IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.151 OF 2009
IN
WRIT PETITION NO.1727 OF 2007

1. Dhanraj R.Mahale, R/o.Ganesh Chowk,
CIDCO, Nashik-9.
2. Sambhaji Sahabrao Bhosale,
since deceased, through L.Rs.
2A. Alkabai Sambhaji Bhosale, Age 40 years,
2B. Madhuri Sambhaji Bhosale, Age 21 years,
2C. Chandrakant Sambhaji Bhosale, Age 19 years,
R/o.Ashoknagar, Satpur, Nashik.
3. Rajendra B.Khairnar,
R/o.N-52, BE-36/1, New CIDCO,
Sinhasthanagar, Swadhyay Chowk, CIDCO, Nashik.
4. Rajesh Baburao More,
R/o.Type A/2096, HAL Township, Ozar,
Tal.Niphad, Dist.Nashik. Appellants

versus

1. Kirloskar Oil Engines Ltd
(Valve Plant), Plot No.A/11, MIDC,
Ambad, Nashik.
2. The Member, Industrial Court,
Nashik. Respondents

Mr.Bhavesh Parmar with Ms.Reshma Nair, Devmani Shukla i/by Devmani Shukla for Appellants.

Mr.Neel Helekar with Mr.Atman Mehta & Vipul Patel i/by Haresh Mehta & Co. for Respondent no.1.

Ms.Shruti Vyas, Additional Govt.Pleader with Ms.Savita Prabhune, AGP, for Respondent-State.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

Date of Reserving the Judgment : 6th March 2026
Date of Pronouncing the Judgment : 27th April 2026

JUDGMENT - (Aarti Sathe, J.) :-

1. This Letters Patent Appeal is directed against the judgment and order dated 21st April 2007 (hereinafter referred to as the "impugned order") passed by the learned Single Judge in Writ Petition No. 1727 of 2007, dismissing the Writ Petition filed by the Appellants on the ground that in view of Rule 32 of the Bombay Industrial Employment (Standing Orders) Rules, 1959 (hereinafter referred to as the Model Standing Orders), the provisions of Clause 4A of Schedule-I stood excluded, and hence the Appellants were not entitled to be continued in regular service post their probation period.

2. Briefly the facts of the case are as follows: -

(i) The Appellants were employees of the Respondent Company before they were terminated. Appellant No.1 was appointed on 9th September 1996 on PMB machine to do the work of copy turning as an operator. Appellant No.1 was initially appointed as a trainee on 9th September 1996. Thereafter, Appellant No.1 was given temporary appointment on 9th September 1997, and post the temporary appointment, Appellant No. 1 was thereafter placed on probation with effect from 1st March 1998. Ultimately, Appellant No. 1's services came to be terminated on 31st August 1999 by the Respondent Company;

(ii) Appellant No.2 was appointed on 12th March 1996 on fricture welding machine as an operator. Appellant No. 2 was initially appointed as a trainee on 12th March 1996, and thereafter Appellant No. 2 was given a temporary appointment on 13th March 1997. Appellant No.2 was thereafter placed on probation with effect from 1st September 1997, and was given an extension of

probation with effect from 28th February 1998. Ultimately, Appellant No.2's services came to be terminated on 31st August 1999 by the Respondent Company;

(iii) Appellant No. 3 was appointed on 17th June 1996 on a PMB machine to do the work of copy turning as an operator. Appellant No. 3 was initially appointed as a trainee on 17th June 1996, and thereafter Appellant No. 3 was given temporary appointment on 1st July 1997. Appellant No. 3 was thereafter placed on probation with effect from 1st January 1999, and ultimately Appellant No. 3's services came to be terminated on 30th June 1998 by the Respondent Company;

(iv) Similarly, Appellant No. 4 was also appointed as a fricture welding machine as an operator on 5th August 1996. He was initially appointed as a trainee on 5th August 1996, and was given a temporary appointment on 1st August 1997. He was thereafter placed on probation with effect from 1st February 1998, and ultimately his services were terminated on 31st July 1998;

