written statement did the Company dispute its liability to pay the amount as claimed by the petitioner in terms of the lease agreement. It is for the first time that the plea was raised in this Court that the lease agreement was in fact a loan transaction. No doubt, the Company has instituted a suit in the District Court at Delhi claiming that the lease agreement is in fact a loan agreement but that too had been filed only after the Company had been served with a statutory notice under section 434 of the Act. It can safely be presumed that the pleas sought to be raised by the Company are only an after-thought and a convenient way to wriggle out of its liability to pay the amount under the lease agreement. It appears that the Company had no funds to pay the amount due to the petitioner and the present pleas have been taken in the written statement only with a view to hide its inability to pay. The defence raised by the Company cannot therefore, be said to be *bona fide* and for this reason as well I hold that the Company is unable to pay its debts. The amount worked out and claimed by the petitioner under the agreement has not been disputed by the Company except on the ground that the interest claimed was excessive and, therefore, hit by the provisions of the Usurious Loans Act as referred to above. The amount due is admittedly more than Rs. 500 which the Company has on receipt of a notice neglected to pay or secure or compound the same to the satisfaction of the petitioner. It must, therefore, be held that the Company is unable to pay its debts.

(9) In the result, the petition is admitted. It is ordered to be advertised not less than 14 days before the next date of hearing in the official gazette of the State of Haryana and in one issue each of the Daily Tribune (English) and Jan Satta.

(10) To come up for further proceedings on 11th August, 1995.

J.S.T.

Before Hon'ble G. S. Singhvi & N. K. Sodhi, JJ.

BHIKKU RAM,—*Petitioner.*

versus

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK & ANOTHER,—*Respondents.*

C.W.P. No. 11851 *of* 1994

28th November, 1994.

Industrial Disputes Act, 1947—*Ss.* 2(oo) (*bb*), 25-*F* & 25-*G*—*Retrenchment—Interpretation of—Unfair labour practice—Application of Section* 2(oo).

Held, that while interpreting and applying various parts of Section 2(oo), the competent Court/Tribunal shall have to keep in mind the provisions of Section 2(ra) read with Section 25-T and U and various paragraphs of the Fifth Schedule and if it is found that the action of the employer to engage a workman on casual basis or as a daily wager or even on temporary basis for long periods of time with intermittent breaks and subsequent termination of service of such workman on the pretext of non-renewal of contract of employment or termination of contract of employment on the basis of a stipulation contained therein is an act of unfair labour practice, such an action of the employer will have to be nullified and the Court will be fully justified in rejecting the plea of the employer that termination of service of the workman does not amount to retrenchment but is covered by clause (bb). In the context of various paragraphs of the Fifth Schedule, clause (bb) which is an exception to the principal section will have to be given a narrow interpretation. This clause has the effect of taking away a right which was vesting in the workman prior to its insertion. Therefore, the same cannot be allowed to be used as a tool of exploitation by the employer, who as already observed, enjoys a position of dominance as against the workman. The employer is always in a position to dictate the terms of service vis-a-vis the workman or to be workman. The employer can unilaterly impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions. The employee cannot possibly protest against the incorporation of arbitrary unreasonable and even unconsciounable conditions of service in the contract of employment. Any such protest by the employee or a to be employee will cost him job or a chance to enter employment. In respect of a work of permanent or continuing nature, the employer can always give an employment of fixed term or incorporate a condition in the contract of employment/ appointment letter that the employment will come to an end automatically after a particular period or on the happening of a particular. In such a situation, if the Court finds that the conditions are arbitrary and unreasonable and the employer has forced these conditions upon a workman with the sole object of avoiding his obligation under the Industrial Disputes Act, a bald plea of the employer that the termination of service is covered by clause (bb) will be liable to be rejected.

(Para 23)

Further held, that termination of service of a workman, who has worked under an employer for 240 days in a period of twelve months preceding the date of termination of service will ordinarily be declared as void if it is found that the employer has violated the provisions of Section 25-F(a) and (b). If the employer resists the claim of the workman and invokes Section 2(oo) (bb), burden lies on the employer to show that though the employee has worked for 240 days in twelve months prior to termination of his service, such termination of service cannot be treated as retrenchment because it is in accordance with the terms of the contract of employment or on account of non-renewal of the contract of employment. It has also to be shown by the employer that the workman had been employed for a specified work and the job which was being performed by the

employee is no more required. Only a *bona fide* exercise of right by an employer to terminate the service in terms of the contract of employment or for non-renewal of the contract will be covered by the clause (bb). If the Court finds that the exercise of rights by the employer is not *bona fide* or the employer has adopted the methodology of fixed term employment as conduct or mechanism to frustrate the rights of the workman, the termination of the service will not be covered by the exception contained in clause (bb). Instead the action of the employer will have to be treated as an act of unfair labour practice, as specified in the Fifth Schedule of the Act.

(Para 37)

Mrs. Abha Rathore, Advocate, *for the Petitioner.*

None, *for the Respondents.*

JUDGMENT

G. S. Singhvi, J.

(1) Award (Annexure P-4) dated 19th April, 1994 has been challenged by the petitioner (workman) in this petition. He has prayed for quashing of the award and for issue of a direction to respondent No. 2 to re-instate him with full back wages.

(2) Petitioner was appointed in the service of the Haryana Handloom Weavers Apex Co-op. Society Limited (for short, 'respondent-society') for a period of 89 days in the first instance,—*vide* order dated 29th June, 1984. On expiry of the period of 89 days, his service was terminated but he was re-employed on similar terms and conditions. The process of re-employment and termination of service continued till 24th June, 1987 when his service was finally discontinued. The petitioner raised a dispute against the termination of his service by alleging that his service was retrenched without compliance of the mandatory requirement of Section 25-F of the Industrial Disputes Act, 1947 (for short, 'the Act'). He also pleaded violation of Section 25-G of the Act as well as the principles of natural justice. Conciliation proceedings were initiated at the instance of the petitioner but the parties failed to arrive at a settlement. Consequently, the Conciliation Officer submitted a failure report to the Government and on a consideration of the failure report, the Government referred the dispute under Section 10(1) (c) of the Act for adjudication by the Industrial Tribunal-cum-Labour Court, Rohtak. Before the Industrial Tribunal, the workman reiterated his plea that termination of his service was contrary to

Sections 25 F and 25-G of the Act. He specifically pleaded that though he had worked for a period of 240 days, notice or pay in lieu thereof and retrenchment compensation were not given to him. He further stated that two workmen, namely, Ranbir and Sashi, who were employed after him, were still working. He also stated that during the course of employment, he was allotted P.F. No. 5973/59 and was called upon to furnish security of a sum of Rs. 25,000. Respondent No. 2 contested the claim of the workman m asserting that the provisions of the Act are not applicable and in any case the workman's case was covered by Section 2(oo) (bb) of the Act. Respondent No. 2 further pleaded that petitioner was employed as a Salesman on purely temporary and *ad hoc* basis for a period of 89 days and his services were likely to be terminated at any time without any notice. His service was terminated at the end of the period stipulated in the order of appointment but on his request, the management of the society again employed him. It was further pleaded that the petitioner was guilty of embezzlement of Rs. 550. A prayer was also made to allow the society to lead evidence to prove the charge of embezzlement.

