





TECHNOLOGY – THE MONSTER

The Industrial revolution in England was considered as the watershed in displacement of man power through several industrial inventions that replaced man power with machine. One of the strong reasons attributed to the emergence of militant unions worldwide is because of the ordeal that the labour class underwent on account of rapid industrialization and due to the greed for profit by the capitalists in Western countries at the expenses of labour.

The labour was considered as one of the prominent factors of production, the other factors being land, capital and raw material. The labour contributed by individuals was considered as capital invested by the industrialists. The rapid advancement in science and technology started with the invention of steam and the electric power replaced the man power. Since then we have seen several ups and downs in the trade union movement. Instead of improving their living standard it only deteriorated the condition of the labour resulting them raising their voice against the atrocities committed by the industrialists. The Trade Unions have sprung up under different environment on the basis of different issues that are typical to each country. In the third world countries, there are umpteen numbers of issues that kept the workforce agitating and organizing in order to resolve those issues.

The dissipation of colonial rule and its replacement by the people of the respective countries gave a new dimension to the history of mankind. The common man became the king and the king became the common man. The liberation of one country after another made common man to feel that he is not servant of any one and he will decide for himself as well as far the country as to what is good and what is bad for both. The bipolar power disappeared and new power centers emerged with India taking lead of several countries who were looking for guidance as to the self-governance. The Indian Government with a view to harness the resources available in the country for the benefit of the common man took keen interest in developing large scale industries in core sector such as Steel, Coal, Cement, Railways, Defense, Telecommunication etc., and made spectacular advancement in science and technology in a short period and became an inspiration for many other countries in the world.

The year 1980's saw a total change in the outlook of the Western countries led

by Mrs. Thatcher, the then Prime Minister of U.K. when she stated that there is no need for the Government to take the responsibility of running the industrial concerns and it is not the business of the Government to be in Business," with that outlook in regard to the ownership, the Trunk Key projects by the Government completely changed. The Governments' all over the world started divesting their interest in the industrial activity when they hand it over to the capitalist who have enormous money to invest in the profitable units established by the Government and make huge profits for themselves ignoring the interest of the people of the country.

The collapse of the imperial kingdom and the emergence of US as a strong economy forced the UK to depend upon the support and guidance of the US administration. The European union were getting powerful and supreme in comparison with UK and US thus Europe proved to be a strong economy.

In order to have a control, the US and other European countries with their interest in the International Trade and Commerce, took advantage of GATT and WTO imposed their conditions over other third world countries in order to have perpetual market for their products. Their idea was to destroy the initiatives of the third world countries from emerging as self-sufficient and progressive in their own right.

The Asian Continent has abundant supply of manpower. The colonial rulers exploited this position through indenture of labours to their own countries and succeeded until the slavery was abolished. The movement of labour in the name of indenture to colonial states stopped. The only solution for the emancipation of the labour class in the Asian continent as well as the African continent where the imperial regime was prevailing was to get freedom. Thus the third world countries could draw inspiration from the leadership of the Indian continent and get liberated. By the time these countries became liberated, the colonial rulers have exploited the situation and taken all the wealth to their

countries in a large scale.

The unemployment and illiteracy became a major challenge to India and other third world countries. The Five Year Plans and philosophy of mixed economy became handy and the country saw the large scale job opportunities in agriculture as in well as industries. The agriculture flourished and the country became self-sufficient and could even export to other countries. The "Green Revolution" and "White Revolution" showed to the other nations that self-reliance in food is possible.

The year 1990's witnessed the emergence of liberalization. The pro-liberalization champions claimed that the liberalisation is the only way for the all-round economic prosperity for all the countries world over. They wanted that the shackles of borders should be eliminated. The labour and capital should have unrestricted mobility. The idea was to help the ailing Western economy and the target was the third world countries in particular the growing economy like India. But the sense of insecurity amongst the working class increased during the period. The absence of a strong opposition at the Center to resist the force of reforms emboldened the Government to take up several initiatives starting from the financial sector. The issue of job security which had to some extent seen getting resolved before the process of reforms started re-appeared and the unions took up cudgel against all attempts of retrenchment by the Government.