(v) Being aggrieved by the termination made by the Respondent Company, Appellant Nos. 1 to 4 approached the Labour Court, Nashik and filed complaints in their individual capacity against the Respondent Company under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the "M.R.T.U. and P.U.L.P. Act"), alleging unfair labour practices against them being committed by the Respondent Company under the Items No.1 (a), (b), (d) and (f) of Schedule IV of the MRTU and PULP Act;

(vi) On 24th August 2005, after due consideration of the pleadings and

evidence led by all parties, the learned Presiding Officer, Labour Court, Nashik, passed a common order of even date in complaints (ULP No. 166 and 174 of 1998 and 157 of 1999) filed under the M.R.T.U. and P.U.L.P. Act, partly in favour of the Appellants and partly in favour of the Respondent Company;

(vii) The Appellants, as well as the Respondent Company, being aggrieved by the common order dated 24th August 2005 (supra) passed by the learned Presiding Officer, Labour Court, Nashik, preferred respective Revision Applications under Section 44 of the M.R.T.U. and P.U.L.P. Act before the Industrial Court, Nashik;

(viii) On 26th July 2006, the learned Member, Industrial Court, Nashik, by a common order of even date, passed in Revision Applications (ULP Nos. 126, 127 and 128 of 2005 and 9, 10 and 11 of 2006) preferred by the Respondent company and the Appellants respectively, was pleased to allow the Revision Applications of the Respondent Company in its totality, and at the same time dismiss the Revision Applications preferred by Appellant Nos. 1 to 4;

(ix) Being aggrieved by the dismissal of the said Revision Applications, the Appellants filed Writ Petition No. 1727 of 2007, which by way of the impugned order dated 21st April 2007 was dismissed by this Court. It is against this order that the Appellants have preferred the present Letters Patent Appeal.

3. In the backdrop of these aforesaid facts, the issue which has fallen for consideration in the present appeal is whether the learned Single Judge was in any error in passing the impugned order and dismissing the Writ Petition filed by the Appellants summarily on the findings as made in the aforesaid impugned order.

This appeal was admitted by the order dated 12th January 2019 by this Court.

4. The primary contention advanced on behalf of the Appellants is that the impugned order needs to be quashed and set aside inasmuch as the said order has not taken into consideration the entire factual conspectus and the legal position.

SUBMISSIONS :

5. The submissions made by learned counsel on behalf of the Appellants can be summarized as follows:

(i) It was submitted that the learned Single Judge has committed an error on the face of the record while passing the impugned order inasmuch as the learned Single Judge has passed the order without giving any proper reasoning and only considered the sole argument advanced by the Respondents that since Rule 32 of the Model Standing Orders is applicable, the provisions of Clause 4A of Schedule-I stood excluded. We have to note that although throughout the pleadings the Model Standing Orders have been pleaded as of the year of 1952, however, the same is of the year 1959.

(ii) It is submitted that the learned Single Judge failed to appreciate that all the rules of the Model Standing Orders are to be read together and not in isolation with each other. The learned Single Judge failed to appreciate that the Model Standing Orders are a beneficial piece of legislation, intended for the benefit of the workers and the interpretation of its rules has to be done accordingly;

(iii) It is next submitted that the learned Single Judge failed to consider the various submissions made by the Appellants in the Writ Petition and also failed to consider that private contracts between the employer and the employee,

which are in violation of industrial and labour laws, and which are not beneficial to the worker, need to be treated as bad under the law, and the benefits be given to the worker as per the beneficial pieces of specific legislation as laid down under the industrial and labour laws;

(iv) It was therefore submitted that the learned Single Judge cannot allow the Respondent Company to take benefit of a private contract to the detriment of the worker, since the provisions of the private contract are in clear violation of the industrial and labour laws;

(v) The Appellants also relied on **Raymond Uco Denim Pvt.Ltd. Vs. Praful Warade and others**[1], to contend that it has been held that the probation period prescribed by Clause 4A of the Model Standing Orders would prevail over the period of probation prescribed under a contract of service, if such probationary period under contract of service is more than that prescribed by Clause 4A of the Model Standing Orders. The Appellant, therefore, submitted that the learned Single Judge has failed to consider this important aspect of law, and in view thereof, the impugned order is liable to be quashed and set aside.