In support of his case, the workman examined himself and respondent No. 2 examined one Sahib Ram as its witness. After considering the rival case, the Industrial Tribunal-cum-Labour Court has passed the impugned award. It has held that case of the petitioner is covered by Section 2(oo) (bb) of the Act and, therefore, he is not entitled to any relief.

(3) Mrs. Rathore, learned counsel for the petitioner, argued that award passed by the Industrial Tribunal-cum Labour Court is perverse and suffers from an error of law apparent on the face of it. She argued that the Labour Court has not looked into the evidence produced before it and has altogether ignored the plea raised on behalf of the petitioner about violation of Section 25-G of the Act and also that the action of the employer was not *bona fide*.

(4) A look at the impugned award shows that after making a reference to the various orders issued for appointment of the petitioner for different specified periods, the Labour Court observed that as the workman was appointed for 89 days on every occasion, it cannot be said that his appointment was for 240 days in a year and, therefore, his case is covered by Section 2(oo) (bb) of the Act and he is not entitled to the benefits of Section 25-F of the Act. However the award does not contain even a single word about the plea of the petitioner that while terminating his service, the employer had retained persons junior to him and that the action of the employer in giving him appointment for a fixed period of 89 days with

intermittent breaks was not *bona fide*. The Labour Court has altogether ignored the oral evidence produced by both the parties. The petitioner did make a statement that initially he was appointed on daily wages but subsequently he was given appointment in regular pay scale and his Provident Fund was also deducted. His work was satisfactory. He was not charge-sheeted and that after terminating his service, the employer had appointed two fresh hands. In his cross-examination, the petitioner stated that he worked continuously. He denied the suggestion that his service was terminated because it was no more required. He also denied the suggestion that he had committed an embezzlement. In his statement, Sahib Ram, who had appeared on behalf of the management, has stated that the petitioner was appointed on purely *ad hoc* basis for a period of 89 days and after few days of termination of his service, a new appointment order on the same terms and conditions was issued. His service was terminated because it was no more required in the light of embezzlement of Rs. 550, which he committed on 23rd September, 1986 at Adampur Depot. In his cross-examination, this witness admitted that Exhibits W-10 and W-11 are the statements from Provident Fund office. He admitted that he was not in a position to say as to whether any inquiry was held into the allegation of embezzlement. Apparently, the learned Labour Court has completely ignored the oral evidence adduced by the two sides and has failed to record any finding on the question of *bona fides* of the action taken by the employer. Apart from this, we find that on the issue of applicability of Section 2(oo) (bb) of the Act also, the finding arrived at by the learned Trial Court is perfunctory and cryptic. The entire approach of the learned Labour Court depicts a casual approach adopted by the said Court while deciding the dispute. To our mind, the Labour Court was totally oblivious of the importance of its jurisdiction to decide the dispute arising under the Industrial Disputes Act, 1947. May be this is due to lack of appreciation on the part of the Presiding Officer of the role of adjudicating bodies constituted under the Act. Lack of this realisation is more than evident in the case in hand. In our opinion, failure on the part of the Labour Court to appreciate the controversy in a correct perspective and its failure to deal with the issues of facts and law in accordance with the settled legal propositions has resulted in manifest injustice to the petitioner and the impugned award suffers from an error of law warranting interference of this Court.

(5) Ambit and scope of Sectoin 2(oo) and clause (bb) added by the Industrial Disputes (Amendment) Act No. 49 of 1984 now needs

a detailed examination. However, before we do not it is necessary to emphasise that object of various labour legislation enacted during 1940s and 1950s was to ensure fair protection to the rights of the workmen and at the same time to prevent dispute between the employers and the employees so that industrial production might not be adversely affected and the larger public interest might not suffer. The Industrial Disputes Act, 1947, is a welfare legislation which provides the machinery and procedure for investigation and settlement of disputes. At the same time, it confers certain rights on the workmen and protects their service conditions. It also imposes certain obligations on the workmen as well as the employers which must be fulfilled for maintaining industrial peace.

(6) The term 'retrenchment' was not defined under in the Trade Disputes Act, 1929 (repealed) or in the Industrial Disputes Act. 1947. as originally enacted. Due to severe crisis in the textile industries in Bombay which, it was apprehended, would result in large scale removal of workmen from service, the Government of India issued the Industrial Disputes (Amendment) Ordinance, 1953, which was subsequently replaced by the Industrial Disputes (Amendment) Act, 1953 (Act No. 47 of 1953). By this Act, clauses 2(kkk) and 2(oo) containing definitions of 'lay-off' and 'retrenchment' respectively were inserted in the Act. At the same time, Chapter V-A containing Sections 25-A to 25-J was inserted in the Act. Sections 25-F, 25-G and 25-H as well as Section 25-J form part of Chapter V-A. Section 25-F contains conditions precedent to retrenchment of a workman. Sectoin 25-G deals with the procedure for retrenchment and Section 25-H deals with re-employment of the workman. Section 25-J contains a non-obstante clause and gives over-riding effect to the provisions contained in Chapter V-A notwithstanding any inconsistency *qua* any other law. The Statement of Objects and Reasons of Amendment Act, 1953, are quite significant and are. therefore, reproduced below :—

> "The Industrial Disputes (Amendment) Bill, 1953 seeks to provide for payment of compensation to workmen in the event of their lay-off or retrenchment. The provisions included in the Bill are not new and were discussed at various tripartite meetings. Those relating to lay-off are based on an agreement entered into between the representatives of employers and workers who attended the 13th session of the Standing Labour Committee. In regard to retrenchment, the Bill provides that a workman who has been in continuous employment for not less than one

year under an employer shall not be retrenched until he has been given one month's notice in writing or one month's wages in lieu of such notice and also a gratuity calculated at 15 days' average pay for every completed year of service or any part thereof in excess of six months. A similar provision was included in the Labour Relations Bill, 1950, which has since lapsed. Though compensation on the lines provided for in the Bill is given by all progressive' employers, it is felt that a common standard should be set for all employers.

