

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 4502 OF 2006**

Shri Sunil Pralhad Khomane & Ors. ...Petitioners

vs.

M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

WITH

WRIT PETITION NO. 9053 OF 2005

Hiralal Gulbhai Patel & Ors. ...Petitioners

vs.

M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

WITH

WRIT PETITION NO. 3175 OF 2012

Shri Laxman Bhonaji Dayalkar ...Petitioner

vs.

M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

WITH

WRIT PETITION NO. 3191 OF 2012

Shri Pramod Kisan Khete ...Petitioner

vs.

M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

WITH

WRIT PETITION NO. 3192 OF 2012

Shri Dhanajirao Bapu Patil ...Petitioner

vs.

M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

WITH

WRIT PETITION NO. 3193 OF 2012

Shri Kisan Sahebrao Gawli ...Petitioner

vs.

M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

WITH

WRIT PETITION NO. 3194 OF 2012

Shri Kishore Dattatreya Upare ...Petitioner
vs.
M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

**WITH
WRIT PETITION NO. 3203 OF 2012**

Shri Rajendrakumar Sheshamal Pipada ...Petitioner
vs.
M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

**WITH
WRIT PETITION NO. 3204 OF 2012**

Shri Kiran Sadhu Nagare ...Petitioner
vs.
M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

**WITH
WRIT PETITION NO. 3206 OF 2012**

Shri Vinayak Vaman Vidhate ...Petitioner
vs.
M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

**WITH
WRIT PETITION NO. 6516 OF 2012**

Shri Prashant Gopal Karmarkar ...Petitioner
vs.
M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

**WITH
WRIT PETITION NO. 6517 OF 2012
ALONG WITH
CIVIL APPLICATION NO.2628 OF 2015
IN
WRIT PETITION NO. 6517 OF 2012**

Shri Ramesh B. Chintal ...Petitioner
vs.
M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

**WITH
WRIT PETITION NO. 6518 OF 2012**

Shri Suresh Yelvande ...Petitioner
vs.

M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

**WITH
WRIT PETITION NO. 6519 OF 2012**

Shri Subhash Govinddas Shah ...Petitioner

vs.

M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

**WITH
WRIT PETITION NO. 6520 OF 2012**

Shri Vijaybabu S. Silam ...Petitioner

vs.

M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

**WITH
WRIT PETITION NO. 6521 OF 2012**

Shri Chandrakant K. Randive ...Petitioner

vs.

M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

**WITH
WRIT PETITION NO. 6522 OF 2012**

Shri Shailendra Manohar Yande ...Petitioner

vs.

M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

**WITH
WRIT PETITION NO. 6523 OF 2012**

Shri Sanjay Madhavrao Naik ...Petitioner

vs.

M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

**WITH
WRIT PETITION NO. 6524 OF 2012**

Shri Sanjay Padmakar Kuvar ...Petitioner

vs.

M/s. Bajaj Auto Ltd., Akurdi, Pune ...Respondent

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Mr. V.P. Patil, a/w. Mr. S.D. Paithane, for Petitioner in WP 6516/2012 to WP 6524/2012.

Mr. Sanjay Singhvi, Senior Advocate, a/w. Ms. Jane Cox and Ms. Karishma

Rao, i/b. Ms. Jane Cox, for Petitioners in WP 9053/2005 and WP 4502/2006.

Mr. Sanjay Singhvi, Senior Advocate, a/w. Ms. Jane Cox and Ms. Karishma Rao, i/b. Mr. Manmohan A. Amonkar, for Petitioners in WPs 3175/2012, 3191/2012, 3192/2012, 3193/2012, 3194/2012, 3203/2012, 3204/2012 and 3206/2012.

Mr. J.P. Cama, Senior Advocate, a/w. Mr. K.M. Naik, Senior Advocate, Mr. Mac Bodhanwalla, Solicitor, Mr. Sheroy Bodhanwalla, Counsel and Ms. Sakshi Sharma, Associate Advocate, i/b. M.S. Bodhanwalla & Co., for the Respondent in all petitions.

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CORAM : S.C. GUPTE, J.

DATE : 1 FEBRUARY 2021

ORAL JUDGMENT :

. This group of petitions challenges four sets of identical awards passed by Labour Courts at Pune on references made to them under the Industrial Disputes Act, 1947. By the impugned awards, the references, made at the instance of workmen of the Respondent, were answered in the negative by the courts. The second party workmen, who are Petitioners herein, challenge the awards on various grounds.

2. A brief history of the matter, as culled out from the petitions, may be noted as follows :

2A. The Respondent company is one of the leading manufacturers of two and three wheelers in India, having factories at Akurdi and Chakan in Pune and at Waluj in Aurangabad. The present dispute concerns its workmen employed at Akurdi.

2B. Between 1984 and 1997, besides its permanent workmen, the

Respondent employed various temporary workmen, their number varying from year to year. (In the years before 1984, the Respondent used to appoint workmen on probation, terminate them later and re-appoint them once again on probation; in due course of time many of these appointees were made permanent.) In 1997, the Respondent had about 6088 permanent workmen and about 4313 temporary workmen.

2C. It is the case of the petitioning workmen that during this period (i.e. 1984 to 1997), the Respondent followed a consistent practice of employing skilled as well as unskilled labour on temporary basis for a maximum period of seven months. After giving breaks to the workmen so employed, the Respondent would appoint other workmen in their place and thereafter, after the latter completed their tenure of upto seven months, re-employ the former. The Respondent had accordingly maintained a pool of about 8000 to 10000 workers and were making temporary appointments from this pool following a rotational pattern. In other words, it is the workmen's case that though the work in the factory was of perennial nature, it was performed through temporaries from a pool of workers by a rotational system, seeing to it that throughout the relevant period none could complete 240 days of continuous service and thus keeping them away from secure permanent jobs. This led to industrial disputes and complaints of unfair labour practice.

2D. A group of about 700 workmen approached the Industrial Court at Pune through complaints of unfair labour practice, invoking Items 5, 6 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("PULP Act"). The other group of workmen, about 300 of them, instead chose to file letters of

demand and initiate conciliation proceedings under the Industrial Disputes Act, 1947 (“ID Act”), upon failure of which, the State Government, as appropriate Government, referred the matters to Labour Courts for adjudication.

2E. In the ULP complaints, the Industrial Court, by way of interim orders, protected the services of about 400 workmen, who were actually in the Respondent’s employment at the time of filing of the complaints. In its final orders on the complaints, the Court allowed claims of permanency of these 400 workmen. So far as the remaining workers, 300 of them, were concerned, it rejected their complaints, holding basically that since their services had already stood terminated, the Court did not have jurisdiction to entertain their complaints; they should have approached Labour Courts with complaints under Item 1 of Schedule IV of the PULP Act challenging their terminations.

2F. Some workmen from this group of 300 workmen thereupon challenged the order of the Industrial Court by writ petitions before this court. Simultaneously, being aggrieved by grant of permanency to 400 workmen, the Respondent company filed cross petition before this court. These petitions were heard by a learned Single Judge of this court, who dismissed the petitions of workmen and allowed the petition of the company.

2G. Being aggrieved, both groups of workmen (i.e. 300 workmen, who had originally failed before the Industrial Court, and whose orders were confirmed by the learned Single Judge, and 400 workmen, who had originally succeeded before the Industrial Court but lost before the learned

Single Judge) filed Letters Patent Appeals before a Division Bench of this court. The appeals were allowed by the Division Bench, granting permanency to all 700 workmen, who had filed complaints.

2H. The Respondent company thereupon approached the Supreme Court by way of Special Leave Petitions. At the hearing before the Supreme Court, the parties arrived at a settlement, under which the Respondent offered permanency to 400 workmen (who continued to work with it under interim orders and whose complaints were finally accepted by the Industrial Court) and paid compensation, as suggested by the Supreme Court, to 300 workmen (who had originally lost before the Industrial Court, but who succeeded before the Division Bench of this court). The settlement thus brought about culmination of proceedings initiated by workmen through ULP complaints.

2I. As for the references made, different Labour Courts adjudicating disputes made different awards (about four sets of common awards, as noted above) answering the references in the negative. The Third Labour Court at Pune, who heard the references in respect of a group of 80 workmen, passed a common award, whereas the Second Labour Court, who heard the references of a group of 115 workmen, passed another common award, both courts answering the references in the negative. The references in respect of another set of 8 workmen were heard by two different courts, First Labour Court hearing the references of 3 workmen and Second Labour Court of 5 workmen, and both answered the references in the negative.

2J. These four sets of awards have given rise to the present writ

petitions. Writ Petition No.9503 of 2005 has been filed by 60 out of the original 80 workmen (who were covered by the award of the third Labour Court), whereas Writ Petition No.4502 of 2006 has been filed by 96 workmen out of 115 (who were covered by the award of the Second Labour Court). The other petitions are filed by 8 workmen, noted above, Writ Petition Nos.3175 of 2012, 3191 of 2012, 3194 of 2012, 3204 of 2012 and 3206 of 2012 by 5 workmen (covered by the award of the Second Labour Court) and Writ Petition No.3193 of 2012, 3192 of 2012 and 3203 of 2012 by 3 workmen (covered by the award of the First Labour Court).

