines had employed permanent guards. In the said fact situation, it was held by the Learned

Single Judge that the job of the security guard cannot be said to be of a temporary nature which would end by efflux of time nor could it be said that Section 2(oo)(bb) of the I. D. Act was attracted. The said judgment was also rendered in the facts which were before the Learned Single Judge of this Court.

In *Indian Tobacco Company Limited's* case (*supra*), it was held by a Learned Single Judge that the provisions of Industrial Employment (Standing Orders) Act are engrafted into Bombay Shops and Establishment Act with only necessary changes in points of details. Hence only Model Standing Orders framed under the Industrial Employment (Standing Orders) would govern the relations between the parties. It was further held that prohibition is cast against operation of Standing Orders only when better rights acquired by an employee under a contract of service are likely to be prejudiced. The said judgment would have no application, as there is no question of better rights acquired by the Complainants, but as indicated above, the question is about the applicability of Section 2(oo)(bb) of the I. D. Act which is a substantive provision.

In *Philipos Babu's* case (*supra*), the same view as taken in *Indian Tobacco Company's* case (*supra*) was taken by a Learned Single

Judge of this Court namely that the Model Standing Orders would override any provision in the contract of employment.

In *Raymond UCO Denim Ltd's* case (*supra*), a Learned Single Judge of this Court held that the benefit of more beneficial provision is to be granted even to employees on probation.

In my view, the said judgments would not further the case of the Petitioners in so far as their claim for permanency under Section 4-C of the Standing Order is concerned having regard to the factual differences.

34 In so far as the submission (iv) that the contracts entered into between the Petitioners and the Respondents were against public policy is concerned, in my view, as already held hereinabove, the Petitioners having accepted the said contracts without demur from the year 1985 and having raised a dispute only as regards their last termination which has taken effect on 28.07.1994 and also coming with the case that the cause of action for filing the Complaints was the fact that they were denied employment on 22.03.1995, the Petitioners are now estopped from challenging the said contracts of employment being against public policy. The Petitioners whilst the contracts were in

existence did not question them, and have taken the benefit under them. It is long after their termination and when they were denied fresh appointment that the Petitioners are now seeking to call in question the said contracts. The termination of the Petitioners pursuant to the said contracts having been held to be covered by Section 2(oo)(bb) of the I. D. Act, the said contention would have to be rejected.

35 In so far as the judgment of the Apex Court in *Central Inland Water Transport Company's* case (*supra*). The Apex Court in the said case was concerned with the term in the contract of employment providing for termination of services of the permanent employees without assigning any reasons on three months notice or pay in lieu thereof on the other side. Such a clause was held by the Apex Court in the said case to be unconscionable, arbitrary and opposed to public policy. The said judgment would have no application as in the instant case, the termination has been effected on account of the contract coming to an end on account of efflux of time and similar terminations in the past were accepted by the Petitioners without demur.

36 Now coming to the last contention that the interpretation should be such as to confer benefits on the workman rather than denial of the same, in my view, as mentioned hereinabove, the issue in the

instant proceedings is as regards the applicability of Section 2(oo)(bb) of the I. D. Act which is an exception to retrenchment as contemplated under Section 2(oo) of the I. D. Act. If the requisites for the application of Section 2(oo)(bb) of the I. D. Act are satisfied, then the legal consequences thereof would necessarily have to follow and therefore there is no question of conferring benefits on the workman rather than denial of the same. If an interpretation as sought by the Petitioners is given, then the result would be that Section 2(oo)(bb) of the I. D. Act, which has been incorporated to cover specific cases of termination would become otiose.

37 In so far as the judgment in *Steel Authority of India's case* (*supra*) is concerned, in the said case, the Apex Court was concerned with the dispute relating to the abolition of contract labour and it is held by the Apex Court in the said judgment that in case of ambiguity in the labour legislation, although the question is to be resolved in favour of conferment of, rather than denial of benefits to the labour but that is to be done without rewriting or doing violence to the provisions of the enactment. For the reasons aforesaid, the said judgment would also have no application in the facts of the present case.

38 The Respondents also opposed the maintainability of the

Complaints for the relief claimed by way of permanency by the Petitioners on the ground of the settlement dated 08.02.1994 entered into between the recognized union and the Respondents. It seems that the recognized union in its charter of demands dated 01.01.1993 had sought permanency for 61 employees including temporary packers and after due negotiations the parties agreed to the regularization of the 27 employees including 12 packers whose names are mentioned in the settlement. It was therefore the contention of the Respondents that the Petitioners who are admittedly left out would also be bound by the settlement and cannot seek permanency contrary to the terms of the settlement. It was also sought to be contended that since there was no challenge to the settlement, the said recognized union and the Petitioners would be bound by the said settlement. It was also the submission of the Respondents that Standing Order 4-C cannot have application de-hors the settlement.

