From the Desk of Editor

KNOWLEDGE, SKILL, COMMITMENT, RESILIENCE; LET ALL DEFINE OUR PATH TO PACIFICATION.

It has been over decades now that the National Academy of Trade Union Research and Education (NATURE) evolved and since then has been devoting itself to equip and empower Defence Representatives (DR) across the circles. The mission carried out in quest of our commitment to offer the best to our members with sharpening of skills, tools and knowledge that considered indispensable for a Defence Representative in performance of his task of bequeathing justice to our members in distress and at the same time uphold the essence of fairness and ensure meticulous dispensation of Natural Justice.

A domestic enquiry follows a process through which employees' rights are protected. It also necessarily is a tool to cleanse the system and make the organization bug free. To accomplish the multifaceted objectives of the disciplinary set-up of an organization, the domestic enquiry is conducted in three phases: pre-enquiry preparation, the enquiry itself, and post-enquiry actions. Each of the stages demand a rigorous set of roles to be played by the Defence Representatives' and it becomes imperative for him to earn mastery in every phase of his performance to ensure that the rule of law prevails and justice does not remain a word of dictionary but bedecked in the essence of fairness and jurisprudence.

However, it remains a matter of concern to see the emergence of a trend where pre-conceived notion on the part of the authorities prevails and justice and fairness takes a back seat. Such draconian trend we need to nip at the bud or else the confidence level of our officers shall meet the lowest ebb and the much-desired goal of achieving a virtuous system remain a far cry. It therefore becomes the responsibility of the Defence Representatives to stand steadfast and ensure that the fundamental tenets of domestic enquiries are not violated and essence of fairness is not compromised with and to do that, the only way forward is to sharpen one's skill and stand resolute with unflinching conviction.

Other perils that emerged from discussion and shared experiences have been the instances of procedural lapses which nowadays has become colossal and rampant through:

(I) The denial of document verification to the charge-sheeted officer (CSO),

(II) Acceptance of documents without verifying with the original

(iii) Introduction of documents by mere holders instead of their authors, denying the fundamental right to cross-examination.

(IV) The practice of Presenting Officers introducing documents instead of Prosecution/Management Witnesses

(V) Conduct of ex-parte hearings without affording reasonable opportunity to the CSO,

(VI) Selective or incomplete recording of enquiry proceedings,

(VII) Unjustified denial of adjournments, and last but not the least,

(VIII) Outright bias by Inquiring Authorities/Enquiry Officers which are routine and rampant. Such experiences however are mere illustrative and fall short of being exhaustive.

Another baffling part lies with the Disciplinary Authorities' noncompliance in terms of issuing of "speaking orders." Such orders are preordained to provide reasoned and elaborate justification for disciplinary actions but sickeningly so often than not it falls short. They fail or deny to articulate as to why the authority disagrees with the CSO's logic, oral testimony, and documentary evidences in hand. At times it seems as if their particular assignment confers them with the license to kill and they walk extra miles to feed their notion which is preconceived and fate of a victim, as pre-determined.

It is what came from the shared experiences, the Disciplinary Authorities neglect to justify the imposed penalty and fail to frame clarity regarding the impacts of the penalty on increments, career progression, and financial aspects which further erodes the integrity of the disciplinary process.

The role of Defence Representatives thus extends beyond the routine job of extending defence, but it is wide-ranging and holistic. Defence Representatives are the breastplates of fair play and protector of natural justice and are responsible for safeguarding the cardinal principles throughout different phases of a domestic enquiry process. Unless Defence Representatives endure vigilance, unless they are knowledgeable, and well-informed, these procedural lapses will persevere and render the entire process of jurisprudence a mere formality and mockery of fair play and mimicry of jurisprudence. The law of Natural Justice shall remain a letter well printed in the pages of law books, until we drag it out to the court room and make the blind unfolded to see the invincible spirit of fairness and justice embedded in the very essence of ours being human.■

[2024 (181) FLR 1032]
(CALCUTTA HIGH COURT)
ARINDAM MUKHERJEE, J.
W.P.A. No. 655 of 2018
March 19, 2024
Between
ASHOK KUMAR PODDAR
and
STATE BANK OF INDIA and others

Employees' Provident Funds and Miscellaneous Provisions Act, 1952—Section 7-A—Order of freezing bank account of petitioner—Challenged in present writ petition—Respondent No. 7 company went into liquidation and a claim of approx. 22 crores was made by EPF authorities before the NCLT, Bengaluru—NCLT considered the claim and allowed it to the extent of approx. 20 crores and said amount has been received by the EPF authorities—Once the additional demand by EPF authorities has been considered and negated by the NCLT, the same demand cannot be made again and again by them —SBI directed to de-freeze the account of the petitioner—Petition disposed of. [Paras 7 to 9]

By the said order while considering the application being I.A. No. 404 of 2022, the NCLT has taken note of the amount claimed by the EPF Authorities, the amount allowed by the Liquidator as also the additional amount. It was clearly held that the additional demand raised by the Employees' Provident Fund Organization that is EPFO is not admissible and allowable. The application, being IA 404 of 2022 was accordingly dismissed. This order has not been challenged as yet and should be taken to have achieved finality.

The balance claimed by deducting ₹ 20,58,09,617/- for ₹ 22,89,67,613/- and the interest from 10 th June, 2022 till 2 nd June, 2023 has been considered by the said authority and has been specifically negated. The same claim cannot be made again and again when competent forum dealing with the liquidation proceedings have turned down the same without having assailed the order dated 2 nd June, 2023, in accordance with law. The NCLT is also a fact finding forum and as such all factual aspects of the claim of the

EPFO has been placed and considered resulting in specific refusal of the same. Taking advantage of this proceedings being one before a different forum cannot be entertained once the same has been gone into.

Counsel for the Petitioners : Soumya Majumder, Chayan Gupta, P. Bandyopadhyay, S. Nandy, Deepankar Thakur and Gyan Prakash.

Counsel for the Respondents : Anil Kumar Gupta, Rittick Choudhury and Shoham Sanyal.

JUDGMENT

ARINDAM MUKHERJEE, J. — The writ petition was filed on 10th January, 2018 challenging a recovery proceedings by which a sum of ₹4,19,43,881/- was directed to be recovered by the Recovery Officer vide order dated 14 th December, 2017 for a default on the part of the establishment, M/s. Falcon Tyres Limited, Mysore , (respondent No. 7) having the Code KN/6707, which resulted initiation of a proceedings under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (in short, EPF & MP Act). By the said order, the said sum of ₹4,19,43,881/- was directed to be recovered from a savings bank account bearing No. 32899201231 maintained with the State Bank of India or any other account maintained with the said bank. Prior to issuance of the said order, the operation of the subject bank account was freezed by a prohibitory order dated 28 th June, 2016. The company-Falcon Tyres Limited had gone into liquidation on 30 th December, 2019 by virtue of an order of the adjudicating authority in a proceedings filed under the Insolvency and Bankruptcy Code, 2016 (in short, IBC). One Shri Shivadutt Bannanje was appointed as a Liquidator of the Corporate Debtor. The EPF Authorities lodged a claim before the said Liquidator on 10 th June, 2022. The claim was for an aggregate sum of ₹ 22,89,67,613/- which was said to be due on 10 th June, 2022. The principal claim as appears from the said statement of claim at page 248 of the supplementary affidavit affirmed by the petitioner on 25 th January, 2024 is for ₹ 4,19,43,881/- for the period 12/2013 to 01/2015. The balance amount is on account of interest and penalty. The supplementary affidavit affirmed by the petitioner on 24 th January, 2024 is not on record but a copy thereof has been served

on the respondents. A copy of the supplementary affidavit affirmed by the petitioner on 24 th January, 2024 as made over to Court is retained with the records.

2. The Liquidator has considered the claim of the EPF Authorities and allowed a total claim of ₹ 20,58,09,617/-. The claim as allowed by the Liquidator was approved by the National Company Law Tribunal (NCLT), Bengaluru Bench by an order dated 2 nd June, 2023 passed in C.P. (IB) No. 14/BB/2017 by which several interlocutory applications were disposed of. This amount was received by the EPF Authorities from the Liquidator from out of the assets of the company in liquidation on 20 th December, 2023.

3. The writ petitioner says that the savings bank account, bearing No. 32899201231 and maintained with the State Bank of India Ballygunge Park Branch is a joint account of the petitioner and the respondent Nos. 8, 9 and 10. The said bank account, according to the petitioner, has no nexus with the establishment, Falcon Tyres Limited, the respondent No. 7 in this proceedings. The petitioner says that the entire amount receivable by the EPF Authorities has been quantified by the Liquidator, approved by the NCLT, Bengaluru Bench and paid in full as on 20 th December, 2023 and as such, nothing is due and recoverable from such account. The writ petitioner, therefor, prays for de-freezing the said bank account and disposed of the writ petition as nothing further requires to be adjudicated.

4. The concerned bank account as appears from the order of the Recovery Officer dated 14 th December, 2017 had a balance sum of ₹ 6,51,93,094/-. The balance, according to the petitioner, as per the statement for the period dated 10 th January, 2007 to 10 th July, 2007 was ₹ 5,25,93,851/-.

5. The respondent Nos. 8, 9 and 10, being the other joint account holder support the cause of the petitioner on the ground that the entire provident fund dues with interest and penalty has been duly received by the authorities on 28 th December, 2023.

6. The EPF Authorities objected to such prayer. By placing a letter dated 16 th January, 2024, issued by the Regional Provident Fund Commissioner-II, Regional Office, Mysore, learned advocate

representing the PF Authorities submits that a sum of ₹1,35,03,477/- is recoverable as interest from 10 th June, 2022 when the claim was lodged and 28 th December, 2023 when the final payment was received in view of the provisions of Section 7-Q of the EPF & MP Act. The EPF Authorities also say that they are entitled to receive the balance claim by deducting ₹ 20,58,09,617/- from ₹ 22,89,67,613/- and as such, the aggregate remaining amount for recovery is ₹ 3,66,61,473/-. The EPF Authorities say that this sum of ₹ 3,66,61,473/- is required to be secured by the petitioner if he wants his bank account to be made operational/de-freezed.

7. The same claim was raised by the EPF Authorities before the NCLT, Bengaluru Bench by filing an application, being I. A. No. 404 of 2022 which was disposed of by an order dated 28 th June, 2023. By the said order while considering the application being I.A. No. 404 of 2022, the NCLT has taken note of the amount claimed by the EPF Authorities, the amount allowed by the Liquidator as also the additional amount. It was clearly held that the additional demand raised by the Employees' Provident Fund Organization that is EPFO is not admissible and allowable. The application, being IA 404 of 2022 was accordingly dismissed. This order has not been challenged as yet and should be taken to have achieved finality.

8. The claim for securing a sum of ₹ 3,66,61,473/-, the particulars whereof is provided in the letter dated 16 th January, 2024 as raised herein, therefor, was raised before an authority in seisin of the liquidation proceedings to the extent of the balance claimed by deducting ₹ 20,58,09,617/- for ₹ 22,89,67,613/- and the interest from 10 th June, 2022 till 2 nd June, 2023 has been considered by the said authority and has been specifically negated. The same claim cannot be made again and again when competent forum dealing with the liquidation proceeding have turned down the same without having assailed the order dated 2 nd June, 2023, in accordance with law. The NCLT is also a fact finding forum and as such all factual aspects of the claim of the EPFO has been placed and considered resulting in specific refusal of the same. Taking advantage of this proceedings being one before a different forum cannot be entertained once the same has been gone into. The date of initiation of the liquidation proceedings has been clearly notified in the order dated 2 nd June, 2023 and any claim beyond that date has also been

specifically negated.

9. In the aforesaid facts and circumstances, there is no merit in the arguments advanced by the EPFO. The State Bank of India is, therefor, directed to withdraw, cancel and/or rescind any direction given for de-freezing the savings bank account, bearing No. 32899201231, maintained jointly by the petitioner and the respondent Nos. 8, 9 and 10 with the State Bank of India Ballygunge Park Branch issued under the instructions of the EPF Authorities. Any direction for de-freezing the savings bank account in question given by the EPF authorities is also set aside in the facts and circumstances of the case by recording accord and satisfaction of the claim of the EPF authorities.

