Before Hemant Gupta, G.S. Sandhawalia & Kuldip Singh, JJ.

MUNICIPAL COUNCIL, DINA NAGAR—*Appellant*

versus

PRESIDING OFFICER, LABOUR COURT AND ANOTHER—*Respondents*

LPA No. 754 of 2010

October 10, 2014

A. Letters Patent, 1919 - Clause X - Industrial Disputes Act, 1947 - S. 25-F - Retrenchment - Reinstatement - Workman appointed on contract basis as Octroi clerk/ Maharar - Services terminated without complying with the mandatory provisions of Section 25-F - Industrial Tribunal ordered reinstatement with full back wages on account of the violation of Section 25 F - In view of the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation - Same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules.

B. Letters Patent, 1919 - Clause X - Industrial Disputes Act, 1947 - S. 25-F - Provisions mandatory - On account of violation of the same - Retrenchment would be void ab initio as if it was never in operation - Therefore, the employee would be deemed to be continuing in service.

C. Letters Patent, 1919 - Clause X - Industrial Disputes Act, 1947 - S. 25-F - Right of reinstatement - Not an automatic right as such - While directing reinstatement, the Labour Court will have to take into consideration various aspects - As to the nature of appointment, the availability of a post, the availability of work, whether the appointment was as per Rules and the statutory provisions, the length of service and the delay in raising the industrial dispute, before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such - Even though the retrenchment was void.

D. Letters Patent, 1919 - Clause X - Industrial Disputes Act, 1947 - S. 25-F - Retrenchment - Reinstatement and regularisation - Retrenchment being void - Would not entitle the workman as such to qualify or claim a right for regularization - Neither by an order of reinstatement, the permanency could be granted to the said employee - He would only be held to be entitled in continuous service on the same status as he was when his services were terminated - Employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions - The employee having any grievance against such a termination could challenge the same in accordance with law.

E. Letters Patent, 1919 - Clause X - Industrial Disputes Act, 1947 - S. 25-F - Reinstatement - Discretion of the Industrial Adjudicator has to be respected - The said Adjudicator has to keep in mind the principles laid down by the Apex Court in Secretary, State of Karnataka and others vs. Uma Devi and others.

F. Letters Patent, 1919 - Clause X - Industrial Disputes Act, 1947 - S. 25-F & 25-B - Retrenchment - Claim for reinstatement - The view that the public authorities could claim total immunity and protection from the provisions of Sections 25-F and 25-B of the Act by taking resort to and shielding themselves on account of the fact that the posts were not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement - Not approved of.

G. Letters Patent, 1919 - Clause X - Industrial Disputes Act, 1947 - S. 25-F & 25-B - Whether the principles laid down in Secretary, State of Karnataka and others vs. Uma Devi and others relating to appointment to public service would be applicable while considering reinstatement under the Industrial Disputes Act, 1947? - Whether the failure to fill up the public posts in accordance with the relevant statutory Recruitment Rules disentitles a workman for reinstatement? - Whether a workman can be paid compensation for wrongful termination effected in violation of Section 25-F of the Industrial Disputes Act, 1947 in lieu of reinstatement? - Reference answered.

Held, the reference made by the Division Bench *vide* order dated 21.01.2014, for the purpose of which, the Full Bench has been constituted is to decide the vexed question as to whether the persons appointed on public posts whithout following proper procedure would be entitled for reinstatement in view of the violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short 'the Act') or in view of judgment of the Constitutional Bench in **Secretary, State of Karnataka and others vs. Uma Devi and others, 2006 (4) SCC 1** only the relief of compensation could be granted in such circumstances. The questions framed by the Division Bench read thus :-

> "(i) Whether the principles laid down in **Secretary, State of Karnataka and others vs. Uma Devi and others, 2006 (4) SCC 1** relating to appointment to public service would be applicable while considering reinstatement under the Industrial Disputes Act, 1947 ?
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> (ii) Whether the failure to fill up the public posts in accordance with the relevant statutory Recruitment Rules disentitles a workman for reinstatement ?
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> (iii) Whether a workman can be paid compensation for wrongful termination effected in violation of Section 25-F of the Industrial Disputes Act, 1947 in lieu of reinstatement ?"
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> *Held,* that the following principles are laid down:
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> (i)Keeping in view the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation of Section 25-F of the Act the same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules.
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> (ii)The settled position of law as has been sought to be addressed by this Court is that the provisions (of Section 25-F being mandatory and on account of violation of the same, the retrenchment would be void ab initio as if it was never in operation and, therefore, the employee would be deemed to be continuing in service.
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> (iii)The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons

appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

(iv)The said retrenchment being void would, however, not entitle the workman as such to qualify or claim a right for regularization and neither by an order of reinstatement, the permanency could be granted to the said employee and only he would be held to be entitled in continuous service on the same status as he was when his services were terminated.

(v)The employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions and the employee having any grievance against such a termination could challenge the same in accordance with law.

(vi)The discretion of the Industrial Adjudicator has thus have to be respected and the said Adjudicator has to keep in mind the principles laid down by the Apex Court, as noticed above.

(vii)We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of Sections 25-F and 25-B of the Act by taking resort to and shielding themselves on account of the fact that the posts were not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement.

(Para 48A)

II. Industrial Disputes Act, 1947 - S. 25-F - Reinstatement - Compensation - Cannot be held as a matter of rule that merely because the posts were not filled in accordance with the statutory provisions, monetary compensation would be the only answer and relief of reinstatement is to be denied outrightly - Industrial Adjudicator will always take into consideration the fact that though it had a power to reinstate, but while issuing any other directions wherein regularization is to be ordered on the strength of some policy, it would always keep in mind the law laid down by the Constitutional Bench in Uma Devi's case - Such an exercise is to be carried out in the facts and circumstances of each case - No strict strait jacket formula can be laid down.

Held, that in such circumstances, it cannot be held as a matter of rule that merely because the posts were not filled in accordance with the statutory provisions, monetary compensation would be the only answer and relief of reinstatement is to be denied outrightly. The Industrial Adjudicator will always take into consideration the fact that though it had a power to reinstate but while issuing any other directions wherein regularization is to be ordered on the strength of some policy, it would always keep in mind the law laid down by the Constitutional Bench in Uma Devi's case (supra) and necessarily, such an exercise is thus to be carried out in the facts and circumstances of each case and no strict straight jacket formula can be laid down that reinstatement is to be directed in all cases or to the contrary that on account of violation of Section 25-F of the Act regarding the appointments to public posts, compensation would be the only remedy.

(Para 49)

Samarth Sagar, Advocate, and Mr. Sankalp Sagar, Advocate, *for the appellant.*

Vijay Kumar Jindal, Sr. Advocate, with Akshay Jindal, Advocate, Garima Jindal, Advocate, and Priya Singla, Advocate, *for the respondents.*

G.S. SANDHAWALIA, J.

(1) The reference made by the Division Bench vide order dated 21.01.2014, for the purpose of which, the Full Bench has been constituted is to decide the vexed question as to whether the persons appointed on public posts without following proper procedure would be entitled for reinstatement in view of the violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short 'the Act') or in view of judgment of the Constitutional Bench in ***Secretary, State of Karnataka and others*** versus ***Uma Devi and others (1),*** only the relief of compensation could be granted in such circumstances. The questions framed by the Division Bench read thus:-

"(i) Whether the principles laid down in ***State of Karnataka and others vs. Uma Devi and others (2006) 4 SCC 1*** *relating to appointment to public service would be applicable while considering reinstatement under the Industrial Disputes Act, 1947?*

(ii) Whether the failure to fill up the public posts in accordance with the relevant statutory Recruitment Rules disentitles a workman for reinstatement?

