CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

PEPSU TRANSPORT COMPANY PRIVATE LIMITED,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 2464 of 1966.

May 17, 1967.

Industrial Disputes Act (XIV of 1947)—S. 25 F—Notice of retrenchment given to workman terminating his services and asking him to collect the wages in lieu of one month's notice and retrenchment compensation—Workman failing to collect the same and employer sending the amount by money order not immediately after the date of termination but within one month thereof—Retrenchment—Whether valid—Tender —Meaning of.

Held, that a plain reading of the provisions of section 25-F of the Industrial Disputes Act, 1947 shows that there are two conditions which have to be satisfied by the employer before he can retrench a workman who had been in continuous service for not less than one year in his industry. The first is that he should be given one month's notice in writing mentioning the reasons for his retrenchment and the period of notice had expired or if no such notice was given, then he should be paid in lieu thereof wages for the period of the notice the second is that the workman should, at the time of retrenchment, be paid compensation which would be calculated in accordance with the principle laid down in clause (b) of section 25-F. It is the obligation of the employer to fulfil both these conditions before he can validly retrench the workman. The time of retrenchment would, in the case of a workman who had been given one month's notice, be at the end of that period and in the case of the workman, who was to be paid wages for the period of the notice in lieu of such, notice it would be the one fixed by the employer. The retrenched workman should be asked to collect the wages in lieu of one month's notice and retrenchment compensation before the date of retrenchment fixed by the employer and in case he fails to do so, these amounts should be sent to him on that very date, if possible, or the next day. A workman, who is paid wages in lieu of notice, ceases to be the employee of the employer with effect from the date of retrenchment and is at liberty to seek employment any where else.

Held, that tender does not mean calling the workman to receive payment on a particular date but the amount due has to be actually offered to the workman concerned. If the workman does not accept the same, he cannot later on

be heard to say that there had been no payment of wages and retrenchment compensation to him by the employer.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of certiorari, mandamus or any other appropriate writ, direction or order be issued quashing the award dated 7th October, 1966, given by Respondent No. 2.

BAL RAJ TULI, SENIOR ADVOCATE WITH S. S. MAHAJAN, ADVOCATE for the Petitioner.

J. N. SETH, ADVOCATE, for Respondents 4 and 5.

ORDER

PANDIT, J.—This is a petition under Articles 226 and 227 of the Constitution filed by the Pepsu Transport Company (Private) Limited, Kot Kapura, district Bhatinda, challenging the legality of the award dated 7th of October, 1966, given by Shri Ishwar Das Pawar, Presiding Officer, Industrial Tribunal, Punjab, Chandigarh, respondent No. 2.

An industrial dispute having arisen between the workmen and the management of the Petitioner-Company, the Governor of the Punjab referred to respondent No. 2, the following two questions for adjudication under clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act):—

(1) Whether the termination of services of Sarvshri Lal Chand and Pritam Singh Johal is justified and in order ? If not, to what relief they are entitled ?

(2) Whether the workmen are entitled to the grant of bonus for the year 1963-64 ? If so, what should be the quantum of bonus and terms and conditions of its payment ?

After hearing the evidence produced by the parties, respondent No. 2 gave the impugned award by which he set aside the retrenchment of Lal Chand and Pritam Singh Johal, respondent 4 and 5 and further directed the petitioner-company to re-instate them in their old jobs which they occupied immediately before their retrenchment. It was also held that these workmen were entitled to the wages from the date of retrenchment to that of re-instatement. That led to the filing of the present writ petition.

With regard to Pritam Singh Johal, respondent No. 5, the position was this. He was employed as a clerk by the petitioner-company on 1st of July, 1953. He was promoted as a Checker in 1958. According to Shri Chanan Singh, Managing Director of the Company, R.W. 1, the Company suffered losses in the years 1962-63, 1963-64 and 1964-65. In view, thereof, they thought that the expense ratio of the Company must be brought down. With that end in view, the Board of Directors, in their meeting on 31st March, 1965, decided that the posts of Mistri (held by Lal Chand, respondent No. 4) and Checker be abolished. Consequently, respondent No. 4 was retrenched with effect from 20th of May, 1965 and Pritam Singh Johal, Checker, from 28th of May, 1965. These retrenchments were approved in the meeting of the Directors on 4th of June, 1965. On 25th of May, 1965, a notice was sent to respondent No. 5 indicating the reasons for his retrenchment and calling upon him to collect the compensation before leaving on 28th of May, 1965. He did not collect the amount as directed and the same was, therefore, sent to him by money order and it was received by him under protest on 4th of June, 1965. Thereupon, he represented that he had not been paid the correct amount of compensation and his retrenchment was not bonafide. The management then sent him another sum of Rs. 122.22 by money order on 25th of June, 1965 and the same was received by him on 28th of June, 1965. His retrenchment was found to be bad in law and consequently set aside by respondent No. 2 on the following two grounds:—

