Before Arun B. Saharya, C.J. & V.K. Bali, J

SATPAL SINGH,—*Appellant*

versus

UNION OF INDIA & OTHERS,—*Respondents*

L.P.A. No. 452 of 1991

20th November, 2001

Industrial Disputes Act, 1947—Ss.2(oo) (bb) & 25-F—Termination of services of a workman on the expiry of specified & fixed period of appointment—Labour Court finding the order of termination legal—plea of Unfair Labour Practice—Neither pleaded by the workman nor any general allegation to that effect made—In the absence of such an allegation, the Management is not under an obligation to prove the same—Neither the reference nor the issue framed by the Labour Court involves the element of unfair labour practice—Management proving that the order of termination was justified & legal—Appeal dismissed while upholding the order of Single Judge.

(Bhikku Ram v. The Presding Officer, Industrial Tribunal—cum—Labour Court, Rohtak, 1998 (1) RSJ 703, held, do not represent correct law)

Held, when the appointment is for a fixed period, unless there is finding that power under clause (bb) of Section 2(oo) was misused or vitiated by its *mala fide* exercise, it cannot be held that the termination is illegal. In its absence, the employer could terminate the services in terms of the letter of appointment unless it is a colourable exercise of power. It must be established in each case that the power was misused by the Management or the appointment for a fixed period was a colourable exercise of power. Unfortunately, neither the learned Single Judge nor the Division Bench recorded any finding in this behalf in the case of Bhikku Ram v. The Presiding Officer, Industrial Tribunal—cum—Labour Court, Rohtak.

(Para 21)

Further held, that the Labour Court cannot go beyond the reference made by the Government, but in the facts and circumstances of the case, there is no need to do so as neither reference nor the issue framed by the Labour Court would involve the element of unfair labour practice indulged by the Management. The reference was only as to whether termination of service of workman is justified and correct. The issue is also almost couched in the same language. The Management could well succeed by asserting and proving that the order of termination of srevice of workman was justified and correct as also legal on the dint of provisions of Section 2(oo)(bb) when appointment of the workman was for a specified tenure and indeed the Management has been able to prove so. It would be too much to assume non—indulgence in unfair labour practice in the works 'justified', 'correct' or 'legal'.

(Para 24)

Sarjit Singh, Sr. Advocate with Jagdev Singh, Advocate for the Appellant.

C.R. Dahiya, DAG (H), for respondent Nos. 2 and 3.

JUDGMENT

V.K. BALI, J.

(1) Letters, Patent Appeals Nos. 452 to 456 of 1991 and Civil Writ Petition No. 336 of 1992 involve common questions of law on similar facts and it is for that precise reason that same have been clubbed together vide admission orders. Learned counsel for the parties are also ad-idem that all these matters need to be disposed of together. The bare minimum facts that need a necessary mention, in the context of contentions raised by learned counsel for the parties, have however, been extracted from LPA No. 542 of 1991.

(2) Appellant—Sat Pal Singh (here-in-after referred to as workman) was employed on daily wages for a fixed period. He had, however, completed more than one year service before clause (bb) of Section 2(oo) of the Industrial Disputes Act, 1947 (for short the Act) came on the Statute by Amending Act of 1984 with effect from 18th August, 1984. When his services were terminated on 1st February, 1985 without any notice, charge-sheet or compensation and in view

of petitioner, in violation of Section 25-F of the Act, he sought reference under sub-section (1) of Section 10 of the Act from the Government. The terms of reference were as follows :—

> "Whether termination of services of Sat Pal Singh workman is justified and correct, if not to what relief is he entitled?"

(3) The respondent—Management entered appearance before the Labour Court, Ambala and hotly contested the cause of workman. In the reply that came to be filed on behalf of the Management, it was *inter-alia* pleaded that the workman was asked to quit as per terms and conditions of the appointment order on the expiry of specified and fixed period of appointment and that being the situation, Section 2(oo)(bb) of the Act would be straightaway attracted, thus, entitling the Management to dispense with the services of the workman without complying with the conditions precedent set out in Section 25-F of the Act.

(4) Learned Labour Court, on the basis of pleadings of the parties, framed following issues :—

> "1. Whether order of termination of the workman dated 31st January, 1985 is legal, if so its effect ?
>
> 2. Relief".