10. The bank account in question should be made operational within 24 hours from service of a server copy of the instant order.

11. All parties including the State Bank of India , the EPF authorities shall act on a basis of a server copy of this order downloaded from the official website of this Court without insisting upon production of a certified copy thereof.

12. Since this writ petition is heard on affidavits and order of the NCLT, the claim lodged by EPFO and the direction of the Liquidator has been considered as part of the supplementary affidavit, nothing further remains to be adjudicated in the writ petition. The same is accordingly is disposed of.

13. Allegations, if any, contained in the supplementary affidavit affirmed by the petitioner on 24 January, 2024 are deemed to have not been admitted by the EPF Authorities.

14. The disposal of this writ petition will also dispose of all the applications filed in the said writ petition which are pending for adjudication.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.■

Petition Disposed Of.

[2024 (182) FLR 147]
(UTTARAKHAND HIGH COURT)
Ms. RITU BAHRI, C.J. and RAKESH THAPLIYAL, J.
W.P. (M/B) No. 75 of 2023 (1) and 26 Connected Cases
April 29, 2024
Between
BABU RAM KASHYAP
and
CANARA BANK (ERSTWHILE SYNDICATE BANK)

Payment of Gratuity Act, 1972-Section 7-Claim for grant of gratuity-Gratuity was awarded but the claim of petitioner for additional sum of 45 days for each completed year after completion of service of 30 years was not allowed-Gratuity was calculated for a period of 33 years only against service of 36 years rendered by petitioner-Controlling Authority and Appellate Authority did not give the benefit of service claimed by petitioner-Hence, present petition- Held, Canara Bank was bound by its Regulations-Any Officer who had completed more than thirty years of his service was entitled to get gratuity amount for an additional amount at the rate of 45 days for each completed year of service beyond thirty years -Writ petitions of employees allowed and all writ petitions of Bank dismissed-All writ petitions decided accordingly. [Paras 20 to 34]

The judgment of Rajasthan High Court is applicable to the facts of the present case, which made it clear that for the purpose of calculation of gratuity beyond thirty years, which is an exception, the additional amount at the rate of one half month's pay for each completed year of service beyond 30 years has to be calculated. The Rajasthan High Court has held that the officers, who have completed more than thirty years of service, shall be eligible by way of gratuity for the additional amount @ one half month's pay for each completed service beyond thirty years. Thus, once the statute is very clear, there is no question of expanding the meaning.

In the present case as well, as per the proviso to Regulation 46(2)

of the SBOSR, if an officer has completed more than thirty years he is eligible by way of gratuity for an additional amount at the rate of one half month's salary for each completed year of service beyond thirty years. Hence, for the purpose of calculation of gratuity, the salary of 45 days has to be taken into account for each completed year beyond thirty years.

The second ground taken by the writ petitioner is that the payment of interest could not be reduced from 10% to 5%. Even on this aspect, the Hon'ble Supreme Court in Y.K. Sigla v. Punjab National Bank and others (Civil Appeal No. 9087 of 2012, decided on 14.12.2012) and D.D. Tiwari v. Uttar Haryana Bizli Vitran Nigam Ltd. (Civil Appeal No. 7113 of 2014) and Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota v. Shukla & Brothers , 1 has consistently held that the rate of interest cannot be reduced once it was granted by the prevalent rules of banking. Hence, in the present case, the petitioners (employees) are entitled for interest at the rate of 7%.

Counsel for the Petitioner : Vipul Gupta, A.M. Saklani, and Siddharth Sah.

Counsel for the Respondent : Ashish Joshi and Shashank Upadhyay.

JUDGMENT

Ms. RITU BAHRI, C.J.- Since a common issue is involved in this bunch of writ petitions, it is being disposed of by a common judgment.

2. For the sake of brevity, the facts of WPMB No. 75 of 2023, Babu Ram Kashyap v. Canara Bank (Erstwhile Syndicate Bank) are being taken-up for consideration.

3. The petitioner has challenged the order dated 29.11.2021 passed by the Appellate Authority / Deputy Chief Labour Commissioner (Central), Dehradun under Payment of Gratuity Act, 1972 (hereinafter referred to as the PG Act).

4. The petitioner preferred a claim for grant of Service Gratuity

after seeking VRS on 10.11.2014 in terms of the Bank after completing active service of 36 years 3 months and 12 days, but his claim for gratuity was not decided and he approached the Controlling Authority for issuing appropriate direction to the Bank for deciding the claim. The Bank decided the claim vide order dated 06.05.2019 (Annexure PA-1) and an amount of ₹ 11,87,100.00 (₹ Eleven Lacs Eighty Seven Thousand One Hundred Only) was granted as the Service Gratuity. It was stated that it has been calculated as per Syndicate Bank Officers Service Regulations, 1979 (for short "SBOSR"). The calculation of the gratuity has been done by observing in the order dated 06.05.2019 as under:-

> " For purpose of calculating Gratuity as per Syndicate Bank Officers Service Regulation, the eligible component of pay are: **Basic Pay + Stagnation Pay + Basic components of EPP + PQP + other allowances** (ranking for PF only) shall be considered.
>
> Further we wish to inform you that "The Regulation 46(2) of Syndicate Bank (Officers) Service Regulation, 1979, read as the amount of gratuity payable to Officer shall be one month "pay" for every completed year of service subject to maximum of 15 months of pay. Provided that where an officer has completed more than 30 years of service, he shall be eligible by way of gratuity for additional amount @ on half of months pay for each completed year of service beyond 30 years. Therefore, it is relevant to peruse the definition of **"Pay"** and **"salary"** which defines **"Pay"** as basic pay including stagnation increment and **"Salary"** means the aggregate of the pay and DA."

5. The Bank has, vide impugned order dated 06.05.2019, declined the claim of 45 days additional amount of pension for each completed year of service after completion of 30 years' service and has allowed only 15 days additional amount for each completed year of service after completion of 30 years' service by the officer. Against the impugned order dated 06.05.2019 (Annexure P-1), the petitioner approached the Controlling Authority after registration. The registered case number is Case No. D-36(32)/2019- ALC.

6. As per the order, the gratuity was awarded to the tune of ₹ 15,22,042/-. The claim of the petitioner for additional sum of 45 days for each completed year after completion of service of 30 years was not allowed and a final order was passed by the Controlling Authority, which is as under :

> **"Final Order"**
> In view of the above mentioned legal points, I am of considered opinion that the appellant Sh. Babu Ram Kashyap is entitled to receive total gratuity of ₹ 15,22,042/- (Rupees Fifteen Lakhs Twenty Two Thousand & Forty Two Only) as the higher amount of gratuity as per the service Regulations of the bank. As the applicant has already received ₹ 11,87,100/-, he need to be paid further amount of gratuity equivalent to ₹ 3,34,942/- (Rupees Three Lakhs Thirty Four Thousand Thirty & Nine Hundred & Forty Two Only), by the Respondent (The General Manager, Syndicate Bank, Head Office, Manipal) within 30 days from receipt of this order along with simple interest @ 7% p.a. from 12.10.2014."

7. With respect to length of service, the gratuity was calculated for a period of three years beyond 30 years i.e. till 33 years. The petitioner, in the present case, has put in service of 36 years, three months and twelve days. The petitioner is also aggrieved that the benefit of six of years of service beyond thirty years has been wrongly denied.

8. The petitioner was communicated the claim order vide order dated 28 th February, 2020 (Annexure PA-2). Against the order dated 28.02.2020, the petitioner filed an Appeal under Section 7(7) of PG Act (Annexure P-3). The Bank also filed an Appeal against the order dated 28.02.2020 passed by the Controlling Authority. Both the Appeals were decided by the Appellate Authority by a common order dated 29.11.2021 (Annexure P-4).

9. In the impugned order, while interpreting Clause-46 of SBOSR, the Appellate Authority held as under :

> "Now after noting the above findings, I conclude that the

respondent is entitled to be paid additional amount of gratuity over and above what has already been paid to him but not as per calculation arrived at by the CA. The CA should include the component of DA only with Basic Pay and calculate the amount of payable gratuity accordingly. The CA should further calculate interest @ 5% only upon the difference of amount of gratuity paid and payable."

10. The Appellate Authority has not given the benefit of calculation of gratuity beyond thirty years of service i.e. 36 years three months and twelve days, which was given by the Controlling Authority as per Regulation 46 of Syndicate Bank (Officers') Service Regulations, 1979. Hence, this writ petition has been filed now. The challenge has been made on two grounds:-

(I) The CA reduced the interest from 7% p.a. to 5% p.a. which is against the Circular of the Reserve Bank of India dated 6 th March, 2020 (Annexure No. 5 to the writ petition), which prescribes payment of interest at the rate of 10% till the date of making payment.

(II) Clause 46 of SBOSR has been misread and misinterpreted by only including Dearness Allowance as part of pay and not including Emoluments as part of pay.

INTEREST :

11. Counsel for the petitioner has referred to the judgments of the Hon'ble Supreme Court in Y.K. Sigla v. Punjab National Bank and others (Civil Appeal No. 9087 of 2012, decided on 14.12.2012) and D.D. Tiwari v. Uttar Haryana Bizli Vitran Nigam Ltd. (Civil Appeal No. 7113 of 2014), wherein the Hon'ble Supreme Court has held that Controlling Authorities (CA) have no discretion to award interest on delayed payment other than the rate of interest as is provided under the statute in terms of sub-section (3-A) of Section 7 of Payment of Gratuity Act, 1972.

12. In another judgment of the Hon'ble Supreme Court in Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota v. Shukla & Brothers , 2 it has been held that the rate

of interest cannot be reduced by the Controlling Authority once it was granted as per the prevalent rules of banking.

DEFINITION OF WORD 'PAY' :

13. The Hon'ble Supreme Court in the case of The Regional Provident Fund Commissioner (II), W.B. v. Vivekanand Vidhya Mandir and others , (Civil Appeal No. 6221 of 2011, decided on 28.02.2019) held that the basic principle is where the wage is universally, necessarily and ordinarily paid to all employees across the board, such emoluments are basic wages. It is not denied by the respondent-Bank that Special Allowance is being paid to all the officers working in the Bank at the rate based on their scale of pay. Therefore, exclusion of Special Allowance from the component of Basic Pay is not permissible for the purpose of calculating gratuity. Therefore, the same shall be taken as part of basic pay for calculating the gratuity payable to the officers of the respondent-Bank but no reason has been assigned by the learned AA with regard to exclusion of Special Allowance. In the said judgment with regard to addition of Dearness Allowance, the Hon'ble Supreme Court has observed as under :

"9. Basic wage, under the Act, has been defined as all emoluments paid in cash to an employee in accordance with the terms of his contract of employment. But it carves out certain exceptions which would not fall within the definition of basic wage and which includes dearness allowance apart from other allowances mentioned therein. But this exclusion of dearness allowance finds inclusion in Section 6. The test adopted to determine if any payment was to be excluded from basic wage is that the payment under the scheme must have a direct access and linkage to the payment of such special allowance as not being common to all. The crucial test is one of universality. The employer, under the Act, has a statutory obligation to deduct the specified percentage of the contribution from the employee's salary and make matching contribution. The entire amount is then required to be deposited in the fund within 15 days from the date of such collection. The aforesaid provisions fell for detailed consideration by this Court in Bridge & Roof

(supra) when it was observed as follows:-

"7. The main question therefore that falls for decision is as to which of these two rival contentions is in consonance with section 2(b). There is no doubt that "basic wages" as defined therein means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash. If there were no exceptions to this definition, there would have been no difficulty in holding that production bonus whatever be its nature would be included within these terms. The difficulty, however, arises because the definition also provides that certain things will not be included in the term ***"basic wages",*** and these are contained in three clauses. The first clause mentions the cash value of any food concession while the third clause mentions that presents made by the employer. The fact that the exceptions contain even presents made by the employer shows that though the definition mentions all emoluments which are earned in accordance with the terms of the contract of employment, care was taken to exclude presents which would ordinarily not be earned in accordance with the terms of the contract of employment. Similarly, though the definition includes ***"all emoluments"*** which are paid or payable in cash, the exception excludes the cash value of any food concession, which in any case was not payable in cash. The exceptions therefore do not seem to follow any logical pattern which would be in consonance with the main definition.

