

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.4206 OF 2009

Lokmat Shramik Sanghatana,
House of Shri Mahule, Jadu Mahal,
New Kailash Nagar, Plot No.2,
Manewada Road, Nagpur
through its General Secretary

...PETITIONER

Vs.

1. Member,
Industrial Court, Nagpur
2. Lokmat Group of Newspapers,
Proprietors: Lokmat Newspapers Ltd.,
Lokmat Bhavan, Wardha Road,
Nagpur-440 012,
Through its Managing Director

...RESPONDENTS

Shri S.D.Thakur, Advocate for the petitioner.
Shri M.A. Kadu, AGP for respondent no.1.
Shri M.G. Bhangde, Senior Advocate a/b Shri V.V. Bhangde, Advocate for
respondent no.2.

CORAM : AMIT BORKAR, J.
RESERVED ON : AUGUST 1, 2022.
PRONOUNCED ON : SEPTEMBER 30, 2022.

JUDGMENT :

1. The writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India is invoked against the judgment and order dated 10.01.2008 passed by the Industrial Tribunal,

Nagpur answering the reference of petitioners for permanency under Section 10 (1) read with Section 12 (4) of the Industrial Disputes Act, 1947 (for short, “**ID Act**”) in the negative.

2. The facts necessary to be cited for the adjudication of the present petition, in brief, has stated as under:

(a) The Additional Commissioner of Labour, Wardha Region, Nagpur made a reference under Section 10 (1) read with Section 12 (5) of the ID Act in respect of 19 employees for permanency. Party no.2 is the Union representing employees. Party no.2 filed a statement claim stating that the Government of India had appointed a Wages Board from time to time regarding the condition of journalist and non-journalist employees. The wages board had passed awards such as Palekar award, Bacchawat award and Manisana award. These awards regulated service conditions of newspaper employees employed by party no.1. Party no.1 categorized employees based on jobs being performed by the employees and were designated accordingly. The service conditions of all employees are governed by the three awards mentioned above. Therefore, there is only one class of employees, and the aforesaid three awards govern all employees.

(b) Party no.1, in 1997, started employing employees on a contract basis, deviating from the service conditions regulated by the aforesaid awards. As a result of such appointments of employees on a fixed period, party no.1 created a different class of employee service that was not covered by the aforesaid awards. Therefore, according to the petitioner, the action employment of the petitioner on fixed term contract basis amounts to unfair labour practice as it had created a class of employees not governed by the provisions of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short, '**the Working Journalists Act**'), ID Act and Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 as well as aforesaid awards.

(c) Party No.1 employed the petitioner's members on a contract basis for a fixed period of one year or less at a time. Party no.1 extended or renewed the contract on year to year basis contrary to the provisions of law. The petitioners were given grades/pay scales different from similarly situated employees regulated by awards. Party No.1 has not given notice of change as contemplated under Section 9A of the ID Act. Since the petitioners completed 240 days of continuous service from the date of

termination, the petitioners have been deemed to attend the status of regular and permanent employees.

(d) Party no.2 amended the claim to contend that during the pendency of conciliation proceedings, some of the petitioners were illegally terminated on the grounds that their contract had ended on 31.03.2006. According to the petitioners, since the contracts were *void ab initio* and contrary to the expressed provision of law, such contracts are not enforceable. Thus, the petitioners continued to be in employment even after the date of termination, i.e. 31.03.2006.

(e) Alternatively, it was submitted that the petitioners could not have been terminated without following the procedure of retrenchment laid down under the ID Act, and therefore the petitioners continued to be employed without interruption. Party No.2, therefore, prayed for the passing of an award granting regularization and permanency to the petitioners on the basis they were working as well as payment of wages as per awards applicable with retrospective effect.

(f) Party no.1 contested the statement of claim of party no.2 by filing a reply. It is stated that party no.1 is doing business

printing, publication and circulation of three newspapers. It is stated that the petitioners were appointed under Section 2 (oo), (bb) of the ID Act on a contract basis for a fixed period; therefore, the non-renewal of the contract of such employees would not be covered under the provisions of Section 25F of the Standing Orders. If a person is employed for a fixed period under Section 2 (oo) (bb) of the ID Act, then his discontinuation after the expiry of the specific period does not change the service condition. The Working Journalist Act does not deal with the matter relating to the grant of permanency. Party no.1 has fully implemented awards passed under the said Act. Neither Act nor awards prohibit party no.1 from appointing employees on a fixed term contract basis, the period of contract is the sole discretion of the employer, and no notice for change is required while employing such persons on a contract basis. The concept of 240 days does not apply to employees on a contract basis.

