**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

282 (12 cases)

CWP-28036-2022 (O&M)
Date of Decision : 14.08.2024

PUNJAB AGRO INDUSTRIES CORPORATION LIMITED

…. PETITIONER

V/S

PUNJAB LAND DEVELOPMENT AND RECLAMATION CORPORATION WORKERS UNION (LUDHIANA UNIT) AND ORS

…. RESPONDENTS

2. CWP-11735-2023

AMARJEET KAUR SANDHU AND ANR …. PETITIONERS

V/S

STATE OF PUNJAB AND OTHERS …. RESPONDENTS

3. CWP-11839-2023

HANS RAJ SAMAN AND ORS …. PETITIONERS

V/S

STATE OF PUNJAB AND OTHERS …. RESPONDENTS

4. CWP-11944-2023

MONICA NEGI AND ORS …. PETITIONERS

V/S

STATE OF PUNJAB AND OTHERS …. RESPONDENTS

5. CWP-13628-2016

VIJAY KUMAR …. PETITIONER

V/S

STATE OF PUNJAB & ORS …. RESPONDENTS

6. CWP-5920-2023

PUNJAB STATE WAREHOUSING CORPORATION

…. PETITIONER

V/S

PUNJAB LAND DEVELOPMENT AND RECLAMATION CORPORATION WORKERS UNION (LUDHIANA UNIT) AND ORS.

…. RESPONDENTS

7. CWP-9380-2023

DEVI LAL NATH AND ORS. …. PETITIONERS

V/S

STATE OF PUNJAB AND OTHERS …. RESPONDENTS

8. CWP-9388-2023

SURJIT SINGH AND OTHERS …. PETITIONERS

V/S

STATE OF PUNJAB AND OTHERS …. RESPONDENTS

9. CWP-12063-2023

GURBINDER SINGH AND ORS …. PETITIONERS

V/S

STATE OF PUNJAB AND OTHERS …. RESPONDENTS

10. CWP-24400-2023

KHUSHWANT SINGH …. PETITIONER

V/S

STATE OF PUNJAB AND OTHERS …. RESPONDENTS

11. CWP-23374-2023

NARINDER KAUR …. PETITIONER

V/S

STATE OF PUNJAB AND OTHERS …. RESPONDENTS

12 CWP-12025-2019 (O&M)

PUNJAB LAND DEVELOPMENT & RECLAMATION CORPORATION WORKERS UNION (LUDHIANA UNIT)

…. PETITIONER

V/S

FINANCIAL COMMISSIONER (DEVELOPMENT), PUNJAB AND OTHERS

…. RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Akshay Bhan, Sr. Advocate with
Mr. Ranjit Singh Kalra, Advocate
Mr. Akhilesh Barak, Advocate
Mr. Randeep Singh, Advocate
for the petitioner in CWP-28036-2022 and
for the respondents in CWP-11735-2023, CWP-11839-2023, CWP-11944-2023, CWP-9380-2023, CWP-9388-2023 and CWP-12063-2023.

Mr. Ashok Bhardwaj, Advocate
for the petitioner (in CWP-11735-2023, CWP-11839-2023, CWP-11944-2023, CWP-9380-2023, CWP-9388-2023, CWP-12063-2023, CWP-24400-2023 and CWP-23374-2023.

Mr. Ish Puneet Singh, Advocate
for the petitioner in CWP-12025-2019.

Mr. Nitin Kaushal, Advocate
for the petitioner in CWP-13628-2016.

Mr. Anil Kumar Sharma, Advocate
for the petitioner in CWP-5920-2023.

Mr. Y. P. Singla, Advocate
for the respondents in CWP-13628-2016.

Mr. H.S.Dhandi, Advocate
for respondent No. 1 in CWP Nos. 28036 of 2022 and CWP No. 5920 of 2023.

Ms. Mona Yadav, Advocate
for respondent No.4 in CWP-28036-2022.

Mr. Ramandeep Singh, Sr. DAG, Punjab.
Mr. Aman Dhir, DAG, Punjab.