(5) The resultant trial on the issues, referred to above, culminated into award dated 26th July, 1986. Reference was answered in favour of the Management and against the workman. Aggrieved, the workman challenged the award of Labour Court ,—vide CWP No. 2409 of 1987. Same has since been dismissed by learned Single Judge vide order dated 3rd September, 1990. Hence the present appeal under Clause X of the Letters Patent.

(6) The workman challenged the award of Labour Court on three different grounds, namely, that the workman had completed service of over a year before clause (bb) of Section 2(oo) of the Act became law and before introduction of clause (bb) of Section 2(oo), he had acquired a vested right and that being so, non-compliance of the pre-conditions, spelt out in Section 25-F would invalidate the order of retrenchment, constitutional validity of clause (bb) of Section 2(oo) and unfair labour practice indulged in by the Management.

(7) The contentions of the workman, as noted above, were repelled by learned Single Judge by holding that the first contention was wholy untenable as to test the validity of the termination of the services of a workman, the law to be considered and applied is that in force on the date of termination and not on any date prior thereto and admittedly on the date when the services of the petitioners were terminated, clause (bb) of Section 2(oo) of the Act was in force. The second contention of constitutional validity of clause (bb) of Section 2(oo) was turned down on the basis of judgment of this Court in CWP No. 2556 of 1987 (Rai Bahadur *v.* Gerneral Manager, Food Specialities Ltd.) decided on 3rd September, 1990. The contention with regard to unfair labour practice indulged in by the Management also did not find favour with the learned Single Judge primarily on the ground that it was never the plea raised by the workman that the work for which he had been employed was continuous. The unfair labour practice, it may be mentioned here, was based upon the job carried out by the workman being perennial in nature or another workman being employed on the job that was being carried out by the workman.

(8) Mr. Sarjit Singh, learned counsel for the appellants in the appeals and petitioner—workman in the Writ Petition, has not questioned the validity of clause (bb) of Section 2(oo) of the Act. There is a very faint and half hearted attempt in challenging the findings of learned Single Judge pertaining to validity of termination of services of workman on the ground that Section 2(oo)(bb) came to be inserted in the Statute book when the workman had already completed service for a period more than 240 days in the year immediately preceding the order of retrenchment. This contention has simply been made without making any endeavour to support the same on any principle, statute or precedent. All that, therefore, deserves to be mentioned is that it is law applicable on the date of termination/retrenchment of workman that shall apply and not the one that may be applicable at the time of employment of a workman. Mr. Sarjit Singh, however, seriously challenges the finding of learned Single Judge pertaining to unfair labour practice indulged in by the Management. Before we might notice his contention with regard to the only point, vehemently canvassed before us, we would like to give bare minimum facts that are relevant in returning the finding on the crucial issue.

(9) Insofar as demand notice preceding the reference made by the Government under Section 10 (1)(c) of the Act is concerned, same has not been placed on records. In the statement of claim filed on behalf of the workman, but for mentioning that his services were dispensed without any notice, charge-sheet, enquiry or compensation and there was no compliance of Section 25-F, nothing has been mentioned. In other words, there is not a word mentioned with regard to management having indulged in unfair labour practice either for the reason that job carried out by the workman was permanent in nature or for that matter he was substituted by another workman. That being the situation, the management, besides denying the basic facts only pleaded that the termination/discontinuation of services of the workman was as per terms and conditions of the appointment order and on the expiry of period of appointment, it would not be a case of retrenchment under Section 2(oo) and, therefore, reference deserved rejection. No replication was filed before the Labour Court controverting the applicability of clause (bb) of Section 2(oo) of the Act. Mr. Sarjit Singh has not referred to the statement of the workman that might have been recorded before the Labour Curt. Surely, if petitioner would have stated on the facts that might point towards unfair labour practice indulged in by the management, the same would have either been placed on record or at least read out in the Court during the course of arguments. No issues was claimed with regard to management having indulged in unfair labour practice nor even a word was stated on that count before the Labour Court during the course of entire proceedings.

(10) Mr. Sarjit Singh, learned counsel, despite the facts, as detailed above, contends that clause (bb) of Section 2(oo) of the Act, being in the nature of an exception to the main clause dealing with retrenchment, the management in every case, where it may press upon the said clause in defence to the chrage of a workman, must plead and prove that it has not indulged in any unfair labour practice and in the context of the unfair labour practice involved in the present case, it must necessarily plead and prove that the job from which workman was asked to quit, was of a temporary nature and further no fresh hands were made to do the job, from which the workman was retrenched. Support for the contention aforesaid is sought to be drawn from the judicial precedents as, in view of Mr. Sarjit Singh, the matter being no more res-integra, there shall be no necessity to

buttress the contention on the basis of provisions of the Act or any other principle.