The labour movement in India had witnessed several turbulent period. The dismantling of many of the Public Sector units by the Government and closure of large scale textile industries that thrown millions and millions of workers out of their jobs. The disinvestment of the Public Sector including a big invasion in the financial sector during 1990's witnessed struggles by the trade unions all over the country. The automation during the period 1960 to 1980s and thereafter the computerization in the financial sector kept the unions engaged in constant struggles and

TO SEEK A FAVOUR IS TO BARTER AWAY ONE'S FREEDOM

agitation with the Government and the Management of the financial institutions. These struggles could slow down the process of liberalization but could not prevent the efforts of the Government moving towards globalization. The technology initiative which is in the anvil is not mere aimed at reduction of employment but also aimed at eliminating the huge infrastructure and the divisions/units themselves from the operation. To-day we are thinking in terms of eliminating the intermediaries in the technology which provide link to e-commerce and trade. We are in an advanced technology which will stand on its own without the support of the intermediary technologies. As a result of which a huge workforce in call centers, telecommunication, networking etc., become redundant and thrown out of jobs. Today's inventions are such that they have tremendous power and strength in carrying the volume of work which could be handled by thousands and

thousands of human labour. The so-called IT Sector which claimed that the job losses elsewhere due to technology introduction will result in vast opportunities of jobs in the IT Sector itself is now proving a fallacy since they themselves are becoming target of retrenchment due to advanced automation.

The Labour which was considered as major factor of production suffered a setback. Its contribution was being ignored in the presence of huge technology initiative and Labour became ultimately a small conduit in the process of production.

The appetite for work by these new inventions is matchless. If we do not provide sufficient alternative to these new inventions perhaps they would swallow the creator himself in the process. The job losses in the process would not in terms of thousands but in terms of millions in the days to come. ■

DECLINING RATE OF WOMEN'S EMPLOYMENT INCREASED MATERNITY LEAVE, MANDATORY CRECHE FACILITIES MAY CAUSE FURTHER FALL

Usually, economic growth goes hand in hand with emancipation of women. But data available with the International Labour Organization (ILO) shows otherwise for India. During the period when the Indian economy grew at a healthy average of about 7%, there was a decline in female participation in the country's labour force from over 35% to 25%. Its a puzzling picture; over the past few decades access to education for Indian women has increased but still they have increasingly less representation in the employment.

Women's participation in work is an indicator of their status in a society. In recent decades, India has enjoyed economic and demographic conditions that ordinarily would lead to rising female labour-force participation rates. Economic growth has been high, fertility has fallen substantially; and female education



has risen dramatically, albeit from a low level. In other regions, including Latin America and the Middle East and North Africa, similar trends have led to large increases in female participation. Yet National Sample Survey (NSS) data for India show that labour force participation rates of women aged 25-54 (including primary and subsidiary status) have stagnated at about 26-28% in urban areas, and fallen substantially from 57% to 44% in rural areas.

Incentives, safe and conducive environment besides a level playing field were critical to boost women participation in the Indian workforce, the World Bank said. In its India Development Report released on 5th of June 2017, the World Bank said the country had one of the lowest female participation in the works once, ranking 120th among 131 countries for which

NEVER BEND BEFORE THE INSOLENT MIGHT

data was available. While overall job creation has been limited, most of the new ones have been grabbed by men given the social norms, the report said.

What is worrisome is the fact that participation level has been dropping since 2005, despite having 42% women who are graduates. What could be a cause for concern is the fact that those women who are moving out of the agriculture are not being able to find jobs elsewhere. In India, the women participation is just at 27% compared to China and Brazil where it is between 65-70%. Even in neighbouring Sri Lanka and Bangladesh the figure is higher.

There is another reason, which is going to be a big hurdle in the employment growth rate among women is the recent increase in the period of maternity leave from 12 to 26 weeks and the mandatory provision for the creche facilities at the workplace for women employees.

