



DEMONETISATION AND THE ECONOMY

The consequences of globalization and free trade had been widening the gap between the rich and poor in the country. It is a paradox that more than 50 percent of the wealth of the country is now being managed by 1% of its total population when nearly 80 percent of the people live in villages, struggling to meet both ends together. It is now the aim of the government to bridge this gap through various social and financial schemes.

One of the major promises made by the present NDA government towards achieving acchedin was bringing back the black money stashed abroad and in the country. While the Apex Court had been reminding the government the step taken to bring back the black money, the opposition parties have been sneering that the government did not implement their various election promises that include eradication of black money.

Now through a surgical strike government had demonetized 500 and 1000 rupee currencies that caught everyone by surprise as it has the benefit as well as pain built in it. On the one hand there is a fervent support to the scheme by the honest and right thinking people across the country, on the other hand it has caused enormous misery to those who has to stand in the long queue to convert their currency, draw the legitimate currency especially by the wage

earners, farmers and others for their daily requirement, in the light of dearth of currencies of smaller denominations. This has also reduced their purchasing power and created damage to the economy with fall in production in various sectors and GDP. The analysts have predicted the reduction of by 2%. As such this exercise has to be properly evaluated in the light of agony caused to the common man.

Another area where ordinary people including farmers are caught is their transactions with co-operative banks in the rural areas including districts co-operative banks that is now de activated. When the currency was demonetized these banks were authorized to convert the currency and accept the remittance. Accordingly there was an unprecedented high flow of funds in to these banks. Most of the people in the rural areas are depended on the co-operative banks for their financial needs instead of depending on the local money lenders. According to report such banks are being controlled by various local politicians who have utilized the system to use their personal money without complying with KYC norms and conducting proper audit.

Many countries including India had demonetized their currencies in the past to correct their economy. USSR had done it in the year 1917

after the bolshevic revolution, Germany after World War II, Libya after fall of Gadafi regime, and many other conditions.

Black money and corruption had been there in the country since time immemorial. Even the great economist in the Indian history, Kautilya, during Gupta dynasty had mentioned about corruption prevailing during those periods, when the ministers were appointed based on their ascertained purity, honesty and integrity. The generation followed thereafter inherited such disease. Black money had created a parallel economy in the country and the usage of currency, the counterfeit and conduits had been damaging the system considerably stalling and polluting the economic growth. According to report 23.5 percentage of the white money is in circulation in India as black. By demonetizing 500 and 1000 currencies it is expected that 80 percentage of the currency in circulation is out of the system, which is a great blow to those who keep unaccounted currency. The counterfeit had affected the terrorist outfit that is coming across the border. It is a move that empties the bucket of dirty water.

Demonetization was done after having given sufficient time to those who are holding black money through a voluntary disclosure scheme by the present and the previous governments. Government in their budget for 2016-17 allowed Voluntary Disclosure Scheme allowing people who are holding black money to bring the same to the system by remitting 40% percent of the same as tax. Still many sharks had escaped from the net laid by the government. In order to give yet another opportunity to the black money holders the government has now come out under another scheme with a tax rate of 50% with the condition that the 25% of the amount will be held in bank deposit without interest for a period of 4 years. Government also insisted for producing PAN number for every purchase of ` 2 lac and above and purchase of gold if the purchase is above ` 5 lac.

There are bouquets and bricks for and against the demonetization. While it will stabilize the economy with more welfare scheme for the common man and eliminate corruption the move also hurt the common man very badly when poorly executed without proper ground work and back

up of currencies, commensurate with volume of currencies that are demonetized. There will be certain difficulties experienced in the money market especially by the common man in the absence of currency of lower denomination. There are long queues in front of every bank or post office consist of genuine customers and those who are benami of others who are trying to convert their high value currencies and those who are withdrawing currencies for others. There are also indication that money withdrawn are not put in circulation knowingly or unknowingly by certain people thereby creating an artificial shortage of currency and anarchy in the system affecting the needy and the real users of currency.

When the present government came into power they announced JanDhan Yojana as part of financial inclusion to make every citizen in the country, especially from the unbanked rural India to open a bank account to enable them to transact all their social benefits and other financial activities through the banking system, ultimately to bring in a cash less society. According to report so far nearly 25 crore bank accounts have been opened so far. Many black money hoarders have laundered at discount using middle man or poor Jan Dhan yojana account holders to remit the money in their account. Accordingly the Jan Dhan Yojana account has suddenly swollen to ` 74000 crores or more with the help of such benami depositors.