(g) Party no.1 contended by amending its reply that party no.1 industry is governed by the Bombay Industrial Relations Act, 1946. During the pendency of the reference, out of 19 workmen, 9 withdrew their claim. 10 workmen persuaded their claim by filing an affidavit of evidence. Mr.Arnab Ghosh, Personnel Manager and

Mr. Arvind Bawankar of party no.1, filed their evidence on affidavit. The Industrial Tribunal answered the reference in the negative, holding that service conditions of petitioners were governed by fixed term appointment orders which the petitioners have not challenged. The Industrial Court recorded a finding that the appointments of petitioners were made for a specific period for additional demand in the Diwali season and because regular employees were going on leave during that season. Therefore, it is held that the petitioners, having accepted the appointment for the contractual post for a fixed period, could not get the right of permanency. As indicated above, the judgment dated 10.01.2008 passed by the Industrial Tribunal is taken exception to by way of the present petition.

3. Shri S.D. Thakur learned advocate for the petitioner, invited my attention to the various provisions of the Working Journalist Act to urge that Section 3 of the said Act make provisions of the ID Act applicable. He invited my attention to Sections 6,7,8,10, 12(3), 14 and 15 to urge that the petitioners are the persons who are entitled to benefits of rights under the provisions of the Working Journalist Act. He invited my attention to page 10 of the writ petition to demonstrate the facts of each of

the petitioners. He submitted that putting petitioners on a fixed-term contract basis is contrary to the provisions of the Working Journalists Act, ID Act. The respondent employer has not issued a notice of change of service as contemplated by Section 9A of the ID Act. He invited my attention to the provisions of the Standing Orders to urge that the employees cannot be appointed on a contract basis. Rules 37 and 38 of Industrial Disputes (Bombay) Rules prescribe the procedure for the appointment of employees. He submitted that the right of service like petitioners is governed by the provisions of the ID Act, Standing Orders and the terms and conditions of the Wages Board. He submitted that in the absence of certified Standing Orders, the petitioners' rights are governed by Model Standing Orders. He invited my attention to Rule 3 of the Model Standing Orders for Working Journalists to urge that there is no entry of fixed appointment. He invited my attention to the appointment order, contending that petitioners' services were continuous for years together on the same terms. He submitted that the appointment orders are not issued as per the Fourth Schedule; section 6 of the Working Journalist Act provides for working conditions. He submitted that a private contract could not override the provisions of the Working Journalists Act. He

submitted that three months probation is contemplated, and thereafter journalist becomes permanent. He invited my attention to Section 16 of the Working Journalist Act, which specifically prohibits agreements contrary to the provisions of the Act. Section 13 of the said Act restrained employer from reducing basic wages to the wages specified by the Board. He submitted that provisions of Section 2 (oo) (bb) of the ID Act were construed to deprive the workman of permanency if he had completed 240 days. Having regard to the nature of work and length of service rendered by the workman would indicate that the work was continuous and permanent. He submitted that 2 (oo) (bb) of the ID Act would not apply since preconditions for the same have not been complied with. He submitted that the Industrial Tribunal erred in not appreciating that petitioners were engaged for years together by issuing appointment letters with notional breaks given in between to deprive the petitioners of permanency and to get out of the clutch of Section 25F of the ID Act.

4. Shri M.G. Bhangade learned Senior Advocate submitted that while answering reference under Section 10 (1) of the ID Act, the Reference Court does not act as a Court of plenary jurisdiction. The only issue referred to the Industrial Tribunal was of

