contempt. The learned single Judge, in our view, rightly ordered the appellant to pay the defaulted amount. Such a direction was required to be given in this case. By no legitimate means it could at all be argued by Mr. Sahni that there was any justification in withholding of payment of defaulted amount by the appellant. We may mention here that in case the directions referred to as passed by the learned single Judge are stayed, it would virtually amount to even non-execution of the order passed by the learned Company Judge. Surely, the appellant by simply filing the present appeal cannot get away from his liability to pay the amount which he undertook to pay to the Court. To stay the payment of such an amount would be doing injustice to the respondent.

(13) In so far as the contention of Mr. Sahni that once an appeal has been admitted and stay granted, it should continue till the appeal might last is concerned, suffice it to say that it is no judicial heroism to stick to an order having been earlier passed particularly when the same was passed without hearing the other side and has manifestly caused injustice to the party not heard in the matter. Such an order whenever might come to the notice of the Court either on application made by the affected party or otherwise has to be recalled or modified as the circumstances may be.

(14) In view of what has been said above, we modify order dated 8th June, 1998 to say that whereas order of conviction recorded by the learned single Judge shall remain stayed during the pendency of the appeal, the direction given by the learned single Judge on payment of defaulted amount shall stand. In other words, there shall be no stay with regard to the payment aforesaid. The application stands disposed of accordingly.

J.S.T.

Before Jawahr Lal Gupta & N.K. Agrawal, JJ.

STATE OF HARYANA & ANOTHER,—*Petitioners*

versus

P.O.L.C. ROHTAK & ANOTHER,—*Respondents*

C.W.P. No. 16416 of 1998

9th March, 1999

Constitution of India, 1950—Arts. 226/227—Industrial Disputes Act, 1947—S. 25-F—Daily wagers—Worked for more than 240 days—Letter of appointment silent on terms and conditions—Nothing on record

to show employment was only for a day—Whether provisions of the Industrial Disputes Act applicable—Held, in absence of proof that services of daily wager can be terminated on completion of work—Provisions of the Industrial Disputes Act applicable.

Held, that it is not shown to have been pleaded or proved that the appointments had been made on a particular project and that the services had been dispensed with on the completion thereof. Nothing has been produced before us not even an order, which may show that the appointment was on a particular job and that the termination had occurred on account of the completion of that job. In such a situation, the plea raised on behalf of the petitioners cannot be accepted. No material has been produced to show that the findings recorded by the Labour Court are wrong. In view of the findings, we see no ground to interfere with the view taken by the Court.

(Paras 14)

Constitution of India, 1950—Arts. 226/227—Industrial Disputes Act, 1947—S.25-F—Industry—Whether Department of Forest is an Industry—Held, yes.

Held, that the issue has to be basically decided in accordance with the rule laid down by their Lordships of the Supreme Court in the case of Bangalore Water Supply and Sewerage Board *v.* A. Rajappa & others, 1978 (2) S.C.C. 213. On the material before us, it cannot be said that the present cases do not fall within the ratio of the aforesaid decision. In view of the authoritative pronouncement of their Lordships of the Supreme Court, which has been reiterated in a later case in General Manger, Telecom *v.* S. Srinivasan Rao & others, J.T. 1997 (9) SC 234, we are unable to find that the functions performed by the respective employers before us fall outside the field of industry.

(Para 16)

H.S. Hooda, Advocate General, Haryana, Parmod Goyal, DAG, Haryana, with him,— *for the State-Petitioners.*

Ramesh Hooda, Advocate,— *for Respondent No. 2*

JUDGMENT

Jawahar Lal Gupta, J. (Oral)

(1) We have a bunch of 53 writ petitions filed by the State of Haryana. The petitioners are aggrieved by the award given by the

Labour Court in each of these cases. It has been held by the Labour court that the services of the respective workmen-respondents were terminated in violation of the provisions of the Industrial Disputes Act, 1947. Orders for the reinstatement of the workmen with certain benefits have been passed. These awards have been challenged in these petitions.