(1) 2006 (4) SCC 1

(iii) Whether a workman can be paid compensation for wrongful termination effected in violation of Section 25-F of the Industrial Disputes Act, 1947 in lieu of reinstatement?"

(2) Counsel for the petitioner has vehemently submitted that it is only in cases where there was victimization or unfair labour practice, this Court would direct reinstatement and mere violation of Section 25-F of the Act would not entail reinstatement as a matter of right as it would be violative of the principles laid down in *Uma Devi's case (supra)* since it would amount to regularizing an employee under orders of the Court and thus, submitted that compensation would be the only adequate remedy.

(3) Though, the sole question of law as such has to be decided in terms of the reference which has been made to the Full Bench, a brief reference to the facts has to be necessarily made.

(4) Perusal of the demand notice dated 24.05.1997 (Annexure P-7) served by the respondent workman-Sarbjit Singh would go on to show that he took the plea that he was appointed as Octroi Clerk/Maharar on 01.03.1995 and worked upto 31.03.1997. Vide notice dated 01.04.1997, the services were terminated and the post against which he was working was permanent and regular. No notice, notice pay or retrenchment compensation having been paid or offered to him while terminating his services, he had claimed reinstatement with all consequential benefits. It had further been mentioned that he had served a demand notice for regularization of his services and on getting the said notice, his services had been terminated and that he was unemployed since his termination and he was drawing Rs.1,550/- per month as salary and that junior persons had been retained.

(5) In the reply, the stand of the appellant's counsel was that the workman was working on a contract basis and the retrenchment had been done after complying with the mandatory provisions of Section 25-F of the Act and as per resolution dated 26.03.1997. Section 2(oo)(bb) of the Act was also pleaded by submitting that the contract was for one year upto 31.03.1997 after obtaining sanction from the Director, Local Government for specified work and specified period. There was no vacancy and no juniors had been retained and new hands had been recruited. As per the Resolution No. 50 dated 26.03.1997, it had been unanimously decided to retrench all clerks and peons employed on contract basis on or after 31.03.1997. The demand drafts of Rs. 4,686/- on account of wages for the month of March, one month's wages in lieu of notice and retrenchment

compensation were delivered alongwith the notice personally on the workman but he had refused to accept the same in spite of being sent by registered post also.

(6) The matter being referred to the Labour Court, similar pleadings were filed by both the sides.

(7) The petitioner appeared as his own witness and also examined one Sanwar Singh as MW-1 and Ram Nath MW-2, Parokar and Cashier respectively.

(8) The Labour Court, after taking into account the evidence on record, came to the conclusion that no documentary evidence had been produced regarding the appointment on contract basis apart from the statement of the management witness and neither the applications and the affidavits have been produced to prove the said facts and accordingly, it was held that the municipal council was guilty of concealing true and materia evidence and an adverse inference was drawn. A finding was further recorded that the workman was appointed on regular basis on permanent post as it was admitted by the witness that the work was still existing. If the appointment was on contractual basis, the services should have been terminated in the year 1996, after the expiry of the first term period and why a fresh contract from 01.04.1996 to 31.03.1997 was entered into. The defence of the Municipal Council was rejected wherein, a plea had been taken that the Division Bench of this Court had directed that all persons appointed on ad hoc basis on 89 days basis be terminated by 31.03.1997. It was held that there is no specific direction regarding the termination of the services of the workman and there is no order available in the file and the resolution relied upon was totally irrelevant. The suggestion that the compensation had been offered on 31.03.1997 in compliance with the provisions of Section 25-F of the Act was also held to be false since the demand drafts were dated 02.04.1997 and even the reports on the envelopes were not as per the averments and even refusal had not been proved by examining the postman concerned. Accordingly, a finding was recorded that mandatory provisions of Section 25-F of the Act had not been complied with and reinstatement had been directed with full back wages.

(9) The learned Single Judge dismissed the writ petitions vide order dated 19.11.2009. The argument raised that the matter should be remanded to produce fresh evidence regarding the nature of appointment and to prove that the same was contractual was rejected and could not be allowed as being against the interest of the workmen after 12 years. It was accordingly held that the appellant, being a public body, should have produced more documents for establishing its defence and the termination without offering them compensation simultaneously was bad in law and the provisions of Section 25-F of the Act had to be strictly construed.

(10) It is necessary to note that since the whole dispute revolves around the observations of the Apex Court in *Uma Devi's case (supra)* which was pronounced on 10.04.2006, the change in view of the issue as to whether the reinstatement would amount to regularization under the Act is to be seen thereafter. The Constitutional Bench of 5 Judges in the said case was seized of the dispute which pertained to a conflict of opinion of two sets of decision of the Apex Court pertaining to the employees appointed by the State or by its instrumentalities on a temporary basis or on a daily wage basis or casually and whether the said set of employees could approach the High Courts for issuance of a writ of mandamus praying for directions that they be made permanent on appropriate posts. Necessarily, the relief being claimed was on the basis of the length of service and unfettered by the fact that there was no sanctioned post and the requisite qualifications were not possessed. The said fact would be clear from the observations in para no. 6 of the judgment in *Uma Devi's case* which read thus:-

> *"6. These two sets of appeals reflect the cleavage of opinion in the High Court of Karnataka based on the difference in approach in two sets of decisions of this Court leading to a reference of these appeals to the Constitution Bench for decision. The conflict relates to the right, if any, of employees appointed by the State or by its instrumentalities on a temporary basis or on daily wages or casually, to approach the High Court for the issue of a writ of mandamus directing that they be made permanent in appropriate posts, the work of which they were otherwise doing. The claim is essentially based on the fact that they having continued in employment or engaged in the work for a significant length of*

time, they are entitled to be absorbed in the posts in which they had worked in the department concerned or the authority concerned. There are also more ambitious claims that even if they were not working against a sanctioned post, even if they do not possess the requisite qualification, even if they were not appointed in terms of the procedure prescribed for appointment, and had only recently been engaged, they are entitled to continue and should be directed to be absorbed."

(11) Accordingly, the Apex Court held that the right of the Government to make public employment had to be respected and it was not proper for the Courts, whether acting under Article 226 or under Article 32 of the Constitution of India, to direct absorption in permanent employment of those who had been engaged without following a due process of selection as envisaged by the constitutional scheme. It was further held that only something which was irregular and did not go to the root of the process could be regularized and financial implications have to be seen and Courts could not impose such burden by giving such directions which may turn counter productive. It was accordingly held that regularization was not and could not be the mode of recruitment and could not thus give permanence to an employee whose services are ad hoc in nature. In such a background, it was held that if the appointment was in terms of relevant rules and after proper competition amongst qualified persons, then only any right would be on the person appointed. Contractual appointments would come to an end at the end of a contract. Similarly, daily wages or persons appointed on casual basis, there services would also come to an end on discontinuance of their terms of engagement and merely because somebody had continued for beyond the term of his appointment, he could not claim regular service or be made permanent. Exceptions were also noticed that where employees had continued under directions of Court would not give them any right to be absorbed or made permanent. The said principle was laid down on the basis that orders of the Court would create another mode of public appointment, which was not permissible as the constitutional scheme would be violated and the employee knew from day one what was the status of his employment and could not invoke the theory of legitimate expectation for being confirmed on the post. The plea of daily wagers that the State had been treating them unfairly was rejected on the ground that the right

to be treated equally could not be extended to the daily wagers against the regular post holders who had been appointed after following the procedure of Articles 14 and 16 of the Constitution of India. Relevant portion of *Uma Devi's case (Supra)* in this context read thus:-

> *"43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.*
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> *44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their*

instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

45. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

(12) Thus, one aspect would be clear that the said judgment never dealt with the issue of the right of reinstatement which had to be established under the provisions of the Act and the Constitutional Bench was never examining the powers of the Labour Court to direct reinstatement in violation of the provisions of the Act.