It will be truism ' to say that though both the provisions are well intentioned but as they that the road to hell is often paved with good intentions. What is the point in having bona fide intentions when there is no job left for the women employees? In view of the high expenses involved in maintaining the crèche facilities and affording 26 weeks maternity leave to women employees, most of the jobs are bound to be grabbed by the male employees at cheaper the cost. The best alternative which can be thought of for the empowerment of women through more employment is to open the creches by the Government. Therefore, the Government must adopt the realistic steps of

opening the creches of its own at the work places or provide enough subsidy to employers, so that they may not feel the pinch of running them at the work premise.

Famous legal philosopher JLA Hart had said that 'Laws are meant to be implemented but un- implementable laws are as bad or good as no laws'.

STANDARDS OF CONSTRUCTION AND MAINTENANCE OF CRECHES

In exercise of the powers conferred by clause (vi)(d) of sub-rule (2) of Rule 25 of the Contract Labour (Regulation and Abolition) Central Rules, 1971, the Chief Labour Commissioner (Central), New Delhi specified the various standard of construction and maintenance of the creches with regards to its :

1. Location
2. Building
3. Accommodation
4. Amenities
5. Equipment
6. Staff
7. Working Hours
8. Medical attention
9. Maintenance or records
10. Inspection or Creche

From Article; "Declining rate of women's Employment " by....Advocate H.L.Kumar.■

Source: *FLR 2017 (154)*

DISTRESSED FARMERS HIT THE NATIONAL ECONOMY

The country saw a green revolution during 1960's under the steward ship of Dr. M.S. Swaminathan, known as Father of Green revolution in India. However the momentum could not be maintained due to persistent draught that followed. Agricultural distress has become a permanent feature in the country due to erratic weather conditions. Climate define the agricultural output whether it is rain or draught or rise in temperature. According to report for every one degree rise in temperature result in decline in yield by 5 percent, posing a threat to food security and to the national economy.

When 50 percent of Indian population is depended on agriculture and that the agricultural sector account for 18 percent of national economy every Union Budget provide prominence to agricultural allocations, such as for irrigation infrastructure storage facilities, market infrastructure, research and development, quality seed, fertilizers and chemicals, transport connectivity etc., besides providing insurance cover against any eventuality in the agricultural sector. Government is also giving priority to irrigation through construction of dams to improve the storage facility and avoid water from going waste.

DEFEND THE ECONOMIC SOVEREIGNTY OF THE COUNTRY

According to report of the half million farmers holding over 10 hectares of land 52 percent are indebted. Non-availability of institutional finance on their small land holding made many farmers depend up on local money lenders at exorbitant rate of interest. The cost of cultivation has escalated almost four times during the first half of the current decade due to abnormal increase in the cost of key inputs and wages. Raise in the input cost squeeze their profit margin heavily. Crop loss started during the year 1990's gathered momentum that continued to haunt the farmers. At the same time farmers personal overheads such as rent, educational expenses of their children, medical expenses, repairs and maintenance etc are also increased unable to bridge the gap between income and expenditure. These situations has led them not only into debt trap but also made them to migrate to different field disposing their land. Some of the farmers who were unable to repay their debt and are under the pressure from their lenders, had to take the extreme steps of committing suicide.



Every time the country wakeup to the plight of the farmers, the policy makers presume that through financial relief package their problem can be solved instead of solving its root cause

In spite of all the efforts of the government to improve the plight of the farmers the situation did not improve at the expected level. Distress seems to have reached a tipping point with scenes of dejected farmers agitating over their plight. Never in the recent history are the farmers so agitated as of now. Every time the country wakeup to the plight of the farmers, the policy makers presume that through financial relief package their problem can be solved instead of solving its root cause. They failed to understand that a loan waiver can at the best give only interim relief that cannot be a permanent solution. Every time the government announces a loan waiver it only increases the rate of suicide or increase default further. All that the farmers need is a proper remuneration for their product commensurate with the cost of production. If the farmers are to be bailed out the price of the product has to be fixed at least 50 percent above the cost of production as recommended by Dr. M.S.

Swaminathan, not through the subsidy or waiver. A market intervention is also needed to protect farmers from making distress sale in the event of bumper crop when the prices tend to fall below the cost of production. When the state failed to procure the yield, farmers are at the mercy of the local financiers who purchase their product at the throw away prices leading them to further misery.

