Before S. S. Sodhi, J.

RAJ BAHADUR,—*Petitioner.*

versus

GENERAL MANAGER. FOOD SPECIALITIES LTD., FARIDKOT AND OTHERS,—*Respondents.*

Civil Writ Petition No. 2556 *of* 1987.

3rd September, 1990.

Constitution of India, 1950—*Art.* 14—*Industrial Disputes Act,* 1947—*Ss.* 2(oo) (*bb*), 2(*ra*), 25*U*, 5*th Sch., Item* 10—*Termination—Employment for fixed period—Person employed on five different occasions—Validity of S.* 2(oo) (*bb*) *challenged as conferring arbitrary and unbridled power on the employer—Held, provision is constitutionally valid.*

Held, that the Legislature has ensured ample safeguards against the provisions of clause (bb) of S. 2(oo) being used as a device for unfair labour practice, by the employer against the employees by way of the provisions of S. 25U read with S. 2(ra) and Item-10, 5th Schedule of the Industrial Disputes Act. Hence, the provision does not confer any arbitrary or unrestricted power upon the employer to misuse against the employee and, therefore. no constitutional invalidity can be attributed to it. S. 2(oo) (bb) is, hence, held to be constitutionally valid. **(Para 6)**

Civil writ petition under Articles 226/227 *of the Constitution of India praying that:*—

(*i*) *that need for advance notices may please be dispensed with.*

(*ii*) *call for the records of the case.*

Issue writ of certiorari *quashing Annexure P*-1 *and Section* 2(oo) (*bb*) *of Industrial Disputes Act as* ultra vires *of Article* 14 *of the Constitution of India and writ of* mandamus *directing re-instatement of petitioner with full back wages or any other writ, order or direction and for this the petitioner shall ever pray.*

Atul Lakhanpal, Advocate, *for the Petitioner.*

N. K. Sodhi, Sr. Advocate, *for Respondents.*

S. S. Sethi, Advocate, *for the Respondent No.* 1.

ORDER

S. S. Sodhi, J.

(1) The Constitutional validity of clause (bb) of Section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') is what is sought to be challenged here.

(2) A similar point has been raised in a bunch of writ petitions which shall all be disposed of by this order. To highlight the point in issue, it would suffice to give the relevant facts pertaining to this particular petition.

(3) The petitioner Raj Bahadur was employed as a Helper on five different occasions. Each time, the appointment given to him was for a fixed period. The last such term of appointment being from May 7, 1984 to December 19, 1984. It was when no further appointment was offered to him that a reference was made at his instance to the Labour Court under Section 10(1)(c) of the Act regarding the termination of his services.

(4) The Labour Court, by its impugned Award of January 13, 1987 (annexure P/1) held that the petitioner was not entitled to the benefits of Sections 25F, 25G or 25H of the Act as he had worked for only 185 days and his appointment was for a fixed term which had expired.

(5) On the facts as they emerge here, the case of the petitioner is squarely covered by the provisions of sub-section (bb) of Section 2(oo) of the Act. Faced with this situation, counsel for the petitioner sought to contend that these provisions conferred an arbitrary and unbriddled power upon the employer to avoid liability towards his workmen by repeatedly making employments of fixed periods and it was thus an absolute lever in the hands of the employer to exploit the workmen who were thereby left without any security in service. This contention cannot, however, stand scrutiny, as a plain reading of the provisions of the Act would show that if an employer acts as per the fears expressed by the counsel for the petitioner, it would clearly amount to 'unfair labour practice', rendering such action not only contrary to law but would also expose the employer

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

> "Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both."

The expression '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 follows 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 workmen."

(6) It will be seen, therefore, that the Legislature has ensured ample safeguards 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. No occasion thus survives to brand this provision of law as conferring any arbitrary or unrestricted power upon an employer to misuse against an employee. At any rate, no constitutional invalidity can be attributed to it. Clause (bb) of Section 2(oo) of the Act must thus be held to be constitutionally valid.

(7) As mentioned earlier, the case of the petitioner clearly falls under sub-clause (bb) of Section 2(oo) of the Act, and no exception can thus be taken to the impugned Award of the Labour Court. This writ petition is accordingly hereby dismissed. In the circumstances, however, there will be no order as to costs.

R.N.R.

Before S. S. Sodhi, J.

SATPAL SINGH,—*Petitioner*.

versus

UNION OF INDIA AND OTHERS,—*Respondents*.

Civil Writ Petition No. 2409 *of* 1987.

3rd September, 1990.

Industrial Disputes Act, 1947—*Ss.* 2(oo) *(bb)—Contractual employment—Periodical renewals of contract of service—Unfair*