8. Then we come to clause (ii). It excludes dearness allowance, house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment. This exception suggests that even though the main part of the definition includes all emoluments which are earned in accordance with the terms of the contract of employment, certain payments which are in fact the price of labour and earned in accordance with the terms of the contract of employment are excluded from the main part of the definition of ***"basic wages".*** It is undeniable that the exceptions contained in clause (ii) refer to payments which are earned by an employee in accordance with the terms of his contract of employment. It was admitted by counsel on both sides before us

that it was difficult to find any one basis for the exceptions contained in the three clauses. It is clear however from clause (ii) that from the definition of the word ***"basic wages"*** certain earnings were excluded, though they must be earned by employees in accordance with the terms of the contract of employment. Having excluded ***"dearness allowance"*** from the definition of "basic wages", section 6 then provides for inclusion of dearness allowance for purposes of contribution. But that is clearly the result of the specific provision in section 6 which lays down that contribution shall be 6-1/4 per centum of the basic wages, dearness allowance and retaining allowance (if any). We must therefore try to discover some basis for the exclusion in clause (ii) as also the inclusion of dearness allowance and retaining allowance (for any) in section 6. It seems that the basis of inclusion in section 6 and exclusion in clause (ii) is that whatever is payable in all concerns and is earned by all permanent employees is included for the purpose, of contribution under section 6, but whatever is not payable by all concerns or may not be earned by all employees of a concern is excluded for the purpose of contribution. Dearness allowance (for examples is payable in all concerns either as an addition to basic wages or as a part of consolidated wages where a concern does not have separate dearness allowance and basic wages. Similarly, retaining allowance is payable to all permanent employees in all seasonal factories like sugar factories and is therefore included in section 6; but house rent allowance is not paid in many concerns and sometimes in the same concern it is paid to some employees but not to others, for the theory is that house rent is included in the payment of basic wages plus dearness allowance or consolidated wages. Therefore, house rent allowance which may not be payable to all employees of a concern and which is certainly not paid by all concern is taken out of the definition of ***"basic wages",*** even though the basis of payment of house rent allowance where it is paid is the contract of employment. Similarly, overtime allowance though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the contract of employment; but because it may not be earned by all employees of a concern it is excluded from "basic wages". Similarly, commission or any other similar allowance is excluded from the definition of "basic wages" for commission and other allowances are not necessarily to be found in all concerns; nor are they necessarily

earned by all employees of the same concern, though where they exist they are earned in accordance with the terms of the contract of employment. It seems therefore that the basis for the exclusion in clause (ii) of the exceptions in section 2(b) is that all that is not earned in all concerns or by all employees of concern is excluded from basic wages. To this the exclusion of dearness allowance in clause (ii) is an exception. But that exception has been corrected by including dearness allowance in section 6 for the purpose of contribution. Dearness allowance which is an exception in the definition of "basic wages", is included for the propose of contribution by section 6 and the real exceptions therefore in clause (ii) are the other exceptions beside dearness allowance, which has been included through section 6."

14. Original Pension Regulation of 1995 is still in force and no amendment has yet been made in such Regulation regarding exclusion of Special Allowance. The definition of 'Pay' as defined in Reg. 3(k) is inclusive definition, which means that the basic pay not only includes stagnation increment, but also other component of basic pay as held by the Hon'ble Apex Court in Vivekanand Vidyamandir case (supra) and the Madhya Pradesh High Court in Madhyanchal Gramin Bank and others v. All India Gramin Bank Pensioners Organisation Unit (WA Nos. 1318 of 2018, 1316 of 2018 & 1317 of 2018, decided on 26.02.2019).

15. In a recent judgment rendered by the High Court of Kerala at Ernakulam in Muralee Mohanan K.T. and others v. Corporation Bank and others , W.P. (C) No. 32386 of 2015 (W), decided on 15.10.2019), the Kerala High Court condemned the exclusion of special allowance payable to bank employees / officers. For ready reference, the relevant Paragraphs 8 and 9 of the said judgment are reproduced herein below :

> "8. However, in Bank of Baroda v. G. Palani and others, the Apex Court drew a distinction where the aggrieved employees are officers who retired from the Bank in question. It was held that the provisions of the Industrial Disputes Act, 1947 are not applicable to such officers. It was held that the Pension Regulations framed under Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act,

> 1970 are statutory in character. In the circumstances, in view of the definition of average emoluments at Regulation 2(d), Pay at Regulation 2(s) and the provision for calculating pension at Regulation 35, it was held that employees are to be paid pension as provided in the Regulations and no reduction from the same is possible, relying on the provisions of a Joint Note, which has no statutory force, unless the Regulations are appropriately amended. It was held in paragraph 28 of the judgment as follows:-
>
> "28. Thus joint note/agreement could not have been in derogation of the existing statutory Regulations and regulation 2(s)(c) could not have been given retrospective effect. It is also apparent from the decisions of this Court in P. Sadagopan v. Food Corporation of India , 3 that executive instructions cannot be issued in derogation of the statutory Regulations. The settled position of law is that no Government Order, Notification or Circular can be a substitute of the statutory rules framed with the authority of law. In Dr. Rajinder Singh v. State of Punjab and others , 4 this Court had reiterated that the settled position of law is that no government order, notification or circular can be a substitute of the statutory rules framed with the authority of law. In K. Kuppuswamy and another v. State of Tamil Nadu , 5 this Court has observed that statutory rules cannot be overriden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules, does not mean that the rule stood obliterated. Till the rule is amended, the rule applies."

The amendment to Regulation 2(s) of the Pension Regulations was struck down as arbitrary and repugnant to Regulations 2(d), 35 and 38(1) and (2).

9. In the above view of the matter, I am of the opinion that the prayers sought for in the writ petition are liable to be allowed. The petitioners are entitled to pension in terms of the Pension Regulations especially Regulations 2(d) and 35 thereof. The respondents are directed to revise the basic pension of the petitioners in accordance with the provisions of the Corporation

Bank (Employees) Pension Regulation, 1995 by taking into account the Special Allowances introduced in Exhibit P-6 as part of pay for the purpose of Basic Pension. There will be a direction to the 2nd respondent to recalculate the commutation pension of the petitioners on the basis of the revised basic pension by including the special allowance introduced vide Exhibit P-6 and to refund the pension arrears recovered from the petitioners as per Exhibits P-5. P-5(a), P-5(b) and P-5(c). The necessary shall be done within a period of three months from the date of receipt of a copy of this judgment."

16. So far as inclusion of DA is concerned in the definition of 'Pay', both the CA as well as AA categorically held in view of binding precedents that DA shall be part of basic pay. There appears no illegality in such finding.

How the gratuity is to be calculated after serving for a period beyond thirty years :

17. Recently, the High Court of Rajasthan in Rajasthan Marudhara Gramin Bank, Jodhpur v. The Appellate Authority (S.B. Civil Writ Petition No. 7359 of 2019, decided on 16.10.2020) has considered this aspect of the matter and in the light of the facts narrated in Paragraph 4 has made its observation in Paragraph 22. Relevant Paragraphs 4 and 22 read as under :

> "4. The brief facts of the case as noticed by this Court are that all these writ petitions relate to the dispute of computation of gratuity of the retired Bank Officers. The petitioner bank is a Regional Rural Bank which has been constituted by amalgamation of Marudhara Gramin Bank and Mewar Anchalik Gramin Bank on 01.04.2014. The retired Bank Officers-private respondents filed their respective applications before the Controlling Authority under the Payment of Gratuity Act, 1972 claiming the differential amount of gratuity with interest with effect from 01.12.2017 based on the basic + dearness allowance + PQP + FPP components of the last pay drawn for the calculation of amount of gratuity payable to such officers. The petitioner-Bank vehemently objected their applications but the same were allowed and the petitioner-Bank was directed to pay the additional amount of gratuity along with simple interest at the rate of 10% with effect from 01.12.2017 till the date of payment made by the petitioner-Bank. The petitioner being aggrieved by the order of the Controlling Authority filed appeals under Section 7 sub-section (7) of the Payment of Gratuity Act 1972, before the Appellate Authority under the Payment of Gratuity Act, 1972 and Deputy Chief Labour Commissioner (Central), Ajmer . The petitioner being under a legal obligation deposited the difference of the amount to the Government before filing the appeals. The Appellate Authority partly allowed the appeals with a direction to pay lesser amount along with simple (31 of 83) [CW-7359/2019] interest at the rate of 10% per month with effect from 01.12.2017 only on the ground of the ratio of the monthly addition of gratuity after completion of 30 years while upholding the broader issue laid down by the Controlling Authority. The bank officers have also made cross-objections against the Appellate Authority's order in certain writ petitions whereby the calculations as per Clause 72(3) of the regulation have been made and reduced by the Appellate Authority and seeking of counting 30 days + 15 days i.e. one and a half months' salary for the basic computation.

22. In view of the above, the writ petitions are allowed. The impugned orders passed by the Appellate Authority are quashed and set aside and the orders passed by the Controlling Authority in the case of the contesting respondents are restored. Accordingly, the petitioner Bank is found not liable to pay any further amount towards gratuity to the contesting respondents as they admittedly received the amount of ₹ 10,00,000/- from the petitioner Bank immediately upon their superannuation." This Court is of the opinion that the judgment in Madhyanchal Gramin Bank (supra) rendered by the Hon'ble Madhya Pradesh High Court and upheld by the Hon'ble Apex Court is the correct view and also binding upon this Court on count of the same having been upheld by the Hon'ble Apex Court . Moreover, the Regulations of 2010 clearly define in Clause 2(1)(i) that emoluments means aggregate of salary and allowances and in Clause 2(1)(m) pay means basic pay drawn per month by the officer or employee in a pay scale including stagnation

increments and any part of the emoluments which may specifically be classified as pay under these Regulations. As per the Clause 72(1) of the Regulations, for the purpose of gratuity, an officer or employee shall be eligible either as per the provision of Payment of Gratuity Act, 1972 or as per the Sub-Regulation (2), whichever is higher and thus, for the beneficial legislation of a welfare law, the benevolent connotation ought to have been accepted by this Court. There is no reason why this Court should take a different view than the one taken by the Hon'ble Madhya Pradesh High Court and affirmed by the Hon'ble Apex Court . The cross-objections made by the Officers do not warrant any interference by this Court because on a bare reading (82 of 83) [CW- 7359/2019] of Clause 72(3) of the Regulations, it is clear that the Statute required the petitioner to pay half month's pay for each completed year of service beyond 30 years. Clause 72(3) of the Regulations reads as follows :

> "(3) The amount of gratuity payable to an officer or employee shall be one months pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay:
>
> Provided that where an officer or employee has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years:
>
> Provided that in respect of an officer the gratuity is payable based on the last pay drawn:
>
> Provided also that in respect of an employee pay for the purposes of calculation of the gratuity shall be the average of the basic pay (100%), dearness allowance and special allowance and officiating allowance payable during the 12 months preceding death, disability, retirement, resignation or termination of service, as the case may be."

Regulation 72(3) has an optimum gratuity prescribed upto maximum of 15 months' pay and the concession given is only for the officers who have completed more than 30 years of service by making them entitled for an additional amount of one half of month's pay for each completed year of service beyond 30 years, which is an exception to the maximum of 15 months' pay gratuity rule and thus, the exception has to be read strictly. It is thus clear that the Appellate Authority has rightly arrived at a conclusion that the Officers who have completed more than 30 years of service shall be eligible by way of gratuity for the (83 of 83) [CW-7359/2019] additional amount at the rate of one half month's pay for each completed service beyond 30 years. Thus, once the statute is clear, there is no question of expanding the meaning. It is one thing to choose one of the beneficial conditions amongst two and it is another thing to expand the ambit of benefits which are strictly prescribed. Accordingly, the cross objections are dismissed. In light of the aforementioned observations, the legal issues, facts and grounds raised by the petitioners do not call for interference by this Court. Accordingly, all these writ petitions are dismissed and the orders of the Appellate Authority are upheld. The consequential benefits shall be released to the respondent officers within a period of three months starting from 1st December, 2020. All pending applications stand dismissed accordingly. All the interim orders stand vacated."