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JAGMOHAN BANSAL, J. (Oral)

1. By this common order, the above said petitions are disposed of as issues involved and prayer sought are common. For the sake of

convenience and with the consent of parties, the facts are borrowed from CWP-28036-2022.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of award dated 31.08.22 (Annexure P-1) whereby Labour Court has answered the reference in favour of the workman.

3. The petitioner is a corporation registered under the Companies Act, 1956. It is a State Government undertaking. The respondent No.1 is a Workers Union represented through its President. The respondent No.4 i.e. Punjab Land Development and Reclamation Corporation Limited (for short, 'PLDRCL') is a limited company. It is also a State Government undertaking.

4. The PLDRCL was engaged in the manufacture and supply of gypsum. On account of financial crisis, the management decided to close down its undertaking. The closure took place w.e.f. 25.10.2002 and for the said purpose, in terms of Section 25-O of the Industrial Disputes Act, 1947 (for short, 'ID Act') approval was sought from Labour Authorities. The workers union preferred multiple petitions before this Court assailing closure of undertaking. This Court vide order dated 21.08.2002 directed Labour Authorities to re-consider the decision of closure of unit. The crux of directions of this Court is as below:

> "a) *To decide whether or not the respondent Corporation is viable unit and/or should be wound up or not for any reason including that the Corporation has become unprofitable or that it has achieved the object for which it was constituted?*
> *b) Whether in the interest of the Corporation, it is*

> *necessary to retrench the employees? If so, for what reason and what should be terms of retrenchment?*
> *c) Whether the Corporation/Government is obliged to absorb retrench employees of this Corporation in either Government/Corporation?*
> *d) Whether the employees of the Corporation should be given the benefit of voluntary retirement scheme as noted by the Corporation or with such amendments as the Board may decide?"*

5. In compliance of orders of this Court, Principal Secretary, Govt. of Punjab, Department of Labour and Employment passed order dated 29.10.2003 whereby decision to close down undertaking was approved. It was noticed that revival of the unit is not viable and employees of the corporation are paid salary without work. The closure of the unit was ordered to be made effective w.e.f. 30.11.2003. The employees of the undertaking were ordered to be retrenched and paid compensation within a period of 06 months i.e. on or before 31.05.2004. The relevant extracts of the order dated 29.10.2003 are reproduced as below :

> 7. *The recommendations made by the Board of Directors of the PLDRC were considered at the Government level and following proposals were approved the level of Chief Minister :-*
> *(a) Close down of the PLDAC per provisions of the Industrial Disputes Act, 1947 ;*
> *(b) Retrenchment of employees of PLDRC and payment of compensation to the employees under the Industrial Disputes Act, 1947;*
> *(c) No absorption of the retrenched employees of the PLDRC in Government Departments.*
> *(d) Instead of VRS, retrenchment compensation be*

> *paid to the employees.*
>
> *8. After taking into consideration, the points put forth by the representative of the employees, the arguments of the Management and above all, the decision taken by the Board of Directors of the PLDRC Ltd., I feel that the revival of the PLDRC is not viable. The employees of the Corporation are simply being paid the salaries without any work. The Corporation has become a constanted drain on the State Exchequer and that the Corporation could not generate sufficient resources to meet its basic obligation for making payment of salaries to its employees from the activities of procurement and supply of Gypsum. I am constrained to accept the application of the Management of the PLDRC and allow its closure w.e.f. 30.11.2003. However, all employees of the Corporation will be paid their salaries and other retrenchment benefits under the Industrial Disputes Act within a period of six months i.e. on or before 31.3.2004.*

6. Pursuant to order dated 29.10.2003 passed by Labour Authorities, the Managing Director of PLDRCL vide order dated 28.11.2003 ordered to pay retrenchment compensation to employees in terms of Section 25-O of ID Act on or before 31.05.2004. The relevant extracts of the order dated 28.11.2003 are reproduced as below :

> *3. As per the legal requirements of Industrial Disputes Act, 1947 (Act No. 14 of 1947), an application under section 25-(0) of the aforesaid act was made to Secretary, Labour and Employment, Government of Punjab. You are hereby informed that in view of the permission having been granted by the Principal Secretary, Labour and Employment, Government of Punjab, vide his letter no.1/32/2002-4-*

Lab-II/4349-53, dated 30-10-2003 to close down the Corporation w.e.f. 30-11-2003 under the relevant provision of the Industrial Disputes Act, 1947, your services stand retrenched w.e.f. 30-11-2003 after.