There were many practical difficulties in implementation of the scheme in an effective manner as it always contain an element of shock and secrecy. Any indication of the positive introduction of demonetization will only nullify the progress of the scheme. In any economy drastic steps to cleanse the system is bound to hurt the lower strata of the society whether it is rural and urban areas. Expectedly or unexpectedly this section of the society absorb the pain with the fond hope of a better future. Along with demonetization as financial reforms it is also necessary to introduce electoral reforms to make the political parties accountable for every rupee they are collecting from the people if the scheme is to succeed. In order to cripple black money or undeclared income it is essential that the rules governing the funding of political parties and elections, are amended

with more power to the Election Commission as recommended by the Apex Court. It is also necessary to carry out tax reforms to simplify and stream line tax laws that are made human

friendly and that the people need to feel that money they pay should come back to them in the form of social welfare not to be eaten away by corrupt people in the society.■

Demonitisation

UNPRECEDENTED EFFORTS BY OUR COMRADES IN DOING THE IMPOSSIBLE AGAIN

Kudos to the officers and staff. Kudos to the Public Sector Banks who once again demonstrated to the world that, if there is call of the nation, it is the officers and employees who came out, shouldered the burden and manage critical situations at the cost of personal inconvenience.

The All India State Bank Officers Federation is PROUD of their wonderful set of Human Resources who have over the years transformed an old generation Bank into a tech-savvy modern Bank of global standards. During the last few days, it has been seen that the officers and employees worked from early morning till late in the night, at times beyond midnight, untiringly, with smiles on their faces and served the customers with utmost patience and care. The extremely high levels of efficiency exhibited in un-paralleled. There have been no complaints, no hang-ups !, but only an unending

flow of service at all branches. The Banking system has handled more than 100 crore customers who were anxious to exchange notes, cleaned up ATM's, reconfigured the ATM's to suit new requirements ,arranged for remittances, filled the ATM's , opened accounts and helped in deposits and withdrawals with seamless ease. They have comforted the Nation, when people ran helter skelter in panic. This is the confidence of the people in our system and our officers and staff have stood up to the millions of expectations. Incredible... !. This is the power of our comrades. This is the strength of the Public Sector Banks which some of the powers of the country are aiming to privatize? Hope they understand and do not venture into any such misadventures which will spoil the beautiful edifice of Public Sector.■

STAPLED MONETIZATION - CLEAN UP DRIVE HARDSHIPS OF EMPLOYEES REALIZED BY GOVERNMENT AND MANAGEMENT

Text of AIBOC Circular No.66 dated 15th November, 2016

QUOTE:

Please refer to our Circular Nos. 2016/64 dated 12.11.2016 and 2016/65 dated 14.11.2016 whereby we highlighted the inconveniences being faced by the Bank employees and Officers due to extra ordinary circumstances under which "WE", the Bank employees, are extending services to the common man, without caring for our family responsibilities and personal health. These issues have been continuously taken up by us and pursued with IBA and Officials of DFS.

We acknowledge with gratefulness the appreciations showered by our Hon'ble Prime Minister Shri Narendra Modi and also by our Finance Minister Shri Arun Jaitely in public meetings as well

as through their communications. Its impact was felt by all of us through the Print and Electronic media which also started highlighting the role of Banks and its employees. We are also pleased to advise you that Department of Financial Services has, through its communication; dated 14.11.2016 once again acknowledged that Bank employees are working strenuously and doing a commendable work in implementing the decision of demonetization. Instructions have also been given to IBA to ensure security and safety of employees particularly that of women employees. IBA has also been advised to make arrangements for food and conveyance for employees working in late hours (copy of the DFS communication attached).

On our contacting IBA, we have been informed that necessary guidelines have already been issued to all the member banks in this regard. We request all our Affiliates to ensure that these guidelines are

ARISE, AWAKE, STOP NOT TILL THE GOAL IS REACHED

meticulously implemented in their respective Banks. With regard to compensation for working on holidays also, many Banks have already taken a decision. Though we are pursuing the issue of uniform

compensation in all the Banks, we once again call upon all our Affiliates to ensure that our Officers are compensated appropriately for attending Office on Sundays/Holidays. ■

SEVEN STATE BANK OF INDIA OFFICIALS AND DRIVER KILLED IN A TRAGIC ROAD MISHAP IN KANPUR

In a tragic incident, seven officers and employees of our Bank besides the driver were killed in a van-container truck collision in Bingawan village under the limits of Ghatampur police station in the district late Wednesday night.

The mishap occurred while the van carrying SBI bank

officers and employees from Ghatampur, was heading towards Kanpur when it collided head-on with a container.

