

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

WRIT PETITION NO. 7423 OF 2018

- | | | |
|--------------------------------------|---|--------------------------------|
| 1. Kiran Shankar Rawool |] | |
| 2. Denis Brian Fernandes |] | |
| 3. Javed Rajput |] | |
| 4. Ravindra Gulia |] | |
| 5. Harry Stephen D'Souza |] | |
| 6. Anil Kadam |] | |
| 7. Blaise D'Souza |] | |
| All having address at Shivaji Nagar, |] | |
| William Chawl No.25/2, Vakola, |] | |
| Santacruz (East), Mumbai-400 055. |] | <u>... Petitioners.</u> |

Versus

- | | | |
|---|---|--------------------------------|
| 1. Eastern International Hotel |] | |
| 2. Executive Director |] | |
| Estern International Hotel |] | |
| All having address at Balraj Sahani Marg, |] | |
| Juhu Beach, |] | |
| Mumbai - 400 049. |] | <u>... Respondents.</u> |

ALONG WITH

WRIT PETITION NO. 6910 OF 2018

- | | | |
|---------------------------------|---|-------------------------------|
| Estern International Hotel |] | |
| Balraj Sahani Marg, Juhu Beach, |] | |
| Mumbai - 400 049 |] | |
| Through Mrs.Meena Vaswani, |] | |
| Corporate Financial Controller. |] | <u>... Petitioner.</u> |

Versus

1. Kiran Shankar Rawool	]	
2. Denis Brian Fernandes	]	
3. Javed Rajput	]	
4. Ravindra Gulia	]	
5. Harry Stephen D'Souza	]	
6. Anil Kadam	]	
7. Blaize D'Souza	]	
All C/o. William Chawl No.14/6,	]	
Shivaji Nagar, Vakola, Santacruz (East),	]	
Mumbai-400 055.	]	<u>... Respondents.</u>

- Mr.Sanjay Singhvi, Senior Advocate a/w. Mr.Bennet D'costa and Ms.Jignasha Pandya for the Petitioner in WP/7423/2018 and for the Respondent in WP/6910/2018.
- Mr.Sudhir Talsania, Senior Advocate a/w. Mr.Ravindra V. Paranjpe for Respondent Nos.1 and 2 in WP/7423/2018 and for the Petitioners in WP/6910/2018.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 21st NOVEMBER, 2018.

PRONOUNCED ON : 05th DECEMBER, 2018.

JUDGMENT. :

1] Rule. Rule made returnable forthwith.

2] With the consent of learned counsel for both the parties, these Writ Petitions are taken up for final hearing at the stage of admission itself.

3] These two counter Writ Petitions are arising out of the judgment and order dated 06/06/2018 passed by the President, Industrial Court, Maharashtra, Mumbai, in Revision Application (ULP) No.90-2011.

4] Out of these two, Writ Petition No.6910 of 2018 is preferred by the Employer; whereas Writ Petition No.7423 of 2018 is preferred by the Employees, whose termination from service was considered by the Industrial Court as the “unfair labour practice” and they were directed to be reinstated with 25% of the last drawn wages. The employer is aggrieved by the order of declaring the termination order as illegal and that of reinstatement of the employees; whereas the employees are having the grievance that they have been paid only 25% of back wages and not the full back wages for the period in between July 2009 till the date of reinstatement.

5] For the sake of convenience, the employer is referred to as the Petitioner; whereas the employees are referred as the Respondents.

6] The facts of the Writ Petitions are, mostly undisputed and they are to the effect that :

The Petitioner, herein runs a five star Hotel at Juhu, wherein the Respondents were employed along with about 200 other employees. As the building of the Hotel required massive repairs, which were not possible, without keeping it closed for substantial time, the Petitioner preferred to serve a notice of temporary closure to all the employees on 09/02/2008, thereby directing the employees not to report to work from 10/02/2008 till they receive an intimation in writing regarding dates of resumption of duties, subject to their fitness.