(13) The observations regarding the right for regularization of appointment, though not under Industrial Law, came up for consideration before a three Judge Bench of Apex Court in ***A. Umarani*** versus ***Registrar, Cooperative Societies and others (2).*** The challenge in the said case was regarding the right of regularization which was claimed by the employees of the Co-operative Societies on the basis of having completed 480 days of service in two years under Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. The Division Bench of the Madras High Court had observed that the regularization could be granted only to the employees recruited by the Cooperative Societies for the period from 09.07.1980 to 11.03.2001 as per Government Order,

(2) (2004) 7 SCC 112

which was subject matter of challenge before the Apex Court. It was observed that regularization was and cannot be the mode of recruitment by any State and could not give permanence to an employee whose employment was ad hoc in nature, specially where appointments had been made in contravention of the statutory rules and accordingly, the appeals filed were dismissed keeping in mind the fact that the matter was pending before the Constitutional Bench of Apex Court in *Uma Devi's case* (supra).

(14) In ***State of Maharashtra*** versus ***R.S. Bhonde (3),*** while examining the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (in short 'MRTU and Pulp Act'), the Apex Court before the decision in *Uma Devi's case (supra),* noticed that the benefit of permanency could not be granted when there was no post and mere continuance of every year of seasonal work could not constitute a permanent status.

(15) In ***Haryana State Electronics Development Corporation Ltd.*** versus ***Mamni (4),*** which was decided on 02.05.2006, immediately after the decision rendered in *Uma Devi's case (supra)* on 10.04.2006, the Apex Court was dealing with a person appointed on ad hoc basis for 89 days who had worked from 13.02.1991 to 07.02.1992. It was in such circumstances it was held that the course of action adopted by the appellant was with a view to defeat the object of the Act and Section 2(oo) (bb) of the Act would not be attracted. It was held that even if she is reinstated, her services could not be regularized in view of the recent decision in *Uma Devi's case (supra)* and accordingly, lumpsum compensation of '25,000/- was directed. Reliance was placed upon ***U.P. Brassware Corporation Ltd. and another*** versus ***Udai Narain Pandey (5),*** wherein, the principle of the right to back wages and whether they were automatic to the extent of 100% had been laid down was also noticed to hold that reinstatement was not a necessary and an automatic consequence and each case has to be considered on its own merit.

(3) 2005 (6) SCC 751
(4) 2006 (9) SCC 434
(5) 2006 (1) SCC 479

(16) In ***Municipal Council, Sujanpur*** versus ***Surinder Kumar (6)***, the Award whereby the workman had been directed to be reinstated with full back wages was set aside and compensation was quantified keeping in mind the period of service of roughly a little over 3 years by holding that the duration/tenure of work, whether the post was sanctioned, the nature of appointment and the purpose for which the appointment had been made were to be kept in mind while directing reinstatement and it is not to be granted automatically specially keeping in mind the fact that the appointment was on the recommendation of a Minister and, therefore, was violative of the equality clause of Articles 14 and 16 of the Constitution of India while making reference to *Uma Devi's case* (supra).

(17) In ***Reserve Bank of India*** versus ***Gopinath Sharma and another (7)***, reinstatement was set aside on the ground that the workman had only worked for 58 days and his claim to be included in the list of Ticca Mazdoor was not sustainable since the bank did not maintain any such list any longer. It was also noticed that the dispute was stale and had been raised after 13 years. It was in such circumstances a reference was made to the observations of the Apex Court in *Uma Devi's case (supra)* to set aside the order of the High Court where it had granted reinstatement with normal back wages. It was in such a background that the Apex Court observed that the High Court had failed to note that the system of engagement of Ticca Mazdoors had been abolished in November, 1993. Thus reinstatement, in such circumstances, was a relief granted by holding that the name had not been included in the list, which was not justified.

(18) In ***Indian Drugs & Pharmaceuticals Ltd.*** versus ***Workmen, Indian Drugs & Pharmaceuticals Ltd. (8)***, the Apex Court was examining the issue where the High Court had modified the Award of the Labour Court and directed the workmen in question to be paid wages like regular employees performing the work and duties in the appellant company. It was held that said directions would amount to creation of posts, which was the legislative function, which could not be done specially keeping in view that the appellant was a sick company and running in huge losses and there were no vacancies on which the respondents-workmen could have been appointed.

(6) 2006 (5) SCC 173
(7) 2006 (6) SCC 221
(8) 2007 (1) SCC 408

(19) In ***Gangadhar Pillai*** versus ***Siemens Ltd. (9),*** reference was made to the judgment of *Uma Devi's case (supra)* and it was noticed that the decision in ***State of Haryana*** versus ***Piara Singh (10),*** had been overruled. In the said case, the workman had worked as a Contractor with the management at several sites since 1978 to 2000 and the Industrial Tribunal had rejected his claim for permanent employment with the company, which was upheld by the Single Judge and the Division Bench. In the case before the Apex Court, it was held that the nature of job would fall under the provisions of Section 2(oo)(bb) of the Act and the Apex Court had refused to interfere. Some observations regarding the status of the workman on reinstatement had been made in para no. 28, which read thus:-

> *"28. It is not the law that on completion of 240 days of continuous service in a year, the concerned employee becomes entitled to for regularization of his services and/or permanent status. The concept of 240 days in a year was introduced in the industrial law for a definite purpose. Under the Industrial Disputes Act, the concept of 240 days was introduced so as to fasten a statutory liabilities upon the employer to pay compensation to be computed in the manner specified in Section 25-F of the Industrial Disputes Act, 1947 before he is retrenched from services and not for any other purpose. In the event a violation of the said provision takes place, termination of services of the employee may be found to be illegal, but only on that account, his services cannot be directed to be regularized. Direction to reinstate the workman would mean that he gets back the same status."*

(20) A perusal of the said paragraph would rather go on to show that the Apex Court observed that on account of violation of the provisions of Section 25-F of the Act, the services could not be directed to be regularized and the workman would only be entitled to get back the same status. Necessarily, the same status would mean the status on which the workman was earlier working as a Contractor on some site and would not in any manner mean regularization or grant of permanency as a regular employee.

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(9) 2007 (1) SCC 533

(10) 1992 (4) SCC 118

(21) In ***U.P. Power Corporation Ltd. and another*** versus ***Bijli Mazdoor Sangh and others (11),*** the challenge was to the order of regularization by the Industrial Tribunal and in such circumstances, the Apex Court relied upon the decision of *Uma Devi's case (supra).* Any decision which ran counter to the principle settled in the said case or directions running counter towards what had been held to stand were to stand denuded of their status as precedents. The relevant observations read thus:-

> *"6. It is true as contended by learned counsel for the respondent that the question as regards the effect of the Industrial Adjudicators' powers was not directly in issue in Uma Devi's case (supra). But the foundational logic in Uma Devi's case (supra) is based on Article 14 of the Constitution of India, 1950 (in short the 'Constitution'). Though the Industrial Adjudicator can vary the terms of the contract of the employment, it cannot do something which is violative of Article 14. If the case is one which is covered by the concept of regularization, same cannot be viewed differently.*
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> *7. The plea of learned counsel for the respondent that at the time the High Court decided the matter, decision in Uma Devi's case (supra) was not rendered is really of no consequence. There cannot be a case for regularization without there being employeeemployer relationship. As noted above the concept of regularization is clearly linked with Article 14 of the Constitution. However, if in a case the fact situation is covered by what is stated in para 45 of the Uma Devi's case (supra), the Industrial Adjudicator can modify the relief, but that does not dilute the observations made by this Court in Uma Devi's case (supra) about the regularization.*
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> *8. On facts it is submitted by learned counsel for the appellants that respondent No.2 himself admitted that he never worked as a Pump Operator, but was engaged as daily labourer on daily wage basis. He also did not possess requisite qualification. Looked at from any angle, the direction for regularization, as given, could not have been given in view of what has been stated in Uma Devi's case (supra)."*

(11) 2007 (5) SCC 755

(22) Thus, it would be clear that the judgment which has been relied upon by the petitioner is only where regularization had been ordered and it was not simple case of reinstatement on the same status.