4. The retrenchment compensation and unpaid salaries under the Section 25-0 of the Industrial Disputes Act, 1947: shall be paid to you on or before 31-5-2004, as per orders of Principal Secretary, Labour and Employment.

7. The workers union preferred a review petition before the Government against order dated 29.10.2003 passed by Principal Secretary, Govt. of Punjab, Department of Labour and Employment. They also preferred CWP No.19929 of 2003 before this Court assailing retrenchment order dated 04.12.2003 passed by PLDRCL. In the integrum, the Govt. of Punjab decided to amalgamate PLDRCL with Punjab Agro Industries Corporation Limited (Petitioner). By order dated 06.08.2004 Under Secretary, Govt. of Punjab declared that PLDRCL would amalgamate with Punjab Agro Industries Corporation Limited with all assets and liabilities including 199 retrenched employees who would be taken into service by the Punjab Agro Industries Corporation as a part of amalgamation plan on "as is where is basis." The relevant extracts of memo dated 06.08.2004 are reproduced as below :

After going through the aforesaid proposals of Punjab Agro Industries Corporation Ltd. and after detailed consideration, the Governor of Punjab is pleased to approve the following:-

a) Punjab Land Development & Reclamation Corporation Limited be amalgamated with Punjab Agro Industries Corporation Limited with all its assets and liabilities including that of its 199 *retrenched employees who are to be taken into service by the Punjab Industries Corporation Limited as a part of the amalgamation plan on as is where is basis.*

b) *Authorities of both the Corporations shall immediately take all pre-requisite steps under the law for completion of the amalgamation.*

8. In view of amalgamation scheme introduced by State Government, the workers of PLDRCL came to be appointed by Punjab Agro Industries Corporation Limited. The relevant extracts of appointment letter dated 15.09.2004, in case of one worker, are reproduced as below:

Subject: Contractual offer for six months.

Dear Sir,

In view of the decision of Board of Directors of Punjab Agro Industries Corporation Ltd. in order to avoid hardship to the retrenched employees of PLDRC, it has been decided to take you on contract basis for six months on consolidated salary, equivalent to last pay drawn in PLDRC subject to the following conditions :

1. *That no disciplinary proceedings/action is pending against you in PLDRC.*
2. *That you shall not claim any extra benefit.*
3. *You are liable to be posted/transferred anywhere in Punjab/India.*
4. *Your services are liable to be terminated anytime during the contract period by giving one month's notice.*

If the above terms and conditions of contract offer are acceptable to you, you are directed to submit

> *joining report to DM Mansa within a period of 15 days of issue of this letter failing which it will be presumed that you are not interested to join PAIC and this offer will stand withdrawn.*
>
> *In case, the above offer is acceptable to you, you are directed to send the duplicate copy duly signed by you to this office as a token of acceptance of offer.*

9. Pursuant to aforesaid appointment letters, 199 workers joined Punjab Agro Industries Corporation Limited. It is apt to notice here that few workers were already working with other government departments on deputation. In view of re-appointment of workers by Punjab Agro Industries Corporation, review petition pending before Government came to be disposed of vide order dated 16.09.2004 passed by Principal Secretary to Government of Punjab. The relevant extracts of order dated 16.09.2004 are reproduced as below:

> *I have gone through the record presented before me at the time of hearing. A perusal of the record shows that the Punjab Land Development and Reclamation has been amalgamated with Punjab Agro Foodgrain Corporation, a subsidiary of Punjab Agra Industries Corporation with all its Assets and liabilities including that of its 199 retrenched employees who are to be taken into service by the Punjab Agre Food Corporation Ltd. and employees will also be paid salaries and other benefits. In this behalf an agreement has been signed between employers and employees. Thus Review Application has become infructuous.*

