

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 296 OF 2021**

Sosamma Mathew And Others

...Petitioners

**Vs.**

Samuel Sam

...Respondent

Mr. Anosh Sequera i/b M. R. Pereira, for Petitioners.

Ms. Shobana Gopal, for Respondent.

**CORAM:- N. J. JAMADAR, J.**

**RESERVED ON:- 26<sup>th</sup> JUNE, 2023.**

**PRONOUNCED ON:- 6<sup>th</sup> DECEMBER, 2023.**

**JUDGMENT:-**

- 1) Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties, heard finally.
- 2) This Petition calls in question the legality, propriety and correctness of an Award passed by the learned Presiding Officer, Labour Court at Mumbai in Reference (IDA) No.51-D of 2013 under Section 2A (2) of Industrial Disputes Act, 1947 ("I.D Act, 1947"), whereby the employer was directed to pay a compensation of Rs.1,50,000/- to the respondent for the unlawful termination of the services of the respondent with M/s. M. T. Engineering Works.

**3)** Background facts leading to this Petition can be stated in brief as under:-

**(a)** Parakatt Thomas Mathew was the proprietor of M/s M. T. Engineering Works (the employer). Respondent- workman claimed that he was appointed as a Welder with the employer, in the month of May, 1993. Respondent alleged after putting in more than 18 years of service, the employer had orally terminated his services on 28<sup>th</sup> November, 2011 illegally and arbitrarily and without assigning any reason. The employer did not comply with the mandate of the provisions contained in Section 25F of the I.D. Act, 1947. Neither retrenchment compensation nor notice pay was paid to the respondent. The termination of the services was also not preceded by any memo, show cause notice or charge-sheet. Nor any domestic enquiry was conducted against the respondent. Respondent initially addressed a notice on 2<sup>nd</sup> December, 2011, demanding reinstatement in service with full backwages and continuity of service. The said notice was unserved with the remark “unclaimed”. Respondent raised an industrial dispute with the Deputy Commissioner of Labour vide letter dated 19<sup>th</sup> January, 2012. However, there was no progress in the conciliation proceedings for more than a year. Hence, the respondent was

constrained to file the Reference before the Labour Court invoking the provisions contained in Section 2A(2) of the I.D. Act, 1947.

(b) The respondent filed a statement of claim. In the meanwhile, Parakatt Mathew, the proprietor of M/s. M.T. Engineering Works passed away on 27th June, 2013. Petitioner Nos. 1 and 2, who are the wife and son of the deceased proprietor were brought on record. The petitioners filed written statements and resisted the claim of the respondent.

(c) The substance of the resistance put forth by the petitioners was that the affairs of M. T. Engineering Works were solely managed by Parakatt Mathew, the deceased proprietor, and the petitioners were not concerned with the said proprietary firm. The tenability of the Reference was also questioned for non-joinder of the daughter of the deceased proprietor. With the death of the proprietor, the business of the proprietary firm was closed. The petitioners further contended that the petitioners never shared the profits of the business of M/s. M. T. Engineering Works and, therefore, post the death of the proprietor, they cannot be held personally liable for the alleged action of illegal termination.

(d) On the merits of the matter, the petitioners contended that they had learnt from Mr. Tijo Thomas, another employee of M.T. Engineering Works, that the respondent had suddenly stopped coming to work on account of his old age. It was, thus, denied that the services of the respondent were illegally and arbitrarily terminated by the employer. Banking upon the provisions contained in the Industrial Employment (Standing Orders) Central Rules, 1946, the petitioners contended that as of the date of the termination, the respondent had already crossed 60 years of age and would have otherwise superannuated. In fact, on the date of the alleged termination, the respondent was 63 years of age, and had left the service on his own. The Reference was made with a view to extort more money from the employer.

(d) The learned Presiding Officer, Labour Court settled the issues and recorded the evidence of respondent – Workman, Thomas Mathew – petitioner No. 2, and Mr. Tijo Thomas, another employee of M/s. M. T. Engineering Works, for the employer.