"**Officers' Cause**" deeply mourn the sad demise of the officers and employees and express their heartfelt condolences to the bereaved families. ■

APPOINTMENT OF OFFICER DIRECTOR ON THE CENTRAL BOARD OF STATE BANK OF INDIA

The position of the Officer Director on the Central Board of State Bank of India is vacant since a long time. The Officer Director on the Central Board of the Bank retired from the Bank on superannuation during November, 2015. The Federation submitted a panel to the Bank for the purpose of appointment of the Officer Director on the Board which was forwarded to the Ministry of Finance for consideration. However, the appointment is still

pending and as a result Officers are handicapped from their non-participation in the functioning of the Board of the Bank as a part of the participative management scheme. Federation had therefore taken up the matter with the Prime Minister seeking his intervention in the matter so that the appointment of the Officer Director on the Central Board of State Bank of India takes place at an early date. ■

GOOD GOVERNANCE –MERE WORDS! REPRESENTATION TO PMO-PROVES FUTILE

Text of AIBOC Circular No.68dated 28th November, 2016.

QUOTE:

Our members are aware that there has been an inordinate delay in appointment of Officer Nominee Directors on the boards of various public sector banks. The matter has continuously been pursued by us through various fora. The matter being of utmost importance for the effective governance of the Bank Boards had been included in our Strike calls dated 11.12.2015 and in subsequent strike calls. Despite various assurances given in the conciliation meetings, there seemed no change in the status. We, therefore, represented to the highest authority, the Hon'ble Prime Minister vide our letter No. 2016/123 dated 03.10.2016. The representation was sent through mail as well as was delivered by hand to the PMO office and was duly acknowledged and were given the grievance registration number DEABD/E/2016/13576. On enquiring the status on Centralised Public Grievance Redress Monitoring

System (CPGRAMS) portal maintained by Department of Administrative Reforms and Public Grievances on 8th November, 2016, we were totally dismayed to find that the case has been CLOSED, quoting the detail as "**The proposals for Officer Employee Directors received from respective Public Sector Banks have already been sent to DoPT for obtaining the approval of Appointments Committee of the Cabinet. However, the same are still awaited.**"

Surprised by such a lukewarm response, we immediately sent our feedback as follows:

"We are really shocked to know the status of our Representation No. PMOPG/E/2016/036627 has been closed. Our grievances addressed to the Hon'ble Prime Minister vide our letter No. 2016/123 dated 03.10.2016 regarding DEFICIENCY IN GOVERNANCE OF PUBLIC SECTOR BANKS – A SERIOUS THREAT, UNDUE DELAY IN APPOINTMENT OF OFFICER EMPLOYEE

WORK IS WORSHIP , DO YOUR DUTY

DIRECTOR ON THE BOARDS OF NATIONALISED BANKS.

If more than one month is taken in getting the status of the issue, it is highly unsatisfactory on the part of such a high office. However, for your information, we have always been informed by Officials of DFS and DOPT (unofficially) that the files are pending at PM office only. We, therefore, request you to re-open our grievance for an early resolution. We were once again advised that the case has been closed on 25.11.16. The status advised was a mere repetition of the earlier advice as ***“The proposals for appointment of Officer Employee Directors received from respective Public Sector Banks have already been sent to DoPT for obtaining the approval of Appointments Committee of the Cabinet. However, the same are still awaited.”***

It is really astonishing, disappointing and unexpected on the part of the Government which boasts of its efficiency and maximum governance. We immediately sent the feed-back as follows: ***“It is really surprising that instead of resolving the issue of substance and relating to Governance of the Banks, only Status is being told. Is DOPT supposed to take more than one year for obtaining the approval of Appointments Committee of Cabinet! Sorry to say that it reflect***

very badly on the functioning of the Government.”

We really wish that some lessons may be learnt from us - the Bank officials, who in Prime Minister's own words have accomplished a task equivalent of one year in a short time of 10-15 days at the call of Government for the demonetization drive. And we feel proud that this is not the first instance that we have proved our mettle in achieving big targets in implementing various Government policies like Prime Minister Jan DhanYojana or Mudra Loan etc. in record time. In sharp contrast, the system followed in PMO raises many questions about its effectiveness. Is this the efficiency of the highest political office for which many tall claims are being made! The question is not only of appointment of few individuals but is also the issue of good governance for which the 'Banks Board Bureau' was specially formed. It's a matter of maintaining sanctity of Banking Regulation Act, a subordinate law of our constitution. It is also a matter of importance of representation of the most trusted and admired workforce of the Banking industry, which is known for its positive approach and contribution in decision making of the Banks.

We really hope that the ‘Good Governance’ does not remain to be jugulary of words only but translate into real actions!” ■

DE-MONETISATION

The Government of India introduced the De-monetisation scheme on 8th November 2016. Our officers and Employees across the country have been working very hard, putting in long hours only to cater to the huge crowd of customers and public. Officers in currency chests are working for more than 15 hours a day. They have all responded to the situation in an exemplary manner.