(a) That Compensation as contemplated under the provisions of section 25-F of the Act was not paid to him according to law, inasmuch as he had not been paid, before the retrenchment, compensation which would be equivalent to 15 days' average pay for every completed year of continuous service or any part thereof exceeding six months as mentioned in section 25-F(b). According to respondent No. 2, the giving of notice and the payment of compensation must precede the retrenchment. It was, therefore, necessary for the management to have sent the amount of compensation simultaneously with the coming into effect of the retrenchment on 28th of May, 1965; and

(b) that even though the post of Checker was abolished respondent No. 5 could not be retrenched from service, because he was the senior-most clerk in the petitioner company.

On the abolition of the post of Checker, he should have been reverted to the post of a Clerk and the junior most workman should have been retrenched in his place.

As regards Lal Chand, respondent No. 4, he was given a month's notice on 17th of May, 1965 indicating the reasons for his retrenchment and calling upon him to collect the amount of compensation within a weak. The date of retrenchment in his case was 20th of May, 1965. Since he did not collect the amount by that date, it was sent to him by three different money orders which were all received by him on 31st of May, 1965 under protest. He also represented that his retrenchment was being made *mala fide*. The said retrenchment was held to be not in accordance with law by respondent No. 2 on three grounds. The first one was the same as was in the case of respondent No. 5 and the other two were as under:—

(i) That his retrenchment was not *bona fide* and was made on account of his trade union activities, which were not to the liking of the management; and

(ii) his retrenchment had been made not for effecting economy as was the case of the Company, but on extraneous grounds, because after his retrenchment the expenditure on the repairs of the vehicles had gone up and consequently the Company was not a gainer but a loser;

Counsel for the petitioner submitted that the Tribunal had erred in law in holding that the retrenchment of respondents 4 and 5 was bad in law, as the pay in lieu of notice and retrenchment compensation had not been paid to them before the date of their retrenchment. The notice stating the reasons for retrenchment was given to the respondents and they were asked to collect their dues. Since they did not do as directed in the notice, the Company remitted them one month's wages in lieu of notice and the retrenchment compensation in full within that month for which they were paid their salaries. Thus, this payment was in order, as it had been made within the period of notice and the date of retrenchment was on the expiry of that period in each case. The company had, therefore, complied with the provisions of section 25-F of the Act. This error of law, according to the learned counsel, was apparent on the record. Reliance for this submission was placed on a decision of the Calcutta

High Court in *National Iron and Steel Co., Ltd* v. *Third Industrial Tribunal, West Bengal and others* (1).

Section 25-F deals with the conditions which are precedent to retrenchment of workmen. The relevant part of this section reads as under:—

"25-F. No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

Provided * * * *

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) * * * *".

A plain reading of the provisions of this section shows that there are two conditions which have to be satisfied by the employer before he can retrench a workman who had been in continuous service for not less than one year in his industry. The first is that he should be given one month's notice in writing mentioning the reasons for his retrenchment and the period of notice had expired or if no such notice was given, then he should be paid in lieu thereof wages for the period of the notice. The second is that the workman should, at the time of retrenchment, be paid compensation which would be calculated in accordance with the principle laid down in sub-section (b) above. It is the obligation of the employer to fulfil both these conditions before he can validly retrench the workman. The time of retrenchment would, in the case of a workman who had been given one month's notice, be at the end of that period and in the

(1) A.I.R. 1964 Cal. 194.

case of the workman, who was to be paid wages for the period of the notice in lieu of such notice, it would be the one fixed by the employer.

It is common ground that both respondents 4 and 5 had been in continuous service of the petitioner-company for not less than one year. The notices sent to them were R/8 and R/30 respectively and they were in the following terms:—

"The Pepsu Transport Co. (P) Ltd., Kotkapura.

REGD. A.D.

(Exhibit R-8)

Kotkapura.
(Punjab.)

Ref. No. P.T.C./44, dated 17th May, 1965.