6. *Per contra*, learned counsel on behalf of the Respondent Company has submitted that the impugned order is passed by the learned Single Judge after appreciating all the facts and is a proper order which has interpreted the law in the correct manner. The submissions made by learned counsel on behalf of the Respondent Company are to the following effect :

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(i) It has been submitted that it is incorrect on the part of the Appellants to contend that the provisions of the Model Standing Orders would override the contract between the Appellants and the Respondent Company, inasmuch as the Appellants were in the very first instance not appointed on probation;

(ii) It is further submitted that from the facts it is very clear that insofar as all the Appellants are concerned, the Appellants were first employed as trainees and thereafter, after the traineeship period was over, they were appointed on a temporary basis for a one-year period and thereafter, they were appointed on probation basis. This goes to show that in the very first instance, the Appellants were not appointed as probationary employees;

(iii) It was further contended that the Appellants were appointed as trainees specifically for a period of one year. The period of training was also specifically mentioned in the letter issued to the Appellants, and during the said period of training of one year, the Appellants were paid a monthly stipend. It was also specifically mentioned in the said letter of training that during the period of training, the relationship between the Appellants and the Respondent Company would be that of a master and pupil. It was also specifically mentioned that during the said training period, the Appellants would not be considered as workmen or regular employees of the Respondent Company;

(iv) Further, it was also submitted that after the period of one year was over, the traineeship was terminated and the Appellants were paid dues as full and final settlement of their traineeship period. Thereafter, the Appellants applied to

the Respondent Company and the Respondent Company appointed the Appellants on a temporary basis for a specific period of six months. After the end of the specific period of six months, the temporary appointment came to an end by efflux of time, and there again the Appellants were paid dues as full and final settlement. Thereafter, the Appellants applied to the Respondent Company and were appointed on a probation period for six months by letters of different dates for each of the Appellants, and the probation period was specifically mentioned in the said letters i.e. of six months.

(v) It was specifically mentioned in the said letters appointing the Appellants on probation that depending on the overall performance of the Appellants, it would be decided as to whether they should be continued in service; otherwise, their employment would come to an end as soon as the probationary period was completed;

(vi) It was therefore submitted that the Respondent Company had appointed the Appellants for a specific period of time, which was clearly mentioned in the appointment letter and therefore on efflux of time, the employment came to an end, and it was not a retrenchment within the meaning of law, but was a case governed by the provisions of Section 2 (oo) and (bb) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "ID Act");

(vii) Further, the Appellants were also not workmen/employees within the meaning of law, and there was no unfair labour practice committed by the Respondent Company.

(viii) It was also submitted that the Industrial Court in the Revision Applications filed before it against the order of the Labour Court has categorically held that merely mentioning the provisions of the M.R.T.U. and P.U.L.P. Act does not attract any unfair labour practices on the part of the Respondent Company, and further has also held that in the appointment letter, it was crystal clear that on completion of the trainee period, the relationship between the parties would come to an end and hence the probation period was specific in terms of the letter of probation;

(ix) It was also contended that in the revision proceedings, it was clearly held that once an employee accepts the fresh letter of appointment without recording any protest, it amounts to unconditional acceptance of the letter of appointment, and since the concerned employees, i.e. the Appellants, had full knowledge and had accepted the letter appointing them for traineeship, the letter of temporary employment, and thereafter the letter of probation without recording any protest, the concerned employees could not now challenge the act of the management of appointing them as trainees, temporary employees, or on probation as there was no protest ever recorded by them. Hence, once the employees i.e. Appellants themselves had accepted the terms of employment, they cannot renege on their conduct, and therefore, in revision proceedings, the Industrial Court held against the Appellants.