Clause 2(oo) as inserted reads as under :

'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

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

(7) Over 35 years of the operation of the Industrial Disputes Act brought out certain discrepancies and anomalies. The National Commission on Labour also made a number of recommendations for amendment of the Act. In *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa* (1), their Lordships of the Supreme Court also suggested that Parliament may bring about changes in the definition of 'Industry'. After the matter had been discussed at various forums. the Industrial Disputes (Amendment) Bill was introduced and finally the Industrial Disputes (Amendment) Act No. 46 of 1982. Another amendment was introduced some time in the year 1984, which ultimately came to be enacted as Industrial Disputes (Amendment) Act, 1984. The Statement of Objects and Reasons of the Amendment Act, 1984, is as in :—

"The Industrial Disputes Act, 1947, provides the machinery and procedure for the investigation and settlement of

(1) A.I.R. 1978 S.C. 548.

industrial disputes. The provisions of the Act had been amended from time to time in the light of experience gained in its actual working, case laws and industrial relations policy of the Government.

2. The amendments proposed in the Bill are mainly to clarify certain doubts expressed by Courts on the validity of certain provisions of the Act. The Bill, *inter alia*, seeks to make the following amendments in the Act, namely :—

(i) Difficulties have arisen in the interpretation of the expression 'retrenchment'. It is proposed to exclude from the definition of 'retrenchment' as contained in the Act termination of the service of a workman as a result of the non-renewal of the contract of employment on its expiry and of the termination of such contract in accordance with the provisions thereof ;

(ii) Following the decision of the Supreme Court in the Excel Wear case (A.I.R. 1979 S.C. 25), some High Courts have declared invalid the special provisions relating to lay off and retrenchment contained in the Act which applied to establishments employing 300 or more workmen. It is proposed to redraft these provi sions on the same lines as the amended provision relating to closure, which was inserted by the Industrial Disputes (Amendment) Act, 1982 (46 of 1982), after taking into consideration the observations of the Supreme Court in the above case."

(8) Clause (bb) was inserted in Section 2(oo) by Act No. 49 of 1984 and has been made effective from 18th August, 1984. Similarly, Section 2(ra) and Fifth Schedule have been inserted in the Act by Amendment Act No. 46 of 1982. Section 2(oo) as it was inserted by the Industrial Disputes (Amendment) Act, 1953, clause (bb) inserted by the Industrial Disputes (Amendment) Act, 1984 and Section 2(ra) inserted by the Act No. 46 of 1982, read 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) 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.

Section 2(ra). 'unfair labour practice' means any of the practices specified in the Fifth Schedule."

(9) In *Pipraich Sugar Mills Ltd.* v. *Pipraich Suger Mills Mazdoor Union* (2), services of the employees were terminated by the company on account of closure. This led to an industrial dispute. The Industrial Tribunal held that the company was bound to pay the share of profit to the workmen. That award was affirmed by the Appellate Tribunal and then the matter was taken to the Supreme Court and their Lordships of the Supreme Court had held *that retrenchment means in ordinary parlance discharge of surplus labour and it cannot include discharge on closure of business.* The same view was expressed in *Hariprasad Shivshankar Shukla* v. *A. D. Divika* (3). After making a reference to the definition of 'retrenchment' under Section 2(oo) as it then stood, the Supreme Court held :—

"Retrenchment as defined in S. 2(oo) and as used in S. 25-F has no wider meaning than the ordinary accepted connotation of the word. It means the discharge of surplus labour or staff by the employer for any reason whotsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and *bona fide* closure of business or where the service of all workmen have been terminated by the emplover on the business or undertaking being taken over by another

(2) 1956 S.C.R. 872.
(3) A.I.R. 1957 S.C. 121.

employer in circumstances like those of a Railway Company which is purchased and taken over by the Government under the terms of the contract under which the company constructed the railway and operated it."

(10) After the decision in *Hariprasad Shivshankar's case* (supra), the Industrial Disputes (Amendment) Act, 1957, was enacted by the Parliament and Sections 25-FF and 25-FFF were inserted. By these two Sections, it came to be provided that though termination of service brought about in the contingencies specified in those two Sections may not be retrenchment in the technical sense, the workman would be entitled to compensation as if the termination of service was retrenchment.

(11) In *Anakapalla Co-operative Agricultural and Industrial Society Ltd.* v. *Workmen* (4), a Constitution Bench of the Supreme Court considered the relative scope of Sections 2(oo), 25-F and 25-FF. Speaking for the Bench, Gajendragadkar, J. said :—

"In Hariprasad this Court was called upon to consider the true scope and effect of the concept of retrenchment as defined in S. 2(oo) and it held that the said definition had to be read in the light of the accepted connotation of the words, and as such, it could have no wider meaning than the ordinary connotation of the word and according to this connotation retrenchment meant the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and did not include termination of services of all workmen on the *bona fide* closure of industry or on change of ownership or management thereof."