3. Writ Petition No.4502 of 2006 is treated as a lead petition for passing of this order. The discussion of facts and submissions in the following order, accordingly, corresponds to this petition, though, broadly speaking, the facts of all cases are more or less similar and all petitions can conveniently be disposed of by this common order.

4. Before we assess the submissions made at the Bar in the light of individual facts, it would be convenient to note the broad contours of the controversy in the present petition. Mr. Singhvi, learned Senior Counsel appearing for the Petitioners, flags the following three main areas of controversy, namely, (i) the treatment of rotational arrangement leading to termination of services of temporary workmen in the light of the definition of retrenchment and its exception provided in Section 2(oo) of the ID Act, (ii) reckoning of 240 days of continuous service within a year for the concerned workmen, and (iii) claims of permanency of the petitioning workmen and their consideration in industrial disputes concerning the workmen's terminations.

5. The precise issues, which arise for the consideration of this Court, based on the submissions made across the Bar on these controversies, may be formulated thus:

(I) Whether the termination of services of temporary workmen in the present case could be termed as termination as a result of non-renewal of the contract of employment on its expiry or under a stipulation in that behalf contained in the contract and thus, amounting to an exception to the definition of 'retrenchment' contained in Clause (oo) of Section 2 of the ID Act? Or whether the rotational arrangement, such as the one in the present case, where there are continuous temporary engagements of the same workmen over long periods of time (adopted as a strategy to deny benefits of permanency to the concerned workmen), does not amount to an engagement on a fixed period contract so as to form an exception under sub-clause (bb) of Clause (oo) of Section 2 of the ID Act?

(II) Whether, (a) Sundays and holidays during the period of service could be counted within 240 days as per the applicable Standing Orders so as to make up aggregate service of 240 days in a year within the meaning of the Standing Orders and (b) such 240 days should be reckoned as forming part of the calendar year of 12 months immediately preceding the dates of termination?

(III) Should a Labour Court dealing with terminations of workmen in a reference under the ID Act refuse to consider their claim of permanency?

6. On Issue (I) above, Mr. Singhvi refers to appointments and removals of temporary workmen in the light of their applications for appointment as also oral evidence of six workmen. Based on this material, learned Counsel submits that the work at the factory, for which these workmen were engaged, was really of a permanent nature; the appointments were not made as a result of any temporary increase in work; the work was always there, but appointments were made in a rotational manner for temporary periods so that at any given time workmen were appointed for a period of upto seven months, giving them breaks and appointing other workmen in their place similarly for periods of upto seven months, whilst re-employing of the former through the same pattern again so that they do not complete 240 days of continuous service, thus, keeping them away from permanency. Learned Counsel submits that such breaks cannot be termed as terminations within the meaning of Clause (bb) of Section 2(oo) of the ID Act. Learned Counsel refers to the case of **Haryana State Electronics Development Corporation Ltd. vs. MAMNI**¹ in this behalf.

7. Mr. Naik and Mr. Cama, learned Senior Counsel for the Respondent, preface their submissions on this issue by stating that in the present case, we are not concerned with prior terminations of the concerned workmen, which were anyway not the subject matter of challenge before the Labour Courts, but with the last terminations which led to the present references. Learned Counsel submit that these last terminations constitute an exception to the definition of retrenchment under Section 2(oo)(bb) of the ID Act. Learned Counsel submit that engagements of the concerned temporary workmen in our case were purely for business exigencies, as pleaded by the Respondent in its written

1 (2006) 9 SCC 434

statement and supported by the oral evidence of its two witnesses. Learned Counsel in this behalf rely on several judgments on the subject, particularly the cases of **Bajaj Auto Ltd. vs. Shrikant Vinayak Yogi**² and **Rohini Kurghode vs. E. Merck (I) Ltd.**³

8. Mr. Singhvi, for his part, distinguishes the case of **Rohini Kurghode** (supra) and, alternatively, submits that the judgment of **Rohini Kurghode**, which takes a view that whenever Section 2(oo)(bb) and Standing Orders 4C and 4D are in conflict, Section 2(oo)(bb) would prevail, is, in any event, *per incurium*.

9. Taking up Issue No.(I) formulated above, let me first outline the context in which this issue arises and the broad aspects to be considered for deciding it. The argument of Mr. Singhvi is that the rotational pattern adopted by the Respondent company in engaging the concerned workmen, namely, employing them and terminating them at intervals interspersed with similar engagement and termination of others from the same pool of workmen, gives rise to a case of retrenchment under Section 2(oo) of the ID Act. Such retrenchment, it is submitted, is not covered by the exception contained in clause (bb) of Section 2 (oo), which excepts from the definition of retrenchment any termination of service as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry or as a result of termination of such contract under a stipulation in that behalf contained therein. Learned Counsel submits that such retrenchment is in breach of the workmen's rights to tenure and permanency under the Industrial Employment Standing Orders Act ("Standing Orders Act") and amounts to an unfair

2 2006 (4) BomCR 197

3 2016 SCC OnLine Bom 9220

labour practice. (It is Mr. Singhvi's submission that an industrial adjudicator hearing a reference under the ID Act is as much bound to take note of such unfair labour practice and prevent it as a labour court or industrial court would under the PULP Act; but this would be considered whilst discussing Issue No. III below.) In any event, it is alternatively submitted that such retrenchment, being contrary to Section 25F of the ID Act, is in any event bad in law and liable to be set aside and the concerned workmen reinstated.

10. There are two factual aspects involved here. The first is, whether for our inquiry we can simply focus on the last termination of each of these workmen and disregard their earlier engagements and terminations. And the second, which is intricately connected with the first, is about the rotational pattern said to have been adopted for engagement of these workmen – whether such pattern exists, for if it does, the legal question as to whether the terminations, including the last, come within the definition of retrenchment under Section 2(oo) and not within the excepting clause, namely, clause (bb) thereof, would have to be answered in its light. After all, for any termination to be within clause (bb), that is to say, to be claimed as a result of non-renewal of an expired contract of employment or as a result of termination under a specific contractual stipulation, the contract of employment should be based on a business exigency and not a regular rotational pattern involving periodical artificial breaks to the same set of workmen over a long period of time. The latter basis would imply that the nature of the work was perennial and the manner of engagement a mere device to avoid the benefit of permanency to the concerned workmen.

11. The requisite pleadings concerning permanent nature of the work, workmen from a pool being employed and terminated on rotation and after artificial breaks, in each case after a period of upto 7 months, are very much to be found in the statement of claim. Six workmen of the Respondent from different departments deposed by examining themselves in chief on behalf of all second party workmen and cross-examination of one of them (Balaji Ramchandra Ghodake) was treated as cross-examination of all six. (Ghodake was a machinist who had incidentally worked in most departments.) All six workmen deposed to details of rotation and how they were periodically engaged and replaced with other employees including those that were junior to them; they deposed how in some cases termination letters themselves indicated future dates of re-joining the company, whilst in many others, appointments were on chits given by their Supervisor stating the name of the worker to be replaced. They deposed how only for their initial appointments, interviews and trade tests were taken and medical examinations done and not for their later appointments. They deposed to the number and period of their appointments over long periods of time. Their depositions bring out that this practice was followed for nearly thirteen years, i.e. between 1984 and 1997-98; there was not a single day when there were no temporaries employed at the factory, their number ranging from about 4 to 8 thousands throughout this period. The company's witness, who was their Manager-Personnel, admitted to this practice of employing temporaries between 1984 and 1998. He admitted that permanent and temporary workmen worked together in rotational shifts; their work was no different from each other; no specified jobs were indicated in appointments of temporaries; and there were no reports of completion of any particular jobs for which temporaries were appointed. He admitted that a seniority list, which was

really treated as a waiting list, was maintained of the temporaries. In particular individual cases (several of them), the company's witness admitted the company having employed individual workmen each between 8 to 14 times over a period. There was no record produced by the company to show any temporary increase in work, necessitating appointment of temporaries. The evidence on record clearly indicates that the work, for which the concerned temporary workmen were engaged from time to time by giving breaks and employing others in their place during such breaks, was of a perennial nature; a pool of temporary workmen (whether as a seniority list or waiting list) was maintained; workmen from this pool were engaged for varying lengths of period on a rotational basis and this went on for about 13-14 years, a period with which we are concerned in these petitions.