Shri Lal Chand Mistry,

Pepsu Transport Co. (P) Ltd.,

Kotkapura.

Subject:—Notice of termination of Service.

That since the post of Mistry has been abolished with effect from 20th May, 1965 and the workshop consequent thereof has been closed being most uneconomical, you have become surplus and your services will not be needed after 20th May, 1965. Please take notice that your services stand terminated with effect from the same date.

Please collect the following amount on account of retrenchment compensation:—

	Rs. P.
(1) One month's wages in lieu of notice ...	225.00
(2) Retrenchment compensation at 15 days' average pay for 6 months' at Rs. 225 per month ...	1,350.00
Total ...	1,575.00

Please (see) that if you fail to collect Rs. 1,350 as detailed above within one week, the amount shall be sent to you by M. O. at your cost.

for Pepsu Transport Co., (P) Ltd., Kotkapura.
(Sd.) KUNDAN SINGH,
Managing Director.

"The Pepsu Transport Co., (P) Ltd., Kotkapura.

(Exhibit R-30)

Kotkapura,
(Punjab),

Ref. No. P.T.C./55. Dated 25th May, 1965.

Shri Pritam Singh Johal,
Checker, Pepsu Transport Co. (P) Ltd.
Kotkapura.

Subject:—Notice of termination of services.

Since the post of Checker shall stand abolished with effect from 28th May, 1965, your services shall not be needed. As such you shall be surplus to the requirements of the company.

Please take notice that your services are terminated with effect from 28th May, 1965. You will be paid one month's wages in lieu of notice with effect from 28th May, 1965 and retrenchment compensation. You are directed to collect before leaving on 28th May, 1965:—

	Rs. P.
(1) One month's wages in lieu of notice ...	105.00
(2) Retrenchment compensation for 5½ months at an average of pay of 15 days' wages for 10 years and 6½ months services ...	577.50
Total ..	682.50

If you do not collect the retrenchment compensation within 3 days, the same shall be sent to you by money order.

for Pepsu Transport Co. (P) Ltd., Kotkapura.
(Sd.) KUNDAN SINGH,
Managing Director."

A perusal of these notices would show that the respondents were not being given one month's notice, but they had to be paid wages for the period of such notice. That being so, the time of retrenchment had to be fixed by the petitioner-company who was their employer. In the case of respondent No. 4, it mentioned 20th of May, 1965 and so far as respondent No. 5 was concerned, the date fixed was 28th of May, 1965. In order to comply with the provisions of section 25-F, the petitioner-company had, therefore, to pay the wages for the notice period together with the compensation at the rate mentioned in 25-F(b) to both these respondents on or before 20th of May, 1965 in the case of respondent No. 4 and 28th of May, 1965, in respondent No. 5's case. Admittedly these payments had not been made to these respondents before these dates. So far as respondent No. 4 is concerned, he was paid this amount on the 31st of May, 1965, while respondent No. 5 received some amount on 4th of June, 1965 and the balance on the 28th of June, 1965. Thus the provisions of section 25-F had not been complied with.

The argument of the learned counsel for the petitioner was that the payments made to these respondents were quite in order as they had been made within the period of 30 days for which they had been given wages in lieu of notice. According to him, the date of retrenchment in each case was on the expiry of the period for which they had been paid wages in lieu of notice, that is to say 20th of June, 1965, in the case of respondent No. 4 and 28th of June, 1965 so far as respondent No. 5 was concerned. There is no substance in this contention, because as already held by me above, according to section 25-F, the date of retrenchment in the case of a workman who had to be paid wages in lieu of notice was the one fixed by the employer and that would be 20th of May, 1965 and 28th of May, 1965 in the case of these respondents. It was submitted by the learned counsel that the workmen would be considered to be their employees upto the date for which they had been paid wages in lieu of notice with this difference that they would not be actually working for them. This argument

is not correct, because the moment the workman had been retrenched after being paid one month's wages in lieu of notice, they would cease to be the employees of the Company and would be at liberty to seek employment any where else. In the case of those workmen, however, who had been given one month's notice, they would continue to be in the employment and could not take up service any where else, because they would be actually working for the Company during that period.

As I have said, the payments had to be made to respondents 4 and 5 on or before 20th of May, 1965 and 28th of May, 1965. They could as well have been asked to collect the amounts due before leaving on the said dates, but in case they did not come to do so, these amounts should have been sent to them on those very dates, if possible, or the next day. This was admittedly not done by the petitioner-company in either of the two cases.