Recently when certain states such as Uttar Pradesh, Maharashtra, Punjab, and Karnataka have announced loan waiver Central Government disowned their commitment to the cause; in view of its impact on national economy. Waiver is not the panacea for the melody as it will only add the fiscal stress of the state. Economists also warned against the risk of loan waiver that will only lead to further fiscal slippage of the state deficit. In such a situation the states will be compelled to cut down the expenditure and capital investment, thereby deviating from their fiscal target.

The irony is that every political party in India is farmer friendly or are true campaigner of farmers including recommending loan waiver and instigating the farmers keeping an eye on the election, without looking into its implications. As one of the main impediments to the cultivation is the persistent draught the country had been witnessing in the recent years, government should take steps to improve the irrigation facility to the farmers. Government should also improve the technology in farming based on the availability of water also adopting cultivation of mixed crops and drip irrigation. It is a paradox that in the recent monsoon while the entire South India had deficit rainfall and struggling for want of water for irrigation, many northern states were reeling under flood with loss of human lives, live stocks and property. As such the long pending proposal of linking the main rivers in the country need to be implemented without any loss of time. ■

SUCCESS COMES TO THOSE WHO DARE AND ACT

ADDRESSING THE SOIL HEALTH CRISIS - IN AGRICULTURE

The Green Revolution, probably the greatest achievement of post – independence India, heralded an era of food sufficiency riding on the use of chemical fertilizers. Now, 50 years on, soil health is rapidly declining. There is ample evidence to show that indiscriminate use of fertilisers is the major cause of deteriorating soil health. Indian farmers apply around 66 million tonnes of fertilizers every year, which account for a significant share of India’s imports and subsidies.

The government, seems determined to promote more judicious use of fertilizers.

The Prime Minister launched a nation –wide “Soil Health Card” (SHC) scheme in early 2015 to rejuvenate India’s exhausted soil. Using a grid –wise approach, representative soil samples from the fields are tested for nutrient content in designated chemical laboratories.

HOW SHC WORKS

Accordingly, macro and micro nutrients needed by the soil are identified and translated into specific, measured quantities of fertilizers required. This information, printed on the SHC, is made available to the farmers in that grid through the state agricultural departments. Thirty million SHCs were issued in 2015-16 and the Ministry of Agriculture aims to cover the entire farming population by 2018-19. In addition, on a pilot basis, the soil health information is made available at fertilizer purchase points- Primary Agricultural Credit Societies (PACS) and POS’ devices –enabled fertilizer retail shops. However, farmers still buy large amount of fertilizer, disregarding SHC recommendations.

MicroSave recently conducted a study into farming practices in two paddy-producing districts of Andhra Pradesh (West Godavari and Krishna)’ and elicited farmers’ views on fertilizers, soil health and SHCs. Though our findings relate to a select sample in a



specific region, they are indicative of attitudes and practices of Kharif paddy farmers across the country.

Farmers appear convinced that there is a perfect causal correlation between high fertilizer usage and more output. As a corollary, they believe their farmlands have

‘good soil health’ if they yield the desired output. Farmers are not concerned that they need not use increasing amount of fertilizer to ensure this ‘**good soil health**’! In fact, they are not sure that the advice based on the SHC can be relied upon; especially when they perceive that the yield might improve by using just a little more fertilizer.

SHCs are not easy to use –they give general recommendations regarding the quantity of fertilizers required over the entire crop season whereas, in reality, fertilizers should be used in varying amounts over the different stages of the crop growth. So, even those farmers who start with the intention to use less fertilizer as a result of the SHCs ultimately have to fall back on their own judgment to decide on the amount of fertilizer to be used at each stage of the cropping cycle.

FOR PRESENT INCOME FLOWS

If crop growth appears to be below normal at the middle of the season, the farmer will usually apply large amounts of fertilizer. For farmers who have already bought bags of fertilizers, it is a sunk cost and so the prudent course of action is to apply more-even if the government’s SHC suggests otherwise. Maximizing yield and fear of loss are the salient concerns.