(2) We have heard Mr. H.S. Hooda, Advocate General, Haryana who has appeared on behalf of the petitioners. The challenge to the award is two fold. Firstly, it has been claimed that the respondent-workmen had been appointed on daily wages. The appointements had not been made against any regular post. Thus, the workmen cannnot claim any benefit under the Industrial Disputes Act. Learned counsel has placed reliance on the decision of their Lordships of post. Thus, the workmen cannot claim any benefit under the Industrial Disputes Act. Learned counsel has placed reliance on the decision of their Lordships of the Supreme Court in *Allahabad Bank v. Shri Prem Singh, (1), Himanshu Kumar Vidyarthi & Ors. vs. State of Bihar & Ors. (2) and State of Himachal Pradesh vs. Ashwani Kumar and others (3),* secondly, it has been contended only in respect of the persons belonging to the Forest Department that the provisions of the Industrial Disputes Act shall not be attracted as the Department discharges the sovereign functions. On this basis, it is submitted that all the awards which are impugned in these 53 cases are liable to be set aside.

(3) The claim made on behalf of the petitioners has been controverted by the counsel appearing for the respondents.

(4) The questions that arise for consideration are :—

(i) Are the provisions of the Industrial Disputes Act not applicable to persons who have been employed on daily wages ?

(ii) Is the Department of Forest not an Industry ?

Regarding (i)

(5) It is not disputed that the workmen in each of the case decided by the Labour Court (except in C.W.P. No. 19141 of 1998) had worked for more than 240 days. It is also not disputed that the services of the workmen had been utilised by the Department for a number of years—

(1) J.T. 1996 (7) S.C. 678
(2) J.T. 1997 (4) S.C. 560
(3) AIR 1997 S.C. 352

the time varying from case to case. It is also conceded that the provisions of the Industrial Disputes Act and in particular, those of Section 25 F had not been complied with at the time the services of the respective workmen had been terminated. The sole plea raised on behalf of the petitioners is that the provisions of the Industrial Disputes Act shall not be attracted in view of the decision of their Lordships of the Supreme Court in the case of Prem Singh (supra).

(6) Before proceeding to consider the contention, it would be useful to briefly notice the decision of their Lordships of the Supreme Court in *Prem Singh's* case, In this case, the employee had worked from 14th June, 1977-*viz.* for a period of 4 days only. The services had been rendered by the employee in different branches of the Allahabad Bank. His Services were terminated as he did not fulfil the prescribed qualification for the post of a Cashier. On a dispute being raised by him, the matter was referred to the Labour Court. It was found by the Court that the workman had appeared in the Higher Secondary Examination. Since he had failed in the 11th class examination but had passed the 10th class examination from a Higher Secondary School, it shall be presumed that he possessed the prescribed qualification of matriculation. Thus, the Labour Court had taken the view that the workman had been "lawfully appointed." In this situation, the denial of employment to him as a Cash Clerk.....amounted to termination.....". This award was challenged before their Lordships of the Supreme Court. After considering the factual position, their Lordships noticed that the appointment of the workman was by a written contract which specifically provided that "the appointment is on a purely temporary basis for a period of one day...." Thus, their Lordships observed that the status of the respondent was, at best, that of a daily wager. By virtue of his letters of employment, he seized to be employed at the end of each day. His day's service stood automatically terminated. "The position in the present case is vitally different. Firstly, it is not shown that a letter of appointment with similar terms or conditions of service, was issued to any of the respondents. Secondly, nothing has been placed on record to show that the employment was only for a day on each occasion and that a fresh employment was granted on every successive day with a different employer. Merely because the wages are granted at the rate fixed for payment on "daily wages" cannot mean that the employment is on a day to day basis. Still further, it is the admitted position that the workmen had continued for long durations of time under the same employer. In this situation, we are satisfied that the facts of *Prem Singh's* case are clearly different and that the petitioners cannot derive any advantage from the decision of their Lordships of the Supreme Court in the said case.