12. Mr. Cama, learned Senior Counsel for the Respondent, whilst commenting on the quality of the evidence led by second party workmen in this behalf, submits that there were as many as 115 workmen, each concerned in a separate reference; if these workmen were to rely on their previous appointments and terminations to urge artificial breaks and rotational pattern of engagement involving them, they ought to have led their own individual evidence; they cannot rely on one individual workman's (Balaji Ramchandra Ghodake's) testimony in support of their individual cases. Mr. Cama also objects to the charts produced by the Petitioners before this Court in proof of their continuous work with the Respondent Company. Learned Counsel submits that these charts have been produced for the first time before this Court. It is pertinent to note that depositions were made (examinations-in-chief) by six second party workmen in a representative capacity on behalf of all 115 workmen. These

six workmen were drawn from six different departments of the Respondent. By consent of all advocates (including the Respondent's advocate), cross-examination of one individual workman out of these six workmen (Ghodake) was adopted as cross-examination in respect of all others (namely, five other witnesses). Besides, individual employments and terminations of all 115 workmen were not matters of dispute; they were supported by the Respondent's own documents. In fact, the Labour Court has itself, in its impugned order, noted that the first party company had produced a "*chart showing details of days worked by each of the 115 second party workmen and also produced supporting temporary appointment orders, extension orders and termination orders in each case.*" It is not in dispute that even the list of temporaries maintained by the Respondent for engagement throughout the relevant period has come from the Respondent itself and is not a matter of contest. The entire analysis of Mr. Singhvi in this Court of the rotational pattern is based on this factual material. Mr. Singhvi has, by his charts produced before this Court, simply collated this material in support of his case and offered his comments on the same. There has been indeed no fresh factual material placed before this Court in support of the case of second party workmen.

13. All this evidence clearly supports the Petitioners' case on the nature of their engagements, the nature of breaks given to them, appointments of other temporaries from the list in their place from time to time, all of which lends credence to their case of rotational employment from a pool of workmen maintained by the Respondent.

14. Let us now consider the provisions of Section 2(oo) (along with the excepting clause (bb) thereof) and apply them to our facts noted

above to see whether the terminations, which are challenged here, amount to retrenchments. Section 2(oo) of the ID Act defines 'retrenchment' as follows :

“(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 in 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
- (c) termination of the service of a workman on the ground of continued ill-health.”

It is clear from the definition quoted above that any termination otherwise than as a punishment inflicted by way of a disciplinary action comes within the main part of Section 2(oo), whereas Clauses (a) to (c), which follow, enacts exceptions to such termination. We are here concerned with clause (bb), which is relied upon by the Respondent Company for excluding the subject terminations from retrenchment. Clause (bb) applies to two situations: (i) where the termination is a result of non-renewal of the contract of employment between the employer and the concerned workman upon its expiry; and (ii) where such termination is the result of a contractual stipulation contained in the contract of employment. In our case, it is nobody's case that there was any contractual stipulation as a result of which the contract

of employment was terminated. The company's case here is under (i) above, i.e. of a contract made for a specific period and its non-renewal upon expiry.

15. To be sure, the employment contracts in our case were all fixed period contracts; they did have an expiry date; and they were obviously not renewed after that date. They did thereby fall within clause (bb) of Section 2(oo)(i.e. under (i) above) – so goes the argument of Mr. Naik and Mr. Cama. That is taking a rather too simplistic or literal view of the matter. The facts of our case demonstrate, as I have noted above, a deliberate rotational scheme employed by the Respondent company over more than thirteen years. A pool of temporaries is maintained and anywhere between four to eight thousand temporaries from out of this pool are employed in rotation, some of them on 8 to 14 times, each time for a duration not exceeding seven months. The classical idea behind retrenchment has been surplussage; an employee, who has become surplus due to any reason of economy, rationalisation in industry, new technology, improved plant, etc., and hence, no more required, is retrenched. A fixed period contract, on the other hand, implies either that for some particular work or project or due to a spurt in the demand and the resultant need for increased activity, there is a special need for a certain employee or number of employees and accordingly, need for a contract of employment for the particular work or project, or for the particular fixed period. In our case, however, what one finds is perennial work, work which is no different from what was performed by permanent workmen of the company, for which temporaries were engaged. The engagement was throughout a long period of over thirteen years. Though the actual number varied throughout, being anywhere between four to eight thousand, surely a minimum of four

thousand temporary workmen were required to be engaged throughout. In the case of each of these workmen (with whom we are concerned here), we can see such rotational pattern even going by the Respondent's own documents. Based on this evidence, the only reasonable conclusion to be drawn was that their employments were neither for any particular work or project nor were brought to an end after a fixed period due to want of work upon expiry of the period of contract. The engagements were brought to an end purportedly at the expiry of the stipulated period of contract only to see that they get an artificial break (during which others from the waiting list were employed) only to be re-employed and this went on - again and again. The whole pattern clearly appears to have been designed with a view to avoid any legitimate claim of permanency of tenure on the part of the concerned workmen. That is a clear recipe of an unfair labour practice, notorious in the industry, of employing 'badlis', casuals or temporaries and continuing them as such for years, with the object of depriving them of the status and privileges of permanent employees.

16. Mr. Naik and Mr. Cama contend that it is, however, impermissible for this court in its writ jurisdiction to hold the employment to be an unfair labour practice. Learned Counsel urge three important grounds in this behalf. It is firstly submitted that whether or not the engagement of the concerned workmen was with a view to avoid the benefits of permanency and, more particularly, by adopting a rotational pattern, is a question of fact (or, at any rate, a mixed question of fact and law) and it is not permissible to reappreciate the evidence on record and come to a conclusion different from the reference court. Secondly, it is submitted that the questions as to whether or not there was any unfair

labour practice and a case for giving substantive relief to the concerned workmen based on such practice are not within the remit of a reference court hearing an industrial dispute under the ID Act. Learned Counsel, thirdly, submit that no such questions, which really reflect on the tenure of the employment (and not on the legality of the last termination, which alone, according to Counsel, was the subject matter of the reference), were reflected in the terms of reference and hence, could not have been decided by the reference court; and no interference is accordingly called for in the writ jurisdiction of this Court.

17. No doubt, the nature of engagement of workmen in the present case – whether on a fixed tenure contract or colourable engagement on a fixed term, the real engagement being on a long term basis by adopting a rotational pattern, so as to avoid any claim of permanency, is a mixed question of law and facts. Particularly, whether or not the Respondent employed a rotational pattern is a pure question of fact, and accordingly, a writ court would not interfere with the conclusion of a reference court on the question by reappreciating the evidence. It is, however, perfectly legitimate to interfere if the conclusion is perverse. And to assess perversity, what the writ court ordinarily employs are the Wednesbury Principles, one of them concerning the reasonableness of the conclusion, having regard to the material placed before the Court. If, seen from that standpoint, the conclusion is not a reasonably possible conclusion, the writ court would be well justified in interfering with it.

18. As noted above, there was abundance of material before the reference court on the rotational pattern adopted by the Respondent for work at its factory, which was of a perennial nature, by engaging the

concerned workmen for temporary periods, but successively. The conclusion of the Labour Court in its common award impugned herein that the second party workmen failed to prove that a rotational system was adopted by the first party, appears to have been rendered in a rather cavalier fashion, by disregarding the entire burden of evidence pointing to adoption of such system. The only reasons cited by the Court in support of its aforesaid conclusion are these: (i) Considering cross-examination (Pgs. 21 to 23) of Diwakar Vishnu Kulkarni, the first witness of the first party, it cannot be said that service of any one temporary workman was terminated and in his place and category and department another temporary workman was employed; and (ii) it is not established that appointment orders were successively given with intermittent artificial breaks. In the first place, this appears to be a thoroughly unsatisfactory way of reading Kulkarni's evidence. Kulkarni had admitted in his cross-examination that the seniority list of temporaries, which was, according to him, a waiting list, was maintained by the first party company, though not published or notified. He admitted all individual instances of terminations of individual temporaries and near simultaneous appointments of others from this list and re-appointments of the former after terminations of the latter, who were, to start with, juniors in many cases. (Besides, terminations of workmen and appointments of others either simultaneously or in close proximity of time can well be deduced from the employment charts produced by the Respondent itself.) He admitted that there was no documentary proof of any of the second party workmen being employed elsewhere during their breaks save and except the solitary case of Ghodake. Kulkarni admitted the Respondent's practice of employing temporaries for the entire relevant period, i.e. from 1984 till 1998. He admitted that permanent and temporary workmen were working together in rotational

shifts and their work was no different; there was no record to show that the temporaries were appointed for particular jobs or any particular jobs were completed when they were terminated. He admitted that he had no idea about production figures or number of workmen required for production. He admitted that there was no record of temporary increase in work or advertisements for recruitment during the relevant period. If anything, thus, Kulkarni's cross-examination supports the case of the second party workmen. Secondly, the Labour Court appears to have totally disregarded the admitted facts as well as the evidence of second party workmen. It is an admitted fact that appointments of temporaries at the Respondent's Akurdi plant went on for over thirteen years, from 1984 to 1997-98. (Prior to that, workmen were appointed on probation, then terminated and re-appointed and so on and some were eventually made permanent.) The figures of temporaries appointed in a year did differ; they were in the range of 4000 to 8000, that is to say, at least about 4000 at any given point of time during this period. The Respondent did maintain what it called a seniority list and what it says was like a waiting list (though it was never published or notified). Admittedly, the temporaries, who used to be appointed without any advertisement for recruitment, worked alongside permanent workers of the Respondent. The six workmen, who deposed on behalf of all and who were drawn from different departments, deposed to their successive appointments, showing details of rotation. (Appointments, terminations and replacements by others from the list were not, as noted above, matters of dispute, since the parties proceeded before the Labour Court on the Respondent company's own records and charts.) The communications of appointment and termination, which were part of the record, lend great credence to the rotation theory urged by the second party workmen, as we have noted above. So also, the fact that interviews,

trade-tests and medical examinations were taken only at the time of their initial appointments and not for the further and successive appointments. Some of the witnesses (Kumbhar, Dhamnaskar and Tilekar) actually gave names of workmen appointed in their place (in most of the cases, being junior to them).