permanency of petitioners. No statute recognizes such right of the petitioners, nor any legal right is shown by the petitioners. He submitted that there was no pleading that the appointment of petitioners was on probation. He submitted that the appointment of petitioners is purely temporary; no direction for permanency can be issued. Rule 2 (c) of Model Standing Order for Working Journalists permits appointments on a fixed term. Additionally, Section 2 (oo) (bb) permits the appointment of employees on a fixed term. Rule 21 of the Model Standing Order for Working Journalists states that the said order does not override the provision of the ID Act. In support of his submissions, he relied on the judgment in the case of **M/s. Rohini S. Kurghode and others Vs. E. Merck (I) Limited**¹. He submitted that to benefit from Model Standing Orders, like 4C, the petitioners must admit that they are temporary employees. He submitted that working journalists have no standing order like Order 4C. There is no provision under the Working Journalists Act or any other which confers a right of permanency on completing 240 days to working journalists. Section 33(1) of the ID Act does not confer permanency. He submitted that on the date of reference, i.e. on 01.02.2006, the petitioners were not employed, and therefore no relief of

¹ 2017(6) ALL MR 562

regularization or permanency can be granted. In support of his submissions, he placed upon judgment in the case of **Oshiar Prasad and others Vs. Employers in relation to Management of Sudamdih Coal Washery of M/s. Bharat Coking Coal Limited, Dhanbad, Jharkhand**¹. He submitted that in case of breach of Section 2(ra) remedy would be to file a criminal complaint under Section 25U of the ID Act. In case of applicability of Item B Schedule-IV of MRTU and PULP Act, a complaint under Section 28 of the said is the remedy. In case of recovery of wages for enforcement of the award, the remedy is available by way of Section 17 of the Working Journalists Act. Neither ID Act nor Working Journalists Act provides for permanency. In support of his submission, he relied on the judgment in the case of **Oil Seed Mills Karmachari Mazdoor Union Vs. State of Rajasthan and others**². He submitted that there is no pleading in the statement of claim that respondent no.2 employer has committed a breach of provisions of Section 33 of the ID Act. He, therefore, submitted that petition deserves to be dismissed.

5. Shri S.D. Thakur, learned Advocate, in rejoinder, submitted that Section 2(oo) (bb) of the ID Act operates as an

¹ (2015) 4 SCC 71

² 1992 1 LLN 678

exception to Section 2 (oo); it was enacted to decree rigorous of Section 2 (o). Section 2(oo) (bb) does not operate as an exception to all labour laws. He, therefore, submitted that having regard to the fact that Section 2(oo)(bb) is part of the ID Act, which is social welfare legislation, the said provision would have to be reasonably construed not to override the rights of petitioners to claim permanency. He submitted that provision of Section 2(oo) (bb) could not be construed to deprive a workman of permanency if he has completed 240 days of service. He, therefore, prayed for setting aside the order of the Industrial Tribunal and granting benefits as prayed in the statement of claim.

6. To consider whether the termination of the services of the workmen would amount to retrenchment within the meaning of Section 2(oo) of the ID Act or whether the workmen are entitled to the grant of the relief of permanency, it would be necessary to refer to the provisions in contention. Section 2 (oo) (bb) of the ID Act is reproduced hereinunder : -

“(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

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

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

7. Section 3 of the Working Journalists Act, which makes the provisions, of the ID Act applicable, *mutatis mutandis*, to working journalists covered by the Working Journalists Act, reads thus:

“3. Act 14 of 1947 to apply to working journalists. -

(1) The provisions of the Industrial Disputes Act, 1947 (14 of 1947) as in force for the time being, shall, subject to the modifications specified in sub-section (2), apply to, or in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of that Act.

(2) Section 25F of the aforesaid Act, in its application to working journalists, shall be construed as if in clause (a) thereof, for the period of notice referred to therein in relation to the retrenchment of workmen, the following periods of notice in relation to the retrenchment of a working journalist had been substituted, namely:—

(a) 6 months, in the case of an editor, and

(b) 3 months, in the case of any other working journalist.”

8. “Working journalist” is defined in clause (f) of Section 2 of the Working Journalists Act, as meaning “a person whose principal avocation is that of a journalist and who is employed as such, either full-time or part-time, in, or in relation to, one or more newspaper establishments, and includes an editor, a leader-writer, news editor, sub-editor, feature-writer, copy-tester, reporter, the respondent, cartoonist, news-photographer and proof-reader, but does not include any such person who –

(i) is employed mainly in a managerial or administrative capacity, or

(ii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature.

9. Section 2(oo) of the ID Act defines retrenchment to mean 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 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.