While dealing with the proviso to section 33(2)(b) of the Industrial Disputes Act, which says—

> "Provided that no such workmen shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

the Supreme Court, in *Strawboard Manufacturing Company* v. *Gobind* (2), observed thus at page 424:—

> "It is not disputed before us that when the proviso lays down the condition as to payment of one month's wages, all that the employer is required to do in order to carry out that condition is to tender the wages to the employee. But, if the employee chooses not to accept the wages, he cannot come forward and say that there has been no payment of wages to him by the employer. Therefore, though S. 33 speaks of payment of one month's wages, it can only mean that the employer has tendered the wages and that would amount to payment, for otherwise a workman could always make the section unworkable by refusing to take the wages."

(2) (1962) 1 Labour Law Journal 420.

According to this decision, the employer must actually tender the amount of wages to the employee and if the latter then does not accept the same, he cannot later on be heard to say that there had been no payment of wages to him by the employer. In the present case, it is not the position of the petitioner-company that the amounts due to respondents 4 and 5 had actually been tendered to them before their respective dates of retrenchment and they had refused to receive the payment. Tender does not mean calling the workman to receive payment on a particular date. As I have said, the amount in question has actually to be offered to the workman concerned, which was not the position in the instant case.

Learned counsel, for the petitioner relied on the following observations of a Single Bench decision of the Calcutta High Court referred to above:—

> ".....Section 25-F no doubt says that no workman shall be retrenched 'until' he has been given either one month's notice or has been paid, in lieu of such notice, wages for the period of notice and that such workman has been paid compensation calculated under section 25-F(b). But it may be difficult to make a workman accept payment if he will not himself do that. Therefore, an unconditional offer for payment, preceding retrenchment may be equivalent (to) payment."

What was actually held in that case was—

> "Where notice of retrenchment was posted on the very day when the retrenchment was to take effect and the workmen were asked to call at the office for receiving payment of wages and compensation either on the same or on any subsequent date, there was little chance for the workmen to receive the letter on the same day and call for payment. The notice really amounted to a call to receive payment subsequent to retrenchment. That made the offer bad and consequently the retrenchment order became incompetent. The payment under S. 25-F, if made or offered to be paid without least possible delay after retrenchment did not suffice."

If, however, the observations made by the learned Judge and relied on by the counsel for the petitioner meant to convey that a mere notice calling upon the workman to receive payment before retrenchment was equivalent to payment within the meaning of Section 25-F, even though the said amount had neither been tendered to him, nor actually paid to him and nor had been sent to him in case he did not come to receive the same, on or before the date of retrenchment, then, I am, with great respect to the learned Judge, not prepared to subscribe to that view, because as I have already said, it is the obligation of the employer to comply with both the conditions mentioned in section 25-F, before he can validly retrench the workman. He has to pay the compensation at the time of retrenchment. If the said workman does not come to receive it on or before the due date, when called upon to do so, the employer should send the same to him on that date, if possible. otherwise on the next day and it is only then that it can be said that he complied with the condition laid down in the section.

There is no dispute that section 25-F has been enacted for the protection of the workmen. As already held by me above, it is the obligation of the employer to make the payment before he can validly discharge a workman. Mere sending notices calling upon the workmen to receive payment before the due date and then equating such an offer to actual payment, might lead to harsh results, because if the employee could not come on the day fixed to receive the payment for some good reason, an obstinate employer may refuse to make the payment on the next day on the plea that the notice itself was equivalent to payment and his obligation to make the payment had ceased on the previous day.

Since, in the instant case, no payment had been made to respondents 4 and 5 at the time of their retrenchment, the provisions of section 25-F had not been complied with. The Tribunal was, therefore, right in holding that the retrenchment of both the respondents was bad on the ground that the provisions of section 25-F had not been complied with before effecting their retrenchment. The contention of the learned counsel for the petitioner thus fails.

It was then submitted that the Tribunal had erred in law in holding that in case the post of the Checker was abolished, Pritam Singh Johal, respondent No. 5 ought to have been given the post of a clerk in the Company. According to the learned counsel, he was the

only Checker in the Company and with the abolition of that post, he had to go. Reference in this connection was made to the provisions of section 25-G of the Act, where it was mentioned that in case any workman in an industrial establishment was to be retrenched and he belonged to a particular category of workmen in that establishment, then in the absence of any agreement between the employer and the workman in that behalf, the employer should ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenched any other workman.