18. The judgment of the Rajasthan High Court has been upheld by the Hon'ble Supreme Court.

19. In the facts of the present case, as per proviso to Regulation 46(2) of the SBOSR, the calculation of the gratuity is done. Regulation 46(2) of the SBOSR reads as under:-

> **" Gratuity:**
>
> 20.46. (2) The amount of gratuity payable to an officer shall be one month's pay forevery completed year of service, subject to a maximum of 15 months' pay.
>
> Provided that where an officer has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years.

Provided further that pay for the purpose of Gratuity for an officer who ceased to be in service during the period 1-7-1993 to 31-101994 shall be with regard to scale of pay as specified in sub-regulation (1) of Regulation 4.

Provided also that pay for the purpose of Gratuity of an Officer who ceased to be in service during the period 1-4-1998 to 31-101999 shall be with regard to scale of pay as specified in sub-regulation (2) of Regulation 4.

Note :
If the fraction of service beyond completed years of service is 6 months or more, gratuity will be paid pro-rata for the period."

20. The judgment of Rajasthan High Court is applicable to the facts of the present case, which made it clear that for the purpose of calculation of gratuity beyond thirty years, which is an exception, the additional amount at the rate of one half month's pay for each completed year of service beyond 30 years has to be calculated. The Rajasthan High Court has held that the officers, who have completed more than thirty years of service, shall be eligible by way of gratuity for the additional amount @ one half month's pay for each completed service beyond thirty years. Thus, once the statute is very clear, there is no question of expanding the meaning.

21. In the present case as well, as per the proviso to Regulation 46(2) of the SBOSR, if an officer has completed more than thirty years he is eligible by way of gratuity for an additional amount at the rate of one half month's salary for each completed year of service beyond thirty years. Hence, for the purpose of calculation of gratuity, the salary of 45 days has to be taken into account for each completed year beyond thirty years.

22. In the writ petitions filed by the Canara Bank, counsel for the Bank has referred to the judgment of the Hon'ble Supreme Court in the case of Beed District Central Cooperative Bank Ltd. v. State of Maharashtra and others , 6 has been referred to on the preposition that when an Scheme of employer has been offered, the workman can opt for the best terms of Statute, and the nature of gratuity scheme and agreement of the parties cannot be changed subsequently to take better benefits under the Payment of Gratuity Act, 1972.

23. He has further referred to another judgment of the Calcutta High Court in Paschim Banga Gramin Bank and others v. Chinmay Majumdar & others (F.M.A. 657 of 2020, decided on 04.02.2021; wherein the Calcutta High Court has held that once the employee has accepted the terms and conditions of the Regulations for the purpose of definition of the word 'pay' and calculation of gratuity, then they are restrained from seeking modification of definition of the word 'pay' and mode of calculation of gratuity.

24. He further states that in this judgment, the respondents were claiming the benefit of Dearness Pay to be treated as part of pay. However, the High Court allowed the appeal filed by the Bank and restricted the meaning of the words as per the Regulations of the Bank. The Regulation made a clear distinction between an officer and an employee and in the matter of calculation of gratuity. Regarding the employees, the 'basic pay' included only allowances and not 'dearness allowance' and the appeal of the Bank was allowed.

25. In the present case, as per the impugned order dated 17 th December, 2021 (Annexure-4), the Appellate Authority had partly allowed the Appeal of Shri Babu Ram Kashyap by including Basic Pay and DA for the purpose of calculation of gratuity and awarded 5% interest.

26. In the judgment of the Hon'ble Supreme Court in the Regional Provident Fund Commissioner (II) W.B. (supra), while dealing with the employees of the Bank, it has been held that the definition of 'pay' was an inclusive definition, which means that the Basic Pay not only includes stagnation increment but also other component of the Basic Pay, i.e. the Special Allowance. Similarly, the Madhya Pradesh High Court in Madhyanchal Gramin Bank and others (supra) and the Kerala High Court in Muralee Mohanan K.T. and others (supra) have held that exclusion of Special Allowances payable to the bank employees / officers for calculating gratuity was not correct, and the petitioners were held entitled to pension in terms of the Pension Regulations by taking into account the Special Allowances.

27. In the present case, as per the Regulations of the Bank, the definition of 'emoluments' is in Regulation 3(e), which reads as under :

"(e) "Emoluments" means the aggregate of salary and allowances if any."

28. The definitions of words 'pay' and 'salary' are given in Regulation 3(k) and Regulation 3(l) of the Regulations of the Bank respectively, which read as under:-

"(k) "Pay' means basic pay including stagnation increment.

(l) "Salary" means the aggregate of the pay and dearness allowance."

29. Applying the ratio of the above said judgments, the definition of 'pay' is inclusive of special allowances, emoluments, dearness allowance and stagnation increments. Hence, the petitioners (employees) are entitled to include the Special Allowances as part of Pay for the purpose of calculation of gratuity by including Dearness Allowance as well.

30. The second ground taken by the writ petitioner is that the payment of interest could not be reduced from 10% to 5%. Even on this aspect, the Hon'ble Supreme Court in Y.K. Sigla v. Punjab National Bank and others (Civil Appeal No. 9087 of 2012, decided on 14.12.2012) and D.D. Tiwari v. Uttar Haryana Bizli Vitran Nig am Ltd. (Civil Appeal No. 7113 of 2014) and Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota v. Shukla & Brothers , 7 has consistently held that the rate of interest cannot be reduced once it was granted by the prevalent rules of banking. Hence, in the present case, the petitioners (employees) are entitled for interest at the rate of 7%.

31. The judgment, referred to by the counsel for the Canara Bank, which is Beed District Central Cooperative Bank Ltd. v. State of Maharashtra and others , 8 will not be applicable to the facts of the present case as in that case the Supreme Court was not examining the definitions of special allowances, emoluments, pay and salary of the Bank employees. It was examining the option exercised by an employee of the Bank. The Hon'ble Supreme Court was examining the provisions of the Banking Regulations, which had been opted by the employee at the time of joining the Co-operative

Bank. It was held therein that the employees, thereafter, could not claim the benefit of calculation of gratuity under the Payment of Gratuity Act, 1972.

32. The Canara Bank, in the present case, is bound by their Regulations for the purpose of calculation of gratuity and that is not being disputed by the Bank employees.

33. The judgment of the Calcutta High Court in Paschim Banga Gramin Bank and others v. Chinmay Majumdar & others , F.M.A. 657 of 2020, decided on 04.02.2021) cannot be made applicable in the facts of the present case as the Calcutta High Court in that case was dealing with the definition of 'pay' as per the Regulations with respect to officers and employees in the matter of calculation of gratuity and it was held that once the employee had accepted the entitlement under the Regulations, in that case, they could not claim the benefit of definition of 'pay' which was applicable to officers. Even this judgment is not applicable as in this judgment, the Calcutta High Court was not examining the definition of 'pay' for the purpose of calculation of gratuity and this aspect has been considered in detail in the judgment of the Hon'ble Supreme Court in The Regional Provident Fund Commissioner (II) W.B. v. Vivekanand Vidhya Mandir and others (Civil Appeal No. 6221 of 2011, decided on 28.02.2019), in the judgment of the Madhya Pradesh High Court in Madhyanchal Gramin Bank and others v. All India Gramin Bank Pensioners Organisation Unit (WA Nos. 1318 of 2018, 1316 of 2018 & 1317 of 2018, decided on 26.02.2019), the SLP against which was dismissed by the Supreme Court, and in the judgment of the Kerala High Court in Muralee Mohanan K.T. and others v. Corporation Bank and others (WP (C) No. 32386 of 2015 (W), decided on 15.10.2019).

34. All the writ petitions, filed by the employees, are being allowed, and a direction is given to the Bank to recalculate their gratuity after calculating the pay, including Dearness Allowance and emoluments, along with 7% interest. All the writ petitions filed by the Canara Bank are dismissed. ■

Petitions Allowed.

[2019 (163) FLR 768]
(UTTARAKHAND HIGH COURT)
RAMESH RANGANATHAN, C.J. and N.S. DHANIK, J.
Special Appeal No. 504 of 2019
May 27, 2019
Between
SANDEEP GHILDIYAL
and
STATE OF UTTARAKHAND and another

Constitution of India, 1950—Articles 226 and 12—2nd respondent is a company under Companies Act—Government of Uttarakhand does not own any share in company—Employees of company are governed by Industrial Employment (Standing Orders) Act, 1946 and U.P. Industrial Employment Model Standing Orders, 1991—2nd respondent is rightly held as not an instrumentality of State under Article 12 of Constitution—It is a private Limited Company carrying on business. [Para 14]

Counsel for the Appellant : Kartikey Hari Gupta.

Counsel for the Respondent B.S. Parihar , S.C.

JUDGMENT

RAMESH RANGANATHAN, C.J. —This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No. 934 of 2019 dated 25.4.2019.

2. The petitioner (appellant herein), an employee of the second respondent, invoked the jurisdiction of this Court seeking a writ of mandamus directing the second respondent to treat him as a permanent workman under section 3(a) of the Uttar Pradesh Industrial Employment Model Standing Orders, 1991 and to provide him full pay and allowances of the post of Traffic Manager from the date of successful completion of one year probation period, and from the date of completion of one year probation period, i.e.

1.5.2015 along with interest; and a writ of mandamus directing the second respondent to treat the services of the petitioner as permanent and regular from the date of completion of one year probation period, i.e. 1.5.2015, and to provide full wages along with interest.

3. The second respondent is a company incorporated under the Companies Act, 1956 and, admittedly, the Government of Uttarakhand does not own any shares in the share-capital of the said company. The employees of the second respondent-company are governed by the provisions of the Industrial Employment (Standing Orders) Act, 1946; and the Uttar Pradesh Industrial Model Standing Orders, 1991, made in terms of the Act, are applicable to the second respondent-Company. The petitioner invoked the jurisdiction of this Court contending that a writ petition would lie against the second respondent, since it discharges public functions.

4. In the order under appeal, the learned Single Judge observed that the second respondent was a private body, which did not fall within the meaning of the term ***"State"*** as defined under Article 12 of the Constitution of India; and, even otherwise, the appellant-writ petitioner was a workman who had a remedy before the Labour Court . On the ground that the appellant-writ petitioner has an alternative remedy, the writ petition was dismissed by the learned Single Judge reserving liberty for him to approach the appropriate forum. Aggrieved thereby, the present appeal.

5. Dr. Kartikey Hari Gupta, learned Counsel for the appellant-writ petitioner, would place reliance on the Memorandum and Articles of Association of the second respondent, as also on the provisions of the Industrial Employment (Standing Orders) Act, 1946, to contend that the functions discharged by the second respondent are in the nature of public functions; and a writ petition would lie against a body discharging public functions.

6. The provision, on which the appellant-writ petitioner, places reliance upon, is Paragraph 3(b) of the Memorandum of Association

of the second respondent. Paragraph 3 are the objects for which the 2 nd respondent was formed and, amongst its objects, are (in Clause 3(b)) to co-operate with Government authorities, and to supplement their efforts in the regulation of traffic, and in providing all possible comforts to the public.

7. The second respondent has, on its own accord, chosen to cooperate with Government authorities, and to supplement their efforts. That, by itself, would not make the second respondent an instrumentality of the State under Article 12 of the Constitution of India, nor can the second respondent be treated as a public body discharging public functions merely because it has on its own stated, in its Memorandum and Articles of Association, that it would co-operate with the Government and would supplement their efforts in regulating traffic.