10. Clause (bb) of Section 2(oo) was introduced by Act No.49 of 1984, effective on 18.08.1984. The onus of proof that a litigant, who may base his cause or project defence on a particular ground, must plead and prove the same and further that the onus to prove an issue, based upon pleadings, is initially on a party who claims such an issue, which of course, keeps on shifting depending upon facts and circumstances of each case.

11. In case of termination of service of a workman, where the workman claims that he had worked for a period of 240 days in a period of 12 months before the date of termination and termination of his service is void for want of compliance with the requirement of Section 25F and where the employer defends termination of service had been brought about in accordance with the terms of the contract of employment or termination is as a

result of non-extension of terms of employment, it will be the duty of the Court to determine the nature of employment with reference to the nature of duties performed by the workman and the type of job for which he was employed. Once the employee pleads and establishes that he was employed for work of a permanent/continuous nature and that employer has arbitrarily terminated his service to defeat his rights under the Industrial Disputes Act or other labour legislation, the Court can draw an inference that the employer's action amounts to unfair labour practice. In such a case burden will lie on the employer to prove that the workman was engaged to do a particular job, and even though the employee may have worked for 240 days, such employment should be treated as covered by Section 2 (oo) (bb) of ID ACT because the service was terminated on the completion of a period of work.

12. A stipulation in the contract that the employment would be for a specified period or till the completion of a particular job may legally bring the termination of service within the ambit of clause (bb). However, if the employer resorts to the methodology of giving a fixed-term appointment to take it out to section 2(oo) and terminate the service of such employee despite the perennial

nature of the work, in that case, the Court can draw an inference that the employers' action lacks *bona fide* or that he had unfairly resorted to his right to terminate the service of the employee. This is because the nature of employment has to be decided based on the facts and circumstances of the case and the service conditions governing the employee and not based on the nomenclature attached to the employment.

13. When an appointment is for a fixed period, unless there is a finding that power under clause(bb) of Section 2(oo) was misused or vitiated by *mala-fide* exercise, it can not be held that termination is illegal, and further, it needs to be established in the facts of the case that the management misused power or it was a colourable exercise of power. Workman must plead bare minimum facts of such misuse of power. The employer would get the opportunity to meet the case employee of colourable exercise of only requisite pleading is made by the employee. There is no question for the management to establish a non-colourable exercise unless it is called upon. The burden of proof for such a charge shall be upon the workman. The onus may keep on changing depending upon the facts of each case.

14. Three Judge Bench decision in the case of ***Shankar Chakravarti Vs. Britania Biscuit Co. Ltd.***¹ with regard to pleadings in industrial disputes particularly, the following observations are relevant:—

“.....If there is no pleading raising a contention there is no question of substantiating such a non-existing contention by evidence. It is well settled that allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because the other side has no notice of it and if entertained it would, tantamount to granting an unfair advantage to the first mentioned party. We are not unmindful of the fact that pleadings before such bodies have not to be read strictly, but it is equally true that the pleadings must be such as to give sufficient notice to the other party of the case it is called upon to meet. The rules of fair play demand that where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no pleading there is no question of proving something which is not pleaded. This is very elementary.”

15. If there is no pleading raising a question of fact, there is no question of substantiating such a non-existing question of fact by evidence. It is well-settled that material question of fact which is not pleaded, evidence in support of it cannot be scrutinized

¹ (1979) 3 SCC 371

because the opposite party has no notice of it. If such a factual plea is entertained, it will grant an unfair advantage to a litigant. It is well settled that pleadings before Labour or Industrial Courts have not to be read strictly, but it is equally valid that the pleadings must be such as to give sufficient notice to the other party of the case it is called upon to meet. The rules of fair play demand that where a party seeks to establish a fact in an issue that, if proved, would be sufficient to deny relief to the opposite side, such fact in issue has to be specifically pleaded and then proved. But if there is no pleading, there is no question of proving something which is not pleaded.

16. In the present case, the requisite pleadings concerning the permanent nature of employment with reference to the nature of duties performed by the workman and the type of job for which he was employed are not found in the statement of claim.

17. At this stage, it would be apposite to refer to a sample appointment letter in respect of one of the Workman - Upendranath Tiwari, which for the sake of ready reference, is reproduced hereinunder: -

“Ref No.

14th May, 1997

Mr. Upendranath Tiwari,

Nagpur.