7] Being aggrieved by the said notice, the Union representing the employees known as “Bhartiya Kamgar Sena”, filed the Complaint (ULP) No.79 of 2008 in the Industrial Court at Mumbai, alleging that the said notice of temporary closure is illegal. However, the matter came to be amicably settled between the Union and the Petitioner. As a result, out of 208 employees, all the employees except the Respondent No.1 to 7 herein accepted voluntary retirement benefits and the Union has withdrawn the Complaint. The present Respondents, however, did not agree to the said settlement. Therefore, at the time of disposal of the said Complaint before the Industrial Court the Respondents sought liberty to continue the proceedings to protect their rights. Their application for impleadment however came to be rejected with liberty

to file fresh complaint, if law permits and the Complaint filed by the Union came to be disposed as settled on 07/07/2008 as regards remaining 199 employees who had preferred voluntarily retirement from their service as an outcome of the amicable settlement.

8] Thereafter, the Petitioner has retrenched the services of these Respondents by issuing individual notices dated 15/07/2008. Being aggrieved thereby and as per the liberty given to them, the Respondents had filed this Complaint (ULP) No.225 of 2008 before the Labour Court, Mumbai, challenging their retrenchment notice. The controversy thus remained only in between the Petitioner-employer and these Respondents and the issue raised before the Labour Court was, *“whether the termination of their services by way of retrenchment was an unfair labour practice under Items 1(a), 1(b), 1(d) and 1(f) of Schedule IV of The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (here-in-after referred to as “MRTU and PULP Act” for short) ?”*

9] It may be stated that during the period of temporary closure of the Hotel, on 23/04/2008 the Petitioner entered into an agreement with M/s.AAPC Hotels Management PTE Limited. The repair work of the Petitioner's Hotel was also completed and it was

restarted in July-2009 by the new Management in the brand name Novotel, Juhu, Mumbai. The Respondents therefore amended the Complaint on 21/01/2010 wherein they claimed that as per the letter issued to them on 09/02/2008 they are entitled to be re-employed and for reinstatement in the service, in view of mandatory provisions of Section 25-H of *The Industrial Disputes Act, 1947* (here-in-after referred to as "*the I.D. Act*" for short).

10] The contention of the present Petitioner was that the Respondents have been validly retrenched from their service. Hence, they are now not entitled to re-employment; especially because the Management of the Hotel has changed the hands and there existed no categories of the employees for which the Respondents were working, as the new Management has after taking into consideration the multi-tasking skill, so as to ensure profitability and flexibility etc, recruited only two categories of employees, i.e. Associates and Team Leaders.

11] The learned Labour Court made enquiry into the Complaint of the Respondents by examining the witnesses produced on behalf of both the sides and after referring to the documents and oral evidence, came to the conclusion that, the retrenchment of the Respondents is legal and valid and it does not amount to unfair labour

practice. Hence, the Respondents are not entitled for relief of reinstatement or re-employment under Section 25-H of the I.D. Act. This conclusion was arrived at considering the fact that the Management has been changed and the business which is now being transacted does not require the employees of the type to which the Respondents belong. It was held by the Labour Court that the Hotel was closed because of unavoidable circumstances beyond control of the employer and therefore Section 25-H of the I.D. Act would have no application.

12] Being aggrieved by this order, the Respondents-employees preferred the Revision Application (ULP) No. 90 of 2011 before the Industrial Court, Mumbai. During the pendency of the said Revision, the Respondents submitted an application praying for remand of the proceeding and also for amendment in the Revision Application to incorporate certain legal contentions, like, validity of the settlement arrived at between the Union representing the remaining 199 employees and the establishment on 12/06/2008 and the effect of non-compliance of Sub-Section (a) to (c) of Section 25-F and Section 25-H of the I.D. Act. The Revisional Court was pleased to dispose off the said application by observing that as the amendment is sought for raising the questions of law, those question of law shall be allowed to be raised

at the time of final hearing of the Writ Petition, as the facts necessary for raising them are already on record.