39 Reliance was placed on the Division Bench judgment of this Court in **Pune Municipal Corporation and others**. The facts in the said case were that the concerned employees union therein had entered into a settlement with the employer in September 1989 and in terms thereof it was agreed that the claim of permanency would be available to the employees only on completion of service of five years. The employees

relying upon Standing Order 4-C of the Model Standing Orders had claimed permanency on the completion of 240 days in service. The said relief was refused on the ground that mere completion of 240 days in service in the absence of the availability of permanent posts duly approved by the Competent Authority would not be sufficient to claim permanency. The Division Bench also observed that one cannot ignore the lawful settlement arrived at between the parties. The Division Bench also adverted to Standing Order 32 of the Model Standing Orders which has already been referred to hereinabove which provides that nothing contained in the Standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right under a contract etc. The Division Bench concluded that once it is not in dispute that under the valid and lawful settlement their claim of permanency would be available only on completion of five years of continuous service and depending upon the availability of permanent vacant post duly approved by the Government, no claim under Standing Order 4-C of the Standing Orders ignoring the settlement arrived at can be entertained. Hence in the aforesaid case of *Pune Municipal Corporation*, the employees who were members of the union had sought the relief contrary to the terms of the settlement. Such is not the case in the instant matter. As in the instant case, the Petitioners who were temporaries were not covered

by the settlement which has been observed by the Learned Judge of the Labour Court by recording a finding that the Petitioners who were working on contract basis for temporary period were not bound by the settlement and therefore were entitled to prosecute the Complaint for the relief sought under Item 1 of Schedule IV of the MRTU & PULP Act. In my view, no fault can be found with the said finding of the Labour Court as confirmed by the Industrial Court. It would be one thing to say that the Complaints are not maintainable and another thing to say that the Complainants are not entitled to the relief of permanency. Hence in so far as the said ground is concerned, the Petitioners were entitled to prosecute the Complaints as they were not bound by the settlement. However in the instant case the Petitioners are not entitled to the relief of permanency in view of the fact that their cases are covered by Section 2(oo)(bb) of the I. D. Act. It is also required to be noted that in so far as the judgment of the Division Bench of this Court in *Pune Municipal Corporation's case (supra)*, it has been held by a Learned Single Judge of this Court in the judgment dated 07.06.2010 in Writ Petition No.443 of 2010 and companion matters as per-incurium to the extent of the finding in paragraph 9 of the said judgment after the quotation of Standing Order 32 in view of the judgment of the Supreme Court reported in **1974 SCC 330** in the matter of **Western India Match Company Ltd. Vs. Workmen.**

The said finding was recorded by the Division Bench of this Court on the basis of the clause in the agreement which provided for permanency after putting in 5 years of service. Hence the issue was the efficacy of the said Standing Order 4-C of the Model Standing Orders. In which context the Apex Court in *Western India Match Company Ltd's* case (*supra*) held that the clause in the agreement inconsistent with the Standing Order cannot prevail over the Standing Order. However in the instant case, the issue is whether the substantive provision i.e. Section 2(oo)(bb) of the I. D. Act would override the Standing Order 4-C, which this Court has answered in the affirmative, and therefore the efficacy of Standing Order 32 of the Standing Orders does not stand denuded. Hence in the instant case, Section 2(oo)(bb) of the I. D. Act would be the law that is envisaged by Standing Order 32 and therefore Standing Order 4-C cannot operate in derogation of Section 2(oo)(bb) of the I. D. Act.

40 In the instant case, both the Courts below have concurrently held that the termination of the Petitioners is covered by Section 2(oo)(bb) of the I. D. Act. Both the Courts below having regard to the material on record i.e. the pleadings and evidence have concurrently held that the Petitioners have not completed 240 days of service in the preceding 12 calender months. In my view, the view taken by the Courts below cannot be said to be a view which could not be taken in the facts and

circumstances of the case.

41 This Court has also recorded a finding that the claim of the Petitioners is barred on the application of the principles of estoppel and acquiescence. This Court has also reached a conclusion that Section 2(oo) (bb) of the I. D. Act would override Standing Order 4-C of the Model Standing Orders. The fact that the Petitioners have been discontinued as long back as on 28.07.1994 would also have to borne in mind. In that view of the matter, no case for interference in the writ jurisdiction of this Court has been made out. The Writ Petition is accordingly dismissed. Rule discharged with parties to bear their respective costs.

[R. M. SAVANT, J]