10. On one hand, the workers came to be absorbed by Punjab Agro Industries Corporation and on the other, amalgamation scheme

failed. The State Government vide order dated 19.11.2004 declared that amalgamation of PLDRCL with Punjab Agro Industries Corporation is hereby withdrawn with immediate effect. On account of withdrawal of amalgamation scheme, all the workers of PLDRCL came to be relieved vide order dated 19.11.2004 passed by Additional Managing Director, Punjab Agro Industries Corporation Limited (Petitioner). The relevant extracts of the order dated 19.11.2004 are reproduced as below :

> *Consequent upon Punjab Government Memo No.20/3/01-Agr.II(8)4608, dated 19.11.04 vide which earlier instructions issued vide letter No.20/3/01-Agr.II(8)/3091, dated 06.08.2004 regarding amalgamation of PLDRC and PAIC stands withdraw today. Keeping in view the above instructions, the contractual appointment of following PLDRC employees are hereby disposed with immediate effect and they are relieved from their duties w.e.f. 19th November 2004 (A.N.):-*

11. The CWP Nos.19929 of 2003 and 19148 of 2014 filed by Workers Union came to be dismissed as withdrawn with liberty to workers to raise an industrial dispute. The workers union feeling aggrieved from relieving order passed by Punjab Agro Industries Corporation approached Labour Authorities at Ludhiana. It is apt to notice here that they approached Labour Authorities at Ludhiana after disposal of their writ petition No. 19929 of 2003. The conciliation proceedings before Labour Court could not be fructified. The workers union with intent to resolve the issue through Labour Court filed a petition before Labour Court at Chandigarh. The said petition was filed without reference by Government. The petitioner herein raised an

objection before Labour Court to the effect that petition before Labour Court without reference by Government is not maintainable. The workers union approached Chandigarh Administration which made reference to Labour Court. Resultantly, earlier petition filed by workers union was withdrawn.

12. The Labour Court by impugned order has adjudicated question of reinstatement as well as compensation. The Court has formed an opinion that retrenchment order was legal and valid, however, Punjab Agro Industries Corporation is liable to pay compensation as well as reinstate the workers because as per amalgamation scheme, they have received 1500 acres land. Once Punjab Agro Industries Corporation has received land pursuant to amalgamation scheme, they cannot deflect from their liability arising out of salary of workers. The petitioner is assailing order dated 31.08.2022 passed by Labour Court, Chandigarh.

13. Mr. Akshay Bhan, Sr. Advocate submits that Labour Court at Chandigarh had no jurisdiction to entertain reference. The U. T. Administration itself was not competent to make reference because all the workers were posted at Ludhiana and they had already approached Labour Authorities at Ludhiana for conciliation. They wrongly invoked jurisdiction of Labour Court at Chandigarh. The workers were retrenched by PLDRCL and were appointed by petitioner on contract of 06 months. The amalgamation scheme was not implemented, thus, they were not bound to retain workers of PLDRCL. The petitioner has not received alleged land from PLDRCL. As detailed at page 26-27 of the writ petition, the State Government has vested land of PLDRCL in favour of different authorities/government functionaries like Punjab Agricultural

University, Punjab Police etc. In any case, Punjab Agro Industries Corporation cannot be held liable to pay salary of workers of PLDRCL merely because Government has transferred a small piece of land earlier owned by PLDRCL. The workers have never worked with petitioner for 240 days during preceding 12 months, thus, they are not eligible for compensation. All the workers were paid retrenchment compensation at the time of their retrenchment. They were also paid salary for the period they worked with petitioner.

14. Mr. H.S.Dhandi, Advocate submits that workers of the Union were posted at Ludhiana, however, registered office of petitioner is at Chandigarh. The order of relieving the workers was passed at Chandigarh, thus, Labour Court at Chandigarh had jurisdiction to entertain reference of the Workers Union.