De-monetisation has flooded our branches with deposits. Large number of Savings Bank Accounts are being opened. Branches are having more cash than their retention limit. Storage of currency has become a major issue for want of space. The transit insurance cover for the remittances which is equal to the cash retention limit falls short of the actual cash being shifted. Currency Chest Branch's and CAC's are suffering from acute shortage of staff, shortage of sorting machines, note bundling/

wrapping machines etc. In this connects Federation had taken up the matter with the Corporate Centre with the following suggestions:

1. Insurance cover for cash in transit and, simultaneously the cash retention limit has to be enhanced temporarily till such time normalcy is restored.
2. Security to be increased at currency chest branches and other branches in remote areas, terrorist affected areas, sensitive and riot prone areas and for cash remittances, as there have been innumerable instances of dacoity pilferage, cash vans being waylaid etc.
3. Cash vehicles need to be insured adequately for the amount being transported and not under insured.

4. Arrangements to be made immediately to supply cash/lift cash from our nearest currency chests to many of our branches which are linked to currency chests of other Banks in case of need for cash/Shortage of Cash etc.
5. Officers/Award Staff from administrative offices may be deputed to branches to meet the rush during first week of December.
6. Please instruct the Circle Authorities not to call officers on Sundays and Holidays for other work like recovery melas, DRT, Society Connect, NPA recovery, Housing Loan melas etc as our officers are already overburdened and badly need a break on holidays.
7. The Risk focused inspection & Audit (RFIA) of branches was deferred till 30-11-2016. We request that this may be deferred till 31-12-2016, as the branches can in no way Cater to RFIA during this period of crisis.
8. The KRA's were allotted to officers as late as at the end of October 2016. The months of November and December has totally disrupted the KRA's of Officers as nothing else other than de-monetisation and managing the huge inflow of customers and public could be even thought of by our officers. Therefore the KRA's exercise may be put off and a KRA holiday may be given till such time the situation normalizes. Every single officer has worked with frenzy in handling this warlike situation and in total sync with the Branches/Admin office Team. Hence differentiating on the basis of the CDS scores and incentivising only a few officers would hurt the sentiments of all the officers who have, unmindful of their CDS scores ensured that their responsibility to the nation is discharged fully.
9. We request you to Please convey to the circles to pay the agreed compensation to officers who are sitting very late /coming on holidays especially at currency chest branches and for ATM loading etc., till the situation eases.■

Labour Issues

**DELEGATION OF THE CONFEDERATION MEETS
HON'BLE MINISTER OF STATE FOR LABOUR & EMPLOYMENT
MEMORANDUM SUBMITTED AND FRUITFUL DISCUSSION HELD
On the various pending issues concerning the Labour issues.**

Text of the Circular No.70,dated 1st December, 2016 of AIBOC

QUOTE:

Our Confederation has been pursuing the issues of improvement in superannuation benefits, delay in appointment of Officer Nominee Directors, enhancement in gratuity ceilings through letters, representations and meetings with concerned authorities for early resolution of the same. These issues had been listed in the Strike Notices served by our Confederation to IBA and Bank Managements. You are also aware that one of the reasons for deferment of our Strike of 2nd September 2016 was the specific appeal made by the Hon'ble MoS with the assurance that our issues will be discussed and resolved. Accordingly, we sought an appointment from Shri Bandaru Dattatreya, the Hon'ble Minister of State for Labour & Employment. We are pleased to inform you that a meeting was held on 28th November, 2016 in the chamber of Hon'ble Minister. The undersigned alongwith Com. Ravinder Gupta,

Jt. General Secretary of our Confederation, submitted a Memorandum(annexed to the circular) to him, highlighting our pending issues and also requested for early discussion on 11th Bipartite Settlement and its implementation from the day on which it is due. Hon'ble Minister directed his officials to have a detailed discussion with us on the issues covered in the Memorandum. Our discussion lasted for more than two and a half hours. We are extremely happy that the officials took keen interest on the subject and immediately initiated the steps required in this regard.