With reference to your application and subsequent interview you had with us, we are pleased to appoint you as “Part Time Proof Reader” w.e.f. the date of your joining on purely temporary basis on the following terms and conditions.

- 1. Your appointment is purely on temporary basis for six months w.e.f. the date of your joining.*
- 2. During the period of temporary employment you will be paid Rs.1,500/- (Rupees One thousand five hundred only) P.M. as consolidated remuneration.*
- 3. You will undertake the job as assigned to you by your superiors.*
- 4. You may be required to contribute your services to the Companies which are associated with us and located at other places.*
- 5. Your services are transferable to any place in India where our offices are located.*
- 6. Your services can be terminated at any time during temporary employment without giving notice or assigning any reasons thereof.*
- 7. The provisions of relevant Acts, Standing Orders and the rules and regulations of the company shall be applicable to you during your temporary employment.*
- 8. This temporary appointment has been made due to exigences and additional burden of work and hence your services will automatically come to an end after the expiry of six months from the date of your joining. You shall not have any right either to claim continuation of the service nor shall the Management be under obligation to continue you in the said post after the expiry of six months of your temporary employment.*

Please signify your acceptance to the aforesaid terms and conditions by signing a copy of this letter.

For Lokmat Newspapers Ltd.

PUBLISHER”

18. In the context of the pleadings and the documents on record, the evidence led on behalf of the employees would have to be seen. The workmen have examined themselves. From their evidence, the following factual scenario emerges: -

"1) That as per the appointment letters, they were appointed temporarily/on a part-time basis for a fixed period;

2) They have not stated that the employer engaged any fresh temporary employee after the last termination of their services;."

19. In so far as the first issue as to whether the termination of services of the employees amounts to retrenchment under Section 2(bb) of the ID Act is concerned, it is required to be noted that the contracts of employment have been entered from time to time from the year 1997-2005. The said contracts were of fixed duration. The same was sought to be justified through the evidence of the witness of Respondent wherein he had deposed that the respondent no.2 examined Shri Arnab Ghosh who stated that because of generation of work for a specific period, additional hands were required and therefore petitioners were appointed on contract basis for fixed terms. On perusal of the statement of claim, it appears that Employees have not pleaded that their work

was perennial. In the absence of pleadings by the Union or employees that the work of the petitioners was of permanent nature and was available at the relevant time, petitioners were still employed on a contract basis appointment of non-permanent employees in the category of packers under a specific contract only intermittently due to temporary increase in workload. There is no evidence led by an employee that Respondent herein did engage any fresh temporary workers for which the services of claimants were engaged. The termination of the Respondents on their contracts coming to an end after the expiry of the fixed period is therefore covered by Section 2 (oo) (bb) of the I.D. Act.

20. In *M. Venugopal Vs Divisional Manager, Life Insurance Corporation of India, Machilipatnam, A.P and another*¹, the termination of a probationer appointed for a fixed term for not complying with the requirement of the target fixed by the LIC was held to be covered by Section 2(oo) (bb) of the I.D. Act. Paragraph 9 of the said judgment is reproduced hereinunder : -

“9.Any such termination, even if the provisions of the Industrial Disputes Act were applicable in the case of the appellant, shall not be deemed to be “retrenchment” within the meaning of Section 2(oo), having

¹ (1994) 2 SCC 323

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

21. In the judgment of *Escorts Ltd. Vs Presiding officer and another*¹. In Paragraph 4 it is held as under: -

“4. Clause (bb) excludes from the ambit of the expression “retrenchment” as defined in the main part of Section 2(00) “termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein”. The said provision has been considered by this Court in *M. Venugopal v. Divisional Manager, LIC* [(1994) 2 SCC 323:1994 SCC (L&S) 664: (1994) 27 ATC 84]. The appellant in that case had been appointed on probation for a period of one year from 23.5.1984 to 22.5.1985 and the said period of probation was extended for further period of one year from 23.5.1985 to 22.5.1986. Before the expiry of the said period of probation, his services were terminated on 9.5.1986. It was held that since the termination was in accordance with the terms of the contract though before the expiry of the period of probation it fell within the ambit of Section 2 (oo) (bb) of the Act and did not constitute retrenchment. Here also the services of the workman were terminated on 13.2.1987, as per the terms of the contract of employment contained in the appointment letter dated 9.1.1987 which enabled the appellant to terminate the services of the workman at any stage without assigning any reason. Since the services of the workman were terminated as per the terms of the contract of employment, it does not amount to retrenchment under Section 2(oo) of the Act and

¹ (1997) 11 SCC 521

the Labour Court was in error in holding that it constituted retrenchment and was protected by Sections 25-F and 25-G of the Act.”