(23) In ***Madhya Pradesh Administration*** versus ***Tribhuban (12),*** again reference has been made to *Uma Devi's case (supra).* The case was where the workman had been employed on temporary basis for a period of little over two years and had been granted only retrenchment compensation by the Tribunal. The workman was successful before the High Court of Delhi wherein, reinstatement had been directed with full back wages. The interference by the High Court was accordingly not approved and the judgment was accordingly reversed by holding that the discretionary jurisdiction exercised by the Industrial Tribunal should have been taken into consideration and each case is required to be dealt with in a fact situation therein.

(24) In ***State of Madhya Pradesh and others*** versus ***Lalit Kumar Verma (13),*** the employee who had been appointed on daily wages had sought regularization as a permanent Clerk on the basis of the certified standing orders. A finding of fact was recorded that there was no clear vacancy and he was not appointed on a permanent post and placed on probation and, therefore, the directions of the Labour Court granting him the relief of regularization were violative of the judgment in *Uma Devi's case (supra).* Accordingly, compensation was awarded instead of reinstatement which had been granted by the Labour Court and had been upheld by the High Court. Thus, a factual finding had been recorded in the said case that there was no vacant post and the workman had been classified on the permanent basis by the Labour Court, which was not permissible in the facts of the case. Thus, in peculiar circumstances, it cannot be held to be as such that any binding principle was laid down that there can be no reinstatement in any case pertaining to persons appointed on daily wages.
25. In ***Haryana Urban Development Authority*** versus ***Om Pal (14),*** the workman had short service pertaining to the year 1994-95 and was working as a daily wager. A finding was recorded that he was working in two different establishments and accordingly, the reinstatement awarded by the Labour Court was set aside by grant of compensation without any reference to the issue of regularization.

(12) 2007 (9) SCC 748
(13) 2007 (1) SCC 575
(14) 2007 (5) SCC 742

(26) In ***Jagbir Singh*** versus ***Haryana State Agriculture Marketing Board and another (15),*** the workman was working as a daily wager for one year who was reinstated and it was held that since he had not been employed on regular basis, he would have no automatic right to back wages. The principle of public appointments was discussed and it was held that the factors which had to be taken into consideration were laid down without any reference to *Uma Devi's case (supra)* and compensation was granted. The relevant observations read thus:-

> *"7. The factors which are relevant for determining the same, inter alia, are:*
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> *(i) whether in making the appointment, the statutory rules, if any, had been complied with;*
>
> *(ii) the period he had worked;*
>
> *(iii) whether there existed any vacancy; and*
>
> *(iv) whether he obtained some other employment on the date of termination or passing of the award.*
>
> *8. The respondent is a local authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a local authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.*
>
> *9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularised.*

(15) 2009 (15) SCC 327

10. Applying the legal principles, as noticed hereinbefore, the relief granted in favour of the appellant by the Labour Court is wholly unsustainable. The same also appears to be somewhat unintelligible.

11. The High Court, on the other hand, did not consider the effect of non-compliance with the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947. The appellant was entitled to compensation, notice and notice pay.

12. It is now well settled by a catena of decisions of this Court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation. (See M.P. Admn. v. Tribhuban).

13. In this view of the matter, we are of the opinion that as the appellant had worked only for a short period, the interest of justice will be subserved if the High Court's judgment is modified by directing payment of a sum of Rs 50,000 (Rupees fifty thousand only) by way of damages to the appellant by the respondent. Such payment should be made within eight weeks from this date, failing which the same will carry interest at the rate of 9% per annum."

14. It would be, thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

(27) Thus, it would be apparent that from the above said observations that where there was reference that in the absence of any proper appointment by the local authority, the employee could not claim any right to be permanently absorbed and that it would not mean that his services were liable to be regularized. However, difference between reinstatement and regularization was not specifically addressed.

(28) In ***Maharashtra State Road Transport Corporation and another*** versus ***Casteribe Rajya Parivahan Karmchari Sanghatana (16),*** the Apex Court was seized of a matter more similar to the dispute in issue and which, in the opinion of this Court, would be directly applicable. The enactment which was under consideration was the MRTU and PULP Act. The claim of the workmen in that case was the benefit of permanency on the ground of unfair labour practice which was resisted by the Corporation. The Industrial Court held in favour of the workmen that they had been deprived the benefits and had worked for years together and directed to grant the said benefit. The decision was upheld by the Single Judge of the Bombay High Court. Challenge was raised on the ground that permanent status had been granted and was violative of *Uma Devi's case (supra).* Provisions of the Act, specially Section 30, was referred to, where there was specific power to take affirmative action which included payment of reasonable compensation or reinstatement. *Uma Devi's case (supra)* was discussed in detail and distinguished after framing the following question:-

> *"Re : Question 1*
>
> *11. Mr. Altaf Ahmad, learned Senior Counsel for the Corporation, heavily relied upon General Standing Order 503 dated 19-6-1959 and the decision by the Constitution Bench of this Court in* ***State of Karnataka v. Umadevi, (2006) 4 SCC 1*** *in assailing the direction of giving status, wages and other benefits of permanency applicable to the post of cleaners. The learned Senior Counsel would submit that granting permanent status to employees who were working as casual workers/daily wagers and whose appointments were made without following the*

(16) 2009 (8) SCC 556

procedure prescribed in General Standing Order 503 on non-existent posts is unsustainable in law. He extensively referred to the Constitution Bench decision in Umadevi (3)1. After framing the said question, it was observed as under:-

"30. The question that arises for consideration is: have the provisions of MRTU & PULP Act denuded of the statutory status by the Constitution Bench decision in Umadevi (3)1? In our judgment, it is not.

31. The purpose and object of MRTU & PULP Act, inter alia, is to define and provide for prevention of certain unfair labour practices as listed in Schedule II, III and IV. MRTU & PULP Act empowers the Industrial and Labour Courts to decide that the person named in the complaint has engaged in or is engaged in unfair labour practice and if the unfair labour practice is proved, to declare that an unfair labour practice has been engaged in or is being engaged in by that person and direct such person to cease and desist from such unfair labour practice and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate policy of the Act.

32. The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years , with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

33. The provisions of MRTU & PULP Act and the powers of Industrial and Labour Courts provided therein were not at all under consideration in the case o f U madevi. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred, considered or decided in Umadevi. Unfair labour practice on the part of the employer in engaging employees as badlies, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in item 6 of Schedule IV and the power of Industrial and Labour Courts under Section 30 of the Act did not fall for adjudication or consideration before the Constitution Bench.

34. It is true that the case of Dharwad District PWD Literate Daily Wage Employees Assn.6 arising out of industrial adjudication has been considered in Umadevi I and that decision has been held to be not laying down the correct law but a careful and complete reading of decision in Umadevi leaves no manner of doubt that what this Court was concerned in Umadevi was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognized by the rules or procedure and yet orders of their regularization and conferring them status of permanency have been passed.

35. Umadevi is an authoritative pronouncement for the proposition that Supreme Court (Article 32) and High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad-hoc employees unless the recruitment itself was made regularly in terms of constitutional scheme.