Analysis and Findings

7. We have heard learned Counsel Mr. Bhavesh Parmar along with Ms. Reshma Nair, Mr. Rajesh Sahani and Mr. Devmani Shukla on behalf of the

Appellants, Mr. Neel Helekar along with Mr Atman Mehta and Vipul Patel on behalf of the Respondent Company. Ms. Shruti Vyas, Additional Government Pleader along with Ms Savita Prabhune, AGP on behalf of the Respondent State. We have heard learned counsels for the parties and with their assistance perused the papers and proceedings. We accordingly proceed to decide the present Letters Patent Appeal.

8. The short issue which has fallen for consideration in the present proceeding is whether the termination of the Appellants, post the probation period, was contrary to Clause 4A of Schedule I of the Model Standing Orders, and whether Rule 32 of the orders would prevail.

9. Model Standing Orders are applicable to every industrial establishment wherein 100 or more workmen are employed on any day of the preceding 12 months, as per the Industrial Employment (Standing Orders) Act, 1946. In exercise of the powers conferred under Section 15 of the Industrial Employment (Standing Orders) Act, 1946, the Government of Maharashtra has framed the Model Standing Orders. Rule 3 of these rules states that the Model Standing Orders, for the purposes of the Act, shall be those set out in Schedule-1 appended to the said rules. It is undisputed that Model Standing Orders are applicable to the facts of the present case. Further, the Respondent Company is also an "industry" as defined in Section 2(j) the ID Act, which reads thus-

> "**(j) "industry"** means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;"

To decide the issue at hand, it would further be beneficial to extract Clause 4A of Schedule-I of the Model Standing Order and Rule 32 of the Model Standing Orders, which reads thus:-

SCHEDULE-I

"**4-A.** Every probationer who has completed the period of three months uninterrupted service in the post in which he is provisionally employed shall be made permanent in that post by the Manager by an order in writing, within seven days from the date of completion of such service;

Provided that, where certified standing orders which prevail on the date of coming into force of this rule prescribe a longer probationary period than three months, the probationer shall complete such probationary period:

Provided further that, if the services of the probationer are found to be unsatisfactory, the Manager may terminate his services after his probationary period.

Explanation.-For the purposes of this clause, the probationary period shall not include any interrupted service and shall not be deemed to have been broken by such interrupted service."

Order 32 of Model Standing Orders:

32. Nothing contained in these Standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right under a contract of service, custom or usage or an agreement, settlement or award applicable to the establishment.

(Emphasis supplied)

10. At the outset, we may observe that Item 4-A of Schedule-I requires a holistic reading. It provides that every probationer who has completed a period of three months of uninterrupted service in the post in which he was provisionally employed "shall be made permanent" in that post by the Manager, by an order in writing, within seven days from the date of completion of such service. Thus, a necessary prerequisite is the performance of an overt act, namely, making such probationer permanent by issuing an order in writing. This provision must be read in conjunction with the second proviso under item 4A, which ordains that if the

services of the probationer are found to be unsatisfactory, the Manager may terminate his services after the completion of the probationary period. This being the basic requirement, the first proviso stipulates that where the certified standing orders in force on the date of commencement of the said Rule prescribe a probationary period longer than three months, the probationer shall be required to complete such extended probationary period.

11. On reading item 4A of Schedule-I, the object intended to be achieved, is quite evident, namely, an appointment on probation is required to be confined within the time period specified therein. In other words, a probationary appointment cannot be for an indefinite or uncertain duration/period. Once such period is confined by virtue of such statutory requirement, such probationer becomes entitled to be made permanent, however, this requires the issuance of an order in writing. For issuing such an order, a decision must necessarily be taken that the services of the probationer are satisfactory, failing which, the Manager may terminate the probationer's services after completion of the probationary period. This is the requirement of the second proviso coupled with the stipulation under item 4A of Schedule I and Model Standing Order No.32 (supra) becomes relevant which is to the effect that nothing contained in the standard orders shall operate in derogation of any law for the time being in force, or to the prejudice of any right under a contract of service, custom or usage or an agreement, settlement, or award applicable to the establishment.