The workers withdrew their review application pending before Government on the assurance of Government that as per amalgamation scheme all the workers of PLDRCL are going to be appointed by Punjab Agro Industries Corporation. There was a letter from Government to the office of Advocate General disclosing that as per amalgamation, all the employees of PLDRCL would be appointed by Punjab Agro Industries Corporation Limited. As per amalgamation scheme, a large chunk of land was transferred to the petitioner. The assets of PLDRCL were transferred to Punjab Agro Industries along with liabilities and 199 workers. The management of petitioner acted upon amalgamation scheme. The petitioner received land as well as issued appointment letters in favour of workers. They were relieved within two months from the date of their appointment. It is a case of violation of principle of promissory estoppel. The workers withdrew their case under assurance of State Government and its instrumentalities. The workers are contesting the matter since 2002. They cannot be left high and dry. The retrenchment compensation was not paid within time stipulated in the retrenchment order, thus, order of retrenchment lost its significance. The workers on account of appointment letter issued by petitioner became employees of petitioner, thus, Labour Court has rightly awarded back wages as well as ordered to reinstate all the employees.

15. The conceded position emerging from record is that members of respondent-Workers Union were employees of PLDRCL. The Board of Directors of PLDRCL vide resolution dated 25.10.2002 decided to close down the Corporation. The said order was challenged before this Court by way of CWP No.19076 of 2002 titled as "Kaka Singh and another vs. State of Punjab". On the directions dated 07.08.2003 of this Court, the question of closure of unit was re-considered. PLDRCL moved fresh application under Section 25-O of ID Act. The Principal Secretary, Government of Punjab, Department of Labour and Employment vide order dated 29.10.2003 approved closure of PLDRCL. The Managing Director of PLDRCL passed order dated 28.11.2003 to pay retrenchment compensation to employees in terms of Section 25-O of ID Act. The Workers Union filed review application before the State Government seeking review of order dated 29.10.2003. During the pendency of review application, the State of Punjab decided to amalgamate PLDRCL with Punjab Agro Industries Corporation. Punjab Agro Industries Corporation passed resolution noticing decision of State Government. In the Board meeting of Punjab Agro Industries

Corporation, it was decided to take over 199 employees of PLDRCL, however, it was noticed that amalgamation scheme would be completed after passing resolution by both the Corporations and approval by Central Government in terms of Companies Act, 1956. The workers of PLDRCL came to be appointed by petitioner for a period of 06 months. The Government decided to withdraw amalgamation scheme, accordingly, workers of PLDRCL came to be relieved by petitioner. Writ petitions pending before this Court assailing different orders of authorities or management came to be disposed of with liberty to workers to approach Labour Court. While disposing writ petitions, it was held that question of delay would not be considered while making reference. The Workers Union approached Chandigarh Administration seeking reference which referred the dispute to Labour Court, Chandigarh. The matter was argued by both sides before the Labour Court which vide impugned order upheld order of closure of unit as well as retrenchment of workers, however, directed the petitioner to reinstate workers and pay back wages on the ground that the petitioner as per amalgamation scheme has received land belonging to PLDRCL, thus, it is liable to pay salary of workers of PLDRCL.

16. The petitioners were concededly regular employees of PLDRCL. On the directions of this Court, the question of closure of PLDRCL was re-considered by Punjab State Government. The order dated 29.10.2003 was passed by Principal Secretary, Government of Punjab whereby closure of undertaking as well as retrenchment of workers was approved. It was decided that workers would be paid compensation in terms of Section 25-O of ID Act. The Managing

Director of PLDRCL, pursuant to order dated 29.10.2003 passed by the Principal Secretary, Government of Punjab passed order dated 28.11.2003 whereby workers were retrenched and they were ordered to be paid compensation on or before 31.05.2004.

The Labour Court has upheld order dated 29.10.2003 passed by Principal Secretary, Government of Punjab as well as order dated 28.11.2003 passed by the Managing Director. By upholding orders of retrenchment, the Labour Court has approved retrenchment of workers. They have been paid retrenchment compensation. They were entitled to compensation on or before 31.05.2004 but were paid in November' 2004 i.e. at the time they were relieved by petitioner.