36. Umadevi does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of MRTU & PULP Act to order permanency of the workers

who have been victim of unfair labour practice on the part of the employer under item 6 of Schedule IV where the posts on which they have been working exists. Umadevi cannot be held to have overridden the powers of Industrial and Labour Courts in passing appropriate order under Section 30 of MRTU & PULP Act, once unfair labour practice on the part of the employer under item 6 of Schedule IV is established."

(29) A caveat was also acted that the status of permanency cannot be granted where no posts exist. Accordingly, question no. 1 was answered against the Corporation by holding that the Industrial Tribunal had powers to grant benefits of permanency. It was held that if the argument of the Corporation was accepted, it would tantamount to putting premium on their unlawful act of engaging in unfair trade practice. Relevant observations read thus:-

"41. Thus, there is no doubt that creation of posts is not within the domain of judicial functions which obviously pertains to the executive. It is also true that the status of permanency cannot be granted by the Court where no such posts exist and that executive functions and powers with regard to the creation of posts cannot be arrogated by the Courts.

42. to 46. xxx xxx xxx

47. It was strenuously urged by the learned Senior Counsel for the Corporation that industrial court having found that the Corporation indulged in unfair labour practice in employing the complainants as casuals on piece rate basis, the only direction that could have been given to the Corporation was to cease and desist from indulging into such unfair labour practice and no direction of according permanency to these employees could have been given. We are afraid, the argument ignores and overlooks the specific power given to the Industrial/Labour Court under Section 30 (1)(b) to take affirmative action against the erring employer which as noticed above is of wide amplitude and comprehends within its fold a direction to the employer to accord permanency to the employees affected by such unfair labour practice.

48. Seen thus, the direction of giving status, wages and all other benefits of permanency applicable to the post of cleaners to the complainants, in the facts and circumstances, is justified and warrants no interference. Question 1 is answered accordingly."

(30) In ***Ramesh Kumar*** versus ***State of Haryana (17),*** the plea of the respondent was that the workman was appointed on casual basis. The relief of reinstatement with 50% back wages and reinstatement being set aside by this Court was reversed by the Apex Court and the workman was successful in getting the benefit granted by the Labour Court restored. The Apex Court rejected the submission of the counsel for the State that the appointment on a public post had been made in contravention of the recruitment rules and the Constitutional scheme of employment and held that what had to be kept in mind by the Courts was the meticulous compliance of Section 25-F of the Act once the workman had completed 240 days. Relevant portion of the said judgment reads thus:-

"17. We are conscious of the fact that an appointment on public post cannot be made in contravention of recruitment rules and constitutional scheme of employment. However, in view of the materials placed before the Labour Court and in this Court, we are satisfied that the said principle would not apply in the case on hand. As rightly pointed out, the appellant has not prayed for regularization but only for reinstatement with continuity of service for which he is legally entitled to. It is to be noted in the case of termination of casual employee what is required to be seen is whether a workman has completed 240 days in the preceding 12 months or not. If sufficient materials are shown that workman has completed 240 days then his service cannot be terminated without giving notice or compensation in lieu of it in terms of Section 25F. The High Court failed to appreciate that in the present case appellant has completed 240 days in the preceding 12 months and no notice or compensation in lieu of it was given to him, in such circumstances his termination was illegal. All the decisions relied on by the High Court are not applicable to the case on hand more particularly, in view of the specific factual finding by the Labour Court."

(17) (2010) 2 SCC 543

(31) In ***Harjinder Singh*** versus ***Punjab State Warehousing Corporation (18)***, the Labour Court had directed reinstatement on the ground of Section 25-G of the Act. However, the Single Judge of this Court held that in view of Articles 14 and 16 of the Constitution of India, reinstatement would not be in consonance on account of the fact that the initial appointment was not as per rules. The Apex Court set aside the order of this Court and directed reinstatement by holding that the relief had wrongly been denied to employees falling in the category of workmen who have been illegally retrenched and the tiny beneficiary of the wrong were being indirectly punished.

(32) The said view was followed in ***Krishan Singh*** versus ***Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (19)***, which pertained to a daily wager whose services had been terminated and the Labour Court had passed the award of reinstatement with continuity of service and 50% back wages. This Court had modified the Award and directed that compensation to be paid. The said judgment was reversed and reinstatement was ordered as a daily wager and the reliance upon *Uma Devi's case (supra)* was held to be of no relevance. The relevant observations read thus:-

> *"22. The decision of this Court in* ***Secretary, State of Karnataka*** *v.* ***Umadevi*** *cited by the counsel for the respondent relates to regularization in public employment and has no relevance to an Award for reinstatement of a discharged workman passed by the Labour Court under Section 11-A of the Act without any direction for regularization of his services."*

(33) In ***Anoop Sharma*** versus ***Executive Engineer, Public Health Division No. 1, Panipat (20)***, a specific plea of *Uma Devi's case (supra)* again was rejected. That the Division Bench of this Court had held that the appellant could not be reinstated in service because he was not appointed against any sanctioned post and he was initially appointed without complying with the statutory provisions and thus being a back door entrant, could not be allowed to be permitted to be reinstated in view of the recent

(18) (2010) 3 SCC 192
(19) (2010) 3 SCC 637
(20) (2010) 5 SCC 497

judgments of the Apex Court. It was held that Sections 25-F, (a) and (b) of the Act were mandatory and non-compliance rendered the retrenchment a nullity and the employee was entitled to continue in employment as if his service had not been terminated and *Uma Devi's case (supra)* was distinguished as under:-

> *"18. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and noncompliance thereof renders the retrenchment of an employee nullity - State of Bombay v. Hospital Mazdoor Sabha AIR 1960 SC 610, Bombay Union of Journalists v. State of Bombay (1964) 6 SCR 22, State Bank of India v. N. Sundara Money (1976) 1 SCC 822, Santosh Gupta v. State Bank of Patiala (1980) 3 SCC 340, Mohan Lal v. Management of M/s. Bharat Electronics Ltd. (1981) 3 SCC 225, L. Robert D'Souza v. Executive Engineer, Southern Railway (1982) 1 SCC 645, Surendra Kumar Verma v. Industrial Tribunal (1980) 4 SCC 443, Gammon India Ltd. v. Niranjan Das (1984) 1 SCC 509, Gurmail Singh v. State of Punjab (1991) 1 SCC 189 and Pramod Jha v. State of Bihar (2003) 4 SCC 619. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/ engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25-F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.*
>
> *19. to 24. xxx xxx xxx*
>
> *25. The judgment of the Constitution Bench in* ***State of Karnataka vs. Uma Devi (3)*** *and other decisions in which this Court considered the right of casual, daily wage, temporary and*

ad hoc employees to be regularised/continued in service or paid salary in the regular time scale, appears to have unduly influenced the High Court's approach in dealing with the appellant's challenge to the award of the Labour Court. In our view, none of those judgments has any bearing on the interpretation of Section 25-F of the Act and employer's obligation to comply with the conditions enumerated in that section."

(34) Recently, in ***Assistant Engineer, Rajasthan Development Corporation & another*** versus ***Gitam Singh (21)***, while dealing with a workman who had worked only for 8 months as a daily wager and had been granted the relief of reinstatement with continuity of service and 25% back wages, the distinction between daily wager and regular employees was discussed alongwith the case law from 1960 onwards laid down by the Apex Court in ***Assam Oil Company Ltd.*** versus ***The workman (22).*** It was held that reinstatement was not to be granted as a matter of right and various circumstances have to be seen by the Court and a distinction had to be drawn between a daily wager and an employee holding the regular post for consequential relief. The judgments in the intervening period in *Harjinder Singh's case (supra) and Devinder Singh's case (supra)* were also considered and distinguished and accordingly, it was held that the relevant factors including the mode and manner of appointment, nature of employment, length of service, ground on which termination has been set aside and delay in raising industrial dispute before granting the relief were relevant factors to be taken into consideration. The relevant observations in *Gitam Singh's case (supra)* read thus:-

"22. From the long line of cases indicated above, it can be said without any fear of contradiction that this Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations. It has always been the view of this Court that there could be circumstance(s) in a case which may make it inexpedient to order reinstatement. Therefore, the normal rule that dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception. Insofar as

(21) 2013 (2) SCT 30
(22) AIR 1960 SC 1264

wrongful termination of daily-rated workers is concerned, this Court has laid down that consequential relief would depend on host of factors, namely, manner and method of appointment, nature of employment and length of service. Where the length of engagement as daily wager has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid. A distinction has been drawn between a daily wager and an employee holding the regular post for the purposes of consequential relief.