(e) After appraisal of the pleadings, evidence adduced by the parties and the documents tendered for her perusal, the learned Presiding Officer, Labour Court was persuaded to answer the Reference in the affirmative. It was, *inter alia*, held that reference at the instance of the respondent under Section 2A (2) of the

I. D. Act, 1947 was maintainable, it was proved that the services of the respondent were orally and illegally terminated on 28th November, 2011. However, since the respondent was found to be then 63 years of age, the learned Presiding Officer, Labour Court held that the respondent stood retired from service and, therefore, he was not entitled to reinstatement in service, but was entitled to receive compensation of Rs.1,50,000/- including the gratuity, for the illegal termination of his service. The learned Presiding Officer, Labour Court was of the view that considering the length of service rendered by the respondent, compensation of Rs.1,50,000/- was just and proper. The petitioners were thus ordered to pay the compensation.

(g) Being aggrieved by and dissatisfied with the impugned award, the petitioners have preferred this Petition.

4) I have heard Mr. Sequera, the learned Counsel for the petitioners and Ms. Shobhna Gopal, the learned Counsel for the respondent at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

5) Mr. Sequera, the learned Counsel for the petitioners submitted that the impugned award deserves to be quashed and set aside for the singular reason that the findings on Issue Nos. 2 and 3 are contradictory. The learned Presiding Officer, Labour

Court while answering Issue No. 2 had held that the services of the respondent were illegally terminated on 28th November, 2011, orally. At the same time, Issue No. 3 has also been answered in the affirmative to the effect that the respondent – workman retired from service as he had attained 63 years of age. This finding on Issue No. 3 renders the finding of illegal termination totally unsustainable. If the respondent–workman retired upon attaining the age of superannuation, it would not be a case of retrenchment within the meaning of Clause (oo) of Section 2 of I.D. Act, 1947 as the case would then be covered by exclusionary Clause (b). Consequently, the employer was not required to follow the mandate contained in Section 25F of the I. D. Act, 1947.

6) Secondly, Mr. Sequera urged that the learned Presiding Officer committed a manifest error in not appreciating the character of the petitioners. Indisputably, late Prakatt Mathew was the Proprietor of M/s. M.T. Engineering Works. The industrial establishment was closed. Since the petitioners came to be impleaded in the reference in the capacity of the legal representatives of late Prakatt Mathew, the petitioners could not have been held liable to pay the compensation as there was no personal liability. At best, the liability of the petitioners, in their character as the legal representatives of Prakatt, was confined to

the estate which devolved upon the petitioners. No material could be brought on record to show that estate of late Prakatt had devolved upon either of the petitioners.

7) Thirdly, Mr. Sequera would urge that the determination of compensation by the Labour Court was wholly arbitrary sans any rationale. The learned Presiding Officer, Labour Court went on to quantify the amount of compensation at Rs.1,50,000/-, inclusive of gratuity. On the one hand, in the statement of claim, the respondent-workman had not claimed any amount towards gratuity. On the other hand, it was not established that the provisions of the Payment of Gratuity Act, 1972 governed the industrial establishment. On the contrary, there was material to show that skeleton staff worked in the said industrial establishment and, therefore, there was no propriety in taking into account the claim for gratuity in determining the quantum of compensation. Thus, on each of the aforesaid counts, according to Mr. Sequera, the impugned award deserves to be interfered with.

8) Ms. Shobhana Gopal, the learned Counsel for the respondent-workman, joined the issue by canvassing a submission that the defence rested on the alleged retirement of the respondent-workman is based on an incorrect impression

about the applicability of the provisions contained in the Industrial Employment (Standing Orders) Act, 1946. Since, neither the said Act, 1946 governed the industrial establishment in question, nor could it be shown that there was a contract between the employer and the workman regarding the age of superannuation, the workman was entitled to remain in service till he was fit to perform the work. Therefore, the employer cannot draw any mileage from the fact that on the date of termination the respondent- the workman had attained 63 years of age. The findings of the learned Presiding Officer, Labour Court on Issue No. 3, therefore, according to Ms. Gopal, are of no consequence. Resultantly, it cannot be said that the impugned award is based on contradictory findings.