(12) In *Workmen of Subong Tea Estate* v. *The Outgoing Management of Subong Tea Estate and Another* (5), it was similarly observed at page 613 of the report :

"In dealing with the question of retrenchment in the light of the relevant provisions to which we have just referred, it is, however, necessary to bear in mind that the management can retrench its employees only for proper reasons. It is undoubtedly true that it is for the management to

(4) 1963 Suppl. (1) S.C.R. 730.
(5) 1964 (5) S.C.R. 602.

decide the strength of its labour force, for the number of workmen required to carry out efficiently the work involved in the industrial undertaking of any employer must always be left to be determined by the management in its discretion, and so, occasions may arise when the number of employees may exceed the reasonable and legitimate needs of the undertaking. In such a case, if any workmen become surplus, it would be open to the management to retrench them. Workmen may become surplus on the ground of rationalisation or on the ground of economy reasonably and *bona fide* adopted by the management, or of other industrial or tread reasons. In all these cases, the management would be justified in effecting retrenchment in its labour force. *Thus, though the right of the management to effect retrenchment cannot normally be questioned, when a dispute arises before an Industrial Court in regard to the validity of any retrenchment, it would be necessary for industrial adjudication to consider whether the impugned retrenchment was justified for proper reasons. It would not be open to the management either capriciously or without any reason at all to say that it proposes to reduce its labour force for no rhyme or reason. This position cannot be seriously disputed.*"

(Underlining is ours)

(13) In *Delhi Cloth and General Mills Ltd.* v. *Shambhu Nath Mukharjee and others* (6), a three-Judges Bench of the Supreme Court held that action of the employer in striking off the name of the workman from the rolls is termination of service falling within the definition of 'retrenchment' under Section 2(oo).

(14) Then came the decision in *State Bank of India* v. *Shri N. Sundra Money* (7). That was a case in which termination of service was brought about in accordance with the terms contained in the contract of employment. The contention of the employer was that when the order of appointment carried an automatic cessation of service, the period of employment worked itself out by efflux of

(6) 1978 (1) S.C.R. 591.
(7) 1976 S.C. 1111.

time and not by an act of the employer and, therefore, such termination of service cannot be termed as retrenchment. Speaking for the Court, Krishna Iyer, J. observed ;

> "A break down of S. 2(oo) unmistakably expands the semantics of retrenchment. 'Termination.....for any reason whatsoever' are the keywords. Whatever the reason, every termination spells retrenchment. So the sole question is, has the employee's service been terminated ? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25-F and S. 2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognito but area covered by an expansive definition. It means 'to end, conclude, cease.' In the present case the employment ceased, concluded, ended on expiration of 9 days automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Section 25-F(b) is inferable from the proviso to Section 25-F(1). True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25-F and axiomatic extinguishment of service by efflusion of time cannot be sufficient.
>
> Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely passing an order as the service runs. He can do so by writing a composite order, one giving employment and the other ending of limiting it. A separate, subsequent determination is not the sole magnetic pull of the provision. A pre-emptive provision

to terminate is struck by the same vice as to the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision.

(15) In *Hindustan Steel Ltd.* v. *The Presiding Officer, Labour Court* (8), their Lordships considered the earlier judgments rendered in *Hariprasad's* case (supra) and *State Bank of India's* case (supra) and held that there was inconsistency between the two judgments. *State Bank of India* v. *Shri N. Sundara Money* (supra) was followed in *Santosh Gupta* v. *State Bank of Patiala* (9), *Mohan Lal* v. *Management of M/s Bharat Electronics Ltd.* (10), *Surendra Kumar Verma* v. *Central Government Industrial Tribunal-cum-Labour Court* (11), and *L. Robert D'Souza* v. *Executive Engineer, Southern Railway and another* (12).

(16) In *Management of Karnataka State Road Transport Corporation, Bangalore* v. *M. Boraiah* (13), and *Gammon India Ltd.* v. *Niranjan Dass* (14), different Benches of the Supreme Court once again followed the interpretation given to the term 'retrenchment' in *State Bank of India* v. *Shri N. Sundara Money* (supra). In first of these two cases, R. N. Misra, J. (as he then was) remarked :—

> "We are not inclined to hold that the stage has come when the view indicated in Money case (supra) has been 'absorbed' into the consensus' and there is no scope for putting the clock back or for an anticlockwise operation."

(17) And in the second case, a three-Judges Bench of the Supreme Court observed :—

> "On a true construction of the notice, it would appear that the respondent had become surplus on account of reduction in volume of work and that constitutes retrenchment even in the traditional sense of the term as interpreted in *Pipraich Sugar Mills Ltd.* v. *Pipraich Sugar Mills Mazdoor*

(8) 1977 (1) S.C.R. 586.
(9) A.I.R. 1980 S.C. 1219.
(10) A.I.R. 1981 S.C. 1253.
(11) A.I.R. 1981 S.C. 422.
(12) A.I.R. 1982 S.C. 854.
(13) 1984 (1) S.C.C. 244.
(14) 1984 (1) S.C.C. 509.

Union, though that view does not hold the field in view of the recent decisions of this Court in *State Bank of India* v. *N. Sundara Money; Hindustan Steel Ltd.* v. *Presiding Officer, Labour Court, Orissa; Santosh Gupta* v. *State Bank of Patiala; Delhi Cloth and General Mills Ltd.* v. *Shambhu Nath Mukharjee Mohan Lal* v. *Management of M/s Bharat Electronics Ltd., and L. Robert D'Souza* v. *Executive Engineer, Southern Railway.* The recital and averments in the notice leave no room for doubt that the service of the respondent was terminated for the reason that on account of recession and reduction in the volume of work of the company, respondent has become surplus. *Even apart from this, the termination of service for the reasons mentioned in the notice is not covered by any of the clauses (a), (b) and (c) of Section 2(oo) which defines retrenchment and it is by now well settled that where the termination of service does not fall within any of the excluded categories, the termination would be* ipso facto *retrenchment.* It was not even attempted to be urged that the case of the respondent would fall in any of the excluded categories. It is, therefore, indisputably a case of retrenchment."

(Emphasis supplied).

(18) Notwithstanding these decisions in which the interpretation of the term 'retrenchment' as given in *Sundara Money's* case was followed and reiterated, the issue was once again referred to a Constitution Bench. In *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh* v. *Presiding Officer, Labour Court, Chandigarh, and others* (14-A), a Constitution Bench of the Supreme Court made a detailed survey on the relevant provisions and also made reference to almost all the decisions of the apex court on the subject of 'retrenchment' and then held that the interpretation of the term 'retrenchment' as given in *Sundara Money's* case, represents the correct position of law. The Constitution Bench held that 'retrenchment' means the termination by the employer of the service of the workman for any reason whatsoever except those expressly excluded in the Section. Thus, there is no doubt that if the termination of service of the workman (petitioner) had been brought about prior to 18th August, 1984, it would have been held to be a case of retrenchment without any hesitation and would have been voided on account of violation of Section 25-F of the Act. However, the

(14A) J.T. 1990 (2) S.C. 489.

dispute has acquired a different dimension on account of the claim made by the employer that termination of service of the workman is covered by clause (bb) and, therefore, it was not necessary for it to comply with the two mandatory requirements contained in Sections 25-F (a) and (b). In substance, plea of the employer is that even though the workman had served for about three years with breaks in service termination of his service does not amount to retrenchment under Section 2(oo).