19. In the face of the evidence noted above, the conclusions of the Labour Court, simply rendered as tag-lines, that there was no rotational pattern, or that it could not be said that service of any one temporary workman was terminated and in his place and category another was employed or that the temporaries were given artificial intermittent breaks, clearly offend the Wednesbury Principles and cannot stand scrutiny under Articles 226 or 227 of the Constitution of India.

20. **Rohini Kurghode's** case (supra) has been relied upon by the Respondent for two propositions. Firstly, it is submitted that the case supports the Respondent's contention that second party workmen in these references are estopped from challenging their terminations on the basis of their earlier engagements and terminations; they have acquiesced in such engagements and terminations and waived their right to seek any relief in that respect. The second proposition that the Respondent advances, on the authority of **Rohini Kurghode**, is that in case of a conflict between a substantive provision of law, here Section 2(oo) (bb), and Standing Orders, here Standing Order 4C, the former would prevail over the latter. Mr. Singhvi, for the Petitioners, submits that **Rohini Kurghode's** case is decided *per incurium* and not a good law. This question, however, need not be debated for the purposes of the present order for the following reasons. Firstly, I have already held that having regard to the rotational pattern

adopted by the Respondent, the engagements and terminations, both prior and the last, cannot come under the saving clause (bb) of Section 2(oo) of the ID Act. Secondly, I also hold, as may be seen from the following order, that earlier engagements and terminations of the second party workmen did form part of the references and were very much needed to be considered for adjudicating the industrial disputes referred to the Labour Courts here. There is, accordingly, no question, as a matter of fact, of any conflict between Standing Order 4-C and Section 2(oo) (bb) of the ID Act, or of any acquiescence or waiver on the part of the workmen here. There is, therefore, no warrant for applying the law stated in **Rohini Kurghode** to the facts of our case.

21. It may now be appropriate to advert to the remit of a reference court under the ID Act, which really forms Issue No.(III) set out in para 5 above. No doubt, it is axiomatic, as the Supreme Court has said in the case of **Bengal River Transport Association vs. Calcutta Port Shramik Union**⁴, that the labour court or tribunal, in exercising its reference jurisdiction, is only bound by the terms of reference; its jurisdiction is confined to the actual points of disputes referred to. Whilst assessing the content of the terms of reference, which are laconically phrased, one cannot, however, take a pedantic or literary view; one has to approach the matter rather holistically, having regard to the original demand, which led to the conciliation proceedings, the statements made before the conciliation officer by rival parties and the report of the conciliation officer proposing a reference, to assess the actual points of dispute referred under Section 10 of the ID Act. This is particularly so, where the reference order refers to the conciliation report and speaks of terms of reference in the light of such

4 1978 LAB. I.C. 1416

report. As Andhra Pradesh High Court put it in **Management of Divisional Engineer, Telecommunications, Mahaboobnagar District vs. Venkataiah**⁵, an order of reference, which ought to be framed carefully, but instead hastily drawn or drawn in a casual manner often gives rise to disputes; even so, courts must attempt to construe the reference not too technically or in a pedantic manner, but fairly and reasonably. Secondly, everything which is “incidental” to the consideration of the disputes referred is open for examination before the reference court. As the Supreme Court put it in the case of **Bengal River Transport Association** (supra), a “*thing is said to be incidental to another when it appertains to the principal thing; it signifies a subordinate action*”. When a grievance is so connected with the main dispute raised that its consideration is necessary to determine the main dispute, it may very well be said to be incidental to the latter.

22. As for the terms of reference in our case, it is important to note at the outset that the statements of justification filed by the concerned workmen before the Conciliation Officer did refer to their initial engagements with the first party employer (the Respondent herein) and terminations and successive appointments and terminations following those – so on and so forth. The statements did take up a position that the workmen were given artificial breaks and, contrary to their expectations, were not made permanent. The workmen submitted in their statements that want of 240 days’ of continuous service on their part with the Respondent company was a result of an unfair labour practice on the part of the latter; that it was incumbent on the Respondent to have made them permanent; and their last terminations were, in any event, illegal, amounting to retrenchment without one month’s notice or pay or payment

5 2007 (112) FLR 24

or offer of any retrenchment compensation. The report of the Conciliation Officer does make it clear that what was submitted by the workmen before him was their demands of reinstatement with continuation of service and full back wages for the whole intervening period. The gist of submissions on behalf of the workmen reflects their case of having worked continuously and regularly over long periods of time and their terminations without payment of legal dues despite such work. What was submitted by the Respondent in response was that the workmen were engaged from time to time for temporary periods according to exigencies of work and terminated each time without their having completed 240 days of continuous service and therefore their last terminations were legally justified. The reference order clearly refers to this report and the workmen's demand for reinstatement with full back wages and continuity of service on the basis thereof.

23. In the face of the foregoing narration, it would be a travesty of justice to hold that the reference did not involve any consideration of past engagements of the concerned workmen and their impact, on the footing of an unfair labour practice, on the workmen's last terminations which were challenged before the reference court. Mr. Singhvi is right in submitting that the order of reference cannot be seen out of the context. The judgment of Supreme Court in the case of **Indian Farmers Fertilizers Co-operative Ltd. vs. Industrial Tribunal-I, Allahabad**⁶ is a case in point. What was before the reference court in that case was the workmen's claim that their services were wrongly terminated by the appellant. The stand of the appellant was that the workmen were not employees of the appellant, but were working under a contractor. The Supreme Court held that an

6 AIR 2002 SC 1318

issue as to the nature of their employment necessarily arose as a result; the nature of their employment, whether directly under the appellant or through the contractor, was necessarily to be decided by the tribunal and there was no merit in the appellant's contention that the tribunal had, in deciding that issue, traveled beyond the scope of the reference.

24. Even otherwise, the consideration as to whether the workmen were liable to be treated as permanent employees, having regard to the impermissible unfair labour practice of engaging them over long periods of time with artificial breaks only to see that they were denied benefits of permanent tenure, was clearly incidental to the main questions to be decided in the reference, namely, whether the workmen were illegally retrenched; whether, by reason of their employment (i.e. the last employment) being for a fixed tenure, their retrenchment formed an exception to the main part of Section 2(oo) of the ID Act, by falling within clause (bb) thereof.

25. It is also clear that the subject not only formed part of the terms of reference or, at any rate, was incidental to the dispute referred, but was very much a part of the *inter partes* contest before the reference court. The case in this behalf of 115 second party workmen, with whom we are concerned in the present writ petition, stated in their separate individual statements of claim, as culled out in a nutshell by the Second Labour Court in its award, was as follows :

“115 second party workmen were employed on different posts on different initial dates of employment and thereafter time and again they were terminated and appointed. This was done with a view to avoid second parties status of permanent employee. The entire mode of appointments and terminations shows that first appointment was

normally given for 7 to 8 months with cautious approach that second party workmen should not be able to complete 240 days in any year. Though, 115 second party workmen were termed as temporary actually breaks by way of aforesaid termination were artificial breaks. Each and every time termination was affected even though there was work available to these categories. The work which 115 second party workmen were doing was of permanent nature and they were doing same work as that of permanent employees. 115 second party workmen were bound by production norms of permanent employees who were not given similar facilities which were given to permanent employees. In short first party company has carved out a scheme of rotating the employees treating them as temporaries replacing one employees by other. As much with a view to flout the monetary provisions of Industrial Dispute Act as per Sec. 25(F) and 25(H) of I.D. Act and Model standing orders temporary services were shown by way of merely eye wash. Company has also misused provisions of Sec.2(oo)(bb) of I.D. Act as illegally taken the shelter to cover up the unscrupulous model of by which the 115 second party workmen and thousand of other employees were kept at disposal with a view to utilize them and throw them on the streets after the use is over. As such termination of 115 workmen is illegal, improper and malafide.”