(11) Section 2(oo) of the Act defines retrenchment to mean 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 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.

(12) Clause (bb) of Section 2(oo) was introduced by Act No. 49 of 1984 with effect from 18th August, 1984. In the context of the facts of the present case, there is no need to determine as to whether clause (bb) is an exception to the definition of retrenchment given in Section 2(oo), as even if it is assumed to be so, in our view, it would not advance the case of the workman as plea of unfair labour practice, based upon whatever facts there may be available constituting such unfair labour practice, have necessarily to be spelt out by the workman. We shall take into hand the exercise of dealing with the judicial precedents that have been cited before us but we may observe here that there is nothing in the Industrial Disputes Act that we may know or that might have been shown to us that may even remotely indicate departure from the general law pertaining to pleadings and onus of proof that a litigant, who may base his cause or project defence on a particular ground, must plead and prove the same and further that the onus to prove an issue, based upon pleadings is initially on a party who claims such an issue, which of course, keeps on shifting depending upon facts and circumstances of each case.

(13) Coming now to the judicial precedents, reliance of learned counsel is upon Division Bench judgment of this Court in ***Bhikku Ram*** versus ***The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak (1)***. Reliance of the counsel is upon

(1) 1998 (1) RSJ 703.

observations made by learned Division Bench in para 35 of the report, which read as follows :—

> "From the above, it is clear that termination of service of a workman, who has worked under an employer of 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 S.25-F(a) and (b). If the employer resists the claim of the workman and invokes S.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 services, with the terms of a 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* exerice 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 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 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. 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 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".

(14) The observations of the learned Division Bench, as extracted above, do support the contention of Mr. Sarjit Singh, but the question that still arises is as to whether these observations can be read without reference to the facts, on the basis of which same were made. An analysis of the facts in *Bhikhu Ram's* case (supra) would reveal that petitioner in the said case was appointed for a period of 89 days in the first instance vide order dated 29th June, 1984. On expiry of the period aforesaid, his services were 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 services were finally discontinued. He raised a dispute against the termination of his services by alleging that his services were retrenched without compliance of requirement of Section 25-F of the Act. He also pleaded violation of Section 25-G of the Act as well as principles of natural justice. Before the Industrial Tribunal, where the disptue was referred by the Government under Section 10(1)(c) of the Act, petitioner workman reiterated his plea that termination of his services was contrary to Section 25-F and 25-G of the Act and he specifically pleaded, so noticed by the learned Division Bench, 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 and two workmen, namely, Ranbir and Sashi, who were employed after him, were still working. In the award that came to be rendered by the Industrial Tribunal-cum-Labour Court, it was, however, held that the case of petitioner was covered under Section 2(oo)(bb) of the Act and he was not entitled to any relief.

(15) The award was challenged before this Court wherein, learned counsel for the petitioner vehemently urged that the award passed by the Industrial Tribunal-cum-Labour Court was perverse and suffered from an error of law apparent on the face of it. It was also 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*. While dealing with the aforesaid contention of learned counsel, it was observed by the learned Division Bench that a look at the impugned award would show 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 can not be said that his appointment was for 240 days in a year and, therefore, his case was covered by Section 2(oo)(bb) and he was not entitled to the benefits of Section 25-F of the Act. It was further observed that the award did 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* and that the Labour Court has altogether ignored the oral evidence produced by both the parties. Taking into consideration some judicial precedents and other relevant factors, it was then held that the analyses of Section 2(oo) along with various clauses showed that even after 18th August, 1984 termination of service of a workman would be treated as retrenchment except where such termination of service falls within one of the following categories :—

(i) termination of service as a punishment conflicted 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".

(16) Dealing then with the circumstances under which the employer can defend the cause of workman when he pleads applicability of Section 2(oo)(bb), it was observed as follows :—

"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 12 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 terms 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 rights under the Industrial Disputes Act or other labour legislations** (emphasis supplied), 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 workan 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".

(17) It has further been observed by the learned Division Bench that:—

"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 to the section 2(oo) and terminate the service despites 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 had unfairly resorted to his right to terminate the service of the employee".