23 to 26 xxx xxx xxx

27. In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This Court found in those cases that judicial discretion exercised by the Labour Court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this Court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors, including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute before grant of relief in an industrial dispute."

(35) The said judgment has been followed in ***Bharat Sanchar Nigam Ltd.*** versus ***Bhurumal (23).*** In the said case also, the Court was seized of a dispute wherein, the workman was a Linesman on daily basis with the management and had worked from 1987 till April, 2002 and had also suffered an electric shock and sustained injuries whose services were terminated. Reinstatement was ordered by the Central Government Industrial Disputes Tribunal, Chandigarh (in short 'CGIT') on 11.01.2011, which was upheld by the Single Bench and Division Bench of this Court. It was held

(23) (2014) 7 SCC 177.

that there was a shift in legal position and reinstatement with back wages was not automatic even if it was in contravention of the prescribed procedure and the compensation was being directed to be paid due to the fact that he would have no right to seek regularization in view of *Uma Devi's case (supra)*. His services could well be terminated by following the procedure under Section 25-F of the Act. However, it was further held that where termination was on account of unfair labour practice or in violation of the principle of 'last come first go' and juniors were retained and in some situations regularized, workman could not be denied reinstatement. Keeping in view the said observations, compensation of Rs. 3,00,000/- was awarded to the workman. The relevant observations read thus:-

> *"33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.*
>
> *34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See: State of Karnataka vs. Uma Devi (2006) 4 SCC 1). Thus when he cannot claim regularization and he has*

no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. While retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied."

(36) The latest on the said issue is the pronouncement of the Apex Court in ***Hari Nandan Prasad and another*** versus ***Employer I/R to Management of FCI and another (24).*** In the said case, the Apex Court was dealing with two workmen who had been directed to be reinstated with 50% back wages by the CGIT. It was noticed that the appointment was on daily wage basis in case of appellant no. 1 as labourer-cum-workman and had been granted the relief of reinstatement and regularization of his services alongwith back wages to the extent of 50%. Similarly, appellant no. 2 was appointed on daily wages as casual typist against vacancy of Class III post who was also given the similar relief, which was upheld by the High Court, which was interfered by the Division Bench of the High Court by holding that the employees had not rendered more than 10 years of service and did not come under the exception carved out in *Uma Devi's case*

(24) (2014) 7 SCC 190

(supra). Accordingly, the workman was held having been duly compensated by the amounts paid under Section 17-B of the Act during the pendency of the case. The Apex Court discussed the issue of regularization and the entitlement of reinstatement and it was held that the issue was noticed in judgment of the Apex Court in *Casteribe's case (supra)* and held that it was not a case only of reinstatement alone and not limited to the validity of termination. The reference contained the claim for regularization of service. The distinction between the difference claimed in a writ petition or a civil suit was noticed and claim adjudicated by an industrial adjudicator. It was held that the Industrial Court has such power where the provisions of the Act specially confers such powers. The judgment of *Uma Devi's case (supra)* would not take away such power from the Tribunal. The relevant observations read thus:-

> *"33. In this backdrop, the Court in Maharashtra SRTC case was of the opinion that direction of the Industrial Court to accord permanency to these employees against the posts which were available, was clearly permissible and with the powers, statutorily conferred upon the Industrial/Labour Courts under Section 30 (1)(b) of the said Act which enables the Industrial adjudicator to take affirmative action against the erring employees and as those powers are of wide amplitude abrogating within its fold a direction to accord permanency.*
>
> *34. A close scrutiny of the two cases, thus, would reveal that the law laid down in those cases is not contradictory to each other. In U.P. Power Corporation, this Court has recognized the powers of the Labour Court and at the same time emphasized that the Labour Court is to keep in mind that there should not be any direction of regularization if this offends the provisions of Art.14 of the Constitution, on which judgment in Umadevi is primarily founded. On the other hand, in Bhonde case, the Court has recognized the principle that having regard to statutory powers conferred upon the Labour Court/Industrial Court to grant certain reliefs to the workmen, which includes the relief of giving the status of permanency to the contract employees, such*

statutory power does not get denuded by the judgment in Umadevi's case. It is clear from the reading of this judgment that such a power is to be exercised when the employer has indulged in unfair labour practice by not filling up the permanent post even when available and continuing to workers on temporary/daily wage basis and taking the same work from them and making them some purpose which were performed by the regular workers but paying them much less wages. It is only when a particular practice is found to be unfair labour practice as enumerated in Schedule IV of MRTP and PULP Act and it necessitates giving direction under Section 30 of the said Act, that the Court would give such a direction.

35. We are conscious of the fact that the aforesaid judgment is rendered under MRTP and PULP Act and the specific provisions of that Act were considered to ascertain the powers conferred upon the Industrial Tribunal/Labour Court by the said Act. At the same time, it also hardly needs to be emphasized the powers of the industrial adjudicator under the Industrial Disputes Act are equally wide. The Act deals with industrial disputes, provides for conciliation, adjudication and settlements, and regulates the rights of the parties and the enforcement of the awards and settlements. Thus, by empowering the adjudicator authorities under the Act, to give reliefs such as a reinstatement of wrongfully dismissed or discharged workmen, which may not be permissible in common law or justified under the terms of the contract between the employer and such workmen, the legislature has attempted to frustrate the unfair labour practices and secure the policy of collective bargaining as a road to industrial peace."

(37) It is, however, to be kept in mind that reference was made to the judgment in *Casteribe's case (supra)* wherein, there was a specific provision under the MRTU and Pulp Act. The power of the Labour Court was accordingly upheld to give directions for regularization where workmen had continued as daily wage workers/ad hoc/temporary workers and only where there was no post, such direction for regularization was held

impermissible. However, jurisdiction of the Industrial Court was approved where similarly situated persons had been regularized under such scheme or otherwise holding that the principle of equality under Article 14 of the Constitution of India had to be upheld rather than violated.

> *"39. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Art. 14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art. 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Art. 14, rather than violating this constitutional provision."*

(38) Accordingly, the benefit was modified and the appellant no. 1 was only granted monetary compensation whereas appellant no. 2 was held entitled for the relief granted by the Labour Court whereby, he had been regularized in service.

(39) The factor which is to be kept in mind is that we are considering the issue only of the effect of violation of Section 25-F of the Act and not the right of the workman for regularization. Whether his services have been

terminated on account of some disciplinary action or where the Labour Court is exercising its powers under Section 11-A of the Act, regarding discharging/dismissal of the workman and where the Labour Court has vast powers also to convert the order of dismissal into lesser punishment on the ground that the dismissal was not justified and in its discretion, give some lesser punishment, in lieu of the same, as the circumstances of the case may require, which principle has been further recognized in the judgments of the Apex Court is not under consideration. In such a background, reference has to be made to the precedents.