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

“10. Clause (oo)(bb) of Section 2 contains an exception. It is in two parts. The first part contemplates termination of service of the workman as a result of the non-renewal of the contract of employment or on its expiry; whereas the second part postulates termination of such contract of employment in terms of the stipulation contained in that behalf. The learned

23. The question as to whether Chapter V-A of the ID Act will apply or not would be dependent on the issue as to whether an order of retrenchment falls within the purview of Section 2 (oo) (bb) of the ID Act or not. It is well settled that if the termination of service in view of the exception contained in clause (bb) of section 2(oo) of the Act is not a retrenchment, then the question of applicability of Chapter V-A thereof would not arise.

24. In the case of ***Karnataka Handloom Development Corporation Ltd. Vs Sri Mahadeva Laxman Raval***¹, the Hon'ble Apex Court had occasion to consider the case of a similarly situated employee who was issued various appointment orders for a fixed period. It will be relevant to refer to paragraph 18 of the said judgment:—

"18.Even assuming that the respondent had worked 240 days continuously, he, in our opinion, cannot claim that his services should be continued because the number of 240 days does not apply to the respondent inasmuch as his services were purely contractual. The termination of his contract, in our view, does not amount to retrenchment and, therefore, it does not attract compliance of section 25-F of the I.D. Act at all.

25. In the case of ***Bhavnagar Municipal Corporation Vs Salim Bhai Umarbhai Mansuri***², the Apex Court was considering the case of a workman appointed for a fixed period. It will be relevant to refer to paragraphs 11 and 13 of the said judgment:—

"11. The facts would clearly indicate that the respondent's service was terminated on the expiry of the fixed periods mentioned in the office orders and that he had worked only for 54 days. The mere fact that the appointment orders used the expression "daily wages" does not make the

¹ (2006) 13 SCC 15

² (2013) 14 SCC 456

appointment “casual” because it is the substance that matters, not the form. The contract of appointment consciously entered into by the employer and the employee would, over and above the specific terms of the written agreement, indicate that the employment is short-lived and the same is liable to termination, on the fixed period mentioned in the contract of appointment.

13. Section 25-H will apply only if the respondent establishes that there had been retrenchment. The facts will clearly indicate that there was no retrenchment under section 2(oo) read with section 2(bb) of the ID Act. Consequently, section 25-H would not apply to the facts of the case. Similar is the factual and legal situation in the civil appeal arising out of SLP © No. 5387 of 2012 as well.”

26. Shri S.D. Thakur, learned advocate, for petitioner, relied on the judgment of the Apex Court in *S.M. Nilajkar's case* (supra) to contend that Section 2 (oo) (bb) of the ID Act operates only in respect of appointments made on projects which appointments come to an end on the projects coming to an end. The Apex Court clarified the said judgment in *S.M. Nilajkar's case* (supra) in *Municipal Council, Samrala's case* (supra) by holding that the judgment in *S.M. Nilajkar's case* (supra) is not an authority for the proposition that Section 2 (oo) (bb) of the ID Act would apply only to a project or a scheme of temporary duration. Paragraph 14

of the judgment in *Municipal Council, Samrala's case* (supra) is reproduced hereinunder : -

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

27. *Municipal Council, Samrala's case* (supra), the stipulation in the appointment letter was to the following effect: -

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

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

29. The aforesaid judgments, therefore, lay down that where the termination is on account of non-renewal of the contract of

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

30. The question also arises as regards the efficacy of clause 2 (a) Model Standing Orders for Working Journalists *vis-a-vis* the provisions of Section 2 (oo) (bb) of the ID Act. The State Government has prescribed the Model Standing Orders in the exercise of powers conferred by Section 15 of the Industrial Employment Standing Orders Act. It is well settled that Standing Orders are not delegated or subordinate legislation and therefore have no statutory flavour. At best, they can be said to be statutorily imposed service conditions. Reference could be made to the judgment of the Apex Court in *Rajasthan SRTC v. Krishna Kant*¹. Relevant Paragraph 18 of the said judgment is reproduced hereinunder : -