(18) The obervations made by the learned Division Bench as have been relied upon by learned counsel for the petitioner, as have been extracted above, can not be read in isolation. The said observations, in our view, came to be made in pertinent facts of the case, as have been discussed threadbare by us in the preceding paragraphs. It is too well settled by now that observations made in a judicial precedent have to be read in reference and context to the facts of the said case. If in a particular case observations have been made on the dint of the facts of the case, same can not assume character of a binding precedent. Further, no observations made in any judicial precedent can be authoritative and of binding nature unless the same come about without there being any issue or question. To illustarte, supposing the observations that have been relied upon by Mr. Sarjit Singh had come about without there being any debate with regard to law of pleadings and onus to prove an issue, it would have been open to a party to successfully contend that the issue with regard to onus of proof having not been examined at all, the aid finding shall not be of binding nature. In the present case, we need not go any further as the question with regard to onus has since been examined by the learned Divisions Bench in *Bhiku Ram's* case (supra) and we are in respectful agreement with the view expressed by the Hon'ble Judges constituting the Bench that once the workman might asert the employer having indulged into unfair labour practice by pleading that the work was of continuous nature or other persons were given the same very job from which he was retrenched, onus would shift to the management to prove otherwise. In the case as was before the learned Division Bench, as already mentioned above, there were not only specific pleadings but the parties had led evidence as well to which the Labour Court had not even adverted. There can be no dispute with the observations made by the learned Division Bench, as have been relied upon by learned counsel for the petitioner in the context of the facts of the case that was before the Bench. In the present case, however, as referred to above, there is not even a word mentioned that the Management had indulged into unfair labour practice either by pleading that the job, on which petitioner was employed, was of permanent nature or for that matter other persons were employed to carry out the same job. There is not even an omnibus or general allegation of the management having adopted any unfair means. In such a cae, if the management is still to prove that it did not indulge in unfair

labour practice, it would be ignoring even the basic principles of pleadings and proof. Further, unfair labour practice, in its fold, can have many dimensions. Unknown to which particular unfair labour practice, the Management has to meet, it would result into employer pleading and proving non-existence of all unfair labour practices specfied under the Act.

(19) Besides placing reliance upon the observations made by the Division Bench in *Bhikhu Ram's* case (supra) which, according to learned counsel, are nearest home reliance has also been placed upon another Division Bench judgment of this Court in ***Chief Administrator, Haryana Urban Development Authority & Anr.*** versus ***Presiding Officer, Industrial Tribnal-cum-Labour Court & Anr.***(2) and a Supreme Court judgment in ***State of Rajasthan & Ors.*** versus ***Rameshwar Lal Gahlot*** (3). Inasmuch as pleadings of the parties have not been reflected in *Chief Administrator, HUDA's* case (supra), we had called, for the original records of the case. From reading of the award rendered by the Labour Court in the said case, the facts that emerge are that the workman filed demand notice and in the claim petition made before the Labour Court he averred that he was an employee of HUDA and was working as a Clerk in the office of Sub Divisional Engineer, HUDA Sub Division No. 1, Panipat from 8th September, 1987 to 10th August, 1988 on salary of Rs. 1,196 per month. On 10th August, 1988 his services were terminated and he was relieved from his regular service without giving him any notice and without any information and further that the official respondents had adjusted their own relation in his place on the basis of political pressure. He had completed 240 days without any break and his work and conduct were satisfactory which was admitted by the official respondents in an experience certificate. It was further pleaded by him that order pertaining to termination of his services was made by respondent No. 2 which was mala-fide, without jurisdiction, illegal, null and void. In the written statement, that came to be filed by the official respondents, it was pleaded that the workman was appointed as a Clerk on 8th September, 1987 for 89 days basis and he was relieved after completion of 89 days, i.e., 4th December, 1987 and again he was appointed on 11th December, 1987 after six days gap and he was relieved on 10th December, 1987. He was