(19) A minute analysis of Section 2(oo) along with its various clauses shows that even after 18th August, 1984 termination of service of a workman will be treated as retrenchment except where such termination of service falls within one of the following categories :—

(i) termination of service as a punishment inflicted by way of disciplinary action ;

(ii) voluntary retirement of the workman ;

(iii) retirement of the workman on his attaining the age of superannuation in terms of the contract of employment ;

(iv) termination of service on account of non-renewal of contract of employment after the same has expired ;

(v) termination of contract in accordance with the stipulation contained in the contract of employment itself ; and

(vi) termination of service on the ground of continuous ill-health of the workman.

(20) The aforesaid six categories can appropriately be termed as exceptions to the definition of 'retrenchment' as contained in the principal Section 2(oo). Being exceptions to the general rule, they have to be strictly interpreted keeping in view the wider literal meaning given to the definition of 'retrenchment' in *State Bank of India* v. *N. Sundara Money* (supra), which has been approved by the Constitution Bench in *Punjab Land Development and Reclamation Corporation's case* (supra). The Court has also to keep in mind the basic cannon of interpretation which has been applied while interpreting the social welfare legislations, including the Industrial Disputes Act. The Courts have time and again held that welfare statutes must receive the construction which advances the object of the statutes and protects the weaker section of the society. This

principal has been applied for interpretation of the term 'industry' in *State of Bombay* v. *Hospital Mazdoor Sabha* (15) and *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa* (supra). Similar approach has been adopted for interpretation of the term 'retrenchment' in a large number of cases to which reference has been made here-in-above. In *S. K. Verma* v. *Industrial Tribunal-cum-Labour Court* (supra), the Supreme Court has observed :—

> "Welfare statutes must, of necessary, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make in roads by making etymological excursion."

(21 It is necessary to keep in mind that while interpreting the term 'retrenchment' in *N. Sundara Money's* case (supra) and in its subsequent decisions, the Supreme Court has kept in view of the basic objects of the Industrial Disputes Act, namely, to protect the workmen against arbitrary action of the employer. Even the legislature has not been unmindful of the disadvantageous position in which a workman is placed *qua* an employer. In order to protect the workman against arbitrary and unreasonable actions of the employer, the legislature has in its wisdom defined the expression 'unfair labour practice' by inserting Section 2(ra) in the Act by the Amendment Act No. 46 of 1982. At the same time the Fifth Schedule has been added by the said Amendment Act of 1982. Sections 25-T and 25-U have also been added in the form of a separate chapter, namely, Chapter V-C. All these provisions have been made effective from 21st August, 1984. Provisions contained in the Fifth Schedule specify various unfair labour practices on the part of the employers as well as the employees. Part-I of the Fifth Schedule deals with unfair labour practices on the part of the employer and the trade unions of employers and Part-II refers to the unfair labour practices on the part of the workmen and trade unions of workmen. Paras 1 to 16 of Part-I of the Fifth Schedule read as under :—

> "1. To interfere with, restrain from, a coerce, workmen in the exercise of their right to organise, from, join or assist a trade union or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, that is to say—
>
> (a) threatening workmen with discharge or dismissal, if they join a trade union ;

(15) A.I.R. 1960 S.C. 610.

(b) threatening a lock-out or closure, if a trade union is organised ;

(c) granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union at organisation.

2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say—

(a) an employer taking an active interest in organising a trade union of his workmen ; and

(b) an employer showing partially or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised trade union.

3. To establish employer-sponsored trade unions of workmen.

4. To encourage or discourage membership in any trade union by discriminating against any workman, that is to say :—

(a) discharging or punishing a workman, because he urged other workmen to join or organise a trade union ;

(b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act) ;

(c) changing seniority rating of workmen because of trade union activities ;

(d) refusing to promote workmen to higher posts on account of their trade union activities ;

(e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union ;

(f) discharging office-bearers or active members of the trade union on account of their trade union activities.

5. To discharge or dismiss workmen—

(a) by way of victimisation ;

(b) not in good faith, but in the colourable exercise of the employer's rights ;

(c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence ;

(d) for patently false reasons ;

(e) on untrue or trumped up allegations of absence without leave ;

(f) in utter disregard of the principles of natural justice in the conduct of domestive enquiry or with undue haste ;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the workman, thereby leading to a disproportionate punishment.

6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as measure of breaking a strike.

7. To transfer a workman *mala fide* from one place to another, under the guise of following management policy.

8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a pre-condition to allowing them to resume work.

9. To show favouritism or partiality to one set of workers regardless of merit.

10. To employ workmen as "badlis", casual or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.

11. To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.

12. To recruit workmen during a strike which is not an illegal strike.

13. Failure to implement award, settlement or agreement.

14. To indulge in acts of force or violence.

15. To refuse to bargain collectively, in good faith with the recognised trade unions.

16. Proposing or continuing a lock-out deemed to be illegal under this Act."

(22) Paragraphs 5 and 10 of the Fifth Schedule show that termination of service of workman by way of discharge or dismissal will be treated as unfair labour practice, if it is established that the same has been brought about by way of victimization or where the employer's action is not in good faith but is in the colourable exercise of the employer's rights, or where termination is for patently false reason or where there is an utter disregard of principles of natural justice in the conduct of enquiry or where the misconduct is of minor or technical nature. Similarly, where the employer engages workmen as "badli", casual or temporary and continues them in the same capacity for years together with the object of depriving them of the status and privileges of permanent workmen, the employer's action would be termed as unfair labour practice.