12. A right under a contract of service includes the rights of the employee and

those of the employer. However, in our opinion, Model Standing Order No.32 must be interpreted to mean that any benefit available to a probationer or employee under the contract of employment cannot be nullified by the operation of the Standing Orders, so as to render it less beneficial to the employee. In other words, the provision, whether under the Standing Orders or the contract of service, that is more beneficial to the employee must be given primacy.

13. On a conjoint reading of Item 4A of Schedule I read with Model Standing Order No.32, as applicable to the facts of the present case, in our opinion, the appellant would not be in a position to canvass that the fallout of item 4A of Schedule I read with Model Standing Order No.32 would be required to be read as if it would grant an automatic or a deemed confirmation on the completion of the probationary period, whichever is beneficial i.e. either the period under the Model Standing Order or the period under the contract of employment, inasmuch as, the necessary requisite of item 4A of Schedule I, namely, that an order in writing would be required to be issued to make the probationer permanent, is in no manner dispensed with. From the mandate of item 4A coupled with the right of the employer being clearly recognized in the second proviso that if the services of the probationer are found to be unsatisfactory, the probationer can be terminated by the Manager after his probationary period, it follows that this would not contemplate that during the subsistence of the probationary period, there is any bar on the employer to conduct appraisal and review as to whether the probationer is discharging services to the satisfaction of the employer. There is no bar for the employer to undertake such exercise.

14. Thus, on completion of the probationary period as in the present case, the appellants were informed that their services were being discontinued on completion of the probation period and that they would be released accordingly, would necessarily mean that their probation is not being confirmed and they are being simpliciter discharged. It does not require much elaboration that such orders of simpliciter discharge, i.e., the release of a probationer from service after completion of the probation period without confirmation, would not require inclusion of any remark in regard to the performance of the probationer that the same was not satisfactory, as any such remark may not be in the interest of the employee and more particularly when he would have avenues of other employment open after his probationary appointment is discontinued. It is well settled that an adverse remark on his performance during the probationary period if made in such discharge letter, would be prejudicial to the probationer apart from casting a stigma, giving rise to different consequences in the labour and service jurisprudence and therefore, a model and careful employer always issues plain and simplicitor orders of discharge whenever the probation for any reason is desired not to be continued.

15. In the facts of the present case, the appointment of the Appellants was initially made as trainees, and thereafter on a temporary basis and post that, the appointment was on a probation basis. It is not disputed that post the traineeship period and also post the one-year temporary employment period, a full and final settlement was given to the Appellants.

16. Further, in the present case, there is no dispute that all the terms of employment were accepted by the Appellants, without raising any protest.

However, the Labour Court, as well as the Industrial Court in revision proceedings have taken differing views, where the former has taken a view that insofar as unfair labour practices are concerned under the M.R.T.U and P.U.L.P Act, the Respondent Company had in fact been guilty of indulging in such practices. The Labour Court has come to this conclusion on the basis that the termination of the services of the Appellants post the probation period was contrary to the Model Standing Orders which prescribed the probation period of 3 months, and therefore was not in consonance with the Model Standing Orders, and hence it amounted to unfair labour practices attracting Item 1 (b & f) of Schedule IV of the M.R.T.U and P.U.L.P Act.

17. The Labour Court has come to this conclusion on the basis that the Appellants were appointed on probation for a period of six months and the Model Standing Orders provide the period of probation for three months. The Labour Court in reaching the aforesaid conclusion placed heavy reliance on the decision of **Western India Match Company Ltd. V/s. Workmen**[2], wherein the Supreme Court had observed that extension of the probation period beyond the maximum period provided by the Standing Orders is illegal. The Labour Court also placed reliance on the decision of **M. Venugopal v/s. The Divisional Manager, Life Insurance Corporation Of India, and An***r.*[3], wherein the facts were that the services of the employees were terminated under a stipulation provided under Regulation 14 of the LIC Staff Regulations, 1960 and the order of the appointment of the employee was amended in 1981, and that during the period of probation, the employee was

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liable to be discharged from service without any notice. The maximum period of probation provided was two years in that case of employees belonging to Class I and II and one year in other cases.