(7) The Industrial Disputes Act aims at providing protection to an employee against the termination of his services in an arbitrary manner. It aims at protecting the employee from being thrown out of service without the grant of the prescribed benefits. According to the scheme of the Act, a person, who has been in service for a period of 240 days during the preceding twelve months, cannot be normally thrown out of service without payment of what has come to be known as the retrenchment compensation. In this bunch of cases, it is the admitted position that the workmen had worked for long durations of time. It had been conceded that the Labour Court has recorded a positive finding in all the cases that the workmen had worked for 240 days during the preceding twelve months. Yet, they were unceremoniously thrown out of service.

(8) Can it be said that in the circumstances of these cases, the workmen were not entitled to the protection under Section 25F of the Industrial Disputes Act ?

(9) This provision clearly lays down certain conditions which have to be followed by the employer before it can order the retrenchment of any workmen. It is necessary that the workman is given one month's notice.Still further, even retrenchment compensation etc. have to be paid. This has, admittedly, not been done. Why ? Mr. Hooda states that in view of the decision of their Lordships of the Supreme Court in the case of *Prem Singh,* the protection is not available to the workmen. We are unable to accept this contention. The decision does not lay down that the provisions of Section 25F shall not apply despite the fact that the employee has served the employer for more than 240 days during a period of twelve months preceding the termination of his services.

(10) Faced with this situation, learned counsel referred to the decision of their Lordships of the Supreme Court in *Himanshu Kumar Vidyarthi & Ors.* vs. *State of Bihar & Ors. (4).* This was a case where the appointments to the posts of Driver and peons had been made in the Co-operative Training Institute. The appointments had been made on daily wages. It was held by their Lordships that the appointments were regulated by "statutory rules". It was the admitted position that the employees "were not appointed to the posts in accordance with the rules.....". In this situation, their Lordships had taken the view that "when the appointments are regulated by the statutory rules, the concept of industry to that extent stands excluded."

(11) So far as the present cases are concerned, it has not been shown or even suggested by the learned counsel for the petitioners

(4) JT 1997 (4) S.C. 560

that except in C.W.P. No. 16827 of 1998 (to which reference shall be presently made) there were any statutory rules governing the appointments to the different posts held by the respondents-workmen. In the absence of statutory rules framed either under the provisions of an Act or under Article 309 of the constitution, the petitioners cannot invoke the decision of their Lordships of the Supreme Court in *Himanshu Kumar Vidyarthi's* case to exclude the provisions of Industrial law.

(12) In Civil Writ Petition No. 16827 of 1998 reference has been made to an extract from a Manual which, admittely, embodies only executive instructions. These instructions lay down the rate of wages and also provide that the services can be terminated without assigning any reason. There is no quarrel with the powers of the employer to do so. However, these instructions have no statutory sanction. These are not rules. These instructions as referred to by the learned counsel do not permit the employer to retrench the workman without paying the retrenchment compensation or complying with the provisions of Section 25F. It has not been shown that the instructions contained in the Manual can supersede the provisions of the Industrial Disputes Act. It has not even been contended that the provisions of the Industrial Disputes Act shall stand excluded by the executive instructions. Still further, it has not been shown that there are any statutory rules governing recruitment to the posts in questions. In this situation, it cannot be said that these cases fall within the rule enunciated in *Himanshu Kumar Vidyarthi's* case.

(13) Faced with this situation, a faint attempt was made on behalf of the petitioners by Mr. Hooda to contend that the orders for termination had been passed as the work for which the appointment was made had been completed. However, the learned counsel was unable to refer to any evidence in any of the cases which may indicate that the appointment had been made for a specific work and that the orders of termination were passed on the completion thereof. In the absence of specific evidence, the plea raised on behalf of the petitioners cannot be accepted. Mr. Hooda referred to decision of their Lordships of the Supreme Court in the *State of Himachal Pradesh* vs. *Ashwani Kumar and others (5).* This was a case where the workman had been appointed on muster roll basis. This appointment was under a Central Scheme. The wages were paid out of the funds provided by the Central Government. After the closure of the Scheme, the services of the workman were dispensed with. He had challenged the order before the High Court. The Court had given an interim direction for his