The government has started to provide recommendations on the SHC as per the crops shown. But more needs to be done. The farmers need SHC recommendations tailored according to crop growth stages. Promotional campaigns must deconstruct the myth of “more fertilizers” as a panacea for better yields.

WORK IS WORSHIP, DO YOUR DUTY

Soil health must be positioned as crucial to the long term productivity of land, which will be irredeemably lost if the focus is only on present income flows.

A behavioral approach based on understanding farmers' realities needs to be used. Many farmers are share-croppers seeking to maximize short-term yields with little care or concern for the long-term health of the soil. Others, who own their land, do not expect their children to farm and "live off the

land". So they aim to maximize short-term yields to finance the education seen as the passport to a job and freedom from the toil of farming.

It is essential that the government executes this initiative with attention to detail. The SHC scheme can go a long way in ensuring long term food security of over 1.25 billion Indians.■

Source: Business Line -11.3.17

EMERGING ISSUES ON OCCUPATIONAL SAFETY, HEALTH AND ENVIRONMENT MANAGEMENT

The Government of India has in the year 2015, unveiled a **National Policy on Safety, Health and Environment at Workplaces** to address the challenges on the Occupational Safety and Health front. The policy demonstrates a firm commitment of the Government at the highest level to promote Safety and Health in all the sectors in the country, in true spirit of our Constitution.

The important and relevant provisions of this policy are enumerated as under:-

OBJECTIVES:

- 3.1(a)** Continuous reduction in the incidence of work related injuries, fatalities, diseases, disasters and loss of national assets.
- 3.1(b)** Improved coverage of work related injuries, fatalities and diseases and provide for a more comprehensive data base for facilitating better performance and monitoring
- 3.1(c)** Continuous enhancement of community awareness regarding safety, health and environment at workplace related areas.
- 3.1(d)** Continually increasing community expectation at workplace health and safety standards.
- 3.1(e)** Improving safety, health and environment at workplace by creation of "green jobs"

contributing to sustainable enterprise development.

COMPLIANCE:

- 4.3.2** By calling upon the co-operation of social partners in the supervision of application of legislations and regulations relating to safety, health and environment at workplace
- 4.3.3** By continuous improvement of Occupational Safety and Health by systems approach ' to the management of Occupational Safety and Health.
- 4.3.5** By recognizing the best safety and health practices and providing facilitation for their adoption.
- 4.3.7** By encouraging all concerned to adopt and commit to "Responsible Care" and/or "Corporate Social Responsibility" to improve safety, health and environment at workplace performance
- 4.3.9** By encouraging employers to ensure occupational safety and health management systems, establish them in efficient manner to improve workplace safety and health.
- 4.3.11** By promoting safe and clean technology and progressively replacing materials hazardous to human health and environment.

Before proceeding further, it is imperative to know various legislations relating to Safety Health and Environment (SHE). such as:

- ♦ The Factories Act, 1948
- ♦ The Mines Act 1952
- ♦ The Dock Workers (Safety Health and Welfare) Act 1986
- ♦ The Indian Boilers Act, 1923-
- ♦ The Building and other Construction Workers (Regulation of Employment and Conditions or Services) Act, 1996
- ♦ The Dangerous Machines (Regulation) Act, 1983
- ♦ The Motor Transport Workers Act, 1961
- ♦ The Plantation Labour Act, 1951
- ♦ The Beedi and Cigar Workers (Conditions or Employment) Act, 1966— The Shops and Commercial Establishments Act
- ♦ The Explosives Act, 1984—
- ♦ The Petroleum Act, 1934
- ♦ The Environment Protection Act, 1986
- ♦ The Water (Prevention and Control of Pollution) Act, 1974-
- ♦ The Water (Prevention and Control of Pollution) Cess Act, 1977
- ♦ The Air (Prevention and Control of Pollution) Act, 1981
- ♦ The Public Liability Insurance Act, 1991
- ♦ The Atomic Energy Act, 1962
- ♦ The Insecticides Act, 1968
- ♦ The Energy Conservation Act, 2001
- ♦ The Disaster Management Act, 2005

Some of the important emerging challenges on the above front are enumerated as under:—

1. **Challenges of Liberalisation and Globalisation:** The Liberalisation of Trade and Globalisation of the markets have led to outsourcing of manufacturing activities resulting in contractualisation and casualisation of the work force in the country during last few decades.