18. The relevant findings of the Labour Court are reproduced below, which hold that in the facts of the present case, the employer, i.e. the Respondent Company had terminated the services of the Appellants without following the Model Standing Orders and hence it was held that the Respondent Company had engaged in unfair labour practice under item 1 (b & f) of Schedule IV of the M.R.T.U and P.U.L.P Act. The relevant paragraphs are as under:

> "18. On hearing both the parties and perusing the citations, the main issue seems whether the act of the respondent in not continuing the complainants in service after expiry of probation period was legal or unfair labour practices. As I mentioned earlier, it is not in dispute that the complainants worked for certain period, they were issued with the letter of one year's training, they were given letters of temporary appointment for a period of 6 months. The complainants Khairnar, Mahale and More were given work as probationers for 6 months whereas complainant Patil and Bhosale were given work as probationer for one year by extending their period of probation for 6 months. It is not disputed that they were allowed to work only till the last day of the probation period. Thus, the complainants have worked in first year as trainee, in next 6 months as temporary workman and in next 6 months or one year as the cast may be as probationer. The respondent's witness Deshmukh has admitted that model standing orders are applicable to the respondent. Schedule 1 4-A of the standing orders provides,
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> > "Every probationer who has completed the period of three months uninterrupted service in the post in which he is provisionally employed shall be made permanent in that post by the Manager by an order in writing, within seven days from the date of completion of such service, provided that, where certified standing orders which prevail on the date of coming into force of this rule prescribed a longer probationary period than three months, the probationer shall complete such probationary period.
> >
> > Provided further that if the services of the probationer are found to be unsatisfactory, the manager may terminate his services after his probationary period.
> >
> > For the purpose of this clause, the probationary period shall not include any interrupted service and shall not be deemed to have been broken by such interrupted service."
>
> Thus, the standing orders provides 3 months probation period only. These

complainants were appointed on probation for 6 months. In the case of Western India (cited supra), it has been held that, the terms of employment specified in the standing orders would prevail over the corresponding terms of contract of service in existence on the enforcement of the standing orders. It has been further held that the special agreement in so far as it provides for additional four months of probation is an act in contravention of the Standing Order. So, the inconsistent part of the special agreement is ineffective and unenforceable. The facts of the case were that one Prem Singh was appointed as Watchman on 1/9/1965. Letter of appointment was stating that he would be on probation for a period of 6 months. The company passed an order on 13/4/1966, 9 days later on April 22, he was discharged with effect from May 1966 for the reasons that probation period is not approved, the services are no longer required by the company. The Division bench of Hon. Apex Court held,

> "The special agreement, in so far as it provides for additional four months of probation, is an act in contravention of the Standing Order. We have already held that, it plainly follows from section 4,10 and 13 (2) that the inconsistent part of the special agreement cannot prevail over the standing Order. As long as the Standing Order is in force, it is binding on the Company as well as the workmen. To uphold the special agreement would mean giving a go by to the Act's principle of three-party participation in the settlement of terms of employment. So, we are of opinion that the inconsistent part of the special agreement is ineffective and unenforceable".