On the other hand, the case in this behalf of the first party company in its written statement, as culled out by the court in the impugned award, was the following :

“The second party workmen were employed as temporary workmen for a fixed period. They were employed when there was a temporary increase in work or when there was temporary work available. The requirement additional manpower was assessed by the company for which the company issued advertisements in the local newspaper. Based upon the advertisement and the word of mouth spread by the workmen already employed in the company the workmen made application for employment. Interviews of these workmen were taken and they had to undergo the trade test and medical examination. Subject to their being found medically fit, they were given appointment order for a fixed period. The said period in the appointment order was based on the information provided to the personnel department by the concerned department clearly stating the period for which the work should be available on a temporary period. In the event the work exceeded beyond the time specified in the appointment order, the second party workmen were issued with letter of extension for a fixed period. Finally on completion of the

work and after the period specified in the appointment order was concluded, the second party workmen were officially intimated with regard to the same. Thereafter, whenever there was a need for these workmen on account of the work being again available the workmen were called back in accordance with their seniority and categories in which they were working depending upon the work which was available. The first party company along with written statement is producing a detailed chart showing the exact number of days worked by the second party workmen during each period of appointment. The first party company the final party shall also produce the appointment orders and termination order and relevant document to show the number of days worked by the second party workmen. These details would clearly indicate that the second party workmen had not completed 240 days uninterrupted service in a period of preceding 12 calendar months. The terminations of services of 115 second party workmen is on account of completion of period and work not being available and hence does not amount to retrenchment.”

Evidence was given by the workmen on this case and there was extensive cross-examination of the deposing workmen on each of these aspects, namely, (i) terminations and re-appointments of individual temporary workmen so as to avoid the status of permanent employees to them, (ii) artificial breaks given to the workmen, not allowing them to complete 240 days of continuous service, (iii) availability of work despite terminations, (iv) permanent nature of the available work, (v) common nature and production norms for the temporaries as of permanent employees, and (vi) the scheme of rotation, replacing one employee by another. Both parties made submissions on each of these aspects. And, finally, the Labour Court in its impugned award, after considering the material placed before it by the rival parties, held on this subject as follows:

18. It can be seen from the cross-examination of second parties that second party failed to establish their contention that they were not allowed to complete 240 days seniority/waiting list was not adhered to and rotation system was adopted by first party with a view not to allow second party workmen to complete 240 days. Further it is difficult to

accept the contention of Second Parties that the breaks were artificial considering the fact that second parties were employed in companies like Bajaj Tempo, Telco, Graves, etc. during the alleged artificial breaks. Further it is to be noted that the alleged artificial breaks are not of short duration i.e. few days but are considerably long duration. Temporary workman is defined under clause – 2(d) of model standing orders as under :

“Temporary workmen means a workman who has been appointed for limited period for work which is of an essentially temporary nature and who is employed temporarily as an addition workman in connection with temporary increase in work of a permanent nature.”

19. It is the case of first party that the demand of 2 & 3 Wheeler vehicle manufactured by it from time to time depends on several factors and hence it is necessary to employees in addition to permanent workmen whenever there is temporary work available and whenever there is temporary increase in work. It is admitted position that the demand of two and three vehicle fluctuates from time to time and hence I do not find any substance in the contention of Advocate Shri Gore that work was available and services of Second parties are terminated in spite of it. Thus, Sec. 2(F) of I.D. Act is not attracted even after considering holidays and weekly off as none of 115 second parties have not completed continuous services of 240 days during 12 months preceding last termination.

20. Letter dtd. 07.11.1990 Exh. 31 shows that Shri Balaji Ramchandra Ghodake has joined Bajaj Tempo Ltd. Akurdi his period there is till 04-01-1991 and he will join lately first party company after first period is over.”

In the face of the foregoing narration, it cannot be gainsaid that both parties, being fully aware of the terms of reference and its scope, made their cases in extenso on the aspects of past engagements of the concerned workman in a rotational pattern and artificial breaks given to them so as to avoid completion of 240 days of continuous service and these were very much part of the trial before the Labour Court. It was thus clearly within the remit of the reference court to decide the issue.

26. Coming now to the power of the reference court to consider an unfair labour practice and grant substantive reliefs based thereon, Mr. Singhvi submits that while adjudicating an industrial dispute and making an award, the Labour Court or the Industrial Tribunal, as the case may be, may well consider whether the actions of the employer complained of in the reference amount to an unfair labour practice. Learned Counsel submits that after all, unfair labour practices are specifically prohibited as per Section 25-T of the ID Act including the one specifically complained of here. Learned Counsel, in this behalf, refers to the cases of **Durgapur Casual Workers Union vs. Food Corporation of India**⁷, **OIL And Natural Gas Corporation Ltd. vs. Petroleum Coal Labour Union**⁸ **Umrala Gram Panchayat vs. Secretary, Municipal Employees Union**⁹ and **Bhikku Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak**¹⁰.

27. Mr. Naik and Mr. Cama, learned Senior Counsel appearing for the Respondent company, submit that the jurisdictions of courts and adjudicators under the PULP Act and the ID Act are different, the objects of the two Acts themselves being different. Learned Counsel submit that it is not for the Labour Court or Tribunal to adjudicate upon an unfair labour practice whilst hearing a reference under the ID Act. Learned Counsel submit that in that case neither Section 25-F nor Standing Orders 4C or 4D are available for adjudication so far as the present references are concerned. Learned Counsel submit that in any event, these would be individual disputes and not collective disputes. Learned Counsel submit that the case of **U.P. Drugs** is not applicable to the facts of our case. Learned Counsel submit that under Section 25-T read with Section 25-U and

7 (2015) 5 SCC 786

8 (2015) 6 SCC 494

9 (2015) 12 SCC 775

10 (1996) SCC Online 241

Section 34 of the ID Act, unfair labour practices cannot be tried under the ID Act; only the offences of unfair labour practice could be tried on complaints of appropriate Governments. Learned Counsel, in this behalf, refer to Section 2(ra) read with Fifth Schedule. Counsel also refer to the Second Schedule and the definition of 'industrial dispute' under Section 2(k) read with Section 2(a) and Section 7 of the ID Act in this behalf.

28. "Industrial dispute" is defined under clause (k) of Section 2 of the ID Act as any dispute between employees and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. Under Section 10 of the ID Act, it is this dispute which is, when it exists or is apprehended, referred to a court or a tribunal. Any matter appearing to be connected with or relevant to such dispute may also be referred to the court or the tribunal. Choice of the court or tribunal for referring such dispute or matter depends on (a) the Schedule to the ID Act in which the matter to which it is related is specified, (b) relation of the dispute to any public utility service, (c) the identity of the appropriate Government in relation to such dispute, etc. Chapter V, VA and VB of the ID Act make particular provisions concerning prohibition or legality of strikes, lock-outs, closures, lay-offs, retrenchments, etc. Chapter VC prohibits unfair labour practices and provides for penalty. Section 25-T in this chapter mandates that no employer or workman or trade union shall commit any unfair labour practice. Section 25-I makes the provision of penalty for any such unfair labour practice. "Unfair labour practice" has been defined to mean any practice specified in the Fifth Schedule [Section 2(ra)]. The schedule separately provides for unfair labour practices on the part of employers or

unions of employers and of workmen and trade unions of workmen. To employ workmen as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen, is an unfair labour practice on the part of an employer under the Fifth Schedule (Item 10 thereof). In the face of this scheme, it would be idle to hold that the industrial adjudicator, upon reference of a dispute or a matter relating to such dispute involving an unfair labour practice, say, as in our case, under Item 10, has no power or authority to prevent such unfair labour practice; all that he can do is to order a penalty for such practice. This appears to me to be clear at least on principle. Even other prohibitions such as prohibition of strikes or lock-outs (Section 22) are simply referred to as prohibitions and there is a provision of penalty for illegal strikes or lock-outs. Is it to be then suggested that the industrial adjudicator only has the power or authority to order penalty and not any ameliorative measure or redressal for such strikes or lock-outs. If not, there is nothing in particular, at least as a matter of principle, in Section 25-T to hold that the adjudicator cannot enforce or implement the prohibition contained therein.

29. The case of **Durgapur Casual Workers Union** (supra) relied upon by Mr. Singhvi arose out of a reference made to the Central Government Industrial Tribunal under Sections 10(1)(d) and (2-A) of the ID Act. The demand of the union before the reference court was for absorption of casual workmen represented by it. The Tribunal held that continued casualisation of services of workmen amounted to unfair labour practice defined in Item 10 in Part I of the Fifth Schedule of the ID Act and ordered their absorption. The Supreme Court, whilst affirming the award of the Tribunal, observed that if any unfair labour practice was committed

by an industrial establishment, pursuant to a reference made by the appropriate Government, the Labour Court/Tribunal would decide the question of unfair labour practice. The Court concluded that the Tribunal having held that the Respondent Corporation had committed an unfair labour practice against its workmen, depriving them of the status and privileges of permanent workmen, the workmen were entitled to the relief of absorption.