On the issue of enhancement of gratuity ceilings, we were informed that a tripartite meeting is required to be held in which the Chamber of Indian Trade & Industry will also participate. After seeking the consent of Hon'ble Minister, officials assured us that they will try to convene the meeting in the next month. On the other issues, officials assured us that a communication will be sent to Department of Financial Services with their strong

BE TRUTHFUL, BE FEARLESS

recommendations to resolve the issues. It was also assured to us that Hon'ble MoS will personally speak to the Hon'ble Minister of Finance, Shri Arun Jaitley

and will persuade him to resolve our issues/grievances. Further development in this regard shall be advised to you. ■

REVISION OF GRATUITY CEILING ON PAR WITH THE GOVERNMENT EMPLOYEES

The Government of India has revised the ceiling on Gratuity payable to the Central Government employees under the 7th Pay Commission with effect from 1.1.2016. The present ceiling of ` 10/- lac has been revised to `20/- lacs for Central Government employees. Federation had requested that the employees in State Bank of India should also get the Gratuity upto `20/- lacs. However, the issue is still pending consideration of the Government despite the repeated representations through the

Management of the Bank as well as directly to the Government.

In the meantime, the RBI has improved the ceiling of gratuity payable to their employees through a decision made by their board. Federation had requested for the intervention of the Prime Minister into the matter and issue suitable instructions to the bank for enhancement of the Gratuity Ceiling from `10/- lac to `20/- lacs with effect from 1.1.2016.■

CONCILIATION MEETING BEFORE RLC (C) AT MUMBAI FAILED EXECUTIVE COMMITTEE TO DECIDE NEXT COURSE OF ACTION

From the Text of AIBOC Circular No.67 dated 18th November, 2016

QUOTE:

Our members are aware that in response to our notice to observe strike on 2nd September, 2016, RLC (C) Mumbai had called a conciliation meeting on 1st September, 2016 at Mumbai and after hearing both the sides had directed IBA to resolve our issues within specific time frame and had adjourned the conciliation proceeding to 17th November, 2016. The conciliation meeting continued today and was attended by Com. Harvinder Singh, General Secretary and Com. Sanjay A Manjrekar, Vice President on behalf of AIBOC.

On behalf of IBA, their representatives filed their reply dated 17th October, 2016 repeating their same old stand that IBA is an independent and voluntary organization which provides advisory services to the member banks as and when asked by them and it holds discussions/ negotiations with apex level Workmen Unions / Officers' Associations of Banks regarding industry level issues and these issues are discussed by them on the basis of specific mandate given by member banks. They further stated that they do not have mandate from the members to discuss the issues pertaining to pension raised by AIBOC since in the mandate given by the banks for Wage Settlement it is specifically mentioned that IBA may discuss on behalf of the concerned banks with the Officers' Associations / Workmen Unions the scales of pay and allowances and other service conditions of officer employees / workmen staff.

On behalf of AIBOC, we disputed the claim of IBA that they are an independent and voluntary organization and do not have mandate to discuss the issues raised by us. During the argument, we brought to the notice of the RLC(C) that all the issues pertaining to our service conditions at industry level are always discussed by Officer unions with the IBA and that the issues raised by us too are the part of our Other Service Conditions which are decided at industry level. We also pointed out that in their reply dated 17th October, 2016, IBA has admitted that in the mandate given by the banks for Wage Settlement they are permitted to discuss on behalf of the concerned banks other service conditions also apart from the scales of pay and allowances of officer employees / workmen staff and hence the IBA's stand that they do not have mandate to discuss the issues raised by us is not tenable. We also filed our counter reply in this regard.

UNQUOTE

Since, IBA was not prepared to settle the issues raised by us, the RLC(C) asked us as to whether we would like the dispute to be referred for arbitration. Taking into consideration the lengthy process of arbitration, which may extend beyond our next salary revision talks, we did not agree for the same and requested the RLC(C) to close the proceedings so that we can reinstate our strike call immediately.

After hearing both the sides, the RLC(C) observed as follows:

QUOTE:

Both the parties requested for closure of the proceedings as the management stated that “no further action by IBA” is taken and the Union said that the management betrayed them and that they want to reinstate their ‘Strike Call’.

Since both the parties are of different views and not induced to come to an amicable settlement, the proceedings are concluded as an ROC (Report on Conciliation).

UNQUOTE:

Thus the proceedings before the RLC(C) Mumbai with respect to our Notice of Strike stands closed as the parties failed to reach at some conclusion.

The issues raised by the confederation in the said strike notice are close to the heart of all bankers, serving as well as retirees and we cannot rest till the same are settled to our satisfaction. The Executive Committee of AIBOC will meet shortly to discuss the developments and decide our next course of action to get justice for all in the matter of all our pending issues. ■

Article

CONTRACT LABOUR SYSTEM SHAM WHEN CONTROLLED BY PRINCIPAL EMPLOYER

With the globalization of the economy, high level, fierce and aggressive competition among multinationals and national organizations have necessitated reorientation of business and industry. In the present circumstances, production is not only to be enhanced but also has to be cost-effective and, therefore, outsourcing of certain services i.e. engaging of contract labour has become a necessity. But engaging of contract labour is not that easy as perceived since there are serious pitfalls which may result into disastrous consequences.