¹ (1995) 5 SCC 75

“18. It is evident from a perusal of the above decisions that while the first decision referred to the certified Standing Orders as constituting “the statutory terms of employment”. they were described as “conditions of service in a statutory form” and as “binding on the parties at least as much, if not more, as private contracts embodying similar terms and conditions of service” in the second decision. The third decision, reiterated the holding in the first decision. So far as the two last-mentioned decisions are concerned, it is obvious, they only purport to set out the purport of the earlier decisions. Vaidialingam, J. used the very expression “part of the statutory terms and conditions of service”, while K. Ramaswamy, J. stated more emphatically that “certified standing orders have statutory force”. It must, however, be said that in the decision rendered by Ramaswamy, J., the question as to the nature and character of the certified Standing Orders did not arise for consideration; the said observation was made in another context. The consensus of these decisions is : the certified Standing Orders constitute statutory terms and conditions of service. Though we have some reservations as to the basis of the above dicta as pointed out supra, we respectfully accept it both on the ground of stare decisis as well as judicial discipline. Even so, we are unable to say that they constitute “statutory provisions” within the meaning of the dicta in Sukhdev Singh [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619] where it was held : (SCC p. 447, para 67)

“(T)he employees of these statutory bodies have a statutory status and they are entitled to declaration of being in

employment when their dismissal or removal is in contravention of statutory provisions”.

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

31. The Apex Court, in the subsequent judgment in ***U.P. State Bridge Corpn. Ltd. Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh***¹, reiterated said view. Relevant Paragraph 13 of the said judgment is reproduced hereinunder : -

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

¹ (2004) 4 SCC 268

Orders would be a contravention of statutory provisions enabling the workman to file a writ petition for their enforcement. This is what was said by this Court in Rajasthan Transport Corpn. [(1995) 5 SCC 75: 1995 SCC (L&S) 1207 : (1995) 31 ATC 110] : (SCC p. 86, para 18)

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

(emphasis supplied)

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

33. At this stage, it would also be relevant to consider Standing Order 21 of the Model Standing Order for working journalists, which reads thus: -

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

34. A careful reading of the Standing Order 21 shows that nothing contained in the Standing Orders shall operate in derogation of any law for the time being in force. Therefore in case of any conflict between the substantive provision of law, i.e. Section 2(oo) (bb) and Standing Orders, the substantive provision of law will prevail over the Standing Orders, which are held to be not statutory in nature. Therefore the result would be that once the termination of the employment of the Workmen was covered by Section 2 (oo) (bb) of the ID Act, the operation of the Model Standing Orders cannot have any impact.

35. Shri S.D. Thakur, learned advocate, submitted that respondent no.2 employer introduced a system of giving employment on a contract basis which amounts to change in

service of its employees, without giving notice of change as required under Section 9A of the ID Act read with Schedule-VI thereof. Having held that the case of the petitioner having covered under Section 2(oo) (bb) of the ID Act and the service conditions of the petitioner as incorporated in the temporary orders of appointment, it cannot be said that there was any need to issue a notice under Section 9A of the ID Act. It needs to be noted that the appointment orders of the petitioners clearly mention the terms and conditions under which they are appointed. The petitioners have accepted their appointment orders from time to time. The petitioners were conscious of the terms of the appointment, which fixed their period and the amount of consolidated salary. Therefore, it is not the case of petitioners that there is a change in conditions of appointment orders issued to the petitioners, and consequently, the Industrial Tribunal has rightly held that there was no question of giving notice under Section 9A of the ID Act.