13] Thereafter, hearing learned counsel for both the parties in the Revision Application on this question of law also, the Tribunal has allowed the Revision Application holding that, though there appears to be compliance of Clause (a) and (b) of Section 25-F of the I.D. Act, undisputedly there was no compliance of Clause (c) and hence, the retrenchment order cannot be sustainable for want of compliance of mandatory provision of Section 25-F(c). The Tribunal also held that before closing down the Hotel, at-least 60 days notice, which was necessary to be given under Section 25(FFA) of the I.D. Act, was not given. Apart from that, it was also held by the Tribunal that the closure of the establishment was only for a temporary period and the assurance was given that after the repairs were carried out, the employees will be informed, regarding dates of resumption of duties. It was held that despite such assurance, on a vague plea that the Management of the Hotel is changed and there is no category of employees to which the Respondents belong, available for taking them in the service, the rightful claim of the Respondents employees was being denied. The Tribunal therefore held this conduct of the Petitioner-establishment as an “unfair labour practice” and hence,

directed the reinstatement of the Respondents in the service of the Petitioner. However, by observing that as no evidence was laid by the Respondents to prove that during this period they were not gainfully employed or could not get any gainful employment, even after the attempts made by them, and there was probability that they would not remain unemployed for such a long time, allowed them only 25% of the last drawn wages as an adequate relief.

14] Against this order of the Tribunal, both the parties have come before this Court.

15] Now taking up the first contention, raised by learned counsel for the Petitioner as regards the challenge raised by the Respondents by way of amendment in the Revision Application, to the amicable settlement arrived at between the Union and the remaining 199 employees, I find much substance in the submission advanced by him, as such contention cannot be available to these Respondents, who were not parties to that settlement. If at all the said settlement was not fair, it was for the Union or those 199 employees who were party to the said settlement to raise such grievance. So far as present respondents are concerned, as admittedly they were not parties and they chose to contest their Complaint and the liberty was accordingly

given to them, they have no locus to challenge the said settlement.

16] The only question for consideration is whether the order of retrenchment of Respondents from the service is legal and valid or whether it amounts to unfair labour practice? For deciding its legality, the Court has to consider whether there was proper compliance of mandatory conditions laid down under Section 25-F of the I.D. Act and for deciding, whether it was an unfair labour practice resorted to by the Petitioner, it has to be seen whether it was done in good faith or *malafide*, under colorable exercise of the power?

17] To know whether there was mandatory compliance of statutory conditions laid down in Section 25-F of I.D., it would be useful to reproduce it as follows.

“25-F. Conditions precedent to retrenchment of workmen -

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

(a) the workman has been given one month's notice in writing indicating the reasons for

retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

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

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

18] In the instant case, there is no dispute as to the compliance of conditions laid down in Clause (a) and (b) of Section 25-F. It is a matter of record that while effecting the retrenchment, individual letters dated 15/07/2008 were sent to the Respondents by registered post and they had received the same. As a part of compliance an amount equivalent to one month's wage at last drawn rate and retrenchment compensation at the rate of 15 days average pay for each completed year of service was also credited to their respective saving accounts. As such, otherwise also, there is no grievance raised as to compliance of conditions laid down in Clause (a) and (b).

19] The real issue is the compliance of the condition laid down in Clause No.(c) of Section 25-F. The Tribunal has observed that “undisputedly” there is no compliance of Clause (c), which finding is challenged by learned counsel for the Petitioner on the count that the Petitioner is disputing the said fact. However, even accepting that it was a disputed fact, the burden was obviously on the Petitioner, to prove it. It was for the Petitioner to produce on record the office copy of the notice given in the prescribed manner to the appropriate Government and further to produce on record acknowledgement receipt to show that the said notice was duly served on the appropriate Government. It is a matter of record that the Petitioner has not produced either the office copy of the said notice or its acknowledgement. There is also no pleading that such notice was actually issued on a particular date and it was duly served. Hence, in absence thereof, the inference is inevitable that no such notice was given. Therefore, there is no proper compliance of Clause (c) of Section 25-F of the I.D. Act. Mere statement made in the Petition that there was proper compliance of Section 25-F of the Act is not sufficient, sans such material and pleading when the fact was raised for consideration and the Petitioner could have been in possession of such documentary evidence, if the notice was given.