2. **Challenges of Technology Transfer at the National and Industry Level:** Import of new technology, complex and hazardous processes into the country from the developing world is adding new complexities, hazards and risks.

3. **Challenges of Modern Manufacturing Systems:** Introduction of robotics to handle hazardous manual operations have also added new challenges.

4. **Challenges on Environmental and Social Front:** The society has become sensitive to the Environment, Safety and Health Issues. There is an increasing demand for a cleaner, greener and pollution free environment.

5. **Challenges Posed by Customers:** The customers have become more demanding, discerning and discriminating. Hence, establishment of Positive Safety, Health and conducive Environment at work place is a great challenge to the manufacturers.

Employees and employers are required to take various precautionary measures to avoid accidents at the work place such as:

EMPLOYEES

- ♦ Will follow safety rules and precautions
- ♦ Will obey all safety signs and warning notices
- ♦ Will use proper PPE
- ♦ Will report all accidents and unsafe conditions
- ♦ Will report defective equipment
- ♦ Will carry out work only when it is safe to do so

EMPLOYER

- ⇒ Use of proper PPE during work.
- ⇒ Proper maintenance
- ⇒ Replace defective / broken PPE.
- ⇒ Proper Sanitation including clean urinals/ latrines.
- ⇒ Proper Scrap/Waste disposal.

STRONG REASONS MAKE STRONG ACTIONS

- ⇒ Clean Drinking water must be available for the workforce
- ⇒ First Aid Boxes are kept at appropriate places.
- ⇒ Medical Care including periodical medical check up

- ⇒ Environmental Protection must be ensured.
- ⇒ Constitution of Safety Committee

S. Sensharma....Industrial Law Consultant
Excerpts from his article

Source: FLR 2017 (154)

Judicial Verdict

**[2017 (153) FLR 969]
 (ORISSA HIGH COURT)**

Km. SANJU PANDA and SUJIT NARAYAN PRASAD, JJ.

W.P. (C) No. 30600 of 2011

September 14, 2016

Between

MANAGEMENT, REGIONAL MANAGER, INDIAN BANK

and

P.O., C.G.I.T.-CUM-LABOUR COURT and another

Award—Passed by Labour Court—Holding that the retrenchment was illegal and unjustified—Directed reinstatement and to pay compensation—Management has not complied with sections 25-F and 25-B (1) of I.D. Act—Petitioner is daily rated employee, hence the compensation is reduced to ₹ 50000/— There is need of part time workers for day today work in case of absence of employees—No interference with direction of reinstatement.

[Para 11]

JUDGMENT

S. N. PRASAD, J.—The award dated 12.5.2011 passed in I.D. Case No. 20 of 2003 is under challenge in this writ petition.

Case of the workman is that he was appointed as sub-staff by the Regional Manager, Indian Bank, Bhubaneswar and posted at Tulsipur Branch, Cuttack. He joined his duty on 17.8.1991. His name was sponsored by the Employment Exchange and interview was held in August, 1990 and thereafter he was selected and empanelled for appointment in sub-staff category. Besides working at Tulsipur Branch, he also worked at Rourkela, Danpur and Alba Branch on leave vacancies of permanent sub-staff. His initial monthly pay was ₹1500/- which was subsequently increased to ₹ 3700/- per month with D.A. and HRA. He signed the attendance registers maintained in the respective branches of the Bank. While working at Cuttack Main Branch he went on leave for one month from

7.4.2001 due to illness and after recovery i.e., after one month when he reported for duty in the Cuttack Main Branch, his joining report was not accepted and he was not given duty, he reported the matter to the Asst. General Manager, however to no effect. Finally he was refused employment and thereafter he has raised a dispute before the competent authority.