19. In the present case, the complainants were appointed on probation for a period of 6 months, and the standing orders provides the period of probation as 3 months. There is catena of judgements wherein it has been observed that the terms of standing order would prevail over corresponding terms in contract of service. I have already discussed the case of Western India and workmen wherein the Hon. Apex Court observed, extension of probation period beyond the maximum period provided by the standing order is illegal. The complainants cited the case of U.P. Co-op. Spinning Mills Vs. State of U.P. And Washim Beg Vs. State of Uttar Pradesh (cited supra) wherein it has been observed that the maximum period of probation can be as prescribed by the standing orders. The respondent cited the case of Venu Gopal Vs. L.I.C. (cited supra). The facts of the case of Venu Gopal were that the services were terminated under a simulation provided under Regulation 14 of L.l.C. Staff Regulations 1960 and the order of appointment of the employee. The regulation 14 of L. I.C amended in 198l was to the effect that during the period of probation, employee shall be liable to be discharged from service without any notice. The maximum period of probation provided in 2 years in the case of employees belonging to Class I and II and one year in other cases. The services of employee in that case were terminated during the period of probation. Here the facts of the case are different. The complainants' services came to be terminated after completion of probation period.

20. The case of Venu Gopal has been relied upon by the respondent mainly for the observation that the services can be terminated on the basis of stipulation in the service contract. It has been contended that as the period of probation was the stipulation and there being specific stipulation that the letter of confirmation will be issued separately after completion of the probation, the services can be terminated on the completion of the said period. As I mentioned earlier the service conditions stipulated in the contract with complainants for probation period of more than 3 months was against the provisions of the standing orders and the standing orders will prevail. More so it has been held in the case of Venu Gopal that under General Law, the services of the probationer car: be terminated after making over all ascertainment

of performance during the period of probation. The facts were that the performance of workman in that case was not satisfactory. He failed to achieve the given target. Here in this case, there seems no such situation of terminating the services due to unsatisfactory performance. Two of the complainants have been issued with the letters of termination though letters nowhere speak about termination of services because of unsatisfactory performance. The letters recite to the effect that the services are terminated because of completion of the period of probation. For better understanding, I would like to produce relevant portion of the letter.

> "Your services are discontinued with effect from 31/8/1998 on completion of your probation period and you will be relieved after working hours of 31/8/1998."

21. The stress of the respondent is that there was specific term in the service contract that after completion of probation period, separate confirmation letters will be issued. In the case of U.P. Co-op. Spinning Mills Vs. State of UP (cited supra), the facts were that the workers were appointed with stipulation in their letter of appointment that confirmation shall be done by separate letter after expiry of satisfactory period of probation. In the said case, it is held,

> "From a perusal of the terms of the appointment letter it is clear that the terms and conditions are inconsistent, with the Standing Orders applicable to the workman of the mills as under the Standing Orders the period of probation is only 3 months and hence there is no power given to the mills for extending the period of probation."

Thus, the stipulation that the confirmation letters will be issued separately cannot entitle the employer to terminate the services by efflux of time.

22. In the present case, the respondent claims that the complainants work was not satisfactory. It is to be noted that in the termination order issued to only 2 of the employees nothing is to the effect that the complainants' services were terminated on finding unsatisfactory performance. The fact also cannot be neglected that remaining 3 workmen were even not issued with letter of termination. Their termination is oral. Therefore, there cannot be presumption to the effect that the termination was for unsatisfactory work of the complainants. It is required to be noted that the complainants were given training in the same factory for 12 months. They were again given 6 months temporary appointment. Thereafter they were appointed on probation. Temporary appointment following the period of training indicates that the company did not find them unsuitable to the work. In such circumstances, the presumption of unsatisfactory performance cannot be drawn up only on the basis of not allowing them to continue to work after the period of probation.

23. The respondent relied upon the case of Prafull Dattatraya Pore Vs. J.K. Chemicals Ltd. And others (Cited Supra) in support of the contention that that a probationer can be terminated without notice. In this case, it has been held that the employer could judge the ability of employees and find out whether the services were satisfactory or not the facts of the case were that the employee was issued with the letter dated 23/3/1979 for finding him unsuitable for the work. He was terminated during probationary period. The facts of the case in hand are different. There is no letter from the side of the respondent to 3 employees for terminating the services due to unsatisfactory performance and the letters issued to two employees do not recite to that effect. There can be no dispute that the employee can be discharged during probation for unsatisfactory performance, and such discharge

cannot be termed as retrenchment if not on the ground of misconduct. The identical ratio laid down in the case of Prafull Dattatraya Pore Vs. J.K. Chemicals, Venu Gopal Vs. Life Insurance Corp. of India and Dy. Director of Health Services Vs. Latabai (cited supra) is that during the probation period, the employee can be discharged for unsatisfactory performance.