(2) 1994 (4) SLR. 775
(3) AIR 1996 SC 1001

appointed on 89 days basis on 16th May, 1988 after a gap of 68 days and was relieved on 12th August, 1988 after completion of 89 days. He had not completed 240 days in a calendar year and further that he was appointed as stop-gap arrangement as per terms and conditions of the appointment letter, which were accepted by hm. Learned Labour Court, on the basis of the evidence that was led before it, returned a finding that the workman carried on with his work for 265 days in one calendar year and further that plea of the management that he did not work for 240 days in a calendar year was not correct. The reference was answered in favour of the workman without any discussion pertaining to Section 2(oo)(bb) of the Act. It is quite apparent from reading of the award that the provisions contained in section, referred to above, were not even pressed into service. It is only before this Court that it was urged that the workman each time had been employed for a fixed term and with the end of the term he could not be said to have been retrenched within the meaning of the Act and, therefore, there was no need to comply with the provisions of Section 25-F of the Act as termination of an employee on account of non-renewal of the contract of employment has been specifically excluded from the definition of retrenchment as per Section 2(oo)(bb) of the Act. The aforesaid contention raised on behalf of management was repelled by observing that "the appointment leter has not been adduced in evidence, so its exact term is not known. All the same, there is no denying the fact that the workman had been employed each time for a period of 89 days and during the calendar year he had worked for 265 days. Whether his services were terminated on completion of work assigned or this device was employed to deprive him of the benefits which accrued to a person on account of his long service has been the subject matter of enquiry before various judicial forums. At times it has been found that this device is employed, i.e., of giving employment for a particular period and again for identical period after a gap of about 5-6 days so as to disrupt the continuity of his service. The Courts, after examining the facts of a particular case at time have held to be an unfair practice. Thus, it is to be seen whether in the present case the action of the HUDA authorities can be termed as *mala fide* and as an unfair labour practice or the same stands justified in the facts of the present case. Admittedly, the workman respondent had been performing the job of a clerk to the satisfaction of his superiors. He had an experience certificate in this regard, reference to which has

been made by Labour Court. No tangible reasons have been given or assigned for terminating the services of the petitioner. It is not a case that his services were no more required as work assigned to him had completed. It is also not a case where the whole department has been closed on account of a particular assignment for which it has been established. In the absence of the same, action of the HUDA authorities can be clearly held to be mala-fide which was solely intended to deprive the respondent-workman of his valuable right to remain in employment unless his srvices are terminated according to law. No doubt, the decision of this Court in *Ram Murti's* case (supra) supports the contention raised by the petitioner, but as per the facts of present case (Emphasis supplied) we are unable to agree with the view taken by our learned brother N.K. Sodhi, J."

(20) As mentioned above, no doubt, plea of the workman that order terminating his services was *mala fide* and that he had satisfactorily carried out the job entrusted to him, which would be evident from the experience certificate issued to him by the employer and further that his termination was with a view to accommodate the relation of the official respondents due to political pressure, has since not been mentioned in the judgment recorded by the Division Bench, but, surely, same was available emanating from the impugned award itself. The management did not rebut the assertion of the workman with regard to employment of another person after relieving him by an order of retrenchment. Further, it was a case where the management had indulged into an unfair labour practice by intentionally giving a break after every tenure of service with a view to frustrate the right of workman in completing 240 days with an intention to terminate his services at will without complying with the provisions of Section 25-F of the Act. It is for that precise reason that the findings came to be recorded in peculiar facts of the case, so specifically mentioned by the Hon'ble Judges constituting the Division Bench.

(21) Insofar as decision of Supreme Court in *Rameshwar Lal Gahlot's* case (supra) is concerned, it is significant to mention that the respondents have also placed reliance upon the same in their endeavour to show that the case in hand is squarely covered by the provisions of Section 2(oo) (bb). The facts of the case aforesaid would reveal that

the workman came to be appointed for a period of three months or till the regular selected candidate assumed office. He was appointed on 28th January, 1988 and his services came to be terminated on 19th November, 1988. Learned Single Judge held that since he had completed more than 240 days, his termination was in violation of Section 25-F of the Act and directed that a fresh appointment should be made. An appeal was filed against latter part of the order and Division Bench set aside the said part of order and directed reinstatement with back wages. As against the order altered by the Division Bench, the appeal came to be filed before the Supreme Court. It was held that "the controversy now stands concluded by a judgment of this Court reported in **M. Venugopal** v. **Divisional Manager, LIC (4)**. Therein, this Court had held that once an appointment is for a fixed period, Section 25-F does not apply as it is covered by clause (bb) of Section 2(oo) of the Act. It is contended for the respondents that since the order of the learned Single Judge was not challenged, the termination became final. Consequently, the appellant would be liable to pay back wages on reinstatement. In our considered view, the opinion expressed by the learned Single Judge as well Division Bench are incorrect in law. When the appointment is for a fixed period, unless there is finding that power under clause (bb) of Section 2(oo) was misused or vitiated by its *mala fide* exercise, it can not be held that the termination is illegal. In its absence, the employer could terminate the services in terms of the letter of appointment unless it is a colourable exercise of power. It must be established in each case that the power was misused by the management or the appointment for a fixed period was a colourable exercise of power. Unfortunately, neither the learned Single Judge nor the Division Bench recorded any finding in this behalf."