8. The other provision, which is relied upon by Dr. Kartikey Hari Gupta, learned Counsel for the appellant-writ petitioner, is under the Industrial Employment (Standing Orders) Act, 1946. It is no doubt true that the provisions of the said Act have been made applicable to the second respondent also. Even private sector companies, which are industries, are governed by the provisions of the Industrial Employment (Standing Orders) Act, 1946; and, in the absence of any certified Standing Order being made with respect to the said companies, the Model Standing Orders, prescribed under the Act, would apply to employees working in such industries.

9. The mere fact that the provisions of the 1946 Act are made applicable to employees of an industry would not make it an instrumentality of the State under Article 12 of the Constitution of India, or require it to be treated as a public body discharging public functions. The distinction between a body created by a Statute, and a body governed by the provisions of a Statute, must be borne in mind. The second respondent is governed by the provisions of the Companies Act, 1956 and the provisions of the Industrial Employment (Standing Orders) Act, 1946. It is not a body created by any enactment. It is a private limited company carrying on business in

terms of its Memorandum and Articles of Association. While its employees would undoubtedly be governed by the provisions of the Industrial Disputes Act and the Industrial Employment (Standing Orders) Act, 1946, the second respondent is not an instrumentality of the State, nor can it be said to be discharging public functions; and, consequently, it would not be amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India.

10. While Dr. Kartikey Hari Gupta, learned Counsel for the appellant-writ petitioner, would rely on the dissenting opinion of Justice SB. Sinha in Zee Telefilms Ltd. and another v. Union of India and others , the law binding on the High Court, under Article 141 of the Constitution of India, is the majority opinion and not that of the minority.

11. The other judgment, on which Dr. Kartikey Hari Gupta, learned Counsel for the appellant-writ petitioner, relies, is Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and others , wherein a Constitution Bench of the Supreme Court summed up its conclusion as under:

> "(1) Simply by holding a legal entity to be an instrumentality or agency of the State it does not necessarily become an authority within the meaning of 'other authorities' in Article 12. To be an authority, the entity should have been created by a statute or under a statute and functioning with liability and obligations to the public. Further, the statute creating the entity should have vested that entity with power to make law or issue binding directions amounting to law within the meaning of Article 13(2) governing its relationship with other people or the affairs of other people —their rights, duties, liabilities or other legal relations. If created under a statute, then there must exist some other statute conferring on the entity such powers. In either case, it should have been entrusted with such functions as are Governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence

Governmental. Such authority would be the State, for, one who enjoys the powers or privileges of the State must also be subjected to limitations and obligations of the State. It is this strong statutory flavour and clear indicia of power - constitutional or statutory and its potential or capability to act to the detriment of fundamental rights of the people, which makes it an authority; though in a given case, depending on the facts and circumstances, an authority may also be found to be an instrumentality or agency of the State and to that extent they may overlap. Tests 1, 2 and 4 in Ajay Hasia enable determination of Governmental ownership or control. Tests 3, 5 and 6 are 'functional' tests. The propounder of the tests himself has used the words suggesting relevancy of those tests for finding out if an entity was instrumentality or agency of the State. Unfortunately thereafter the tests were considered relevant for testing if an authority is the State and this fallacy has occurred because of difference between 'instrumentality and agency' of the State and an 'authority' having been lost sight of sub-silentio , unconsciously and un-deliberated. In our opinion, and keeping in view the meaning which 'authority' carries, the question whether an entity is an 'authority' cannot be answered by applying Ajay Hasia tests.

(2) The tests laid down in Ajay Hasia's case are relevant for the purpose of determining whether an entity is an instrumentality or agency of the State. Neither all the tests are required to be answered in the positive nor a positive answer to one or two tests would suffice. It will depend upon a combination of one or more of the relevant factors depending upon the essentiality and overwhelming nature of such factors in identifying the real source of governing power, if need be by removing the mask or piercing the veil disguising the entity concerned. When an entity has an independent legal existence, before it is held to be the State, the person alleging it to be so must satisfy the Court of brooding presence of Government or deep and pervasive

control of the Government so as to hold it to be an instrumentality or agency of the State."

12. In terms of the law declared in Pradeep Kumar Biswas , for it to be considered an authority within the meaning of 'other authorities' in Article 12, the entity should have been created by a statute or should be functioning with liabilities and obligations to the public; the statute creating the entity should have vested that entity with power to make laws; it should have been entrusted with such functions as are Governmental or closely associated therewith; and the person, approaching the Court, must satisfy it of the brooding presence of the Government, or of deep and pervasive control of the Government, so as to hold it to be an instrumentality or agency of the State.

13. In the present case, the self-proclaimed intent of the second respondent to co-operate with Government authorities, and to supplement Governmental efforts in regulating traffic, would not make it an instrumentality of the State amenable to the writ jurisdiction of the High Court.

14. We see no reason, therefore, to differ with the opinion of the learned Single Judge that the second respondent is not an instrumentality of the State under Article 12 of the Constitution of India and is, therefore, not amenable to the writ jurisdiction of this Court.

15. The learned Single Judge has also relegated the appellant-writ petitioner to approach the Labour Court on the ground of existence of an alternative remedy. While the jurisdiction of this Court is not barred, by the mere existence of an alternative remedy, it is one of the factors which this Court would bear in mind while exercising its discretion whether or not to entertain the writ petition.

16. Interference in an intra-Court appeal is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal. The appeal fails and is, accordingly, dismissed. ■

Appeal Dismissed.

[2005 (107) FLR 182]
(ALLAHABAD HIGH COURT)
SABHAJEET YADAV, J.
Civil Misc. Writ Petition No. 16194 of 2003
June 24, 2005
Between
UNION OF INDIA through G.M., N.E. RAILWAY, GORAKHPUR and another
and
PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR Court , KANPUR and another

Administrative Tribunals Act, 1985-Sections 14 and 28(b)-Jurisdiction of Central Industrial Tribunal/Labour Court-Despite the constitution of Central Administrative Tribunal (CAT) for deciding the dispute in respect of service matter of employees of Central Government-Jurisdiction of Central Industrial Tribunal/Labour Court expressly saved-Which remains unaffected. [Para 15]

There appears no room for doubt to hold that despite constitution of Central Administrative Tribunal under the Act 1985 for deciding the dispute in respect of service matter of employees of Central Government yet the jurisdiction of Central Industrial Tribunal/Labour Court has been expressly saved by the section 14 and section 28 (b) of the Act 1985 itself and the same remains unaffected, therefore, it cannot be said at all that the Central Industrial Tribunal/Labour Court has no jurisdiction to decide the dispute referred before it is respect of claim of respondent-workman through adjudication case referred above. Accordingly the impugned award made by Central Industrial Tribunal/Labour Court is well within the authority under law and cannot be called in question on that score.

Constitution of India, 1950-Article 227-Jurisdiction-Suo motu exercise of-High Court can exercise its jurisdiction suo motu under Article 227 of Constitution. [Para 17]

Back Wages-Once the termination of workman is found null and void-Logical consequences would be that he would be entitled to be reinstated-With continuity of service and in normal course with

full back wages-Except in exceptional circumstances-Tribunal may exercise discretion in a judicial and judicious manner. [Para 30]

It is clear that once it is found by the Labour Court that termination of workman is null and void being violative of any provisions of Industrial Disputes Act, the logical consequences would be that he would be entitled to be reinstated in service with continuity of service and in normal course he would be entitled to full back wages. However, there are certain circumstances in which it will not be appropriate to grant full back wages to the workman, even though he would be entitled to be reinstated in service. These circumstances may vary from case to case and no exhaustive list of such circumstances can be drawn by this Court. In the very nature of things there cannot be any strait-jacket formula for awarding relief of back wages, but all the relevant considerations would be kept in mind while deciding the issue for grant of back wages. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner.

Counsel for the Petitioners : Tarun Verma and G.S. Pandey.
Counsel for the Respondents : Sanjay Kumar Om and S.C.

JUDGMENT

SABHAJEET YADAV, J.- By means of this petition, the petitioners have challenged the award of the Central Industrial Tribunal/Labour Court, Kanpur dated 26.7.2002 published in Part-II, section 3 , sub-section (ii) of the Gazette of India, New Delhi dated 20.8.2002, contained in Annexure-4 of the writ petition, passed by Presiding Officer, Industrial Tribunal-Cum-Labour Court, Kanpur in adjudication case No. 182/1991 which was between Sri Mohd. Fahim and Union of India and another.

2. The relevant facts for the purpose of question in controversy involved in the case in brief are that the Central Government, Ministry of Labour, New Delhi vide its notification dated 31.10.1991 has referred the dispute for adjudication to the Central Industrial Tribunal under section 10 of the Industrial Disputes Act, 1947 (in short Act 1947). The opposite party No. 2 filed his claim through the union on the ground that he had worked from 15.2.1980 to 25.4.1981 and 9.5.1983 to 26.3.1984 and subsequently had worked till

18.11.1986 and his services were abruptly terminated without giving any notice, notice pay or retrenchment compensation. It is further alleged that the persons junior to the respondent No. 2 have been allowed to work whereas the services of respondent No. 2 have been dispensed with without complying with the provisions of section 25-F and section 25-G of the Act, 1947. The claim set up by opposite party No. 2 was contested by the petitioners by filing written statement wherein allegations made in the claim of opposite party No. 2 were denied and it was stated on behalf of petitioners that the opposite party No. 2 was initially appointed as casual Labour in the electrical department on 9.5.1983. He worked between 9.5.1983 to 15.11.1986 in the Electrical department in different period mentioned in para 5 of the writ petition, wherein it is stated that opposite party No. 2 did not complete 240 days working at a stretch in any year. As regards the allegations that junior persons have been retained in service and services of opposite party No. 2 have been dispensed with, it was stated on behalf of petitioners that the persons mentioned namely, Sri Ravinder Singh, Sri Subhash Singh and Sri Suman Singh were appointed as S.C./S.T. candidates and other persons namely Sri Mahipal, Sri Amrika, Sri Santosh Kumar, Sri Ram Kumar and Sri Ram Pher Gupta were appointed on compassionate grounds and they were senior to the opposite party No. 2. A replication was filed on behalf of opposite party No. 2 wherein he claimed the benefit of the provisions of Indian Railway Establishment Manual. Further he has claimed that he has got the status of temporary employee under the aforesaid Manual and is entitled to be regularised. It is stated that vide order dated 26.7.2002 opposite party No. 1 has allowed the claim of respondent No. 2 and aforesaid award has been published by Government of India on 20.8.2002. A copy of award is filed as Annexure-4 of the writ petition. It is stated that although while allowing the claim of opposite party No. 2, the opposite party No. 1 has held that the workman did not complete 240 days continuous service in 12 calendar months before termination of his services, therefore, he is not entitled for benefit of section 25-F of the Industrial Disputes Act, 1947 yet in view of provisions contained in the Indian Railway Establishment Manual since the opposite party No. 2 has completed 120 days continuous service and is entitled to get temporary status, therefore, his services could not be terminated without giving him notice as required under Rules. It was categorically stated in the written statement that the persons who belonged to the S.C./S.T. have been appointed and other appointments have been made on

the basis of compassionate appointment and no junior persons have been retained as alleged by opposite party No. 2. In view of these facts also the findings of opposite party No. 1 that there is violation of section 25-G of Industrial Disputes Act is without jurisdiction. It is further stated that in view of section 14 of the Administrative Tribunals Act, 1985 (in short Act, 1985), all the service matters including recruitment and termination of services of respondent No. 2 was cognizable by Administrative Tribunal and not by the Central Industrial Tribunal.

3. In reply thereto the opposite party No. 2 has filed a counter affidavit whereby he has refuted the allegations contained in the body of the writ petition with regard to the working period of opposite party No. 2 and stated that it is erroneously mentioned that respondent No. 2 has not completed 240 days in a calendar year rather he has stated that from 9.5.1983 to 22.4.1984, which constitutes a calendar year, the answering respondent No. 2 has worked for almost about 254 days. Earlier to it, he was initially engaged on 15.2.1980 and continuously worked upto 25.4.1981. Subsequently he worked till 28.6.1986 and persons junior to him have been retained whereas his services were arbitrarily terminated. Thus the action of petitioners are violative of Articles 14 and 16 of the Constitution of India inasmuch as section 25-G of Industrial Disputes Act. In para 7-A of the counter affidavit it is stated that large number of persons junior to the answering respondent have been retained in service in violation of section 25-G of Industrial Disputes Act. Some of the persons are Sri Ashok Kumar Srivastava, Sri Ram Achal Singh, Sri Markendey Rai, Sri Nasir Ali, Sri Mukhatrul Hasan etc., they are still working under Electrical Foreman (A.C.), Lucknow Jn. Apart from it there are several other persons who are junior to the answering respondent but their details could not be obtained as entire record is in possession of the petitioners.