9) Ms. Gopal further submitted that the petitioners did not place before the Labour Court the relevant record pertaining to the employment of the respondent workman. Nor the claim of the respondent-workman that he had been working with the said industrial establishment since 1993 could be demolished during the course of cross-examination. Furthermore, there is no material to show that any retirement dues were paid to the respondent-workman. Therefore, the defence sought to be bolstered up on behalf of the petitioners that the respondent-

workman had left the service on his own as he had attained the age of superannuation does not merit countenance. In the absence of any material to show that there was either a statutorily prescribed age of superannuation or a stipulation in the contract to that effect, termination of the respondent-workman would clearly fall within the ambit of retrenchment under Section 2 (oo) of I.D. Act, 1947, submitted Ms. Gopal.

10) To lend support to the submission that in the absence of statutory prescription or a stipulation in the contract, a workman is entitled to continue to work till he is physically and mentally fit, Ms. Gopal placed reliance on a decision of this Court in the case of **Universal Transport Co., Mumbai Vs. Siraj Kadarbhai China and Others**<sup>1</sup>. In the said case, a learned Single Judge of this Court had, *inter alia*, observed that where there was no dispute that the Model Standing Orders would not be applicable to the employees as there were less than 50 workmen and there was no contract between the parties, there could not be any obstacle to the workman to continue in service beyond 60 years of age since it not the was not the case that the workman was either physically or mentally unfit. It may be apposite to

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**1** 2005 (3) CLR 912

extract the observations in paragraph No. 9 of the said Judgment. It read as under:-

“...9. The only issue which remains to be decided is whether the respondent is entitled to reinstatement, having crossed the age of 60 years. Admittedly, the Industrial Employment (Standing Orders) Act is not applicable to the concern, as less than 50 employees are engaged by the Petitioners. No age of superannuation is fixed by the Petitioners nor is there any evidence on record to indicate that 60 is the retirement age. Admittedly, no letter of appointment was issued to the respondent and, therefore, the respondent would be entitled to continue till he is physically fit. The Petitioners have not shown in any manner that the respondent is not physically and mentally fit to continue with the duties which he was performing prior to his termination of services. Therefore, in my view, the respondent must be allowed to continue in service. The Supreme Court in the case of Workmen of Kettlewell Bullen & Co. Ltd. v. Kettlewell Bullen & Co. Ltd. 1964 II LLJ 146 was considering a case as to what should be the retirement age of an individual worker. The Supreme Court noted that the rules of retirement at the age of 55 years had been framed in 1957 and 1951 in that case. It held that such rules would not apply to any workman who was employed prior to those dates. The Supreme Court observed that since there was no rule or condition of service as regards the age of retirement, the workmen could continue as long as they remain fit. In the case of M.K. Mulki v. Kemen Pvt. Ltd. & Ors. 2002 (95) FLR 567, I had an occasion to consider as to whether a person who had crossed the age of 60 years could be continued in service, when there was no retirement age fixed. In that case, although it has been held that the workman was entitled to continue beyond the age of 60 years, since he was admittedly not in good health, compensation was awarded to him. In the case of Krishna G. Kasar v. India United Mills No.2 & Anr. 2004 II CLR 430 relied on by the learned Advocate for the Petitioners, it has been held that where the age of superannuation has been fixed under the Standing Orders, the workman could not be continued upto the age of 63 years. This judgment, in my view, would have

no application since the standing orders framed under the Bombay Industrial Relations Act were applicable to the conditions of service of the employees in that case. In the present case, there is no dispute that the Model Standing Orders would not be applicable to the employees, as there were less than 50 workmen. Therefore, in my view, there cannot be any obstacle to the respondent continuing in service since it is nobody's case that he is either physically or mentally unfit...