(22) In our opinion, the view expressed by the Hon'ble Supreme Court, far from advancing the cause of workman, would rather advance the case of the Management as it has been clearly held that when appointment is for a fixed period, unless there is finding that power under clause (bb) of Section 2(oo) was misused or vitiated by its *mala-fide* exercise, it can not be held that termination is illegal and further it must be established in each case that the power was misused by the management or appointment for a period was a colourable exercise

(4) (1994) 2 SCC 323

of power. The misuse of power has to be established in each case, in our view, by the workman by at least pleading bare minimum facts. There is no question for the management to establish non-colourable exercise unless it is called upon to do so and surely it would be called upon to do so only if there is a charge to that effect against it. The burden of proof for such a charge shall always be upon the workman, which shall never change, even though onus may keep on shifting depending upon the facts and circumstances of the case.

(23) Mr. C.R. Dahiya, Deputy Advocate General, Haryana, appearing for the respondents in the appeals and Mrs. S.K. Bhatia, Senior Deputy Advocate General, Punjab, appearing for the respondents in CWP No. 336 of 1992, on the contrary, besides relying upon judgment of Supreme Court in Rameshwar Lal Gahlot's case (supra), have also relied upon ***Harmohinder Singh*** versus ***Kharga Canteen, Ambala Cantt.(5) M/s kalyani Sharp India Ltd.*** versus ***Labour Court No. 1 Gwalior & Anr. (6), Orissa Mining corporation & Anr.*** versus ***Ananda Chandra Prusty (7), Karnal Central Coop. Societies Bank Ltd.*** versus ***State of Haryana (8), Banarsi Dass*** versus ***Presiding Officer, Labour Court, Ambala (9), Kartar Singh*** versus ***The State of Haryana through its Secretary, Urban Development Chandigarh & Ors (10) and M. Venugopal*** versus ***The Divisional Manager, LIC of India, Machilipatnam & Anr. (11).*** There is no need at all to give in detail the facts giving rise to cases mentioned above and the law laid down therein as suffice it to mention that the plea of workman, based upon judicial precedents relied upon by Mr. Sarjit Singh does not advance his case at all.

(24) Faced with the situation, as is in the present case, Mr. Sarjit Singh then contends that the Labour Court can not go beyond the reference and inasmuch as not only the reference but issue framed

(5) 2001 (3) SLR 555
(6) J.T. 2001 (3) SC 533
(7) 1997 (1) RSJ 151 (SC)
(8) 1995 (1) RSJ 817
(9) 1994 (4) RSJ 465
(10) 1994 (3) PLR 734
(11) 1994 (2) RSJ 359

by the Labour Court is also couched in a language which presupposes or has in it inherently involved the element of unfair labour practice, it is the Management which ought to have proved that it had not indulged into any such practice, failure whereof would result into invalidating the order of termination. We would have given serious thought to the contention of learned counsel that the Labour Court can not go beyond the reference made by the Government, but, in the facts and circumstances of this case, there is no need to do so as neither reference nor the issue framed by the Labour Court, in our view, would involve the element of unfair labour practice indulged by the Management. The reference was only as to whether termination of service of workman is justified and correct. The issue is also almost couched in the same language. The Management could well succeed by asserting and proving that the order of termination of service of workman was justified and correct as also legal on the dint of provisions of Section 2(oo)(bb) when appointment of the workman was for a specified tenure and indeed the Management has been able to prove so. It would be too much to assume non-indulgence in unfair labour practice in the words 'justified', correct, or legal, as is sought for by learned counsel representing the appellants.

(25) Civil Writ Petition No. 336 of 1992 has been filed by the workman against award dated 24th July, 1992, wherein the Labour Court, relying upon judgment of this Court in ***Sat Pal*** versus ***Human Resources Swaraj Foundry Majri (11)*** subject matter of LPA No. 456 of 1991, held that the case of workman would be covered under Section 2(oo)(bb) and it is for that precise reason that writ petition was ordered to be heard along with LPA in hand.

(26) In view of the discussion made above, we do not find any merit in the Letters Patent Appeals as also writ petition, detailed above. Same are, thus dismissed, leaving, however, the parties to bear their own costs.

R.N.R.

(12) 1990 (5) SLR 694