The Labour Court has made petitioner liable to reinstate workers of PLDRCL with full back wages and consequential benefits. The petitioner has been made liable to pay back wages and reinstate workers on the sole ground that there was amalgamation scheme and as per said scheme, assets of PLDRCL were transferred to the petitioner. As per amalgamation scheme, 1500 acres land was transferred to petitioner. It was liability of petitioner, as per amalgamation scheme, to absorb 199 workers of PLDRCL. Thus, the petitioner was liable to pay salary of workers of PLDRCL. The workers could not be terminated and act of petitioner as well as Government was in violation of principle of promissory estoppel. There was promise on the part of Government and Management of the petitioner, thus, they were bound to comply with their promise. The workers could not be terminated in the manner they had been.

The Labour Court while passing impugned order has heavily relied upon amalgamation scheme and formed an opinion that 1500 acres land was transferred to the petitioner pursuant to amalgamation.

17. The Government of Punjab vide letter dated 06.08.2004 conveyed its decision to amalgamate PLDRCL with Punjab Agro Industries. The decision of Government, for the ready reference, is reproduced as below :

> *After going through the aforesaid proposals of Punjab Agro Industries Corporation Ltd. and after detailed consideration, the Governor of Punjab is pleased to approve the following:-*
>
> *c) Punjab Land Development & Reclamation Corporation Limited be amalgamated with Punjab Agro Industries Corporation Limited with all its assets and liabilities including that of its 199 retrenched employees who are to be taken into service by the Punjab Industries Corporation Limited as a part of the amalgamation plan on as is where is basis.*
>
> *d) Authorities of both the Corporations shall immediately take all pre-requisite steps under the law for completion of the amalgamation.*

In the aforesaid letter, it has been categorically noticed that the authorities of both the Corporations shall immediately take all pre-requisite steps under the law for completion of amalgamation. The respondent is heavily relying upon decision of Board of Directors of petitioner. The relevant extracts of Board Meeting read as :

> "*The Board of Directors took note of the Punjab Government order dated 06.08.2004 in respect of amalgamation of Punjab Land Development & Reclamation Corporation (PLDRC) with Punjab Agro*

Industries Corporation Limited (PAIC) according to which all PLDRC assets and liabilities including that of its 199 retrenched employees are to be taken into service by PAIC as a part of amalgamation plan on 'as is where is' basis.

It was, however, noted that formal approval of the scheme of amalgamation shall have to be obtained in pursuance of Section 396 (1) and (2) of the Companies Act, 1956 after upto date information in respect of assets and liabilities of PLDRC was received consequent upon finalization of the accounts and availability of exact information regarding assets and liabilities of PLDRC.

As the process of amalgamation was likely to take some time, to avoid hardship to the retrenched employees of PLDRC, it was decided to take these 199 employees on contract basis for six months on the consolidated salary equivalent to last pay drawn subject to there being no disciplinary proceedings/action pending against them.

The PLDRC employees taken on contract would be responsible for finalization of accounts and ascertainment of exact assets and liabilities of PLDRC required for the purpose of preparation of scheme of amalgamation within this period & approval of the same from the competent authority."

18. From the perusal of decision dated 06.08.2004 and 27.08.2004 of State Government and Board of Directors of petitioner respectively, it is quite evident that scheme of amalgamation was to take place after approval by Central Government under Section 396 of Companies Act, 1956 and receiving upto date information in respect of assets and liabilities of PLDRCL. It was noticed that process of

amalgamation would take sometime. To avoid hardship to retrenched employees, 199 employees of PLDRCL came to be appointed on contract basis for 06 months on consolidated salary equivalent to last drawn pay. The amalgamation had to take place after completion of formalities contemplated by Section 396 of Companies Act. The petitioner as well as PLDRCL was a limited company and two limited companies cannot be amalgamated by State Government without complying with mandatory provisions of Companies Act. The scheme of amalgamation is approved by Central Government where there is amalgamation of companies in national interest. The Board of petitioner in its meeting had noticed that amalgamation would take place after approval by Central Government in terms of Section 396 of Companies Act. Had the Board not noticed the said fact still both companies could not be amalgamated except after approval by Central Government. Amalgamation of two limited companies is not like a merger of two proprietorship or partnership firms. Establishment, winding up and amalgamation of limited companies is governed by Companies Act. It is apt to notice that at present, Companies Act, 2013 is in force and during the period in question Section 396 of erstwhile Companies Act, 1956 was applicable which is reproduced as below :