(40) In ***State of Bombay*** versus ***Hospital Mazdoor Sabha (25),*** a three Judge Bench of the Apex Court upheld the orders of the Appellate Court and held that the mandatory provisions of Section 25-F have not been complied with and therefore, allowed the writ petition whereby the employees who were appointed as ward servants and whose services were terminated. On examination of Section 25-F, it was held that the section imposed had a mandatory provision and non-compliance of the same would mean that the impugned orders would be invalid and inoperative. The submission that Section 25(I) could be resorted to, was rejected. Relevant observations read as under:

> *"6. Now, turning to the first point, it may be stated that the facts on which the respondents' plea is based are not in dispute. It is conceded that the services of respondents 2 and 3 have been retrenched though it may be for the purpose of making room for other Government servants with a longer record of service who had to be retrenched owing to the closure of the appellant's Civil Supplies Department. It is also not disputed that the said respondents had not been paid at the time of retrenchment compensation as prescribed by section 25-F(b). The respondents' contention is that the failure to comply with the said requirement makes the order of retrenchment invalid. This plea has been upheld by the Court of Appeal. Section 25-F (b) provides that 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 he has*

(25) AIR 1960 SC 610

been paid at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months. Clauses (a) and (c) of the said section prescribe similar conditions but we are not concerned with them. On a plain reading of section 25-F (b) it is clear that the requirement prescribed by it is a condition precedent for the retrenchment of the workman. The section provides that no workman shall be retrenched until the condition in question has been satisfied. It is difficult to accede to the argument that where the section imposes in mandatory terms a condition precedent, noncompliance with the said condition would not render the impugned retrenchment invalid. The argument which appealed to Tendolkar, J., however, was that the consequence of non-compliance with the requirement of section 25-F (b) was not to render the impugned retrenchment invalid, because he thought that by section 25-I a specific provision has been made for the recovery of the amount prescribed by section 25-F (b). Section 25-I provides for the recovery of monies due from employers under Chapter V, and according to Tendolkor J. this provision covers the amount due to the workman by way of compensation under section 25-F (b). In our opinion, this view is untenable. Having regard to the fact that the words used in section 25-F (b) are mandatory and their effect is plain and unambiguous it seems to us that the Court of Appeal was right in holding that section 25-I covered cases of recover of monies other than those specified in s. 25-F (b), an it is obvious that there are several other cases in which monies become due from the employers to the employees under Chaper V; it is for the recovery of the monies that section 25-I had been enacted. Therefore, we see no substance in the argument that the Court of Appeal has misconstrued section 25-F (b). That being so failure to comply with the said provision renders the impugned orders invalid and inoperative."

(41) In ***Bombay Union of Journalists & others*** versus ***State of Bombay & another (26),*** a three Judge bench of the Apex Court, while dilating on Section 25-F, held that it was mandatory and a condition precedent and put in a negative form. The relevant observations read as under:

> *"12. In this connection, there is one more consideration which is relevant. We have already seen the requirement of Section 25F(a). There is a proviso to Section 25F(a) which lays down that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of services. Clause (a) of Section 25F, therefore, affords a safeguard in the interests of the retrenched employee; it requires the employer either to give him one month's notice or to pay him wages in lieu thereof before ,he is retrenched. Similarly, clause (b) provides that the workman has to be paid at the time of retrenchment, compensation which shall be equivalent to 15 days' average pay for every completed year of service, or any part thereof in excess of six months. It would be noticed that this payment has to be made at the time of retrenchment, and this requirement again provides a safeguard in the interests of the workman; he must be given one month's notice or wages in lieu thereof and he must get retrenchment compensation as prescribed by clause (b). The object which the Legislature had in mind in making these two conditions obligatory and in constituting them into conditions precedent is obvious. These provisions have to be satisfied before a workman can be retrenched. The hardship resulting from retrenchment has been partially redressed by these two clauses, and so, there is every justification for making them conditions precedent. The same cannot be said about the requirement as to clause (c). Clause (c) is not intended to protect the interests of the workman as such. It is only intended to give intimation to the appropriate Government about the retrenchment, and that only helps the Government to keep itself informed about the conditions of employment in the different industries within its region. There*

(26) AIR 1964 SC 1617

does not appear to be present any compelling consideration which would justify the making of the provision prescribed by clause (c) a condition precedent as in the case of clauses (a) & (b). Therefore, having regard to the object which is intended to be achieved by clauses (a) & (b) as distinguished from the object which clause (c) has in mind, it would not be unreasonable to hold that clause (c), unlike clauses (a) & (b), is not a condition precedent."

(42) In ***State Bank of India*** versus ***Shri N.Sundara Money (27),*** again a three Judge Bench of the Apex Court, while dealing with the dispute whereby the Division Bench of the High Court had held that where the retrenchment compensation had not been paid, the termination of service was invalid. It was held that compensation has to be computed under Section 25-B(2) and the protection under Section 25-F of the Act was mandatory and the workman cannot be retrenched without payment. Similarly, in ***Santosh Gupta*** versus ***State Bank of Patiala (28),*** the salutary reason behind provisions under Section 25-F and the object was examined to hold that it was for the purpose of compensating the workman for loss of employment and to provide him the wherewithal to subsist till he could find fresh employment, by placing reliance upon the earlier judgment of the Apex Court in ***Indian Hume Pipe Co. Ltd.*** versus ***Workmen (29).***

(43) In ***Surendra Kumar Verma etc.*** versus ***The Central Government Industrial Tribunal-cum-Labour Court, New Delhi & another (30),*** a three Judge Bench of the Apex Court held that continuous service in one year was not necessary and if the workman had worked for 240 days in a period of 12 months preceding termination, reinstatement could be directed and such reinstatement would not mean that he would be automatically entitled for permanent absorption. Relevant observations read as under:

"7. In the cases before us we are unable to see any special impediment in the way of awarding the relief. The Labour Court appears to have thought that the award of the relief of

(27) (1976) 1 SCC 822
(28) (1980) 3 SCC 340
(29) 1960 (2) SCR 32
(30) (1980) 4 SCC 443

reinstatement with full back wages would put these workmen on a par with who had qualified for permanent absorption by passing the prescribed test and that would create dissatisfaction amongst the latter. First, they can never be on par since reinstatement would not qualify them for permanent absorption. They would continue to be temporary, liable to be retrenched. Second, there is not a shred of evidence to suggest that their reinstatement would be a cause for dissatisfaction to anyone. There is no hint in the record that any undue burden would be placed on the employer if the same relief is granted as was done in Santosh Gupta v. State Bank of Patiala."

(44) Similar was the view taken in ***Shri Mohan Lal*** versus ***The Management of M/s Bharat Electronics Ltd. (31),*** wherein it was held that the period of 240 days has to be calculated by taking into consideration the factor whether the workman has rendered service for a period of 240 days within the period of 12 calendar months, commencing and counting backwards from the relevant date, i.e., the date of retrenchment and if the workman has rendered service for 240 days, he would be held to be in service for continuous one year, for the purpose of Section 25-B and Chapter VA. On account of the provisions not being followed, the termination of service would be *ab initio void* and inoperative and the workman would continue in service with all consequential benefits. The relevant paras reads as under:

"Appellant has thus satisfied both the eligibility qualifications prescribed in section 25F for claiming retrenchment compensation. He has satisfactorily established that his case is not covered by any of the excepted or excluded categories and he has rendered continuous service for one year. Therefore, termination of his service would constitute retrenchment. As precondition for a valid retrenchment has not been satisfied the termination of service is ab initio void, invalid and inoperative. He must, therefore, be deemed to be in continuous service."