(23) Therefore, while interpreting and applying various parts of Section 2(oo), the competent Court/Tribunal shall have to keep in mind the provisions of Section 2(ra) read with Section 25-T and U and various paragraphs of the Fifth Schedule and if it is found that the action of the employer to engage a workman on casual basis or as a daily-wager or even on temporary basis for long periods of time with intermittent breaks and subsequent termination of service of such workman on the pretext of non-renewal of contract of employment or termination of contract of employment on the basis of a stipulation contained therein is an act of unfair labour practice, such an action of the employer will have to be nullified and the Court will be fully justified in rejecting the plea of the employer that termination of service of the workman does not amount to retrenchment but is covered by clause (bb). In the context of various paragraphs of the Fifth Schedule, clause (bb) which is an exception to the principal section will have to be given a narrow interpretation. This clause has the effect of taking away a right which was vesting in the workman prior to its insertion. Therefore, the same cannot be allowed to be used as a tool of exploitation by the employer who, as already observed above, enjoys a position of dominance as against the workman. The employer is always in a position to dictate the terms of service vis-a-vis the workman or to be workman. The employer can unilaterly impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions. The employee

cannot possibly protest against the incorporation of arbitrary unreasonable and even unconsciousable conditions of service in the contract of employment. Any such protest by the employee or a to be employee will cost him job or a chance to enter employment. In respect of a work of permanent or continuing nature, the employer can always give an employment of fixed term or incorporate a condition in the contract of employment/appointment letter that the employment will come to an end automatically after a particular period or on the happening of a particular event. In such a situation, if the Court finds that the conditions are arbitrary and unreasonable and the employer has forced these conditions upon a workman with the sole object of avoiding his obligation under the Industrial Disputes Act, a bald plea of the employer that the termination of service is covered by clause (bb) will be liable to be rejected.

(24) We may make a slight digression to point out that in the cases of public appointment, the Courts have unequivocally recognized the rule that the employer cannot terminate the service of an employee according to its sweet will by incorporating arbitrary and oppressive conditions of service. In cases of purely *ad hoc* and temporary employees, the Supreme Court has in *State of Haryana* v. *Piara Singh* (15), held that service of such an employee cannot be terminated in order to make room for another similarly situated employee or with a view to give employment to a fresh temporary or *ad hoc* appointee. In *Manager, Government Branch Press* v. *D. B. Balliappa* (16), the Supreme Court has applied the principle of 'last come first go' in the matter of termination of service of a purely temporary employee. Similarly, in *E. P. Rayappa* v. *State of Tamil Nadu* (17), their Lordships of the Supreme Court have held that for invoking Articles 14 and 16 by a Government servant, it is not necessary that he must have a right to hold the post and the action of the employer will be vitiated if it is found to be arbitrary and unreasonable. In *Central Inland Water Transport Corporation* v. *Brojonath Ganguly* (18), the Supreme Court invoked Section 23 of the Contract Act for taking the view that a contract of employment which is opposed to public policy is also *ultra vires*

(15) 1992 (4) S.C.C. 118.
(16) A.I.R. 1979 S.C. 429.
(17) A.I.R. 1974 S.C. 555.
(18) A.I.R. 1986 S.C. 1571.

to Article 14 of the Constitution. That was a case in which service of an employee was terminated by a notice in terms of the rule governing contract of service. Their Lordships held that Rule 9(1) of the Central Inland Water Transport Corporation Limited Service Discipline and Appeal Rules, 1979, which empowers the employer to terminate the service of a permanent employee without reason is void under Section 23 of the Contract Act as being opposed to the public policy and is also *ultra vires* Article 14 of the Constitution to the extent that it confers upon the Corporation the right to terminate the employment of a permanent employee by giving him three months' notice in writing or by paying him the equivalent of three months' basic pay and dearness allowance in lieu of such notice in that, besides being arbitrary and unreasonable, it wholly ignores audi alteram partem rule. The Court made reference to a large number of English authorities and further observed :—

> "The principle deducible from various precedents is that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. *It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be.* The types or contracts to which the principle formulated above applies are not contract which are tainted with illegality but are contracts which contain terms which are so unfair and unreasonable and they shock the conscience of the Court. They are opposed to public policy and require to be adjudged void."
>
> (Emphasis supplied)

(25) Though the principle laid down by the Supreme Court in cases relating to public appointment cannot strictly be applied to the cases of workmen, who are governed by the provisions of the Industrial Disputes Act, it is perfectly legitimate to take the view that the rationale of the principle laid down in those cases can certainly be applied to the cases arising under the Act. It is interesting to note that rule of 'last come first go' has been statutorily recognised in the cases of industrial workers by virtue of Section 25-G. Likewise, the duty imposed on the employer to make an offer of re-employment to a retrenched employee in terms of Section 25-H of the Act shows that another facet of equality clause has been incorporated in the Act. By treating the employer's action of dismissal or discharge brought about in colourable exercise of the employer's rights or where there is want of good faith as unfair labour practice or termination of service for patently false reasons or other similar acts of the employer enumerated as acts of unfair labour practice, the legislature has indirectly incorporated the Equality Clause in the Act. The new dimension given to the provisions of Article 14 by the apex Court in *Maneka Gandhi* v. *Union of India* (19), and further extension of those principles in *Shrilekha Vidyarthi* v. *State of Uttar Pradesh* (20), virtually find their reflection in various paragraphs of the Fifth Schedule. In fact, what is implicit in the 'equality clause' enshrined in Articles 14 and 16 has been made explicit in the Fifth Schedule.

(26) Therefore, in every case of termination of service of a workman, where the workman claims that he has worked for a period of 240 days in a period of twelve months and termination of his service is void for want of compliance with the requirement of Section 25-F and where the employer pleads that termination of service has been brought about in accordance with the terms of contract of employment or termination is as a result of non-extension of term of employment, the Court will have to carefully scrutinise all the facts and apply the relevant provisions of law. 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 establishes that he was employed for a work of permanent/continuous nature and that employer has arbitrarily terminated his service in order to defeat his

(19) A.I.R. 1978 S.C. 597.
(20) A.I.R. 1991 S.C. 537.

rights under the Industrial Disputes Act or other labour legislations, a presumption can appropriately be drawn by the Court 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 the amended clause because the service was terminated on the completion of the work. A stipulation in the contract that the employment would be for a specified period or till the completion of a particular job may legitimately bring the termination of service within the ambit of clause (bb). However, if the employer resorts to methodology of giving fixed term appointment with a view to take it out of the Section 2(oo) and terminate the service despite the continuity of the work and job requirement, the Court may be justified to draw an inference that the employers' action lacks *bona fide* or that he has unfairly resorted to his right to terminate the service of the employee.