(emphasis supplied)

11) Though the facts of the case *ex facie* appear to be rather uncontroverted and uncomplicated and the quantum of compensation also cannot be said to be huge, yet the Petition presents a number of illegal issues which warrant determination. Even if the question as to whether M/s. M. T. Engineering Works constitutes an industrial establishment within the meaning of Section 2 (ka) is assumed to be not contested on behalf of the petitioners, and the applicability of the provisions contained in the I. D. Act, 1947 is not put in contest, yet in the facts of the case, the questions as to whether there was illegal termination of the services of the respondent by the late Proprietor of M/s. M. T. Engineering Works, whether the petitioners could be saddled with the liability to pay the compensation for the alleged illegal termination by the late Proprietor and whether the determination of the compensation, inclusive of gratuity, is justifiable, warrant consideration.

12) To start with, the approximate age of the respondent-workman on the date of the alleged illegal termination. By and large, it is not controverted that the respondent-workman had crossed 60 years of age on the date of the alleged oral termination i.e. 28th November, 2011. In the affidavit of evidence sworn by the respondent-workman in the month of March, 2019, the respondent-workman claimed that he was then 70 years of age. During the course of further examination-in-chief, the respondent-workman claimed that he was born in the year 1948. Thus, on the own showing of the respondent-workman, on the date of the alleged termination i.e. 28th November, 2011, the respondent-workman was 63 years of age.

13) It is on the basis of these facts, that an endeavour was made on behalf of the petitioners to urge that the services of the respondent – workman had come to an end at the age of 63 years and, thus, it could not be termed ‘retrenchment’ within the meaning of Section 2 (oo) of the I.D. Act, 1947. Support was sought to be drawn from the provisions contained in the Industrial Employment (Standing Orders) Central Rules, 1946. Under Rule 3 of the Model Standing Orders (Schedule I-B) appended to the said Rules, the age of retirement on superannuation of a workman shall be as may be agreed upon

between the employer and the workman under an agreement or as specified in a settlement or award which is binding on both the workman and employer. Where there is no such agreed age, retirement or superannuation shall be on completion of 58 years of age by the workman.

14) The aforesaid submission brings to the fore the question of applicability of the provisions contained in the Industrial Employment (Standing Orders) Act, 1946, Sub Section (3) of Section 1 of the Industrial Employment (Standing Orders) Act, 1946 provides that the said Act applies to every industrial establishment wherein 50 or more workmen are employed or were employed on any day of the preceding 12 months. In the case at hand, it is neither the case of the employer nor that of the respondent-workman that 50 or more workers were working with the industrial establishment at any point of time. On the contrary, Mr. Tijo Thomas (witness No. 2 for the employer) categorically informed the Court that in the month of November, 2011, apart from him, three more employees were working with the industrial establishment. Thus, the provisions contained in the Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 cannot be legitimately resorted to. Therefore, the submission on behalf of the employer that the age

of superannuation was 58 years as stipulated in the Model Standing Orders does not deserve acceptance unreservedly.

15) It is pertinent to note that there is neither any appointment order which spells out the terms of the appointment, particularly the age of superannuation, nor any material could be placed to show that there was a contract of employment between the late Proprietor Parakatt Mathew and the respondent-workman, which indicated with sufficient clarity the age of superannuation. Consequently, it cannot be said that there was either a statutory prescription in the matter of the age of retirement or a contract under which the parties had agreed upon the age of superannuation.

16) Undoubtedly, termination of the services of a workman on account of retirement or attaining the age of superannuation does not fall within the ambit of retrenchment under Section 2 (oo) of the I.D. Act, 1947. It reads as under:-

“...2 (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) 2 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;]...”

17) If the employer could demonstrate that the respondent-workman stood retired on attaining the age of superannuation either with reference to the contract of employment or the governing rules, exclusionary Clause (b) would govern the case. However, in the case at hand, as noted above, neither the Model Standing Orders apply nor there is a stipulation in the contract.