4. In para 14 of the counter affidavit it is stated that it is incorrect to allege that opposite party No. 1 has committed illegality in interpreting the provisions of Indian Railway Establishment Manual. The respondent No. 1 rightly referred that respondent No. 2 has attained the temporary status in terms of Indian Railway Establishment Manual, after working for 120 days in a year. Apart from it, respondent No. 1 rightly took cognizance of illegality committed by the petitioners inasmuch as several junior workmen were retained by the petitioners in preference to answering

respondent who has worked for much more number of days and in the seniority list also, the answering respondent has been shown as much senior. Further statement of fact in this regard has been made in para 15 of the counter affidavit which is reproduced as under :

> "15. That the contents of para 12 of the writ petition are incorrect and are denied. It is specifically stated that apart from Scheduled Caste, Scheduled Tribe and Compassionate appointees, large number of workmen whose details has been mentioned in Annexure-3 viz. Sri Ashok Kumar Srivastava, Sri Ram Achal Singh, Sri Markandey Rai, Sri Nasir Ali, Sri Muktharul Hasan, Sri Maharam Prasad. It is stated that answering respondent has mentioned the name of these workmen along with his claim petition but in the written statement, petitioners have not mentioned nothing about the status of these workmen. Apart from it, several workmen who were engaged subsequently, such as Sri Ram Kishore, Hausala Prasad, Sri Uma Shankar Tewari, Ram Shankar, Sri Hoob Lal, Sri Babu Ram were for the first time engaged on 30.10.1987 and such that there was no paucity of work with the petitioner but even then, the services of the answering respondent has been terminated without any rhyme or reason.
>
> 15.1 Petitioner had also tried to mislead the respondent No. 1 inasmuch as erroneously mentioned that some of the workmen junior to answering respondent were compassionate appointees. It may be clarified that Railway Board has clarified time and again that all the compassionate appointments is to be made on regular basis and, therefore, it cannot be held that those workmen, working on casual basis, were appointed on compassionate grounds. The action of petitioner terminating the services of the answering respondent, while retaining the juniors is wholly arbitrary and violative of section 25-G of Industrial Disputes Act, 1947."

5. The affidavits have been exchanged between the parties and the case was ripped for final disposal, therefore, with the consent of the Counsel of the parties the writ petition has been heard for final disposal at admission stage itself.

6. I have heard Sri G.S. Pandey holding brief of Sri Tarun Verma,

Counsel for the petitioners and learned Standing Counsel for respondent No. 1 as well as Sri Sanjay Kumar Om for respondent No. 2 and have also perused the record.

7. The thrust of submission of learned Counsel for the petitioner/ Union of India is that since the respondent No. 2 is alleged to be an employee of railway department of Central Government/Union of India, therefore, on establishment of Central Administrative Tribunal the dispute was fully cognizable by Administrative Tribunal under section 14 of Act 1985 constituted under the aforesaid Act. Thus, the Central Industrial/Labour Court had no jurisdiction at all to adjudicate the dispute in question, accordingly, the impugned award passed by Labour Court is wholly without jurisdiction non-est and nullity.

8. Contrary to it learned Counsel appearing for respondent No. 2 has submitted that on a joint reading of section 14 and section 28 of the Act 1985 clearly demonstrates that inspite of establishment and constitution of Central Administrative Tribunal, the jurisdiction of the Industrial Tribunal/Labour Court or other authority constituted under the Act, 1947 or any other corresponding law for time being in force has been saved, therefore, the same is entitled to exercise any jurisdiction power or authority in relation to recruitment or matters concerning such recruitment or such service matters despite establishment of such Central Administrative Tribunal. Therefore, the award of the Central Industrial Tribunal passed in the adjudication case in question can not be assailed on that score and same is well within the ambit of authority under law and perfectly justified in given facts and circumstances of the case.

9. Now on the basis of rival contentions of the parties the question arises for consideration of this Court as to whether on account of establishment of Central Administrative Tribunal constituted under Act 1985 which has jurisdiction to decide the dispute of service matter of respondent No. 2 the jurisdiction of Central Industrial Tribunal/ Labour Court would stand excluded and barred or not and as to whether the Central Industrial Tribunal or Labour Court still have jurisdiction to decide such dispute or not?

10. In order to find out complete answer of the question it is necessary to examine the relevant provisions of the Act, 1985. Section 2 of the Act deals with the category of persons in respect of

whom the Act 1985 would not apply as exemption clause under the Act which reads as under :-

"2. Act not to apply to certain persons .-The provisions of this Act shall not apply to-

(a) any member of the naval, military or air forces or of any other armed forces of the Union;

(b) (***)

(c) any officer or servant of the Supreme Court or of any High Court (or Courts subordinate thereto) ;

(d) any person appointed to the secretariat staff of either House of Parliament or to the secretariat staff of any State Legislature or a House thereof or, in the case of a Union Territory having a Legislature, of that legislature."

11. Section 14 of the Act 1985 deals with the jurisdiction, powers and Authority of Central Administrative Tribunal which reads as under :-

"14. Jurisdiction, powers and authority of the Central Administrative Tribunal .-(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts (except the Supreme Court in relation to-

(a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian ;

(b) all service matters concerning.-

(i) a member of any All-India Service ; or

(ii) a person (not being a member of an All-India Service or a person referred to in clause (c)) appointed to any civil service

of the Union or any civil post under the Union ; or

(iii) a civilian (not being a member of an All-India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence. and pertaining, to the service of such members, persons or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the Control of the Government of India or of any corporation (or society) owned or controlled by the Government ;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation (or society) or other body, at the disposal of the Central Government for such appointment.

Explanation. -For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory).

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations (or societies) owned or controlled by Government, not being a local or other authority or corporation (or society) controlled or owned by a State Government ;

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of or different categories under any class of, local or other authorities or corporations (or societies).

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation (or society), all the

jurisdiction, powers and authority exercisable immediately before that date by all Courts (except the Supreme Court in relation to)-

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation (or society) ; and

(b) all service matters concerning a person (other than a person referred to in clause (a) or clause (b) of sub-section (1)) appointed to any service or post in connection with the affairs of such local or other authority or corporation (or society) and pertaining to the service of such person in connection with such affairs."

12. Section 19 of the Act 1985 provides that subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal may make an application to the Tribunal for the redressal of his grievance and further provides the manner of making applicaiton and inquiry to be held thereon. Section 22 provides procedure and powers of Tribunal, which is not much relevant for the purpose of question in controversy involved in the case. Section 28 provides exclusion of jurisdiction of Courts except the Supreme Court, Industrial Tribunal, Labour Courts or other authorities constituted under Act, 1947, which reads as under :-

"28. Exclusion of jurisdiction of Courts except the Supreme Court .-On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any Service or persons appointed to any Service or post, (no Court except.)-

(a) the Supreme Court ; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force.shall have, or be entitled to exercise any jurisdiction powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

13. Section 29 of the Act 1985 deals with the transfer of cases including suit or other proceedings pending before any Court or authority immediately before the date of establishment of a Tribunal under this Act which reads as under :-

"29. Transfer of pending cases .-(1) Every suit or other proceeding pending before any Court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal.

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court.

(2) Every suit or other proceeding pending before a Court or other authority immediately before the date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation (or society), being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the said date, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal ;

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court.

Explanation. -For the purposes of this sub-section "date with effect from which jurisdiction is conferred on a Tribunal", in relation to any local or other authority or corporation (or society), means the date with effect from which the provisions of sub-section (3) of section 14 or, as the case may be, sub-section (3) of section 15 are applied to such local or other authority or corporation (or society)."

14. An identical question in controversy has been dealt with by Hon'ble Apex Court in Krishna Prasad Gupta v. Controller, Printing and Stationary . 1 It would be useful to refer relevant paragraphs of the aforesaid decision as under :-

"15. Reverting back to section 14, we may immediately notice the

striking feature that this section begins with the words "Save as otherwise expressly provided in this Act" which constitute at extremely significant expression as they purport to constitute a "Saving Clause". This expression has also been used in the opening part of sub-section (3) of section 14."

"16. What is intended to be saved is indicated in section 28 which, incidentally, also purports to exclude the jurisdiction of almost all the Courts in service matters. Section 14 and section 28 have, therefore, to be read together to find out the real intent of the legislature as to the extent of jurisdiction retained or excluded."

"17. The jurisdiction which is transferred to and vested in the Tribunal is the jurisdiction of all the Courts except the Supreme Court which is expressly excluded."

"18. The 'matters' in respect of which this 'jurisdiction' is to be exercised are also indicated in this section. That is why it is provided in section 19 that any person aggrieved by an 'order' (defined in the Explanation appended to sub-section (1) of that section) pertaining to any 'matter' within the 'jurisdiction' of the Tribunal may approach the Tribunal for the redressal of his grievance. While section 19 operates "subject to other provisions of the Act." the field of operation of section 14 is limited by the use of the words "save as otherwise expressly provided in this Act." These words control and regulate whole of the section not only in respect of 'jurisdiction' but also the 'matters' specified therein. This constitutes the original jurisdiction of the Tribunal."

"19. The appellate jurisdiction of the Tribunal is indicated in sections 29 and 29-A of the Act. While all appeals pending in various Courts, except those pending in the High Court on the date from which Tribunal became functional stand transferred to the Tribunal by the force of the Act, the appeals in all cases which were decided prior to the establishment of Tribunals, are required to be filed before the Tribunal, if they had not already been filed provided the cause of action on which the case was based in cognizable by the Tribunal."

"20. The appellate jurisdiction of the Tribunal is extremely limited and was conferred on the Tribunal so that the judgment, if any passed, for example, by a Munsif or Civil or Subordinate Judge in a civil suit relating to a service matter (decided before the establishment of the

Tribunal) may be challenged before the Tribunal notwithstanding that the judgment passed in that suit is not covered by the word 'order' defined in the explanation appended to sub-section (1) of section 19. Except the appeals, which are transferred to the Tribunal or the appeals which may be filed before the Tribunal in the above circumstances, no other appeal would lie before the Tribunal."

"21. The "Saving Clause" or the "Saving Phrase" (not in the sense of "Repeals and Savings") divides 'jurisdiction' into two classes, namely, 'jurisdiction' which is transferred to and vested in the Tribunal and 'jurisdiction' which is not so transferred and is, on the contrary, saved. When the jurisdiction thus became exercisable by the Tribunal, it was provided by section 28 that no Court shall exercise the jurisdiction, powers and authority on and from the date from which such jurisdiction, powers and authority becomes exercisable by a Tribunal. It, however, excepts.-

(a) the Supreme Court ; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force."

"22. It is, therefore, apparent that in spite of section 14 of the Act, the jurisdiction of the Industrial Tribunal, Labour Courts or other authorities, under the Industrial Disputes Act or Authority created under any other corresponding law remains unaffected. The original, or for that matter, the appellate authority under the Payment of Wages Act is neither an Industrial Tribunal nor a Labour Court nor are they 'Authorities' under the Industrial Disputes Act, 1947 but if the Payment of Wages Act is ultimately found to be a "corresponding law", the jurisdiction of the authorities under the Payment of Wages Act would also be saved."