> *396. **POWER OF CENTRAL GOVERNMENT TO PROVIDE FOR AMALGAMATION OF COMPANIES IN NATIONAL INTEREST.***
>
> *(1) Where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, then, notwithstanding anything contained in sections 394 and 395 but subject to the provisions of this section, the Central*

Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution; with such property, powers, rights, interests, authorities and privileges; and with such liabilities, duties, and obligations; as may be specified in the order.

(2) The order aforesaid may provide for the continuation by or against the transferee-company of any legal proceedings pending by or against any transferor-company and may also contain such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.

(3) Every member or creditor (including a debenture holder) of each of the companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the company resulting from the amalgamation as he had in the company of which he was originally a member or creditor ; and to the extent to which the interest or rights of such member or creditor in or against the company resulting from the amalgamation are less than his interest in or rights against the original company, he shall be entitled to compensation which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette. The compensation so assessed shall be paid to the member or creditor concerned by the company resulting from the amalgamation.

(3A) Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section

(3) may, within thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Tribunal and thereupon the assessment of the compensation shall be made by the Tribunal.

(4) No order shall be made under this section, unless -

(a) a copy of the proposed order has been sent in draft to each of the companies concerned ;

(aa) the time for preferring an appeal under sub-section (3A) has expired, or where any such appeal has been preferred, the appeal has been finally disposed of; and

(b) the Central Government has considered, and made such modifications, if any, in the draft order as may seem to it desirable in the light of any suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, or from any class of share- holders therein, or from any creditors or any class of creditors thereof.

(5) Copies of every order made under this section shall, as soon as may be after it has been made, be laid before both Houses of Parliament.

19. The petitioner and other stakeholders in terms of Section 396 of Companies Act, 1956 did not apply for amalgamation of two State Government Undertakings rather proposal to amalgamate both companies was rescinded. In the absence of compliance of procedure of Section 396 of Companies Act, there was no question of amalgamation.

20. From the above noted facts, it is evident that PLDRCL never merged with petitioner and there was only an administrative decision of

State Government to merge both entities which was withdrawn within a short span. The engagement of workers of PLDRCL on the roll of petitioner was part of amalgamation. As amalgamation was bound to take quite sometime, the workers were appointed on contract basis for a period of 06 months. They were relieved even prior to completion of 06 months period. They were appointed on 15.09.2004 and relieved on 19.11.2004. Meaning thereby, they worked for a small period of 02 months with petitioner. The Labour Court has formed compassionate opinion and held that the petitioner is liable to retain workers of PLDRCL and pay them back wages. The Labour Court is bound to pass order within metes and bounds of ID Act. The Labour Court cannot travel beyond the banks of river of ID Act. The Labour Court while passing impugned order was bound to consider statutory provisions governing change of terms and conditions of employment or retrenchment of workers. Section 25-O of ID Act provides procedure for closing down an undertaking and Section 25-N of ID Act prescribes conditions precedent to retrenchment of workman. The expression 'retrenchment' has been defined under Section 2(oo) of ID Act. Section 25-O, 25-N and 2 (oo) of ID Act are reproduced as below :

> ***25-O. Procedure for closing down an undertaking**.—*
> *(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also*

be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall, be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting

or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

X X X X

25-N. Conditions precedent to retrenchment of workmen*.—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—*

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such

permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits

under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

X X X X

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) 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;