There is no substance in this submission. In the first place, it was not the case of the Company before the Tribunal that under section 25-G, it was respondent No. 5 who had to go when the post of Checker was abolished, since he belonged to a particular category of workmen in that establishment. This argument is being raised for the first time in these proceedings. Whether a workman belongs to a particular category in an establishment is a question of fact which has to be agitated in the first instance before the Tribunal. The Company cannot be permitted to raise this issue for the first time in writ proceedings, especially when it involves determination of questions of fact. Secondly, it has been found by the Tribunal that respondent No. 5 was appointed as a clerk in the first instance and later on he was *promoted and made a checker*. He was the senior-most amongst the clerks and even if the post of the Checker was abolished, he could have been reverted to this original post of a clerk and the junior-most clerk should have been discharged from service. It is undisputed that in making retrenchment the management normally has to adopt and give effect to the industrial rule of retrenchment 'last come, first go'. There is no reason why this well-recognised principle should not have been applied in this case.

It was then argued that the Tribunal had erred in holding that the retrenchment in Lal Chand Mistri, respondent No. 4, was not *bona fide* and was made on account of his trade union activities which were not to the liking of the Company. Neither any particulars of the trade union activities had been given and nor was there any evidence on the record in support thereof and, according to the learned counsel, the finding of the Tribunal on that point was liable to be set aside.

In the impugned order, the Tribunal had referred to a number of documents on the basis of which he came to the conclusion that the retrenchment of respondent No. 4 was not *bona fide* and it had been made on account of his trade union activities which were not to the liking of the management. Respondent No. 4 had admittedly not been paid his wages for several months and in order to get the same, he had been making a number of complaints both to the management and the labour authorities. As a result of these complaints, the management was pulled up by the authorities and was asked to make the payments of the outstanding wages to the worker and to keep the register of wages complete for inspection, failing which necessary action would be taken against them. The District Motor Transport Workers Union, Kotkapura also took up the cause of respondent No. 4 with the management. All these activities of respondent No. 4 were naturally not liked by the Company and they wanted to get rid of such a workman. There was, thus, ample material on the record to give a finding that the retrenchment of respondent No. 4 was not bona fide. Such a finding of fact, which is based on evidence, cannot be interfered within writ proceedings.

Learned counsel then contended that the finding of the Tribunal to the effect that the retrenchment of Lal Chand, respondent No. 4, was made not for effecting economy as was alleged by the Company, but on extraneous grounds, was not correct. The finding of the Tribunal, according to the learned counsel, that the total expenditure of the Company on repairs was more by Rs. 749 in the year ending 31st March, 1966 than in the previous year was obviously incorrect, because the Tribunal had not taken into consideration the saving made by the Company in the shape of salary of respondent No. 4 for more than 9 months which came to about Rs. 2,100. The Company thus made a net saving of about Rs. 1,350. This error, according to the counsel, was patent on the face of the record.

In arriving at the finding that by retrenching Lal Chand, Mistry, respondent No. 4, the Company had, as a matter of fact, not effected any economy, because the expenditure on the repairs of the vehicles had gone up, the Tribunal had relied on the statement of Shri Kundan Singh, Managing Director and the balance sheet of the Company for the year ending 31st March, 1965. Shri Kundan Singh had stated that the total expenditure on the

repairs of vehicles for the year ending 31st March, 1965 was Rs. 37,217 while in the subsequent year it was Rs. 37,966. This finding of fact of the Tribunal was again based on evidence and the same cannot be reversed in these proceedings. Whether in calculating the expenditure, the saving made by the Company, in the shape of salary of Lal Chand for more than 9 months, had been taken into consideration or not was a matter which should have been agitated before the Tribunal. If this point had been brought to his notice, he might have examined it and come to the conclusion whether there was any truth in that or not. This was again a question of fact which cannot be permitted to be raised for the first time in these proceedings.

Lastly, it was submitted that the Tribunal had erred in law in holding that respondents 4 and 5 were entitled to wages from the date of retrenchment to the date of re-instatement, without any finding that they remained unemployed since the date of their retrenchment and were still unemployed. These respondents appeared as their own witnesses and, according to the learned counsel, they did not state that they remained unemployed during all this period. The Company had learnt that Lal Chand remained in the employment of the Moga Transport Co. Pvt. Ltd., Moga, from 17th June, 1965 to 5th January, 1966 at Rs. 225 per mensem and was employed in the Gondara Transport Co., Private Limited, Faridkot, since 7th January, 1966 at a salary of Rs. 250 per mensem. Similarly, Pritam Singh Johal, respondent No. 5, remained in the employment of the Moga Transport Co., Private Ltd., Moga from 17th June, 1965 to 30th November, 1965. The Tribunal did not investigate this matter before awarding back wages and thus committed an error of law. There was no evidence on the record regarding the un-employment of respondents 4 and 5 since their retrenchment by the Company. Under these circumstances, the back wages could not have been awarded to them. This error, according to the learned counsel was apparent on the face of the record.