36. Shri S.D. Thakur then invited my attention to various provisions of the said Act provision to urge that under the provisions of the said Working Journalists Act, the petitioners are entitled to enforce various awards passed under the said Act

before the Industrial Tribunal, including payment of wages and permanency. A perusal of the scheme of the said Act and Section 2b of the ID Act, it appears that the Wage Board recommendations made under Section 10 of the said Act are not an award within the meaning of Section 2b of the ID Act. Once the recommendations under Section 10 of the Working Journalists Act are received, in terms of Section 12, the Central Government must appropriate orders for enforcement of the award. Section 17 of the Working Journalists Act provides a remedy to the aggrieved person if appropriate orders for enforcement of the award are not complied with by the employer; the employee may take recourse under Section 17 of the Working Journalists Act Act. Therefore, considering the scheme of the said Act and the provisions of the ID Act, it appears that the recommendations of the Wage Board cannot be termed as an award of settlement under the provisions of the ID Act. The enforceability of such award, recommended under Section 10 of the Working Journalists Act Act, depends upon orders passed by the Central Government under Section 12 of the Working Journalists Act. In the facts of the present case, it has not been pointed out that the Central Government has accepted the awards by passing an order under Section 12 of the

Working Journalists Act Act. There is no provision in Working Journalists Act which grants permanency to journalists covered under the act.

37. Shri S.D Thakur, learned advocate, next submitted that there is non-compliance with Section 33 of the ID Act. As observed earlier, it appears that the employer has not altered the conditions of service applicable to the petitioners. In addition, the petitioners' services have come to an end by efflux of time as per appointment orders. Therefore, Section 33 of the ID Act is not attracted to the facts of the case.

38. Shri S.D. Thakur, learned advocate, relied upon the judgment in the case of *Tata Iron and Steel* (supra). In the facts of the said case, weeks rest days of collieries were changed, and therefore, the Apex Court held that there was a change in service and it was necessary to give notice of the change. Therefore, in the facts of the present case, in view of the discussion made above, there is no breach of Section 9A.

39. Shri S.D. Thakur, learned advocate, relied on the following judgments to urge that notice of change under

Section 9A of the ID Act was required before the introduction of the contractual labour system.

- (i) **Navbharat Hindi Daily Vs. Nav Bharat**¹
- (ii) **Tata Iron & Steel Vs. Workme**²
- (iii) **Workmen of Hindustan Lever Vs. Hindustan Lever Ltd.**³
- (iv) **Lokmat Vs. Shankarprasad**⁴

40. In the case of *Navbharat Hindi Daily* (supra) the employer had installed mono composing machine as a result thereof 13 composers came to be retrenched therefore there was change of service condition. In the facts of the present case, in view of acceptance of employees of petitioner-Union for fixed term appointment, Section 9A of the ID Act is not attracted.

41. In the case of *Workman of Hindustan Unilever* (supra) the issue involved was not under Section 9A of the ID Act, and therefore the said judgment is not applicable in support of the submission of notice under Section 9A of the ID Act.

42. In the case of *Lokmat Vs. Shankarprasad* (supra), the employer, had installed two phototypes composing machines to increase the standard of quality of the product on an experimental

¹ 1984 LIC 445 : MhLJ 483(Bom) (DB)

² (1973) 2 SCC 383

³ (1984) 4 SCC 392

⁴ (1999) 6 SCC 275

basis. As a result, 24 employees were rendered redundant and therefore were sought to be transferred to Jalgaon. In the said facts, it was held that this amounts to change in service; there was necessary to serve notice of the change. However, in the facts of the present case, the petitioners having been appointed on a fixed term basis and having knowledge of terms and conditions, there is no breach of Section 9A.

43. The upshot of the above discussion is that while construing the provisions of Section 2(oo) (bb) read with Chapter V-A of the ID Act, if the contract of employment is for a fixed period, the appointment is terminable at the end of the period of the contract and if such appointment is not made with *malafide* intention or colourable exercise of power, then in view of provisions of Section 2 (oo) (bb), the provisions of Chapter V-A would not be applicable. Therefore, although a workman had completed 240 days of service a year before the termination date, if Section 2 (oo) (bb) of the ID Act is applicable, the provisions of Chapter V-A of the ID Act would not be applicable. The remedy is provided under Section 17 of the Working Journalists Act Act for recovery as per the order passed by the Central Government under Section 12 shall be available depending upon the order passed by

the Central Government. Having held that termination of the employment of the Workmen covered by Section 2(oo) (bb) of the ID Act, the operation of the Model Standing Orders cannot have any impact.

44. The learned Member of the Industrial Tribunal has properly appreciated the controversy. There is no perversity or jurisdictional error warranting any interference in writ jurisdiction. Accordingly, the writ petition stands dismissed.

45. Rule stands discharged. Pending civil application(s), if any, stand disposed of.

JUDGE

Wagh