30. The case of **Petroleum Coal Labour Union** (supra) also arose out of a reference made under Section 10 of the ID Act. The workmen concerned there were employed by the appellant Corporation initially through contractors. Upon issuance of a contract labour abolition notification for the particular jobs in the Corporation, a settlement was arrived at between the Corporation and the workmen, under which the latter were appointed directly and thereafter continued to work without written orders of the Corporation. The Corporation's case was that the appointments being without any procedure of selection or as per recruitment rules, the workmen were not entitled to regularization. The corporation also contended that in the absence of any plea taken by the workmen in their claim statement regarding the alleged unfair labour practice, no such plea could be entertained. The Supreme Court, negating this contention, held as follows:

“49. it is an undisputed fact that the workmen have been appointed on term basis vide memorandum of appointment issued to each one of the concerned workmen in the year 1988 by the Corporation who continued their services for several years. Thereafter, they were denied their legitimate right to be regularised in the permanent posts of the Corporation. The said fact was duly noted by the High Court as per the contention urged on behalf of the Corporation and held on the basis of facts and evidence on record that the same attracts entry Item No.10 of

Schedule V of the Act, in employing the concerned workmen as temporary employees against permanent posts who have been doing perennial nature of work and continuing them as such for number of years. We affirm the same as it is a clear case of an unfair labour practice on the part of the Corporation as defined under [Section 2\(ra\)](#) of the Act, which is statutorily prohibited under [Section 25T](#) of the Act and the said action of the Corporation warrants penalty to be imposed upon it under [Section 25U](#) of the Act. In fact, the said finding of fact has been recorded by both the learned single Judge and the Division Bench of the High Court in the impugned judgment on the ground urged on behalf of the Corporation. Even if, this Court eschews the said finding and reason recorded in the impugned judgment accepting the hyper technical plea urged on behalf of the Corporation that there is no plea of unfair labour practice made in the claim statement, this Court in this appeal cannot interfere with the award of the Tribunal and the impugned judgment and order of the High Court for the other reasons assigned by them for granting relief to the concerned workmen. Even in the absence of plea of an act of unfair labour practice committed by the Corporation against the concerned workmen, the Labour Court/High Court have got the power to record the finding of fact on the basis of the record of the conciliation officer to ensure that there shall be effective adjudication of the industrial dispute to achieve industrial peace and harmony in the industry in the larger interest of public, which is the prime object and intendment of the [Industrial Disputes Act](#). This principle of law has been well established in a catena of cases of this Court. In the instant case, the commission of an unfair labour practice in relation to the concerned workmen by the Corporation is ex-facie clear from the facts pleaded by both the parties and therefore, the courts have the power to adjudicate the same effectively to resolve the dispute between the parties even in the absence of plea with regard to such an aspect of the case.”

31. In **Umralla Gram Panchayat** (supra), the industrial dispute referred to the adjudicator concerned the workmen’s claim that after rendering services for a number of years, they were entitled to the benefit of permanency. They invoked Entry 10 in the Fifth Schedule to the ID Act. Whilst holding in favour of the workmen on this point, the Supreme Court held as follows:

“10. It is an admitted fact that the work which was being done by the concerned workmen was the same as that of the permanent workmen of the appellant- Panchayat. They have also been working for

similar number of hours, however, the discrepancy in the payment of wages/salary between the permanent and the non-permanent workmen is alarming and the same has to be construed as being an unfair labour practice as defined under [Section 2\(ra\)](#) of the ID Act r/w Entry No.10 of the Fifth Schedule to the [ID Act](#), which is prohibited under [Section 25\(T\)](#) of the ID Act. Further, there is no documentary evidence produced on record before the Labour Court which shows that the present workmen are working less or for lesser number of hours than the permanent employees of the appellant-Panchayat. Thus, on the face of it, the work being done by the concerned workmen has been permanent in nature and the Labour Court as well as the High Court have come to the right conclusion on the points of dispute and have rightly rejected the contention of the appellant-Panchayat as the same amounts to unfair labour practice by the appellant-Panchayat which is prohibited under [Section 25\(T\)](#) of the ID Act and it also amounts to statutory offence on the part of the appellant under [Section 25\(U\)](#) of the ID Act for which it is liable to be prosecuted.”

The Court also noted as follows:

“13. Further, [Section 25\(T\)](#) of the ID Act clearly states that unfair labour practice should not be encouraged and the same should be discontinued. In the present case, the principle "equal work, equal pay" has been violated by the appellant-Panchayat as they have been treating the concerned workmen unfairly and therefore, the demand raised by the respondent-Union needs to be accepted. The High Court has thus, rightly not interfered with the Award of the Labour Court as the same is legal and supported with cogent and valid reasons.”

The Court affirmed the relief of treating the workmen as permanent employees after completion of five years of initial appointment and payment of salaries as per regular pay scale.

32. In **Bhikku Ram’s** case (supra), the Supreme Court held as follows:

“(37)If the Court finds that the exercise of rights by the employer is not bona fide or the employer has adopted the methodology of fixed term employment as a conduct or mechanism to frustrate the rights of

the workman, the termination of the service will not be covered by the exception contained in Clause (bb). Instead the action of the employer will have to be treated as an act of unfair labour practice, as specified in the Fifth Schedule of the Act. The various judgments rendered by the different High Courts and by the Supreme Court clearly bring out the principle that only a bona fide exercise of the powers by the employer in cases where the work is of specified nature or where the temporary employee is replaced by a regular employee that the action of the employer will be upheld. In all other cases, the termination of service will be treated as retrenchment unless they are covered by other exceptions set out hereinabove.”

33. Both on principle and authority, thus, Mr. Singhvi’s submission that industrial adjudicator has the requisite power and authority, whilst deciding a reference, to take note of an unfair labour practice and provide an ameliorative remedy so as to avoid such practice or order redressal, deserves to be accepted. Besides, a contrary approach would clearly lead to an avoidable anomaly. Exactly similarly placed workmen of the Respondent, who happened to take the route of the PULP Act to seek redressal of the very same grievance, got reliefs of either reinstatement or compensation in lieu thereof, whereas the workmen in the present case would be denied such relief only because they resorted to references under the ID Act. The anomaly can only be termed as the very antithesis of industrial peace and is best avoided.

34. Coming now to the argument concerning inclusion of Sundays and holidays for counting 240 days’ work in a calendar year, Mr. Naik and Mr. Cama rely on the judgement of a learned Single Judge of our Court in the case of **Bajaj Auto Ltd., Akurdi, Pune vs. Ashok D. Dhumal**¹¹ confirmed by a Division Bench in **Ashok V. Dhumal vs. Bajaj Auto Ltd.**¹² Relying on these judgments, learned Counsel submit that Sundays and holidays cannot

11 2006 I CLR 441

12 L.PA.No.247 of 2005 in Writ Petition No.5631 of 1995 dated 12.4.2006

be considered for counting 240 days of service of daily wagers employed in a factory. Mr. Singhvi, on the other hand, relies on three judgments of the Supreme Court in the cases of **Workmen of American Express International Banking Corporation vs. Management of American Express International Banking Corporation**¹³, **H.D. Singh vs. Reserve Bank of India**¹⁴ and **Management of Standard Motor Products of India Ltd. vs. A. Parthasarathy**¹⁵. He submits that the learned Single Judge of our court as well as the Division Bench holding to the contrary has clearly not noticed the later two of these three judgments. It is submitted that the proposition laid down by these three Supreme Court judgments is even more true for Standing Order No.4C than for Section 25-B; whereas Section 25-B of the ID Act uses the words “days actually worked”, Standing Order No.4C uses the term “uninterrupted service”. Mr. Singhvi submits that many of the workmen involved in these references, by that token, could be said to have actually completed 240 days of continuous service in a calendar year, and would be accordingly entitled to be regularized as permanent workmen.

35. Our court in **Ashok Dnyanoba Dhumal**’s case did consider this very question in the context of a similarly placed workman of this very Respondent. The court, after referring to the relevant provisions of the Factories Act, 1948 and rules and applicable GR in connection with employment in engineering industry, held that the scheme of these provisions showed that in a week, workers in a factory were required to work for six days with eight daily working hours each so that in a week they worked for 48 hours; there was no provision under the Factories Act

13 (1985) 4 SCC 71

14 (1985) 4 SCC 201

15 (1985) 4 SCC 78

for payment for weekly holidays as was the case under the Delhi Shops and Establishments Act. The court held that the expression “actually worked under the employer” must necessarily comprehend all those days during which the workman was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute or standing orders. The court observed that it had come on record that Model Standing Orders were applicable to the Respondent's factory and they did not prescribe any payment for weekly rest days. The court held that Sundays and holidays were, thus, not to be counted for computing actual work of 240 days in a calendar year for daily rated workmen. The workman concerned in that case appealed to the Division Bench, which affirmed the decision of the learned Single Judge, holding that the appellant could not be given the benefit of weekly-offs whilst calculating 240 days of continuous service.