In reply to this contention, learned counsel for respondents 4 and 5 submitted that the question whether the workmen were employed since the date of their retrenchment was never raised by the petitioner-company before respondent No. 2. Kundan Singh was the Managing Director and Bakhtawar Singh, the Chief Controller of the Moga Transport Company, Private Ltd., Moga. They appear-

ed as witnesses before the Tribunal, but they never stated about the employment of respondents 4 and 5 with their Company. Chanan Singh, the Managing Director of the Petitioner-company was also a share-holder in the Moga Transport Company. He too did not make a mention in his statement about the employment of respondents 4 and 5 with the latter Company. Respondents 4 and 5 also appeared as their own witnesses, but they were never cross-examined regarding their employment during the period of their retrenchment. It was denied that the Tribunal was to investigate this matter without being raised before him. There was no duty cast upon the Tribunal to go into this matter *suo motu*. It was, however, admitted that Lal Chand, respondent No. 4 remained in the employment of the Gondara Transport Private Company, Faridkot, but he was there on temporary basis and he was not the regular employee of the said Company. It was further admitted that the petitioner-company did possess some receipts of payments signed by respondents 4 and 5 in favour of the Moga Transport Company, but no amount, according to the return filed by the workmen, was actually paid to them and a long explanation was given by them in their written statement as to how those receipts came into existence.

It is undisputed that the back wages are awarded to compensate the workmen for the loss of income during the period of their retrenchment. It was not the case of respondents 4 and 5 that even if it was proved that they were suitably employed during the period of their retrenchment and were earning, not less than what they were getting from the petitioner-company, they were still entitled to the back wages at the time of their re-instatement. It was admitted that respondents 4 and 5, in their evidence, did not state that they had remained unemployed during the retrenchment period. It is clear that *prima facie* it would be within the knowledge of the workmen as to whether they remained employed or not, and if employed, with whom and at what salary. The question as to whether it was for the workmen to prove that they remained unemployed or for the petitioner-company to establish that they were employed during the retrenchment period or else it was the duty of the Tribunal to determine this matter before awarding the back wages, need not be decided as an abstract question of law, because in the instant case it had been admitted by respondent No. 4 that he had remained in the employment of Gondara Transport Company Private Ltd., Faridkot, though on a temporary basis, meaning thereby that he had received some wages from that Company. It has further been admitted by both the respondents that they had

issued receipts in favour of Moga Transport Company Private Ltd., Moga, though they did not represent the correct state of affairs, because nothing was paid to them thereunder. On the other hand, the petitioner-company has mentioned in minute details the dates of payments and the actual amounts paid on those dates to the two workmen by the Moga Transport Company. In this state of the pleadings, it would be in the interests of justice that before the back wages were awarded to the workmen, these wages being admittedly given in order to compensate them for the loss of income during their retrenchment period, an enquiry should be made into this matter by the Tribunal to find out if they were actually employed with those Companies or anywhere else during the relevant period and had in fact received any wages. It is only then that it can be determined as to how much loss of income was suffered by the workmen during the retrenchment period, for which they have to be compensated. The amount of compensation, if any, to be paid in the form of the back wages has, of course to be determined by the Tribunal after giving the parties proper opportunity to lead evidence regarding this matter.

In view of what I have said above, I would uphold the award of respondent No. 2 to the effect that the retrenchment of the two workmen was bad in law and the order re-instating them was valid. With regard to the payment of the back wages, however, the order of the Tribunal is set aside and he is directed to re-determine this matter in the light of the observations made above. In the circumstances of this case, however, I leave the parties to bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

GURBACHAN SINGH AND ANOTHER,—*Petitioners*

versus

FINANCIAL COMMISSIONER AND OTHERS,—*Respondents*

Civil Writ No. 1620 of 1964.

May 18, 1967.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 7-A (1)—Land-owner holding more than 30 standard acres at the commencement of the Act, but holding 30 standard acres or less at the time of making application for