18) It is trite that under the scheme of I. D. Act, 1947 especially under Section 2 (oo) termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment save and except in cases specifically excepted by Sub-Clauses (a) to (c) of Clause (oo) of Section 2. In the case of **Mohan Lal Vs. Management of M/s. Bharat Electronic Ltd.**<sup>2</sup> it was enunciated that niceties and semantics apart, termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment except in cases excepted in the section itself. Where the termination of service of the workman does not fall within any of the exceptions, or to be precise, excluded categories, the termination would constitute

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**2** (1981) 3 SCC 225

retrenchment and by a catena of decisions it is well settled that where prerequisite for valid retrenchment as laid down in Section 25-F has not been complied with, retrenchment bringing about termination of service is *ab initio* void.

19) Petitioners do not claim that prerequisite contained in Section 25-F were followed. On the contrary, it is the claim of the petitioners that they learnt that the respondent-workman stopped reporting to work on his own volition as he had crossed the age of superannuation. In the backdrop of this nature of the defence, in the absence of material to show that the age of retirement stood fixed either by statutory prescription or contract between the parties, in my considered view, the case of the respondent-workman does not fall within the exclusionary Clause (b). Resultantly, the pronouncement of this Court in the case of **Universal Transport Co., (Supra)** may govern the facts of the case. The respondent-workman was thus entitled to continue beyond the age of 60 years provided that he was in good health and able to perform the work entrusted to him.

20) This propels me to the aspect of the liability of the petitioners in the capacity of the legal representatives of the deceased Proprietor of M/s. M.T. Engineering Works. It is a positive case of the petitioners that after the demise of the

Proprietor of M/s. M.T. Engineering Works, the said industrial establishment was closed. Orders dated 22nd October, 2013, issued by the Sales Tax Officer under the Central Sales Tax Act, 1956 and the Maharashtra Value Added Tax Act, 2002, lend support to the version of the petitioners. Those orders indicate that the registration certificate in respect of the industrial establishment, granted on 31st December, 2005, was cancelled with effect from 27th June, 2013, the date of death of the Proprietor of M/s. M. T. Engineering Works. Mr. Tijo Thomas (witness No. 2 for the employer) has also put oath behind the statement that he worked with the industrial establishment till the year 2013. No material could be placed on record to show that industrial establishment was a running concern even after the death of its Proprietor Parakatt Mathew.

**21)** It is pertinent to note that Thomas Mathew, first party No. 3 i.e. the son of the deceased Proprietor, categorically asserted that after the death of his father, he shut the business of M/s. M. T. Engineering Works and started another business in the said premises under the same firm name.

**22)** In the aforesaid backdrop, the crucial question that wrenches to the fore is whether the petitioners could have been saddled with the liability to pay the compensation after the death

of the original proprietor and the closure of the business of M/s. M.T. Engineering Works. Could the reference be proceeded with against the legal representatives of the deceased employer? It is trite, the Labour Court upon a reference under the Industrial Disputes Act, 1947 broadly follows the pattern of determination by the Civil Court. The provisions of the Code of Civil Procedure, 1908 ("the Code, 1908") are generally applicable to the proceedings before the Labour Court/ Industrial Tribunal in the absence of any provision to the contrary in the Act, 1947 or the Rules framed thereunder. Therefore, the death of the employer by itself may not result in the termination of the proceedings initiated against the employer.

**23)** A converse scenario was considered by the Supreme Court in the case of **Shri. Rameshwar Manjhi Vs. Management of Sangramgarh Colliery and Others**<sup>3</sup>, namely whether on the death of a workman the Industrial Tribunal becomes *functus officio* and the dispute under Section 2-A of the I.D. Act, 1947 abates. The Supreme Court held that even when the reference is of an individual dispute under Section 2-A of the I.D. Act, 1947, the Tribunal does not become *functus officio* or the reference does not abate merely because, pending adjudication, the workman

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**3** (1994) 1 SCC 292

concerned dies. It is open to the legal representatives of the deceased workman to pursue the matter and get a determination. The observations of the Supreme Court in paragraph Nos. 12 and 13 are material and, hence, extracted below.