(27) Applicability of clause (bb) has been considered by different High Courts, including this Court. In *Shailendra Nath Shukla* v. *Vice Chancellor, Allahabad University and others* (21), termination of service of a workman, who had served as daily-wager for a period of five years and whose contract of service was renewed every three months, was held to be covered by the principal section and not by clause (bb) by the Allahabad High Court. A Divison Bench of that Court held that Section 2(oo) (bb) is in the nature of an exception to Section 2(oo) and has to be construed strictly in favour of the workman as the entire object of the Act is to secure a just and fair deal to them. It was further held that Section 2(oo) (bb) cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals were made to avoid regular status to employees. That would be unfair practice. In *Dilip Hanumantrao Shirke* v. *Zilla Parishad, Yavatmal* (22), a learned Judge of the Bombay High Court considered a case where the workman was appointed as a Sanitary Inspector on 9th January, 1986 and his appointment letter contained a stipulation that the appointment will be for eleven months ending on 30th November, 1986 or for such further period or till select list of the candidates is

(21) 1987 Lab. I.C. 1687.
(22) 1990 Lab. I.C. 100.

received by the office. His service was terminated with effect from 30th November, 1986. While the workman pleaded that he had worked for more than 240 days and as there was violation of Section 25 F, he was entitled to be reinstated, the employer invoked clause (bb). While upholding the claim of the workman, the Bombay High Court set aside the award of the Labour Court and doing so it observed :—

> "But if the employer resorts to contractual employment as a device to simply take it out of the principal Cl. (oo) irrespective of the fact that the work continues or the nature of duties which the workman was performing are still in existence, such contractual engagements will have to be tested on the anvil of fairness, propriety and *bona fides*. May be that such fixed tenure employments are made to frustrate the claim of the workman to become regular or get himself confirmed as a permanent employee either under the Rules applicable to such employment or even under the Standing Orders. It is always open to the Court adjudicating the dispute to examine each and every case in its proper perspective and to protect the workman against the abuse of the amended provision. If this protection is not afforded, the benefit flowing from retrenchment, to which every termination succumbs, would be rendered nugatory. The amended sub-clause (bb) would apply only to such cases where the work ceases with the employment or the post itself ceases to exist or such other analogous cases where the contract or employment is found to be fair, proper and *bona fide*."

(28) In *K. Rajendran* v. *Director, P. & E. Corpn. of India Ltd., New Delhi* (23), the facts were that the petitioner was appointed as Messenger for 44 days at a time. He continued to work on similar terms for about three years and the work was available on the date of termination of his service. While rejecting the plea of the employer that termination of service was covered by clause (bb) of Section 2(oo), the Madras High Court held :—

> "But, there is nothing in sub-clause (bb) which enables an unscrupulous employer to terminate the service of the

(23) 1992 Lab. I.C. 909.

workers on the ground of non-renewal of their contract even when the work for which they were employed subsists. The exception as contained in sub-clause (bb), will have to be strictly construed and clause (bb) should be made applicable only to such cases where the work ceases with the employment or the post itself ceases to exist. Clause (bb) cannot be made applicable to a case when the employer resorts to contractual employment as a device to simply take it out of Clause (oo) of S. 2 of the Act notwithstanding the fact that the work for which the workmen are employed continues or the nature of duties which the workman was performing are still in existence."

(29) In *Jayabharat Printers & Publishers Pvt. Ltd.* v. *Labour Court, Kozhikode and others* (24), an identical issue came up for consideration before the Kerala High Court. In that case the Labour Court had declared the termination of service of the workman after he had served for two years as illegal and void. While rejecting the plea of the employer that termination of service was covered by Section 2(oo) (bb), the Kerala High Court held :—

"If contractual employment is resorted to be a mechanism to frustrate the claim of the employee to become regular or permanent against a job which continues or nature of the duties is such that the colour of contractual employment is given to take it out from Section 2(oo), then such agreement cannot be regarded as fair or *bona fide* and Section 2(oo) (bb) cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewal are made to avoid regular status to the employee.

Section 2(oo) (bb) has to be strictly interpreted and it is necessary to find out whether the letter of appointment is a camouflage to circumvent the provisions of the Industrial Disputes Act, which confer permanency to a worker who has continuously worked for 240 days."

(30) This Court examined the scope of clause (bb) in *Balbir Singh* v. *Kurukshetra Central Coop. Bank Ltd* (25), and held :—

"The amended provision in Section 2(oo) (bb) cannot be so construed as to drastically restrict the orbit of the term

(24) 1994 (II) L.L.J. 373.

(25) 1990 L.L.J. 443.

'retrenchment'. Clause (bb) is an exception which must be interpreted narrowly. It cannot be given meanings which nullify or curtail the ambit of the principal clause. No doubt the intention of Parliament in enacting this clause was to exclude certain categories of workers from the term 'retrenchment', but there is nothing in this clause which allows an outlet to unscrupulous employers to shunt out workers in the garb of non-renewal of the contract even when the work subsists. This clause as a whole has to be construed strictly in favour of the workman as far as possible as to ensure that the Act is implemented in the letter and spirit. If the termination is meant to exploit an employee or to increase the bargaining power of the employer, then it has to be excluded from the ambit of clause (oo) and the definition of the term 'retrenchment' has to be given full meaning. *The contractual clause enshrined in clause (bb) cannot be resorted to frustrate the claim of the employee against uncalled for retrenchment or for denying the other benefits. It cannot be so interpreted as to enable an employer to resort to the policy of 'hire and fire' and give unguided power to the employer to renew or not to renew the contract irrespective of the circumstances in which it was entered into or the nature and extent of work for which he was employed.*

Clause (bb) has to be so interpreted as to limit it to cases where the work itself has been accomplished and the agreement of hiring for a specific period was genuine. If the work continues, the non-renewal of the contract has to be dubbed as *mala fide*."

(31) In *Raj Bahadur* v. *General Manager, Food Specialities Limited* (26), this Court held :—

"It would be pertinent, in this behalf, to advert to the provisions of Section 25-U of the Act, which read as under :—

"Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which

(26) 1991 (1) P.L.R. 631.

may extend to six months or with fine, which may extend to one thousand rupees or with both."

The expresion 'unfair labour practice' has been defined by Section 2(ra) of the Act to mean any of the practices specified in 5th Schedule. Item-10 of this Schedule would clearly cover the point in issue. This item is in the following terms :—

'To employ workmen as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workman.

It will be seen, therefore, that the Legislature has ensured ample safe-guards against the provisions of clause (bb) of Section 2(oo) being used as a device for unfair labour practice, by the employer against the employees."