(31) (1981) 3 SCC 225

(45) In ***L.Robert D'Souza*** versus ***The Executive Engineer, Southern Railway (32),*** the issue of regularization had also been considered and a finding was recorded that once there is violation of Section 25-F of the Act, termination of service would constitute retrenchment and for not complying with pre-conditions to valid retrenchment, the order of termination would be illegal and invalid, while noticing that the workman had worked continuously for a period of 20 years, being a daily rated wager. In ***Gammon India Limited*** versus ***Niranjan Dass (33),*** the reinstatement granted by the Industrial Tribunal was upheld by the Division Bench of the High Court. The Apex Court directed that the services of the workman would mean to be uninterrupted from the date of termination till the date of superannuation and rejected the appeal filed by the Management. In ***Gurmail Singh & others*** versus ***State of Punjab & others (34),*** the employees who were serving with the Irrigation Branch of the PWD Department were served notices under Section 25-F of the Act which were challenged successfully twice and on 3rd time, they were upheld by the High Court holding that there was compliance of Section 25-F (b) and Section 25-F (c), being directory, the notices were not vitiated. It was noticed that the services of the said employees had been taken over by the Punjab State Tubewell Corporation and it was noticed that the drafts regarding the mode of compensation had been forwarded to the Divisional offices, sufficiently in time, to be available for sufficient compliance under the provisions of Section 25-F. Accordingly, the only benefit granted was regarding the termination of service by the Government to the length of service in the Corporation, for the purposes of calculation of salary and length of service and retiral benefits, while upholding the finding recorded that the mandatory provisions of Section 25-F (a) & (b) of the Act had been complied with.

(46) In ***Pramod Jha & others*** versus ***State of Bihar & others (35),*** the Apex Court held that compliance of the provisions of Section 25-F (a) & (b) were mandatory however 25-F(c) was directory and the object of the Act is that the workman should have the time and money available for searching alternative employment, was noticed. It was held that payment of tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the

(32) (1982) 1 SCC 645
(33) (1984) 1 SCC 509
(34) (1991) 1 SCC 189
(35) (2003) 4 SCC 619

mandatory provision which has a beneficial purpose and a public policy behind, would result in nullifying the retrenchment. Relevant observations read as under:

> *"9. We have given our anxious consideration to submission and counter-submission made before us in the light of the pleadings and undisputed documents available on record. We are of the opinion that the appeals are devoid of any merit and liable to be dismissed. The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment. Payment of tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and noncompliance with the mandatory provision which has a beneficial purpose and a public policy behind would result in nullifying the retrenchment."*

(47) In ***Manager, RBI Bangalore*** versus ***S. Mani and others (36),*** a three Judge Bench of the Apex Court set aside the relief of reinstatement granted by the Industrial Tribunal to the Tikka Mazdoors of the bank. The effect of the order of the reinstatement was also discussed and what would be the status of the respondents by virtue of the order of reinstatement by the Award of the Labour Court was taken into consideration and it was held that due to the non-compliance of provisions of Section

(36) (2005) 5 SCC 609

25-F of the Act, the same status would be restored which was before the termination. The jurisdiction of the Industrial Tribunal to direct reinstatement was upheld but it was held that the grant of relief would depend upon the fact situation and relief was not to be bound to be granted only because it was lawful to do so. The relevant observations read thus:-

> *"56. Furthermore, a direction for reinstatement for non-compliance of the provisions of Section 25F of the Industrial Disputes Act would restore to the workmen the same status which he held when terminated. The Respondents would, thus, continue to be Ticca Mazdoors, meaning thereby their names would continue in the second list. They had worked only from April, 1980 to December, 1982. They did not have any right to get work. The direction of continuity of service per se would not bring them within the purview of terms of settlement.*
>
> *57. xxx xxx xxx*
>
> *58. Mr. Phadke, as noticed hereinbefore, has referred to a large number of decisions for demonstrating that this Court had directed reinstatement even if the workmen concerned were daily wagers or were employed intermittently. No proposition of law was laid down in the aforementioned judgments. The said judgments of this Court, moreover, do not lay down any principle having universal application so that the Tribunals, or for that matter the High Court, or this Court, may feel compelled to direct reinstatement with continuity of service and backwages. The Tribunal has some discretion in this matter. Grant of relief must depend on the fact situation obtaining in a particular case. The industrial adjudicator cannot be held to be bound to grant some relief only because it will be lawful to do so."*

(48) Recently, in ***Bhuvnesh Kumar Dwivedi*** versus ***M/s. Hindalco Industries Ltd. (37),*** while noticing the mandatory nature of Sections 25-F and 25-B of the Act and holding the retrenchment of an employee as a nullity and as *void ab initio*, it was held by the Apex Court that the employee was entitled to continue in employment as if his services had not

(37) (2014) 6 SC JT 190

been terminated. Reliance was again laid on the earlier judgments referred above starting from *Hospital Mazdoor Sabha (supra) to Anoop Sharma (supra)* and the order of the High Court modifying the reinstatement and granting compensation was set aside.

(48A) Thus, the following principles are laid down:-

(i) Keeping in view the recognised power of the Industrial Tribunal to direct reinstatement on account of the violation of Section 25-F of the Act the same cannot be denied solely on the ground that appointments were made by public bodies against public posts and were not in accordance with the relevant statutory recruitment rules.

(ii) The settled position of law as has been sought to be addressed by this Court is that the provisions of Section 25-F being mandatory and on account of violation of the same, the retrenchment would be void ab initio as if it was never in operation and, therefore, the employee would be deemed to be continuing in service.

(iii) The right of reinstatement, however, is not an automatic right as such and while directing reinstatement, the Labour Court will have to take into consideration various aspects as to the nature of appointment, the availability of a post, the availability of work, whether the appointment was per se rules and the statutory provisions and the length of service and the delay in raising the industrial dispute before any award of reinstatement could follow in cases of persons appointed on a short term basis and as daily wagers and who had not worked for long period but solely on the strength of having completed 240 days, would not per se be entitled for reinstatement as such, even though the retrenchment was void.

(iv) The said retrenchment being void would, however, not entitle the workman as such to qualify or claim a right for regularization and neither by an order of reinstatement, the permanency could be granted to the said employee and only he would be held to be entitled in continuous service on the same status as he was when his services were terminated.

(v) The employer would have a right to further terminate him in accordance with law by complying with the mandatory provisions and the employee having any grievance against such a termination could challenge the same in accordance with law.

(vi) The discretion of the Industrial Adjudicator has thus have to be respected and the said Adjudicator has to keep in mind the principles laid down by the Apex Court, as noticed above.

(vii) We do not subscribe to the view that the public authorities could claim total immunity and protection from the provisions of Sections 25-F and 25-B of the Act by taking resort to and shielding themselves on account of the fact that the posts were not filled up in accordance with the relevant statutory recruitment rules and, therefore, per se the workman could not claim reinstatement.

(49) The facts in this case demonstrate that the appointment was for a short period and the workmen had only worked for two years but there are instances which come to the notice of this Court that workmen have continued for longer periods and in some instances for decades. Though we are not deciding on merits since the Full Bench is only to decide the question of reference claimed and in such circumstances, it cannot be held as a matter of rule that merely because the posts were not filled in accordance with the statutory provisions, monetary compensation would be the only answer and relief of reinstatement is to be denied outrightly. The Industrial Adjudicator will always take into consideration the fact that though it had a power to reinstate but while issuing any other directions wherein regularization is to be ordered on the strength of some policy, it would always keep in mind the law laid down by the Constitutional Bench in *Uma Devi's case (supra)* and necessarily, such an exercise is thus to be carried out in the facts and circumstances of each case and no strict straight jacket formula can be laid down that reinstatement is to be directed in all cases or to the contrary that on account of violation of Section 25-F of the Act regarding the appointments to public posts, compensation would be the only remedy.

(50) In view of the above, the main appeal will go back to the Hon'ble Division Bench for a decision on merits, keeping in view the principles laid down above.

V. Suri