20] As a matter of fact, according to learned counsel for the Petitioner, the compliance of the condition laid down in Clause (c) is not mandatory at all, as it is merely directory in nature. To substantiate this submission, learned counsel for the Petitioner has placed reliance on the judgment of the Apex Court in the case of *Bombay Union of Journalists and Others Vs. State of Bombay and Another*¹, wherein it was held that when there is compliance of Clause (a) and (b), which are mandatory in nature, then in that situation Clause (c) cannot be held to be a condition precedent, even though it has been included under Section 25-F along with Clauses (a) and (b) which prescribe conditions precedent. It was held that, “*as the hardship resulting from retrenchment has been partially redressed by compliance of first two clauses (a) and (b), there is every justification for making them condition precedent. However, the same cannot be said about the requirement as to Clause (c)*”. It was further held that, “*Clause (c) is not intended to protect the interest of the workman as such. It is only intended to give intimation to the appropriate Government about retrenchment and that only helps the Government to keep itself informed about the conditions of the employment in different industries within its region. There does not appear to be present any compelling consideration which would justify*

1 AIR 1964 SC 1617

the making of the provision prescribed by Clause (c) a condition precedent as in the case of Clauses (a) and (b)". Thus, it was held that, "having regard to the object which is intended to be achieved by Clauses (a) and (b), as distinguished from the object which Clause (c) has in mind, it would not be unreasonable to hold that Clause (c), unlike Clauses (a) and (b), is not a condition precedent".

21] However, it must be noted that, the view taken by the Apex Court in this judgment of *Bombay Union of Journalists (supra)* has been distinguished in the recent judgment of *Raj Kumar Vs. Director of Education and Others*². While considering the exact question whether the compliance of Clause (c) is mandatory or directory, it was held in paragraph Nos.34 and 35 that, *"though in the decision rendered in the case of Bombay Union of Journalists (supra) in the year 1963, holding that the provisions of Section 25-F(c) of the I.D. Act are directory and not mandatory in nature and though the Parliament has amended the law, thereafter nothing was done on the part of Legislature to indicate that it intended Section 25-F(c) of the I.D. Act to be a directory provision, when the other two sub-sections of the same section are mandatory in nature"*. It was held that,

“in the case of Bombay Union of Journalists (supra), this Court read the I.D. Act and the relevant Rules thereunder together and arrived at the conclusion that Section 25-F(c) is not a condition precedent for retrenchment. By no stretch of imagination can this decision be said to have held that there is no need for industries to comply with this condition at all. At the most, it can be held that Section 25-F(c) is a condition subsequent, but is still a mandatory condition required to be fulfilled by the employers before the order of retrenchment of the workman is passed.”

22] It was further held in this judgment that,
“Rule 76(a) of the 1957 Rules clearly mandates that the notice has to be sent to the appropriate authorities within three days from the date on which notice is served on the workman”.

23] In the said case, as no evidence was produced on behalf of the Respondent-employer to show that the notice of retrenchment has been sent to the appropriate Government till the date, it was held that the mandatory condition of Section-25-F of the I.D. Act to retrench workman has not been complied with. Hence, the retrenchment order was set-aside.

24] In the light of this authoritative pronouncement of the Apex Court, it is unequivocal that the compliance of Clause (c) of Section 25-F is mandatory. In the present case, absolutely nothing is produced on record by the Petitioner to show that such notice was given to the appropriate Government, either before or subsequent to the retrenchment of the Respondents. Hence, for want of compliance of such mandatory condition, the Tribunal was justified in holding that the retrenchment of the Respondents cannot be called as legal and valid.