15. On a close scrutiny and analysis of the aforesaid provisions of the Act 1985 and the law laid down by the Hon'ble Apex Court, thus there appears no room for doubt to hold that despite constitution of Central Administrative Tribunal under the Act 1985 for deciding the dispute in respect of service matter of employees of Central Government yet the jurisdiction of Central Industrial Tribunal/Labour Court has been expressly saved by the section 14 and section 28 (b) of the Act 1985 itself and the same remains

unaffected, therefore, it cannot be said at all that the Central Industrial Tribunal/Labour Court has no jurisdiction to decide the dispute referred before it in respect of claim of respondent-workman through adjudication case referred above. Accordingly the impugned award made by Central Industrial Tribunal/Labour Court is well within the authority under law and cannot be called in question on that score. Therefore, the submissions made by learned Counsel for petitioners in this regard is wholly misconceived and not tenable hence rejected.

16. Before parting with the judgment, one more question which strikes in the mind of this Court is as to whether the Central Industrial Tribunal/Labour Court was justified while directing reinstatement of respondent-workman to award full back wages to the respondent-workman? Although this point has neither been pleaded in the writ petition nor any argument has been advanced by the learned Counsel for the petitioners to question the quantum of back wages and validity of award of the Labour Court on that score, but the aforesaid question, emerges and borne out from the material available on the record. The question is also not superficial in nature, rather it goes to the very root of the case, therefore, this Court needs to answer despite not argued before it. It is also because of another reason that power conferred upon this Court under Article 227 of the Constitution of India involves a duty on this Court to keep the subordinate Courts and the Tribunals within the bounds of their authority under law throughout the territory in relation to which it exercises jurisdiction and to see that they do what their duty requires and that they do it in a legal manner. Article 227 of the Constitution of India confers jurisdiction/powers of superintendence upon this Court over all the Courts or Tribunal throughout the territory in relation to which it exercises jurisdiction.

17. Since as held in Faquir v. Gopi , 2Barlow v. State of U.P. , 3 this Court can in proper cases interfere suo motu under Article 227 of Constitution without any applicaiton by any party aggrieved, therefore, on this count also. I have no hesitation to hold that this Court can exercise its jurisdiction suo motu under aforesaid Article in suitable and proper cases warranting the exercise of jurisdiction, thus while exercising aforesaid jurisdiction this Court should not shirk from its duty to answer such question despite the same has not been argued and raised before it, in the light of well settled parameters enunciated by the Hon'ble Apex Court from time to time

on the question in issue.

18. This Court is also conscious about the contents and scope of supervisory powers conferred on it under Article 227 of the Constitution of India which is confined only to see whether a inferior Court or Tribunal had proceeded within its parameters and not to correct the error apparent on the record much-less the error of law. In exercising supervisory power and jurisdiction under Article 227 of the Constitution of India, this Court does not act as appellate Court or Tribunal. It is also not permissible to this Court on a petition filed under Article 226/227 of the Constitution of India to review or to re-weigh the evidence on which the interior Court or Tribunal purports to have passed the order or to correct the error of law in the decision. The decision of Tribunal should not be interfered with unless it arrived at a finding, which is perverse or based on no materials. A patent and flagrant error in procedure resulting manifest injustice can also be a good ground for interference by this Court in the order of sub-ordinate Court and Tribunals.

19. At this juncture it is necessary to point out that it is well settled that once the order of termination of workman was held by Labour Court null and void being violative of any provisions of law and Act, 1947 the logical consequence would be that he would be entitled to be reinstated in service with continuity of service and in normal course he would be entitled to full back wages, but for granting relief of back wages to the workman while making reinstatement in service the Labour Court is required to exercise its discretion judicially and judiciously and for that purpose the Labour Court is required to go into details of pleadings and evidence adduced by the parties on the aforesaid question and such other factors having material bearing with the issue. The Labour Court is not expected to award full back wages during the period interregnum from the date of termination to the date of reinstatement without applying its mind upon the facts and circumstances of the case, in routine manner. When the question of determining the entitlement of a person to back wages is concerned, the employee/workman has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard the employer can bring on record materials to rebut the claim.

20. At very out set it is necessary to point out that in the instant case, the respondent-workman had neither pleaded nor placed any

material showing that he was not gainfully employed during the period of operation of order of termination i.e. period of interregnum nor placed any material in that regard. It is not in dispute that respondent No. 2 was in service for a short period in between year 1980 to 1986 during which there were several frequent breaks in service. The services of respondent-workman were terminated in November, 1986 and the dispute for adjudication was referred in the year 1991, after lapse of much time of about 5 years. Thereafter the Central Industrial Tribunal/Labour Court, Kanpur has made award on 26.7.2002, published in the official Gazette on 20.8.2002 after lapse of 11 years from the date of reference and 16 years from the date of termination of services. The Presiding Officer, Labour Court found that the termination of respondent-workman was illegal, null and void, therefore, directed his reinstatement with consequential benefits of continuity of service with full back wages. Now the question arises for consideration whether in the circumstances of the case while reinstating the respondent-workman with the benefits of continuity in service the back wages have to be awarded and if so, to what extent. In other words while doing so as to whether the Labour Court has exercised its discretionary jurisdiction judicially and judiciously in well settled parameters and norms or not? Similar question has received consideration of Hon'ble Apex Court from time to time. It would be necessary to make reference of some of the decisions of Hon'ble Apex Court hereinafter.

21. In case of M/s. Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. and others , 4 Hon'ble Apex Court in para 11 of the decision has dealt with the issue in detail and in paras 17 and 19 of the decision has held that 75% back wages would meet the ends of justice between the parties in given facts and circumstances of the case. For ready reference para 11 of the decision is reproduced as under :

> "11. In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. Major or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reasons

> for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular See Susannah Sharp v. Wakefield. 5"

22. In Jai Bhagwan v. Management of the Ambala Central Co-operative Bank Ltd. and another , 6 the Hon'ble Apex Court while dealing with the case of delay in raising the industrial dispute by the workman, in paragraph 4 of the decision has held that in the aforesaid facts and circumstances of the case awarding full back wages would not be justified. For ready reference paragraph 4 of the decision is reproduced as under :-

> "4. The appellant is, therefore, entitled to be reinstated in service with continuity of service from the date on which his services were terminated. Having regard to the circumstances that the workman raised an industrial dispute after considerable delay without doing anything in the meanwhile to question the termination of his services, we do not think that we will be justified, in awarding full back wages. We think that award of half the back wages from the date of termination of service until to day and full back wages from this day until reinstatement will meet the ends of justice. The appellant will be entitled to his costs which we quantified at Rupees 5,000/-"

23. In Ajaib Singh v. The Sirhind Co-operative Marketing-Cum-Processing Service Society Ltd. and another , 7 the Hon'ble Apex Court in paragraph 12 of the decision held as under :-

> "12. We are, however, of the opinion that on account of the admitted delay, the Labour Court ought to have appropriately moulded the relief by denying the appellant workman some part of the back wages. In the circumstances the appeal is allowed, the impugned judgment is set aside by upholding the award of the Labour Court with modification that upon his reinstatement the appellant would be entitled to continuity of service, but back wages to the extent of 60 per cent with effect from 8.12.1981 when he raised the demand for justice

till the date of award of the Labour Court i.e. 16.4.1986 and full back wages thereafter till his reinstatement would be payable to him. The appellant is also held entitled to the costs of litigation assessed at Rs. 5000/- to be paid by the respondent-management."

24. The question in a slightly different context has again received consideration of Hon'ble Apex Court in Management of M.C.D. v. Prem Chand Gupta and another . 8 In para 18 and 19 of the decision Hon'ble Apex Court has held as under :-

"18. . . . Once it is held that termination of the respondent workman on 29.4.1966 was null and void being violative of section 25-F of the I.D. Act, the logical consequence would be that he would be entitled to be re-instated in service with continuity and in normal course would be entitled to full back-wages. However, in our view on the peculiar facts of this case, it will not be appropriate to grant full back wages to the respondent-workman even though he will be entitled to be reinstated in service of the appellant-Corporation with continuity and all further consequential benefits on that score, save and except the grant of full back-wages, as indicated herein below."

"19. The reasons for non-granting full back-wages from the date of his termination of 29.4.1966 till actual re-instatement pursuant to the present order can now be indicated. Firstly, for no fault of the contesting parties, the litigation has lingered on for more than three decades. The termination order was as early as on 29.4.1966 and after 33 years and more it is being set aside. To saddle the appellant-Corporation and its exchequer, which is meant for public benefit, with full back-wages for entire period would be too harsh to the appellant Corporation. It is the delay in disposal of cases in the Courts that has created this unfortunate situation for both the sides. Respondent-workman is also not at fault as he was clamouring for justice for all these years. However, this delay in Court proceedings for no fault of either side permits us not to burden the appellant-Corporation, being a public body, with the full back-wages for the entire period of respondent-workman's unemployment, especially when for no fault of either side actual work could not be taken from the respondent-workman by the appellant-Corporation. It is true that the respondent-workman was always willing to work but he could

not be permitted to work so long as the termination order stood against him. The Labour Court as well as the learned Single Judge upheld that order. Only the Divisions Bench set aside that order. This Court at SLP stage itself while granting leave stayed re-instatement order on 17.11.1997. Two more years since elapsed during the pendency of this appeal before this Court. All these factors together point in the direction of not saddling the appellant-Corporation, a public body, with the burden of entire full back-wages to be granted to the respondent-workman after the passage of 33 years since his order of termination. The second reason is that the respondent-workman for all these years could not have remained totally unemployed though there is no clear evidence that he was gainfully employed and was so well off that he should be denied complete back-wages. But keeping in view the view the fact that for all these long years fortunately the respondent-workman had survived and has still two more years to reach the age of superannuation as we are told, not granting him full back-wages on the peculiar facts of this case, would meet the ends of justice. We, therefore, following order :

(i) The impugned order of the Division Bench of the High Court insofar as it holds that the termination order of the respondent-workman dated 29.4.1966 was violative of Rule 5 of the relevant Rules is set aside.

(ii) However, the final order passed by the High Court ordering reinstatement of the respondent-workman with continuity of service is upheld on the alternative ground holding termination of services of the respondent-workman on 29.4.1966 to be violative of section 25-F of the I.D. Act.

(iii) So far as back-wages are concerned, the impugned order of the High Court is modified by directing that the respondent-workman will be entitled to get 50% of back-wages from the date of his termination i.e. from 29.4.1966 till his actual re-instatement in service of the appellant-Corporation with continuity of service. The respondent-workman will also be entitled to all other consequential benefits including increments in the available time scale and revisions of the time scale, if any, and also further service benefits as per the rules and regulations of the appellant-Corporation being treated to have been in continuous service of the appellant-

Corporation from 29.4.1966 all through out till re-instatement. The appellant-Corporation shall reinstate the respondent-workman with continuity of service within 8 weeks from today and will also pay 50% back-wages as directed hereinabove within that period. The appellant-Corporation will also grant all other consequential benefits to the respondent-workman in the light of this judgment. Appeal stands allowed as aforesaid with no order as to costs in the facts and circumstances of the case."

25. The similar issue has again been dealt with by Hon'ble Apex Court in P.G.I. of M.E. and Research, Chandigarh v. Raj Kumar etc. , 9 wherein Hon'ble Apex Court has taken note of earlier decision rendered in M/s. Hindustan Tin Works Pvt. Ltd.'s case and in para 8, 9 and 12 of the decision held as under :-

"8. While it is true that in the event of failure in compliance with section 25(F) read with section 25(b) of the Industrial Disputes Act, 1947 in the normal course of events the Tribunal is supposed to award the back wages in its entirety but the discretion is left with the Tribunal in the matter of grant of back wages and it is this discretion, which is Hindustan Tin Works Pvt. Ltd. case (supra) this Court has stated must be exercised in a judicial and judicious manner depending upon the facts and circumstances of each case. While, however recording the guiding principle for the grant of relief of back wages this Court in Hindustan's case, itself reduced the back wages to 75% the reason being the contextual facts and circumstances of the case under consideration."

"9. The Labour Court being the final Court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however, the finding of fact is based on any misapplication of evidence that would be deemed to be an error of law, which can be corrected by a writ of certiorari. The law is well settled to the effect that finding of the Labour Court cannot be challenged in a proceeding in a writ of certiorari

on the ground that the relevant and material evidence adduced before the Labour Court was insufficient or inadequate though however perversity of the order would warrant intervention of the High Court. The observation, as above, stands well settled since the decision of this Court in Syed Yakoob v. K.S. Radhakrishna . 10

"12. Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. As regards the decision of this Court in Hindustan Tin Works Pvt. Ltd. , (supra) be it noted that though broad guidelines, as regards payment of back wages, have been laid down by this Court but having regard to the peculiar facts of the matter, this Court directed payment of 75% back wages only."