“...12. The maxim 'actio personalis moritur cum persona' though part of English Common Law has been subjected to criticism even in England. It has been dubbed as unjust maxim, obscure in its origin, inaccurate in its expression and uncertain in its application. It has often caused grave injustice. This Court in a different context, in considering the survival of a claim for rendition of accounts, after the death of the party against whom the claim was made, in *Girja Nandini Devi v. Bijendra Narain Choudhury*<sup>8</sup> observed as under:

"The maxim 'actio personalis moritur cum persona' a personal action dies with the person has a limited application. It operates in a limited class of actions ex delicto such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. An action for account is not an action for damages ex delicto, and does not fall within the enumerated classes. Nor is it such that the relief claimed being personal could not be enjoyed after death, or granting it would be nugatory."

13. It is thus obvious that the applicability of the maxim 'actio personalis moritur cum persona' depends upon the 'relief claimed' and the facts of each case. By and large the industrial disputes under Section 2-A of the Act relate to the termination of services of the concerned workman. In the event of the death of the workman during pendency of the proceedings, the relief of reinstatement, obviously,

cannot be granted. But the final determination of the issues involved in the reference may be relevant for regulating the conditions of service of the other workmen in the industry. Primary object of the Act is to bring industrial peace. The Tribunals and Labour Courts under the Act are the instruments for achieving the same objective. It is, therefore, in conformity with the scheme of the Act that the proceedings in such cases should continue at the instance of the legal heirs/representatives of the deceased workman. Even otherwise there may be a claim for back wages or for monetary relief in any other form. The death of the workman during pendency of the proceedings cannot deprive the heirs or the legal representatives of their right to continue the proceedings and claim the benefits as successors to the deceased workman...."

(emphasis supplied)

24) A fortiori, the death of the employer also may not necessarily lead to the termination of the reference proceedings. However, the liability of the legal representatives of the deceased employer hinges upon the estate which has devolved upon those legal representatives. The workman would thus be entitled to proceed against the legal representative to the extent they have succeeded to the estate of the deceased employer. Liability of such persons, who are sued in their character as the legal representatives of the employer, cannot be personal. An analogy can be drawn from the provisions contained in Section 50 of the Code, 1908. It reads as under:-

**"50. Legal representative-** (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which

passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

**25)** The phraseology of Sub Section (2) of Section 50 makes it clear that where the decree is sought to be executed against the legal representative of the deceased judgment-debtor, he shall be liable only to extent of the property of the deceased, which has come to his hands and has not been duly disposed of.

**26)** In the case at hand, the learned Presiding Officer, Labour Court has not adverted to this aspect of the matter. Nonetheless, there is a categorical admission on the part of the first party No. 3- Thomas Mathew that after the demise of his father, he started a new business, from the very premises wherein the industrial establishment was run by the late Proprietor. This implies that the estate of the deceased, at least to the extent of the said premises, wherein the industrial establishment was being run, devolved upon the petitioner No. 2- Thomas Mathew. In the context of the quantum of compensation and the view that this

Court is persuaded to ultimately take, the said devolution of the estate appears to be sufficient.

**27)** This leads me to the justifiability of the quantum of compensation ordered to be paid by the learned Presiding Officer, Labour Court. As noted above, the Labour Court was of the view that since the respondent-workman, had attained the age of 71 years by the time the award came to be passed, reinstatement in service could not be ordered. Thus, considering the length of service, the learned Presiding Officer, Labour Court found it appropriate to award compensation, inclusive of gratuity.

**28)** There is a dispute as regards the length of service rendered by the respondent-workman. The respondent-workman claimed that he worked with M/s. M. T. Engineering Works since the year 1993 till November, 2011. The petitioners, on the other hand, contended that the record indicates that the respondent-workman worked with M/s. M.T. Engineering Works since the month of November, 2006 only. Respondent-workman placed on record muster-cum wages slip from the month of November, 2006. The last muster cum wage slip was for the month of June, 2011. It indicated that the respondent had then drawn wages of Rs.5,900/-.