25] As rightly held by the Tribunal, this aspect of non compliance of Clause (c) has a material bearing on the facts of the present case, in order also to decide whether the retrenchment order was an unfair legal practice adopted by the Petitioner under the colorable exercise of power or otherwise. It may be noted that in the instant case the services of the employees, including the Respondents were stopped with immediate effect from 10/02/2008 by the notice of temporary closure dated 09/02/2008. It was done with an assurance given to them in the notice itself that they would receive an intimation in writing regarding dates of resumption of duties. Indirectly it was an assurance that they would be re-employed upon recommencing of the

operation of the Hotel. This fact is not disputed by the Petitioner also. No notice of 60 days as contemplated under Section 25-FFA of the I.D. Act was also given before the date on which intended closure was to become effective. Thus, there was no compliance of the legal procedure for such temporary closure also. Not only that, the Management of the Hotel was also changed meanwhile. As the Respondents did not opt for Voluntary Retirements like other 199 employees on 07/07/2008, their retrenchment orders came to be issued on 15/07/2008 within eight days of the disposal of Complaint (ULP) No.79 of 2008. Hence, the intention behind the retrenchment of the Respondents is clear. It was to ensure that the new Management can have the employees of their choice.

26] It needs to be noted that, even after Hotel business was recommenced, the Respondents were not allowed to join the employment, though such assurance was given to them in the letter dated 09/02/2008 and it was done under the specious plea that the Management has changed the hands and the category in which the Respondents were working, those posts were no more available. As rightly pointed out by learned counsel for the Respondents, only the Management of the Hotel is changed but not the ownership of the business. The business still remains with the Petitioner. Even

otherwise, the new Management cannot get rid of the liabilities or obligations of erstwhile Management, as the change of Management of the business carries with it the shifting of liabilities. Moreover, the Respondents were working in the 'General Category' which does not require any expertise as such for working in the Hotel Business. One can work in one category and at the same time, if required, can work in other categories also like a Accountant or Manager. It can hardly be said that those categories of employees are no more required by the new Management when the business remains the same.

27] Section 25-H of the I.D. Act provides for re-employment of retrenched workmen, who offer themselves for re-employment and they are to have the preference over other persons. It is the duty of the employer, in so far as those persons, who were earlier employed and retrenched, to prepare the list of those persons for the purpose of offering the job opportunity to them, when the employer proceeds to make re-employment. It is a mandatory right given to the employees. This right cannot be taken away from the employees. The Petitioner however is attempting to do so. Hence, as rightly held by the Tribunal, the entire exercise undertaken by the Petitioner was a colorable exercise of power, first by temporarily closing the business for the purpose of repairs, then getting rid of majority of workers, for the

purpose of changing the Management and thereafter retrenching these Respondents on the spacious plea of non availability of work. The reason behind it clearly appears to be their non accepting Voluntary Retirement like other workers.

28] Thus, the retrenchment of the Respondents is neither done in good faith nor in the interest of the employees. The denial of reemployment to them is also in violation of the provisions of Section 25-H of the I.D. Act and amounts to unfair labour practice. The Tribunal has hence rightly set-aside their retrenchment and granted the relief of reinstatement. Therefore, the Writ Petition No.6910 of 2018 preferred by the establishment challenging the said order is liable to be dismissed.

29] As regards the Writ Petition No.7423 of 2018 which is preferred by the employees, challenging the order of the Tribunal awarding them only 25% of the wages last drawn by them, there appears much substance in the grievance raised by the employees. It is to be noted that, in the light of the judgment of the Apex Court in the case of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others*³, the burden was upon the

3 (2013) 10 SCC 324

employer to prove that during this period of retrenchment, the Respondents-employees were gainfully employed. However, in this case, the employer has not adduced any evidence regarding the employment of these Respondents. The Tribunal has however held that it was for the Respondents-employees to prove what attempts were made by them to get the employment and since they have not discharged this burden, the probability that they would not remain unemployed for such a long time, would prevail, and therefore, in the circumstances, the Tribunal has held that 25% of the last paid wages would be adequate relief.

30] However, as rightly submitted by learned counsel for the Respondents-employees these observations of the Tribunal run contrary to the law settled by the Apex Court in the case of *Deepali Gundu Surwase (supra)*, wherein the Apex Court in paragraph No.38 has laid down the propositions, dealing with the issue of payment of back wages in the case of wrongful termination of service. Those propositions, for ready reference, can be reproduced as follows:

“38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its

existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under [Section 11-A](#) of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the

concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under [Article 226](#) or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always keep in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply

because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”

31] In view of this legal position, it is clear that the only burden which was on the Respondents-employees was to make a statement that they were not gainfully employed or were employed on

lesser wages, then the burden was to shift upon the employer to plead and also to lead evidence to prove that they were gainfully employed and were getting wages equal to the wages they were drawing prior to the termination of service.