The Constitution Bench of the Supreme Court of India, in a landmark judgment had held that even when the contract labour system is prohibited by the appropriate Government under section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 (CLRA Act), the principal employer will not be obliged to regularize or absorb such workers. Even when the principal employer has not sought registration and the contractor has not obtained the licence under the CLRA Act, the workers of the contractor can't be treated or become the employees of the principal employer. An exception has been made that if the contract labour system is found to be sham or camouflage, then the workers; of the contractor will become the employees of the principal employer.

Reference is made to a judgment of Bombay High Court wherein it has been observed that a contract between the contractor and the principal employer will be deemed as sham, bogus and camouflage when the workers, as engaged through the contractor, were controlled by the company, the rate of wages as payable was decided by the principal employer and the contractor was not frequently visiting the work hence such workers will

be entitled to regularization of service. Amongst others, in order to determine the control and supervision of contractor's workers by the principal employers, there are several factors like—

- (a) who is the appointing authority.
- (b) who is paying the wages to the workers.
- (c) who is directing as to how the job is to be done, nature of establishment.

The facts of one case were that the respondents No. 1 to 8 (the workers) who were engaged through contractor had raised an industrial dispute against the principal employer i.e. Ramjas Public School (Day Boarding), Anand Parbat, New Delhi and the contractor i.e. Smt. Promila Mehta Proprietor of M/s Promila Mehta Caterers alleging these were illegal termination of their services without any notice, non-payment and arrears of minimum wages w.e.f. August 1, 2000 etc. It was stated by the respondents Nos. 1 to 8 (the workers) that they were appointed by Ramjas Public School, however, the wages were paid to them through the contractor Vishwanath Mehta, Proprietor of M/s Karan Caterers. The respondents were also protesting against illegal contract policy of the Management of Ramjas Public School. When Vishwanath Mehta-the contractor, died in May 2002 the man against of Ramjas Public School terminated their services as noted above and started taking work from the newly appointed workers through Management No.2, that is. M/s Promila Mehta Caterers run by daughter-in-law of late Vishwanath Mehta, Proprietor of Karan Caterers. Ramjas Public School was registered as principal employer and Karan Caterers obtained licence under the Contract Labour (R&A) Act. The respondents averred that they were actually employees of Ramjas Public School i.e. principal employer and not the contractor. After the evidence was led, the learned Labour Court, aide

the Award dated November 20, 2010, held that the services of respondent Nos.1 to 8 were illegally terminated hence granted the relief of reinstatement with continuity of service and 70% back-wages. Challenging the Award dated November 20,2010, Ramjas Public School filed a writ petition being W.P.(C) No. 3495/2011 which was dismissed vide the impugned order dated September 26, 2014 hence an appeal was filed before the Division Bench of the Delhi High Court.

On behalf of the appellant i.e. Ramjas Public School, it was submitted that the payment of provident fund which was deposited by Ramjas Public School being the principal employer as per the section 8-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short 'the EPF Act ') and as the contractor Vishwanath Mehta was not registered with the Employees Provident Fund. Hence merely by depositing the provident fund, Ramjas Public School could not be fastened with the liability of reinstatement and back wages in respect of respondent Nos. 1 to 8. It was urged that under section 8-A of the EPF Act, even for contract labour the Management of the school had to deposit the provident fund of the contract labour and could recover the same from the contractor while making payment to the contractor. While relying upon the judgment of the Supreme Court, the Division Bench referred to the following paragraph:

"The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him." While dismissing the appeal by Ramjas School, the Division Bench held:-

(a) The contract between principal employer and contractor is sham, nominal and camouflage if attendance of such workmen

is recorded in a register, separately kept with the principal employer, such workmen are to perform duty as per direction, supervision and control of the principal employer, material record to prove or disprove the relationship of employer-employee is not produced by the principal employer.

(b) If the contract between principal employer and the contractor is proved to be sham or nominal or camouflage, the workers of the contractor would be treated of the principal employer, entitled to all benefits of regular employees of the principal employer.

The Allahabad High Courts has also held that the Labour Court has rightly awarded reinstatement with full back-wages to a workman who was allegedly appointed through the contractor whereas the principal employer, though registered under the Contract labour (R&A) Act, has been paying wages and exercising control over the workman hence the High Court, in writ petition, would not interfere in the Award. The High Court observed as under:

The contract labour arrangement between the contractor and principal employer is sham due to following reasons :

(i) The Labour Court found that the muster roll (attendance register) stated to be maintained by the contractor is not worthy of reliance as it was not duly signed by the authorized representative of the principal employer as such, it was against the Contract Labour (R&A) Rules.