29) In a situation of the present nature, where the reinstatement in service was out of question, for reasons peculiar to both the employer and the workman, award of compensation appeared to be most appropriate restitutive relief. The length of service already rendered, the period for which the workman could have otherwise served if he had not been terminated, the situation and financial position of the employer, the situation of the workman and whether the workman was gainfully employed during the period he was out of the employment, are few of the factors which generally influence the determination of the quantum of compensation.

30) In the case at hand, the fact that the applicant had already completed 63 years of age on the day of the alleged illegal termination also deserved to be properly taken into account. The aspects of physical fitness, mental alertness and agility of the workman deserved to be considered. During the course of cross-examination, the workman conceded that after the termination of service, he did not make any effort to secure employment. He could not work as Welder due to his old age. Though he had good vision, his hearing capacity was impaired for the last five years. The aforesaid admissions in the cross-examination bear upon

the period for which the respondent-workman would have rendered services, had he not been terminated.

**31)** There is further material to show that after the death of the late Proprietor of M/s. M.T. Engineering Works, the business of the said industrial establishment was closed. Registration certificates came to be cancelled with effect from the date of the death of Parakatt Mathew, the Proprietor. This factor also ought to have entered into the determination of compensation.

**32)** Having regard to the aforesaid factors, before adverting to consider what ought to be the appropriate compensation, it may be apposite to note that the submission of Mr. Sequera that the learned Presiding Officer, Labour Court could not have taken into account the component of gratuity, appears to carry substance. In the statement of claim, the respondent-workman had not claimed gratuity. As indicated above, there was a skeleton staff with M/s. M. T. Engineering Works. The liability to pay gratuity under the Payment of Gratuity Act, 1972 would accrue where ten or more employees are employed in an establishment or were employed on any date in preceding 12 months. Evidently, there is no material to show that the number of employees at the industrial establishment exceeded 'ten'. Thus, the Labour Court was not justified in taking into account the component of

gratuity. In any event, the question of payment of gratuity was required to be agitated before the authorities constituted under the Payment of Gratuity Act, 1972.

**33)** The factors which bear upon the determination of the quantum of compensation have been noted above. From the own showing of the respondent-workman, after the alleged illegal termination, he made no effort to secure other employment. He went on to concede that on account of advanced age he was not able to work as a Welder. To add to this, the industrial establishment itself was closed in the month of June, 2013 upon the death of the Proprietor of M/s. M. T. Engineering Works. Conversely, even if it is assumed that respondent-workman had worked with the industrial establishment since the year 1993 in accordance with the measure of retrenchment compensation, provided under Section 25-F (b), the respondent – workman would have been entitled to nine months of average pay. The last drawn wages were in the range of Rs.5,000/-. Moreover, the fact that the liability to pay compensation was to be fastened upon the legal representatives of the late Proprietor of M/s. M. T. Engineering Works, could not have been lost sight of.

**34)** In the totality of the circumstances, in the peculiar facts of the case, the direction to the legal representatives of late

Proprietor of M/s. M. T. Engineering Works to pay compensation of Rs.1,50,000/- to the respondent-workman slightly errs on the side of excessiveness. I am conscious, as an absolute figure, compensation of Rs.1,50,000/- can not be said to be too excessive. However, the peculiar facts of the case deserved to be taken into account. On the one part, there is a workman whose services stood terminated at the age of 63 years. On the other part, there are the legal representatives of the deceased employer whose liability is conditioned upon the estate that devolved upon them. Thus, the equities are required to be balanced.

35) I am, therefore, inclined to partly allow the Petition and modify the impugned award to the extent of the quantum of compensation. A sum of Rs.80,000/- would be a just and reasonable compensation.

36) Hence, the following order.

**ORDER**

1) The Petition stands partly allowed.

2) The impugned award stands modified as under:-

The petitioners-first party shall pay a sum of Rs.80,000/- towards compensation to the workman-respondent – second party within a period of one month from today.

In the event of default in payment of compensation, the said amount shall carry interest @8% p.a. from the date of the impugned award.

**3)** Rule made absolute to the aforesaid extent.

**4)** In the circumstances of the case, there shall be no order as to costs.

**[N. J. JAMADAR, J.]**