(5) AIR 1997 S.C. 352

re-engagement. This order was challenged before the Supreme Court. Their Lordship were pleased to accept the plea of the State Government with the observation that "when the project is completed and closed due to non-availability of funds....., the employees have to go along with the closed project." [In the present set of cases, it is not shown to have been pleaded or proved that the appointments had been made on a particular project and that the services had been dispensed with on the completion thereof. Nothing has been produced before us-not even an order-which may show that the appointment was on a particular job and that the termination had occurred on account of the completion of that job. In such a situation, the plea raised on behalf of the petitioners cannot be accepted.]

(14) In view of the above, the plea raised on behalf of the petitioners that the provisions of the Industrial Disputes Act shall not apply to persons appointed on daily wages is rejected. It is held that no material has been produced to show that the findings recorded by the Labour Court are wrong. In view of the findings, we see no ground to interfere with the view taken by the Court.

Regarding (ii)

(15) Mr. Hooda contended that the Forest Department is not an 'industry'. In fact, the State Government discharges sovereign functions which cannot be described as an industrial activity. Learned counsel is, however, unable to refer to anything which may have been produced before the Labour Court to show as to what were the precise functions being performed by the different divisions in which the respective workmen had been appointed. Still further, even in these petitions, no evidence is shown to have been produced which way indicate that the respective employers were performing any sovereign functions.

(16) Even otherwise, the issue has to be basically decided in accordance with the rule laid down by their Lordships of the Supreme Court in the case of *Bangalore Water Supply and Sewerage Board* vs. *A Rajappa & others (6).* On the material placed before us, it cannot be said that the present cases do not fall within the ratio of the aforeaid decision. In view of the authoritative pronouncements of their Lordships of the Supreme Court, which has been reiterated in a later case in *General Manager Telecom* vs. *S. Srinivasan Rao & Ors. (7)* we are unable to find that the functions performed by the respective employers before us fall outside the field of industry.

(6) 1978 (2) S.C.C. 218
(7) J.T. 1997 (9) S.C. 234

(17) Mr. Hooda has conceded that the factual position in all the cases is identical except in C.W.P. No. 19141 of 1998. According to the learned counsel, the respondent-workman had been in service only from 1st December, 1994 to 27th July, 1995. Mr. Hooda states that the employee had worked for 237 days and not for 240 days. Thus, the provisions of Section 25 F shall not be attracted. So far as this case is concerned, the Labour Court has noticed three things. Firstly, it has been noticed that the employer had not produced the rocords. Nothing was produced to show that the workman had remained absent even for a day. On this basis, it would be clear that the workman had remained in continuous employment from 1st December, 1994. Thus, he would complete 239 days on 27th July, 1995. Still further, the post had been sanctioned uptil 31st July, 1995. Yet the services of the workman were shown to have been terminated on 27th July, 1995. Why ? The Labour Court has observed that this was done "before the expiry of the last day of the sanction." The Court has, not surprisingly, concluded that the action was prompted by *"mala fide* intention". In the circumstances, we find no ground to take a different view.

(18) Mr. Hooda concedes that the factual position of the other cases does not require to be noticed. He further submits that the Court may disallow back wages to whatever extent they have been granted by the Labour Court. No argument has ever been advanced in support of this submission. We notice that the Labour Court has examined the factual position in each of the cases. We find no ground to differ with the view taken by the Court and the discretion as exercised by the respective officers.

(19) No other point has been raised.

(20) In view of the above, we find no ground to interfere in any of these petitions. These are, consequently, dismissed. However, there shall be no order as to costs.

J.S.T.

Before Iqbal Singh, J

GULF AIR COMPANY,—*Petitioner*

versus

NAHAR SPINNING MILLS LTD. AND OTHERS,— *Respondents*

C.R. 1019 of 1999

7th September, 1999

Code of Civil Procedure, 1908-S. 115—Carriage by Air Act, 1972—Rl. 29—Second schedule—Jurisdiction—Suit filed at Ludhiana—