32] Here, in the case, the Respondents-employees have made such statement on oath that during the relevant period they were not gainfully employed. Hence, the burden was shifted on the Petitioner-employer to prove and lead cogent evidence on that aspect to prove that the employees were gainfully employed and were getting the substantially similar emoluments. No such evidence is laid or for that matter even no specific pleadings to that effect are raised. In such circumstances, the Tribunal should not have denied them the full back wages, especially when, as observed in this judgment of *Deepali Gundu Surwase (supra)*, the employer in this case, has acted in gross violation of the statutory provisions, while retrenching the Respondents-employees on the ground of the temporary closure of the Hotel for repairs. Thereafter, though the Hotel was repaired and the business restarted, the employer avoided to comply with the provisions of Section 25-H of the I.D. Act.

33] Thus, in case of such wrongful and illegal termination of

service, where the wrongdoer is the employer and sufferer is the employee, no premium can be given at all to the Petitioner-employer for its wrong doings, by relieving the Petitioner of the burden to pay to the employees their dues in the form of full back-wages. Merely because the litigation has taken long time and the probability cannot be ruled out that during this long period the Respondents-employees might have worked somewhere for maintaining themselves, they cannot be deprived of their rightful claim.

34] For the sake of argument even if the probability of these employees not remaining unemployed for such a long time is accepted, the fact remains that they may not have got the service or the payment of the same level, as they were earning. Even if they have worked somewhere, whatever they were earning was merely for their day-to-day maintenance and for their survival which must be grossly inadequate.

35] Hence, once it is held that there was gross violation of provision of Section 25-F(c) and 25-H of the I.D. Act and on the pretext of closing the business temporarily for the purpose of repairs, the Petitioner-employer has got rid of the service of its erstwhile employees and thereafter refused to reinstate them, after handing

over the Management to some other agency, but retaining its ownership, the Respondents-employees need to be given full back-wages.

36] Assuming that they have received some amount by way of compensation when they were retrenched, that will not also exempt the employer from paying them the full back-wages considering the facts and circumstances of the instant case. It would also amount to grave injustice to them, if they are denied back-wages, simply because there is long lapse of time between the termination of their services and the finality given to the order of reinstatement. The Petitioner-employer in this case is in advantageous position. The Petitioner has changed the Management which has engaged the new employees and have started running business, but deprived the Respondents-employees of their lawful claim over the job and the wages. Hence, according to this Court, this is a fit case where the Tribunal should have granted full back-wages without any liability of paying any interest but after deducting the amount paid to them towards their retrenchment compensation.

37] Therefore, the Writ Petition preferred by the employees needs to be allowed.

38] As a result, following order is passed.

- (i) *Writ Petition No.6910 of 2018 preferred by the Petitioner-employer stands dismissed.*
- (ii) *As a result, the order passed by the Revisional Court for the reinstatement of the Respondents-employees therein with back-wages stands confirmed.*
- (iii) *Writ Petition No.7423 of 2018 preferred by the employees is allowed.*
- (iv) *The impugned order passed by the Tribunal is modified by directing the Petitioner-employer to pay to each of the employee full wages at the rate last drawn by them before retrenchment for the period in between July 2009 till the date of reinstatement, however, without any liability of paying any interest and after deducting therefrom the amount paid to them towards retrenchment compensation.*

39] Rule is made partly absolute in above terms.

40] At this stage, learned counsel for the Petitioner-employer seeks extension of the stay, granted by this Court during the pendency of the Writ Petition(s), for a period of eight weeks, in order to enable the Petitioner-employer to approach the Hon'ble Supreme Court. Learned counsel for the Respondent-employee submits that, he has no objection to grant the stay for a period of six weeks.

41] Considering the impending vacation, the order passed by this Court is stayed for a period of eight weeks from today.

[DR.SHALINI PHANSALKAR-JOSHI, J.]