21. From the perusal of Section 2 (oo) of the ID Act, it is evident that retrenchment does not include termination of the service of a workman as a result of non-renewal of the contract of employment on its expiry or being terminated under a stipulation in that behalf contained therein. Section 25-N of ID Act is applicable to a workman who has been in continuous service for not less than one year. Section 25-O of ID Act permits closure of an undertaking. The Labour Court has directed the petitioner to reinstate workers of respondent Union. They were appointed for a period of 06 months. It was a contractual appointment and they came to be relieved within two months from the date of appointment. The appointment was outcome of proposal of amalgamation of two limited companies. The amalgamation scheme did not materialize and respondents were relieved. They had not worked for a period of one year i.e. 240 days during the preceding 12 months. In the absence of completion of one year period, they were not entitled to protection guaranteed by Section 25-N of the ID Act. They were actually workers of PLDRCL and Labour Court has upheld their termination from their actual employer. Neither original employer has been asked to reinstate them nor pay back wages. The petitioner is an independent entity. It had engaged respondent, on contract, for a period of 06 months. No protection as contemplated by different provisions of ID Act ensued

in their favour because they never worked for a period of 240 days in the preceding 12 months.

22. The Labour Court has heavily relied upon averments of workman and cross-examination of one employee of petitioner. The Labour Court without any concrete evidence has concluded that land owned by PLDRCL was transferred to petitioner. It is noticed in the impugned order that land is reducing in the hands of petitioner. The Court did not scrutinize balance sheet of petitioner which would have cleared the factual position. Land of a Limited Company cannot be transferred merely by communication. It is transferred by way of a registered sale deed and compliance of provisions of Companies Act. The respondent in the pleadings as well as during the course of arguments has specifically pleaded that they have not received land from PLDRCL. A piece of 200 acres of land was allotted by Punjab Government to develop food park. The said land also did not vest in petitioner. The transfer of land of PLDRCL in favour of petitioner, in any case, could create right in equity, however, no right in terms of ID Act was created in favour of workers of PLDRCL.

23. The Labour Court has upheld order of closure as well as retrenchment. The workers were entitled to retrenchment compensation. They have already been paid retrenchment compensation. The amount of retrenchment compensation was charge on the assets of PLDRCL. Had compensation not been paid, the said amount could be recovered from the assets of PLDRCL. As soon as compensation was paid, there remained no right of the workers especially against Punjab Agro Industries. The compensation was to be paid by 31.05.2004 whereas it was paid in the

month of November' 2004. On account of delayed payment of retrenchment compensation, the order of retrenchment at the most could be doubted, however, order of retrenchment has been upheld, thus, delayed payment of compensation has no effect. As soon as compensation was paid, there remained no charge of dues of workmen on the assets of PLDRCL. In such circumstances, transfer of assets of PLDRCL to Punjab Agro Industries did not create any right in favour of workers.

24. In the wake of above discussion, this Court is of the considered opinion that workers of PLDRCL, in terms of ID Act, are not entitled to reinstatement or back wages from petitioner.

25. The petitioner has raised question of jurisdiction of Labour Court, Chandigarh. As per petitioner, the Labour Court, Chandigarh had no jurisdiction to entertain reference of Workers Union. The respondent has pleaded that office of petitioner is at Chandigarh and orders of termination were passed at Chandigarh, thus, Labour Court at Chandigarh had jurisdiction to entertain their reference. In the wake of findings on merits, I do not find it necessary to advert with question of jurisdiction.

26. In the wake of above discussion and findings, this Court is of the considered opinion that the present petition deserves to be allowed and accordingly allowed. The impugned award dated 31.08.2022 is hereby set aside.

CWP Nos.13628-2016, 12025-2019 (O&M) and 11735, 11839, 11944, 5920, 9380, 9388, 12063, 24400 & 23374 of 2023

27. In the wake of setting aside of award dated 31.08.2022 passed by Labour Court, Chandigarh, the claim of petitioners does not

survive. Accordingly, all the petitions are hereby dismissed.

(JAGMOHAN BANSAL)
JUDGE

14.08.2024
anju

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No