(32) In *Haryana State Federation of Consumers Co-op. Wholesale Stores Ltd.* v. *Presiding Officer, Labour Court* (27), a Division Bench of this High Court negatived the contention of the employer that termination of service of the workman in accordance with the period fixed in the extension given by the employer would be covered by clause (bb) and held that :—

"The provisions of Section 2(oo) (bb) are to be read along with Section 25-F of the Industrial Disputes Act. When the management allows the workman to continue in service with notional breaks after the workman had put in 240 days in service in 12 months, it amounts to unfair labour practice if his services are terminated."

(33) Similar view has been taken by a Single Bench of this Court in *Kurukshetra Central Coop. Benk Ltd.* v. *State of Haryana* (28).

(34) We may also refer to some decisions in which clause (bb) has been applied by the Courts for taking the view that termination

(27) 1992 (1) Services Cases Today 697.
(28) 1993 (1) S.C.T. 109.

of service does not amount to retrenchment. In *J. J. Shrimali* v. *District Development Officer, Jilla Panchayat* (29), a Division Bench of the Gujarat High Court dealt with a case of workers employed for supervising scarcity relief works. The Gujarat High Court held that famine and drought relief works undertaken by the Government do not fall within the definition of 'Industry' under Section 2(j) and further held that the appointment order in terms provided that the appoinment was being made on purely *ad hoc* and temporary basis and was to last till scarcity works were in progress and, therefore, termination of service with the cessation of scarcity works falls within the ambit of clause(bb). In *Chakradhar Tripathy* v. *State of Orissa* (30), termination of service was upheld where the appointment was on *ad hoc* basis for a specified term or till the availability of regularly selected candidate and service was terminated on availability of regularly selected candidate. The Orissa High Court held that such termination of service cannot be termed as *mala fide* or colourable.

(35) In *Ram Prasad* v. *State of Rajasthan* (31), a Division Bench of the Rajasthan High Court dealt with the constitutional validity of Section 2(oo) (bb) and upheld it but at the same time it followed the principle laid down by the Bombay High Court in *Dilip Hanumantrao Shirke* v. *Zilla Parishad* (supra) and observed :—

> "The work may be of a casual nature and may be of a limited scope and in such cases, the employer cannot be saddled with making permanent employment. *If the Court comes to a conclusion that the provisions of S. 2(aa) (bb) are being misutilised by the unscrupulous empoyers, it can grant relief to the employees.*"
>
> (Underlining is ours)

(36) In *M. Venugopal* v. *The Divisional Manager, Life Insurance Corporation of India* (32), termination of service of a person appointed on probation was upheld as it was found that the termination was strictly in accordance with the terms and conditions on which the employee had been appointed on probation.

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(29) 1989 Lab. I.C. 689.
(30) 1992 Lab. I.C. 1813.
(31) 1992 Lab. I.C. 2139.
(32) J.T. 1994 (1) S.C. 281.

(37) From the above, it is clear that termination of service of a workman, who has worked under an employer for 240 days in a period of twelve months preceding the date of termination of service will ordinarily be declared as void if it is found that the employer has violated the provisions of Section 25-F (a) and (b). If the employer resists the claim of the workman and invokes Section 2(oo) (bb), burden lies on the employer to show that though the employee has worked for 240 days in twelve months prior to termination of his service, such termination of service cannot be treated as retrenchment because it is in accordance with the terms of the contract of employment or on account of non-renewal of the contract of employment. It has also to be shown by the employer that the workman had been employed for a specified work and the job which was being performed by the employee is no more required. Only a *bona fide* exercise of right by an employer to terminate the service in terms of the contract of employment or for non-renewal of the contract will be covered by the clause (bb). If the Court finds that the exercise of rights by the employer is not *bona fide* or the employer has adopted the methodology of fixed term employment as a conduit or mechanism to frustrate the rights of the workman, the termination of the service will not be covered by the exception contained in clause (bb). Instead the action of the employer will have to be treated as an act of unfair labour practice, as specified in the Fifth Schedule of the Act. The various judgments rendered by the different High Courts and by the Supreme Court clearly bring out the principle that only a *bona fide* exercise of the powers by the employer in cases where the work is of specified nature or where the temporary employee is replaced by a regular employee that the action of the employer will be upheld. In all other cases, the termination of service will be treated as retrenchment unless they are covered by other exceptions set out hereinabove.

(38) We may now revert back to the facts of this case. Admittedly, the petitioner had served for about three years. The work against which the petitioner had been engaged was not of a specified nature or of fixed duration. That work did not cease to exist on the date of termination of service of the petitioner. The job which was being performed by the petitioner continued to be required by the employer. This has been conclusively established that the employer did engage two persons after termination of the petitioner's service. The reason for the termination of the service of the petitioner held out by Sahib Ram in his statement, namely, that the workman had committed embezzlement in 1986, is patently false

because after 1986 the petitioner continued to be employed for one year. Therefore, the allegation of embezzlement could not be related to the termination of service of the workman brought about on 24th June, 1987. In view of all this, it must be held that the employer has not exercised his right to terminate the service of the petitioner in good faith. Rather the power vesting in the employer to dictate the terms of employment has been misused by it. Merely because the petitioner accepted the oppressive, unreasonable and arbitrary conditions of service, he cannot be denied relief despite the fact that the respondent society committed a patent violation of Section 25 F. In our considered view the award passed by the Labour Court suffers from an error of law and deserves to be set aside.

(39) In the result, the writ petition is allowed. Award (Annexure P-1) is declared illegal and is quashed. The case is remanded back to the Labour Court for passing a fresh award in the light of the observations made in this Judgment. Parties are left to bear their own costs.

S.C.K.

Before Hon'ble R. P. Sethi and S. S. Sudhalkar, JJ.

K. L. KOHLI,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 18562 *of* 1994.

10th May, 1995.

Constitution of India, 1950—Art. 226—Medical reimbursement—Immediate open heart surgery advised in Private recognised (Escorts) Hospital—Treatment in Private hospital—Claim for reimbursement cannot be rejected for want of prior permission of the Medical Board.

Held, that the petitioner was entitled to be reimbursed for the treatment he received at the Escorts Heart Institute and Research Centre, New Delhi, even if the prior permission of the Medical Board constituted for this purpose was not obtained.

(Para 8)