36. In the case of **Workmen of American Express International Banking Corporation** (supra) relied upon by Mr. Singhvi, the workman concerned was governed by the Delhi Shops and Establishments Act. Under that Act, even in the case of daily wagers, wage was to be paid for closed days or holidays. The observation in that judgement that the expression “actually worked under the employer” could not mean those days only when the workman worked with hammer, sickle or pen, but must comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders, etc., has to be understood in that context. In our case, going by the ratio of **Dhumal’s** case, there is nothing in the express or implied contract of service or statute or standing orders warranting payment of wages to the

concerned workmen for Sundays and holidays. In fact, that is precisely how the judgment of **Workmen of American Express International Banking Corporation** was distinguished by our court in **Dhumal's** case. The former case, accordingly, cannot be cited as an authority to detract from the principle stated in **Dhumal's** case.

37. In **Management of Standard Motor Products of India Ltd.** (supra), relying on Section 25-B(2) of the ID Act, the Supreme Court held that the workman was in uninterrupted service; even if the period of illegal strike was excluded, the number of days for which he actually worked would be more than 240 days if Sundays and other holidays for which he was paid wages were included. What distinguishes this case is that the workman concerned there was actually paid wages for Sundays and holidays, unlike in our case, where neither under express or implied terms of the contract of service nor under any statute or standing order the workmen concerned were paid wages for Sundays or holidays.

38. The case of **H.D. Singh** (supra) involved a Tikka Mazdoor employed with Reserve Bank of India, whose name was struck off the register despite his having completed, according to him, 240 days of continuous service. No doubt he was a daily rated employee and in his case, Sundays and holidays were indeed counted by him to compute such continuous service. His case of more than 240 days of continuous service on that basis appears to have been accepted by the court, since he had stated so on affidavit, and despite the service record being with the Bank, nothing was produced to contradict his case. In the absence of any evidence to the contrary, the court drew an inference that his case that he had worked for more than 240 days in a particular calendar year was true.

It is difficult to hold that this case is an authority for holding that in every case, irrespective of the contract of service (in express or implied form) or statute or standing orders, a daily rated employee must be said to have worked on Sundays and holidays for the purposes of counting continuous service and that for not having considered this case, the judgement of the learned Single Judge and Division Bench in **Dhumal's** case (supra) can be said to be *per incurium*.

39. The judgements of our court in **Dhumal's** case are binding on me and there is nothing on principle or authority to persuade me to take a different view so as to refer this point to a larger Bench. I do not, accordingly, accept Mr. Singhvi's submission that some of the workmen involved in these references have actually completed a minimum 240 days of continuous service in any calendar year.

40. Even if, however, I were to accept Mr. Singhvi's submission, there is yet another unsurmountable difficulty in his way for bringing his case under the relevant Standing Order to support his clients' claim to permanency for having completed 240 days of continuous service. The impugned awards hold that the concerned workmen had to complete 240 days in the calendar year immediately preceding the respective terminations of their services. Mr. Singhvi submits that it does not have to be so. He argues that 240 days can be counted in any previous year, that is to say, any year prior to the date of termination and not necessarily in the year immediately prior to the termination of service. Learned Counsel relies on the judgments of the Supreme Court in the case of **U.P Drugs & Pharmaceuticals Co. Ltd. vs. Ramanuj Yadav**¹⁶ and of our Division Bench in

16 (2003) 8 SCC 334

the cases of **Jairaj N. Shetty vs. Union of India**¹⁷ and **Mehboob vs. Executive Engineer, Agriculture Construction Division, Nagpur**¹⁸ in support of this proposition.

41. Standing Order 4C is in the following terms:

“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.

Explanation.-For purpose of this clause any period of interrupted service, caused by cessation of work which is not due to any fault of the workman concerned shall not be counted for the purpose of computing 190 days or 240 days, or, as the case may be, for making a *badli* or temporary workman permanent.

Section 25-B of the ID Act, which is another provision bearing on the subject, provides as follows:

"25-B. Definition of continuous service.— For the purposes of this Chapter, -

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer -

17 2005(4) Mh.L.J.

18 2012 SCC OnLine Bom 1956 : (2012) 134 FLR 1082

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation : For the purpose of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which -

(i) he has been laid-off under an agreement or as permitted by standing orders made under the [Industrial Employment \(Standing Orders\) Act, 1946](#) (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks."

As is apparent, both provisions use with the expression "240 days in a calendar year" the word "preceding". The word "preceding", in its natural meaning, implies "coming before something in order, position or time". If the word is used in the sense of order in point of time, it does imply "the period of time immediately before the one being talked about". The natural meaning of the word, thus, does not support Mr. Singhvi's contention.

42. Let us now see if any authority suggests otherwise. Mr. Singhvi relies on mainly the case of **U.P. Drugs & Pharmaceuticals Co. Ltd.** (supra). That was a case, where the court was concerned with Section 6N, read with Section 2(g) of the Uttar Pradesh Industrial Disputes Act, 1947 (for short, “U.P. Act”). Section 6N provided for condition precedent to retrenchment of workmen. It used the expression “continuous service for not less than one year” under the employer as a condition applicable for retrenchment under Section 6N. The expression “continuous service” was defined in Section 2(g) of the U.P. Act, which read as follows:

“2.(g) 'Continuous service' means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman, and a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry. Explanation.—In computing the number of days on which a workman has actually worked in an industry, the days on which—

(i) he has been laid off under the agreement or as permitted by standing order made under the [Industrial Employment \(Standing Orders\) Act, 1946](#), or under this Act or under any other law applicable to the industrial establishment, the largest number of days during which he has been so laid off being taken into account for the purposes of this clause,

(ii) he has been on leave with full wages, earned in the previous year, and

(iii) in the case of a female, she has been on maternity leave; so however that the total period of such maternity leave shall not exceed twelve weeks, shall be included.”

The court noted that Section 2(g) of the U.P. Act did not require a workman, to avail the benefit of the deeming provision of completion of one year of continuous service in the industry, to have

worked for 240 days during “preceding” period of twelve calendar months. The court noted that the word “preceding” had been used in Section 25-B of the ID Act (incorporated in the year 1964), whereas Section 2(g) did not use the word “preceding”. The court observed that if the viewpoint propounded before it were to be accepted (implying that 240 days were to be completed in the immediately preceding year before retrenchment), then every year the workman would be required to complete more than 240 days; if in any one year the employer gives him actual work for 240 days, the service of the workman could be terminated. The court, in the premises, proceeded on the footing that there was no requirement of completing not less than 240 days during a period of twelve calendar months immediately preceding the retrenchment under the U.P. Act. The absence of the word “preceding” in the U.P. Act is, in my view, a determinative factor for the ruling of the court in **UP Drugs and Pharmaceuticals**. In fact, the reasoning proceeds on an express footing of distinction between amended Section 25-B of the ID Act, which uses the word “preceding”, and Section 2(g) of the U.P. Act, which does not use the word “preceding”, which is the very pointer for my conclusion.

43. Mr. Singhvi also relies on the cases decided by our court. The case of **Jairaj N. Shetty** was under Section 25-B of the ID Act. The court’s view in that case that if a workman had worked for more than 240 days in an earlier year or in one of the earlier years, he would be deemed to be in continuous service, was on the basis of concession made by learned Counsel for the respondent Railways in the case before it. It was accepted by learned Counsel for the Railways in that case that in the light of the judgment in **U.P. Drugs and Pharmaceuticals**, the legal position crystallised under Section 25-B of the ID Act implied that if a workman had worked for

more than 240 days in the earlier year or any one of the earlier years, he would be deemed to be in continuous service. Though the Division Bench did say that, in its view, that was a correct reading of **U.P. Drugs and Pharmaceuticals**, evidently the point was decided, at any rate, at best *sub-silentio*, and, at worst on a concession made by Counsel. The other judgment of Nagpur Bench in the case of **Mehbooba** (supra) simply noted the judgment in **Jairaj N. Shetty** and, on that basis, remanded the matter to the Single Judge for a fresh hearing and decision on the question of validity of termination after having completed 240 days of continuous service in one of the previous years. This case cannot be said to be an authority for the proposition that 240 days of continuous service preceding the date, with reference to which such calculation is to be made within the meaning of Standing Order 4C, can be any period of 240 days in any one or other of the previous years.

44. There is, accordingly, nothing in the authorities cited by Mr. Singhvi to support his case that the word "preceding" used in Standing Order 4C does not imply the immediately preceding twelve calendar months. Accordingly, neither on principle nor on authority am I persuaded to hold that these workmen were liable to be made permanent under Standing Order 4C by reason of completion of 240 days of continuous service in twelve preceding calendar months within the meaning of Standing Order 4C. I hold Issue No. (II), on both counts, accordingly, against the Petitioners.