2. On the other hand, case of the management-Bank is that the workman was a temporary sub-staff in the panel of temporary sub- staff of the Bank's Tulsipur Branch engaged in branches/ offices of the Bank in the leave vacancy of permanent sub-staff, depending purely on their requirement of the Bank and as such they cannot be reinstated on regular basis. The engagement of the workman is against leave vacancies and that too for intermittent period. He was never appointed as permanent staff. His service has been utilized at various Branches as and when required by the Bank against leave vacancies of permanent sub-

MAN IS THE ARCHITECT OF HIS OWN FUTURE

staff. There was complaint from the customers of Cuttack Branch i.e., the workman has misappropriated the fund given to him for depositing in their account with the Bank and in pursuance to that a criminal case has been instituted and as such there is a allegation of misappropriation of money against the workman.

3. The workman, having not been allowed to discharge duty, has raised dispute before the competent authority which ultimately culminated into a following reference:—

“Whether the action of the management of Indian Bank, Tulsipur Branch, Cuttack by terminating the services of Shri J.K Nayak temporary sub-staff w.e.f 24.6.2001 without following the provisions of section 25 of I.D. Act, 1947 and Sastri Award is legal and justified? If not, what relief the disputant is entitled to?”

4. The Labour Court after appreciating the rival submissions has passed award with the following direction:—

“From the findings recorded above, the disengagement or technically say retrenchment as per section 2(oo) of the Industrial Disputes Act, 1947 being held illegal and unjustified the 2nd Party-workman is entitled to reinstatement in the post on which he was engaged before this disengagement. As the 2nd Party-workman was engaged as a temporary sub-staff against leave vacancies of permanent sub-staff, he is not entitled to receive full back wages for the period of his disengagement. But I think it proper and justified in the facts and circumstances of the case that he be given a compensation of ₹1,50,000/- for the period or its illegal unjustified disengagement. I order accordingly. The 1st party-Management is directed to give him employment and pay compensation as

ordered above within a period of three months from the date of publication of the award.”

5. The management has challenged the award on the ground that they have not dispanelled the petitioner from the panel of appointment and as such it is not a case of retrenchment so that the provision of section 25-F cannot be attracted. The petitioner has not performed 240 days of continuous service in a calendar of 12 months, hence also the provision of section 25-F is not applicable. The workman is of tarnished character and he is not worth to be taken into service since there is allegation of misappropriation, to that effect an F.I.R. has been instituted.

6. While on the other hand, the workman has defended the award by submitting that has worked continuously from 17.8.1991 till 6.5.2001, hence he has continued regularly for the period of 10 years and when he, due to compelling circumstances i.e., due to illness, has not reported to duty and on recovery, reported to the duty he has been refused to allot duty which tantamount to retrenchment and the Labour Court after taking into consideration this aspect of the matter and also considering the fact that the petitioner has continued his service regularly for the period of 240 days in the calendar of 12 months has passed award of compensation and also reinstatement on the post in which he has been disallowed to discharge his duty.

He has submitted that provision of section 25-F since has attracted which is mandatorily to be followed, hence the award cannot be said to be unjustified and illegal. On this pretext of the rival submission, we have examined the same

7. The fact regarding joining of workman w.e.f. 17.8.1991 till May, 2001 has been disbelieved by the Labour Court on the ground that no such evidence has been laid by the workman, but however relying upon Ext-8, which is a muster roll. From its perusal, the Labour Court has come to finding that the workman has continued in service regularly from

the month of June, 1999 to March 2001 as such he had completed continuous service of 240 days in the calendar of 12 months, hence come to conclusion that provision of section 25-F is attracted.

8. So far as the part of submission that the workman has gone on leave w.e.f. 7.4.2001 reported on duty on 6.5.2001 and since there was a complaint on 28.5.2001 leading to an F.I.R. dated 19.12.2002, the petitioner has been disallowed to resume his duty but this fact has also been not taken into consideration for the purpose of attracting provision of section 25-F of the I.D. Act and this has rightly been done by the Labour Court that even from the period from 7.4.2001 till registration of the F.I.R. i.e., on 19.12.2001 will be excluded, then also taking the period from June, 1999 to March 2001 (Ext.8) the period would be 240 days in a calendar of 12 months and as such the provision of section 25-F of the I.D. Act would be attracted.