(ii) There is no dispute that the initial burden was upon the workman to prove that he was an employee of the principal employer whereas it was established that he was working for over 6 years.

(iii) In the facts and circumstances of the case, the Labour Court found that once the workman has come out with the clear case that he was a direct employee of the principal employer.

(iv) The wage register was not maintained by the contractor but by the principal employer.

(v) The contractor, in fact, acted as a mediator/link between the principal employer and the

workman and had no control and supervision over working of the employee

- (vi) The principal employer not only controlled and directed the work to be done by the contract labour but also decided where and how long the employee would work and the conditions for his working hence it cannot be said that the principal employer had only secondary control over the working of the employee and the primary control was with the contractor.
- (vii) The officers of the principal employer were assigning duties directly to workman and regulating the place and period of working of the employee and, therefore, it should be deemed that he was working under the direct control and supervision of the petitioner/ principal employer.

The Calcutta High Court has summarised the eventualities for sham contract:

- (i) When the agreement does not disclose the name and address of the contract.
- (ii) When the agreement does not disclose the exact nature of job to be assigned.

- (iii) When the agreement narrates the nature of job other than actually to be performed.
- (iv) When the agreement is against the norm of judicial pronouncement/ statutory provisions.
- (v) When the agreement is a tool or a device to deprive the right of livelihood or is a tool for victimization or unfair labour practice
- (vi) When the agreement ensures and discloses the obligations to pay the minimum wage or agreed wages.

The Madras High Courts has held that a contract of employment with any contractor is sham and nominal when over all day-to-day administrative control and supervision upon those workers is exercised by the principal employer through its officials in addition to payment of wages, allowances and other benefits are borne by the principal employer and the work is of regular nature. As such when it is proved that the employment contract with the contractor is sham and nominal, the employees of the contractor will be having their right to be absorbed as regular employees of the principal employer.

By.....**H.L. Kumar**
Source: **FLR**

Judicial Verdict

2016-II-LLJ-546 (P&H)
LNIND 2016 PNH 3370

IN THE HIGH COURT OF PUNJAB AND HARYANA

Present:

Hon ' ble Ms. Justice Sabina

C.W.P. No. 59 of 2014

Ajmer Singh ...

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon
and Another

29th February, 2016

Petitioner

... Respondents

Reinstatement - Decline of Reinstatement- Validity of - Industrial Disputes Act, 1947, Section 25F - Petitioner raised industrial dispute by serving demand notice challenging his termination, same referred to Labour Court for adjudication - Labour Court held that services of Petitioner terminated in violation of Section 25F and Petitioner entitled to receive lump-sum compensation in lieu of reinstatement- Petitioner filed present petition challenging part of award declining relief of reinstatement to him - Whether Petitioner entitled for relief of reinstatement or was liable to be compensated in lieu of reinstatement - .Held, evidence on record shows that Petitioner already worked with 2nd Respondent before contractor got licence — While granting relief, Labour Court opined that as Petitioner fought his case for many years and during intervening period, technology underwent sea change, Petitioner was not familiar with new technology, same was without basis – Nothing on record to suggest that Petitioner would not be able to perform duties of welder - Certificates issued by third party company

NEVER BEND BEFORE THE INSOLENT MIGHT

qua training period and certificate that Petitioner engaged as apprentice in grade of turner proved on record – Since Labour Court disallowed relief of reinstatement on imaginary grounds, award to extent whereby relief of reinstatement declined to Petitioner liable to be set aside - Petitioner gave up claim for back-wages Impugned award passed by Labour Court modified to extent that Petitioner entitled for reinstatement with consequential benefits, but without back wages - 2nd Respondent entitled to seek refund of amount deposited in pursuance to impugned award - Petition disposed of.

ORDER

Ms. SABINA, J

Petitioner has filed this petition under Article 226 of Constitution of India challenging the part of the award dated 18.9.2013 (Annexure P-1) whereby relief of reinstatement was declined to him.

2. Petitioner had raised an industrial dispute by serving a demand notice challenging his termination. Dispute raised by the petitioner was referred for adjudication to Labour Court-I, Gurgaon by the appropriate Government.

3. Case of the petitioner, in brief, was that he was working with respondent No. 2 as a Welder from 5.5.1999 to 21.6.2000. Services of the petitioner were terminated without complying with the mandatory provisions of Industrial Disputes Act, 1947 ('Act' for short).

4. Respondent No. 2, in its written statement averred that the petitioner had been employed by contractor M/s R.K. and Company. It was averred that there existed no relationship of master and servant between the parties.