26. In case of Vikramaditya Pandey v. Industrial Tribunal and another , 11 in para 6 of the decision while taking note of facts and circumstances of the case Hon'ble Apex Court has held that since the order of termination dates back to 19.7.1985 it would be appropriate in the interest of justice to grant back wages only to the extent of 50%. for ready reference relevant extract of paragraph 6 of the decision is reproduced as under :-

"6. . . . . The only issue before the High Court was whether the appellant was entitled to reinstatement in service with back wages, once the termination of his services had been held to be illegal and more so when the same was not challenged. Ordinarily, once the termination of service of an employee is held to be wrongful or illegal the normal relief of reinstatement with full back wages shall be available to an employee; it is open to the employer to specifically plead and establish that there were special circumstances which warranted either non-reinstatement or non-payment of back wages. In this case we do not find any such pleading of special circumstances either before the Tribunal or before the High Court.

In this view the High Court declined relief to the appellant which in our view cannot be sustained. The Tribunal felt difficulty in ordering reinstatement as the appellant was not a regular employee. The appellant ought to have been ordered to be reinstated in service

once it was found that his services were illegally terminated in the post he was holding including its nature. Thus in our opinion both the Tribunal as well as the High Court were not right and justified on facts and in law in refusing the relief of reinstatement of the appellant in service with back wages. But, however, having regard to the facts and circumstances of the case and taking note of the fact that the order of termination dates back to 19.7.1985 we think it just and appropriate in the interest of justice to grant back wages only to the extent of 50%."

27. In Haryana Urban Development Authority v. Devi Dayal , 12 the respondent was engaged on daily wages as helper on 1.8.1994. He worked utpo 17th October, 1995 when his services were dispensed with. According to the appellant, he did not work continuously during that period and he was frequently remaining absent from duty for which a show cause notice was issued to him. It is an undisputed fact that no retrenchment compensation or one month's notice or pay in lieu thereof was offered to the appellant. On the admission of Management witness that the workman rendered duty for 340 days during the year preceding the date of termination. The Presiding Officer of the Labour Court has held that the termination was illegal being contrary to the provisions of Industrial Dispute Act. Hence he directed reinstatement with continuity of service and full back wages. The matter was carried before the Hon'ble Apex Court and in the aforesaid facts and circumstances of the case, the Hon'ble Apex Court had modified the awarded in connection with back wages to the extent of 50%. For ready reference the observation made by the Hon'ble Apex Court in para 6 of the decision is reproduced as under :-

> "6. We are of the view that having regard to the facts of the case, the award of full back wages covering a period of nearly five years is not warranted. Firstly, it is to be noted that the respondent was in service for a short period with frequent spells of absence. The second and more important aspect is that there is a reasonable possibility of the respondent being gainfully employed somewhere else. The respondent was working as a helper which, apparently, involves performance of work of manual labourer. In all probability, he would have been working somewhere and earning daily wages, if not, regularly, at least for some days in a month. The respondent did neither assert in the claim statement nor did he give any evidence that he could

> not earn anything throughout by way of daily wages or otherwise during this long interregnum. Considering all these aspects, it would not be a sound exercise of discretion to saddle the appellant with the liability of full back wages. We are inclined to think that the award of back wages to the extent of 50% would be proper and justified on the peculiar facts of this case."

28. In Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya and another , 13 the reinstatement with full back wages was ordered by the Labour Court without applicaiton of mind. There was no pleading or evidence whatsoever on the aspect whether the respondent of the aforesaid case was in service during the long interregnum i.e. from the date of termination to the date of reinstatement. The Hon'ble Apex Court had modified the back wages to the extent of 50% till the date of reinstatement. For ready reference paragraphs 11 and 16 of the decision are reproduced as under :-

> "11. Under section 11-A as amended in 1971, the Industrial Tribunal is statutorily mandated, while setting aside the order of discharge or dismissal and directing reinstatement of the workman to consider the terms and conditions subject to which the relief should be granted or to give such other relief to the workman including the award of any other punishment in lieu of the discharge or dismissal, as the circumstances of the case may require. The section is couched in wide and comprehensive terms. It vests a wide discretion in the Tribunal in the matter of awarding proper punishment and also in the matter of the terms and conditions on which reinstatement of the workman should be ordered. It necessarily follows that the Tribunal is duty bound to consider whether in the circumstances of the case, the back wages have to be awarded and if so, to what extent.
>
> 16. As already noted, there was no application of mind to the question of back wages by the Labour Court. There was no pleading or evidence whatsoever on the aspect whether the respondent was employed elsewhere during this long interregnum. Instead of remitting the matter to the Labour Court or High Court for fresh consideration at this distance of time, we feel that the issue relating to payment of back wages should be settled finally. On consideration of the entire matter in the light of the observations referred to supra in the matter of awarding back wages, we are of the view that in the context of the facts of

this particular case including the vicissitudes of long drawn litigation., it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement. The amount already paid, as wages or subsistence allowance during the pendency of the various proceedings shall be deducted from the back wages now directed to be paid. The appellant will calculate the amount of back wages as directed herein and pay the same to the respondent within three months, failing which the amount will carry interest at the rate of 9% per annum. The award of the Labour Court which has been confirmed by the Division Bench of the High Court stands modified to this extent. The appeal is disposed of on the above terms. There will be no order as to costs."

29. The law enunciated by Hon'ble Apex Court in M/s. Hindustan Tin Works Pvt. Ltd. case (supra) has been consistently followed in the cases referred herein before. The same position was also reiterated in Indian Railway Construction Co. Ltd. v. Ajai Kumar , 14M.P. State Electricity Board v. Smt. Jarina Bee , 15Chief Conservator of Forests and another v. Rahmat Ullah , 16Kendriya Vidyalaya Sangathan and another v. S.C. Sharma , 17Allahabad Jal Sansthan v. Daya Shanker Rai and another . 18

30. Thus from the aforesaid enunciation of law by the Hon'ble Apex Court, it is clear that once it is found by the Labour Court that termination of workman is null and void being violative of any provisions of Industrial Disputes Act, the logical consequences would be that he would be entitled to be reinstated in service with continuity of service and in normal course he would be entitled to full back wages. However, there are certain circumstances in which it will not be appropriate to grant full back wages to the workman, even though he would be entitled to be reinstated in service. These circumstances may vary from case to case and no exhaustive list of such circumstances can be drawn by this Court. In the very nature of things there cannot be any strait-jacket formula for awarding relief of back wages, but all the relevant considerations would be kept in mind while deciding the issue for grant of back wages. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. The discretion must be exercised according to

the rules of reason and justice, according to law and not humour. As held by the Hon'ble Apex Court it is not to be arbitrary, vague and fanciful but legal and regular.

31. Thus from the aforesaid decision of the Hon'ble Apex Court it is clear that Hon'ble Apex Court did not lay down any such broader guiding principle for applicaiton of Labour Courts rather held that in the very nature of things, there can not be any strait-jacket formula for awarding the relief of back wages. Grant of back wages should not be as matter of course rather it dependents upon the facts and circumstance of the individual case. in some cases delay in raising the industrial dispute was considered as a relevant circumstance to disentitle the workman for full back wages. The short period of service before the order of termination and undue delay in disposal of case without fault of the parties in the proceedings has also been considered as one of the circumstance, in which the workman can be denied of full back wages. Want of pleading and proof of non-employment during the long interregnum from the date of termination of service to the date of award has also been regarded as relevant consideration for presuming that the workman would have been in gainful employment somewhere else. But these circumstances can be treated to be only illustrative and are not exhaustive, therefore, these factors would be only guiding factors for exercise of discretion by Labour Court while considering the issue of grant of back wage during interregnum.

32. Now recapitulating the facts of the case again it cannot be disputed that respondent-workman had worked for a very short span of time with several frequent breaks in service, since his initial engagement in the year 1980 till the date of his termination from service in year 1986. There is no material on record as to why after long elapse of time from the date of termination of this service in November, 1986, the dispute was referred to the Central Industrial Tribunal for adjudication in year 1991. The learned Presiding Officer of the Labour Court has made award of reinstatement of respondent No. 2 with continuity in service on 26.7.2002, which was published in the official Gazette of the Central Government on 20.8.2002 after long lapse of time about 16 years from the date of termination of service and after 11 years from the date of reference of dispute. Nobody can be found in fault in absence of necessary materials on record for long lingered litigation between the parties, but having regard to the nature of work performed by respondent-workman

during the period in which he was employed with the petitioners, the possibility of his gainful employment to somewhere else during such long interregnum cannot be ruled out. In all probability he would have been working some where and earning atleast daily wages, if not regularly atleast for some days in a moth to sustain himself and family members dependent upon him. The respondent-workman for all these years could not have been totally unemployed, though there is no evidence of his employment anywhere. In such a facts and situation it would be unjust to saddle the Central Government/Union of India and its exchequer with liability for payment of full back wages for the entire period of interregnum, which would be undue burden on the public Ex-chequer. Since the period of more than 18 years has already been passed from the date of termination of service of the workman till now. There is nothing on record to show that there was application of mind to the question of back wages by the Labour Court. From the bare perusal of impugned award it is clear that while awarding back wages to the respondent-workman, the learned Labour Court did not exercise its discretionary jurisdiction judicially and judiciously according to settled norms and parameters rather it appears that Labour Court acted arbitrarily in routine and fanciful manner and awarded full back wages to the respondent-workman without applicaiton of mind and without any cogent reason therefor. Thus the award of Labour Court to that extent cannot be sustained. Accordingly same is hereby quashed to that extent only. However, it would not be in fitness of things to remit the matter before the Labour Court for fresh consideration at this distance of time, as the disposal of case before the Labour Court will take further considerable time, which will again cause harassment to the workman.

33. Thus on consideration of the entire matter in the light of discussions made herein above, I am of the considered opinion that undoubtedly the respondent-workman is entitled to reinstatement in service with continuity of service from the date on which his services were terminated till his reinstatement in service but having regard to the facts and circumstances of the case discussed herein before fifty per cent of back wages from the date of termination till the date of reinstatement of respondent-workman would meet the ends of justice. The petitioners are directed to reinstate the respondent-workman forthwith in service. The petitioners are further directed to calculate the amount of back

wages, as directed herein and pay the same to respondent-workman within a period of three months from the date of production of certified copy of this order before any of the petitioners, failing which the amount will also carry simple interest thereon at the rate of 9% per annum. As consequential benefits of service, the respondent-workman would be entitled to be treated in continuous service from the date of his termination till the date of his reinstatement for the purposes of seniority and other benefits of service. He is also entitled for regular increments and revision of pay scale admissible to him from time to time, as if his services were not terminated at material point of time. To that extent the order passed by the Labour Court stands modified.

34. At this juncture, before parting with the judgment it is also necessary to point out that the learned Counsel for the petitioners did not argue any other point, therefore, this Court need not to examine the validity of the impugned award of the Central Industrial Tribunal on any other aspect.

35. Thus is view of the aforesaid discussions and observations, it is necessary for this Court to issue direction to all the Central Industrial Tribunals, State Industrial Tribunals and the Labour Courts, throughout the territory in relation to which this Court exercises jurisdiction under Article 227 of the Constitution of India, to strictly adhere to the observations made by this Court in respect of grant of back wages while making reinstatement of workman in service.

36. In view of the foregoing discussions, observations and directions made, the impugned award passed by the Central Industrial Tribunal is modified to the extent indicated herein before in the body of the judgment. Accordingly the writ petition succeeds in part, hence is allowed partly.

37. There shall be no order as to costs.

38. The Registrar General of this Court is directed to communicate this order to all the concerned Central Industrial Tribunals, State Industrial Tribunals and the Labour Courts within a period of two weeks from the date of order passed by this Court. ■

Petition Allowed Partly.

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