9. In view of this factual background, supported by the evidence we approve the finding of the Labour Court regarding non- observance of section 25-F of the I.D. Act which stipulates that before retrenchment, a notice is required to be given and retrenchment has been defined under the provision of section 2(oo) of the I.D. Act, 1947 and the definition of continuous service has been defined under section 25B(1) of the I.D. Act, 1947, these provisions are being referred as, for ready reference it is being reproduced herein below:—

“25-B. Definition of continuous service- For the purposes of this Chapter-(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.”

10. The stand of the Bank which has been taken into consideration in course of argument that till date the workman has not been retrenched from service, he is in panel which suggests that the petitioner has not been removed from the panel of employment which goes to suggest that they have not taken any action in pursuance of the criminal case lodged against him. Even otherwise also the date of occurrence of the F.I.R. is during the period from 15.10.2000 to 15.10.2001 which is the period covered under Ext.8 but no such action has been taken against the workman, which goes to show that lodging of criminal case has not adversely affected the employment of the petitioner.

11. It has been held by the judgment rendered by the Hon'ble Supreme Court regarding the nature of provision of section 25-F of the I.D. Act and accordingly it has depicted in the decision that provision of section 25-F is mandatorily to be followed, reference in this regard may be made in the case of *State of Bombay and others v. The Hospital Mazdoor Sabha and others, and Pramod Jha and others v. State of Bihar and others.*

In view of the settled provision the provision of section 25-F is mandatorily to be followed in case of retrenchment and if the employee has rendered 240 days of regular continuous service in the calendar of 12 months and the continuous service has been defined under section 25-B(1) of the I.D. Act, 1947 and in view thereof there is no dispute about the fact that the workman has rendered 240 days continuously in the calendar of 12 months, hence the provision of section 25-F is attracted.

12. So far as the direction passed by the Labor Court i.e.,(i).to reinstate the petitioner on which the petitioner was engaged before his disengagement and(ii) to be paid a compensation of ₹1,50,000/- for the period of its illegal and unjustified disengagement.

The learned Counsel representing the management-Bank has submitted that the workman

is still in the panel of employment and whenever the work will be available, he will be provided the work, as such he has submitted that he has not aggrieved with the part of direction i.e., the reinstatement in the post before disengagement, hence we are not interfering with the same

It is also for the reason that in the Bank, there is need of part time workers for day-to-day work in case of absence of regular employees and when the management is submitting that he has not yet been struck off from the roll of the panel, hence we are not interfering with that part of the award.

13. So far as the amount of compensation is concerned, the direction is to pay amount of compensation of ₹ 1,50,000/-. There is no dispute about the fact that the petitioner has been appointed as temporary sub-staff against leave vacancies and it is also not in dispute that the F.I.R has been instituted against him, further the ground of the petitioner that he has joined on 17.8.1991 continued till 6.5.2001 but that has been disbelieved by the Labour Court which has also been proved. Taking into consideration the Ext.8 and the Labour Court has reached to conclusion that the petitioner has continuously work from June, 1999 to March, 2001 and after 7.4.2001 he has not performed his duty, as such amount of compensation of ₹ 1,50,000/- is on higher side.

14. Considering the fact that the workman was engaged as temporary sub-staff and as such he is entitled to be paid -wages as has been fixed to be paid to the daily rated employee prevailing in the Bank and also considering the fact that making payment of ₹1,50,000/- will amount to causing over burden upon ex-chequer of the Bank, hence we thought it proper to reduce the amount from ₹1,50,000/- to ₹ 50,000/-.

This reduction is made in the facts and circumstances of this case that the Bank has submitted that the workman is in the roll of the panel and the work would be provided to him subject to satisfactory performance of his service.

15. In course of argument, it has been submitted by the learned Counsel appearing for the workman is that the other persons who have been taken as temporary sub-staff, they have been regularized staff except the petitioner, if that is so, the petitioner may ventilate his grievance before the appropriate forum. In view of the above discussions and directions, the Award is modified to the extent as above.

Accordingly, the writ petition is disposed of.

Petition Disposed of.

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