5. On the pleadings of the parties, following issues were framed by the Industrial Tribunal-cum-Labour Court:-

1. Whether there existed any relationship of employer and employee between the parties? OPW

2. If issue no. 1 is proved in affirmative, whether the termination of services of the workman is justified and in order? if not, to what relief, he is entitled to? OPW

3. Whether the claim statement is bad in view of

preliminary objection no. 4? if so, its effect? OPM

4. Relief.

Parties led their evidence in support of their respective pleas.

6. Labour Court vide award dated 18.9.2013 held that services of the petitioner had been terminated in violation of provisions of Section 25-F of the Act. However, While granting the relief, the Labour Court held that the petitioner was entitled to receive lump-sum compensation in lieu of reinstatement.

7. Learned counsel for the petitioner has submitted that the petitioner undertakes to forego the claim of back-wages. Petitioner was liable to be reinstated in service as his services had been terminated in violation of provisions of Section 25-F of the Act. The Labour Court had disallowed the relief of reinstatement on imaginary grounds.

8. Learned counsel for respondent No. 2, on the other hand, has opposed the petition and has submitted that in the facts and circumstances of the present case, petitioner was not entitled for the relief of reinstatement. The discretion exercised by the Labour Court while allowing compensation to the petitioner in lieu of reinstatement was justified. Respondent No. 2 has already deposited the amount of compensation in terms of the award passed by the Labour Court.

9. In the present case, the Labour Court after going through the evidence led by the parties on record gave the finding that the services of the petitioner had been terminated without complying with the mandatory provisions of Section 25-F of the Act. Labour Court further held that the name of the petitioner had been kept on the rolls of the contractor to deny the legal right of the petitioner. It has also been noticed by the Labour Court that the contractor was not having a valid licence from November 1999. Rather, the contractor was having a licence from 1.1.2000 to 31.12.2003. Petitioner had worked with the respondent management from 5.5.1999 to 21.6.2000. Thus, the petitioner was already working with respondent No. 2 before the contractor got the licence.

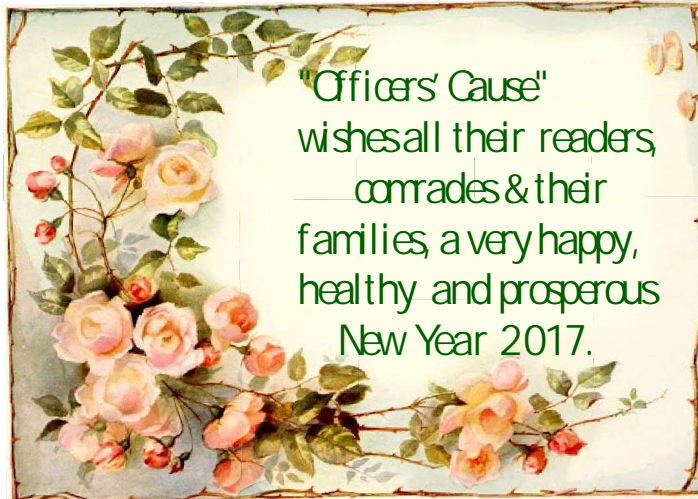
10. So far as the present case is concerned, the controversy involved is as to whether the petitioner was entitled for the relief of reinstatement or was liable to be compensated in lieu of reinstatement.

TIME AND TIDE WAIT FOR NONE

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The Labour Court while declining the relief of reinstatement has held that the petitioner was fighting his case for the last 12 years and during the intervening period technology had undergone a sea change and he was not familiar with the new technology. Hence, the Labour Court held that in lieu of reinstatement, petitioner was liable to be compensated by awarding him lump-sum compensation to the tune of ` 50,000/-. However, the opinion of the Labour Court that the petitioner was not familiar with the new technology was without any basis. There is nothing on record to suggest that the petitioner would not be able to perform the duties of a Welder. The certificates issued by Maruti Udyog Limited qua training period and the certificate that the petitioner had been engaged as an apprentice in the trade of Turner were duly proved on record. Since in the present case, the Labour Court has disallowed

the relief of reinstatement on imaginary grounds, the impugned award of the Labour Court to the extent whereby relief of reinstatement has been declined to the petitioner, is liable to be set aside. Petitioner has given up the claim for back-wages.



11. Accordingly, the award dated 18.9.2013 (Annexure P-I) passed by the Labour Court is modified to the extent that petitioner is entitled for reinstatement with all consequential benefits but without back-wages. Respondent No. 2 would be entitled to seek refund of the amount deposited by it with the executing authority in pursuance to the award Annexure P-1

Petition stands disposed of accordingly.

Petition disposed of.

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