45. Having, however, answered Issues (I) and (III) in favour of the Petitioners, the impugned awards of the Labour Court deserve to be quashed and set aside. That, however, leads to a pertinent question of

relief to be granted to the second party workmen in their references. Mr. Cama submits that the factory at Akurdi, where these workmen were working, has long been closed. He has produced before this Court material to show that there was closure with effect from 1 September 2007. Shri S.M. Tamhane, General Manager (IR) of the Respondent, has filed an affidavit before this Court (affidavit dated 29 September 2016) affirming this position. This closure, according to the Respondent, was after consultation with the recognised union and after signing of a memorandum of settlement with it. This settlement has also been noted and acted upon in **Shrikant Vinayak Yogi** (supra) by our Court. The entire text of such settlement has been produced before me. The Petitioners are hardly in a position to contest this position. All that Mr. Singhvi can point out is that (i) there is some research activity carried on at Akurdi and the work done by those engaged for such activity is not much different from the work carried out by the second party workmen in the present case, and (ii) some workmen at Akurdi have been transferred to the Chakan unit of the Respondent. These are matters of dispute; and these can be said to arise after the impugned awards were delivered and hence, not tested before the Labour Court, the closure as such and the settlement preceding it, though, are not in dispute. In the premises, it is difficult to conceive of a relief of reinstatement for the second party workmen here. It would instead be in the interest of justice to consider compensation in lieu of reinstatement. Also, considering that the terminations challenged in these references have taken place in 1997/98, more than twenty long years having since passed, it is not in the interest of justice to remit the references to the Labour Courts for consideration of monetary relief in lieu of reinstatement. And what is more important, we already have models of monetary reliefs granted to similarly placed workmen of this very Respondent, who were

terminated around the same time as the second party workmen in the present references and who had a similar case on merits, though they approached the subject differently, i.e. through complaints of unfair labour practice under the PULP Act. Detailed submissions have been made before me by both sides, when a possible settlement of the present dispute was debated at the hearing before me. I, therefore, propose to consider monetary relief in lieu of reinstatement based on the material produced before me, the material as such not being a matter of dispute.

46. In **Bajaj Auto Ltd. vs. R.P. Sawant**¹⁹, a case decided by the Supreme Court on 11 September 2003, the amount paid, by way of settlement, to those workmen who chose to leave service, was 65 days 'wages for each year worked (with an addition of two years for future service), such wages calculated after taking the monthly wage to be Rs.8000/-. (This was the minimum monthly wage paid to workmen on the job in 2003, as against Rs.4700/- which was the wage of 1998.) In **Bajaj Auto Ltd. vs. Bhojane Gopinath D.**²⁰, decided on 17 December 2003, the Supreme Court awarded 85 days for each year worked (with an addition of three years for future service), the wage being calculated at the minimum wage of Rs.8000/- per month. In **Bajaj Auto Ltd. vs. Rajendra Kumar Jagannath Kathar**²¹, a case decided in 2013, the Supreme Court awarded the workmen 65 days' wages per year worked (with two years added for future service), the wage being reckoned at Rs.8000/- per month. In **Ghanshyam Sukhdeo Gaikwad vs. Bajaj Auto Ltd.**²², a case decided in 2016, the Supreme Court, exercising its power under Article 142 of the Constitution, directed each workman to be paid Rs.10 lakh as

19 Civil Appeal No.4999 of 2002

20 (2004) 9 Supreme Court Cases 488

21 (2013) 5 SCC 691

22 (2016) 13 SCC 295

compensation plus gratuity at the current rate of wages till the date of the order of the Supreme Court.

47 These cases give us a fair estimate of the band of compensation considered by the Court, at times by consent, whilst at others as orders of the Court, for those workmen of the Respondent who could not be reinstated. These are all cases of daily wagers, doing more or less the work as the second party workmen in our case, and who were given similar breaks and kept from the status of permanent workmen. Apart from **Ghanshyam Sukhdeo Gaikwad's** case, where such compensation was decided by the Supreme Court by exercising its power under Article 142, in all other cases, the compensation was determined at 65 to 85 days of work for each year of service and with 2 to 3 years added towards future service and with the wages taken at Rs.8000/- per month (which was the minimum wage paid in the year 2003). The case of **Rajendra Kumar Jagannath Kathar** deserves to be distinguished for one particular feature of it. The Supreme Court observed in that case that the workmen before it were late-comers, who had approached the court of first instance only after seeing the success of the earlier matters. In our case, the workmen approached the court in a reasonable time after their terminations and have diligently pursued their remedy. If we leave out, thus, the case of **Rajendra Kumar Jagannath Kathar**, we come down to two cases, namely, **R.P. Sawant** and **Bhojane**. **R.P. Sawant's** case, though representing those workmen of the Akurdi plant of the Respondent who came to court via the alternative route of ULP complaints, was a settlement; those of the workmen of the Respondent herein, who actually chose to leave, were not of a very significant number; these latter workmen had prospects of finding other jobs. **Bhojane's** case, on the other hand, appears to be the closest

parallel to our case. Here were workmen, who, though employed at Waluj in Aurangabad, were similarly placed as workmen in our case, who were similarly appointed as daily wagers in a rotational manner with similar breaks and finally terminated, but who had approached the labour court, around the same time, through the alternative route of ULP complaints rather than through references as was the case with the workmen in the present case. It may be more appropriate, thus, to take **Bhojane's** case as the working basis or as a guide for working out the compensation in our case.

48. Both parties, however, have reservations about taking **Bhojane's** case as the basis for working out the compensation. Mr. Singhvi for the Petitioners submits that in **Bhojane's** case, which was decided nearly 17 years back, the workmen were under 40 years of age and were capable of finding work elsewhere, whereas in our case, the workmen are all, on average, over 55 years or so. Secondly, it is submitted that in the year 2007, when the Respondent Company closed its Akurdi factory, it gave a VRS of over Rs.20 lakh apart from gratuity to each workman. It is submitted that workmen concerned there were identically placed like the workmen here. On the other hand, Mr. Cama for the Respondent submits that **Bhojane's** case cannot be taken as a precedent; it was decided on its own peculiar facts. Learned Counsel submits that the Supreme Court in that case was of the view that since the conclusion of the tribunal, which was against the management, was based on carefully considered evidence and the unfair labour practice complained of there had been established. It is submitted that that was not the case here.

49. After hearing both sides, I am of the view that the case of

Bhojane can well be taken as a model for determining compensation in our case. There is a special merit in extending the same benefit to the workmen in our case, so long as the impact of late receipt of compensation in our case is factored in. The VRS payment of 2007 was not relevant to the workmen in **Bhojane's** case who were awarded compensation; it only applied to those workmen who continued to work at Akurdi in Pune under stay orders of the court with the Respondent. There is no reason why it should have any bearing in our case. Secondly, as in that case, even here I have come to a considered opinion that the evidence fully supports the workmen's case and the unfair labour practice on the part of the Respondent has been clearly established. There is no reason, accordingly, why **Bhojane's** case should not be treated as a model for working out fair compensation in our case. And lastly, but not in the least, such approach is merited by the very principle and idea of parity amongst like workmen as a rationale of industrial peace. Equally placed workmen of the same industry must get an equal relief in real terms. That is what is conducive to industrial peace.

50. In the premises, I hold that the Petitioners should be paid the same compensation as in **Bhojane's** case calculated as at the date of **Bhojane's** judgment together, however, with interest for the entire intervening period of seventeen years at the rate of 8 per cent per annum. That appears to me to be a reasonable and adequate compensation to be paid to the workmen.

51. Rule is accordingly made absolute and the petition is allowed by quashing and setting aside the impugned award of the labour court and answering the references in the affirmative and awarding to all second

party workmen compensation in lieu of reinstatement as follows :

- (i) Each of the second party workmen shall be paid a lump-sum amount calculated at 85 days' salary, inclusive of all allowances, for the number of years each workman had actually worked irrespective of the days a workman may have put in in a year, calculated on the basis of work during a calendar year, such calendar year in which a workman may not have worked at all being kept out of consideration while calculating the amount. In calculating the salary for each workman, the minimum salary that would be taken into account would be Rs. 8,000/- per month subject to the condition that if on the date of termination, the salary of any particular workman was more, then the calculation would be made on actual last drawn salary. The calculation in the abovesaid manner would be made for a period up to the date of termination in the year 1997-98. For the period after termination till date, the basis of calculation would be lump-sum three years of service on the basis aforesaid, namely, 85 days for each calendar year, i.e. salary for 255 days.
- (ii) Each workman shall be entitled to receive interest at the rate of 8 per cent per annum on the amount calculated as above from 11 September 2003 till this date and thereafter till payment or realization.

52. The cases of each of the second party workmen, who are concerned in the accompanying writ petitions, are on the same footing as the workmen whose references have given rise to Writ Petition No.4502 of 2006, and whose facts are discussed above and whose references are

determined as above. For the reasons stated in their cases, the workmen in all other references are entitled to the same relief as the former workmen. Each of these latter workmen shall, accordingly, be entitled to receive the same compensation as mentioned in clauses (i) and (ii) of paragraph 51 above.

53. All writ petitions are disposed of accordingly.

54. In view of the disposal of writ petitions, all civil applications taken out therein do not survive and stand disposed of.

(S.C. GUPTE, J.)