24. The facts of the present case are different. The learned counsel for the respondent in support of the contention that stipulation in service contract contrary to standing orders may be illegal, but does not amount to unfair labour practice, cited the case of General Workers Union Vs. Sangli Municipal Council reported in M.R.T.U. & P.U.L.P. Cases by Shri Athare and Modgekar page -146 (Bombay High Court). The facts of the cited case are that the transfer and promotion were claimed illegal as there was no common seniority list as required according to the Government orders of reservation. It was not a case of termination, discharge or dismissal following under item 1 of schedule IV of the M.R.T.U. & P.U.L.P. Act. It was a case following under item 4(e) of schedule II and items 3,5 and 9 of schedule IV of the M.R.T.U. & P.U.L.P. Act. It was held that, transfer from one department to another and to give promotions according to the Government Resolution of reservation of scheduled caste will not be unfair labour practice if there is common seniority list. The status of Government orders of Reservation is on different footing than the standing orders framed under the Industrial Employment Standing Orders Act. The model standing orders have status of legislation. In such circumstances, the above cited case is not applicable to the present case.

25. It was contended on behalf of respondent that this Court has no jurisdiction to interpret the model standing orders. In support of his above contention, he relied on section 13 A of the Industrial Employment Standing Orders Act, 1946 which runs as under.

> "Interpretation etc, of standing orders (model standing or amendment):-
> If any question arises as to the application or amendment certified under this Act any employer or workman (or any prescribed representatives of workmen) may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947 (XIV of 1947), and specified for the disposal of such proceedings by the appropriate Government by notification in the Official Gazette and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties."

26. Here in this case, there is no question of interpretation of the model standing orders. In the present case, it has to be seen whether the service contract contrary to the provisions of the model standing orders and termination of service contrary to the provisions of the model standing orders amounts to unfair labour practices. The section is inserted w.e.f. 10/3/1957. Our Hon. High in the case of Indian Tobacco Co. Vs. Industrial Court reported in 1990 I CL.R-88 in the year 1989 held that contract of the probation contrary to the provisions of model standing orders is illegal and termination on the ground of stipulation of contract is unfair labour practice. The facts of the case at hand are similar as of the cited case i.e. Indian Tobacco Company. Thus, this Court has jurisdiction.

27. It has been contended by the respondent that there was contract to grant employment for specific period as mentioned in the letter of appointment for probation & the termination by way of non-renewal of contract falls in clause (bb) of section 2(oo) of Industrial Disputes Act. In support of the contention, the respondent relied upon the case of Maharashtra State Electricity Board Vs. Mr.

Pagar. (cited supra). It is in case of temporary employee appointed on purely temporary basis for 3 months. It was not the case of appointment on probation. The appointment for fixed period falls in clause (bb) of section 2(oo) of the Industrial Disputes Act. It would be a temporary appointment. The standing orders granted separate status to temporary employee and probationer. As per standing orders, the employee who has completed period of probation provided by it satisfactorily, deemed to be confirmed. There is no provision to grant separate letter of confirmation. The temporary employee who has been appointed for fixed period governed by simulation of fixed period in his appointment letter. The respondent cannot be allowed to take both the inconsistent pleas of fixed period appointment and appointment as probationer. The letters issued by the respondent to the complainant are for appointment on probation. So, the appointments are to be considered on probation & not for fixed period. The complainants' case therefore do not fall under clause in 2(oo) of the Industrial Disputes Act. They were probationers. They crossed the minimum period of probation provided by the standing orders. The termination of their services was not for unsatisfactory performance. In such circumstances, their termination was in colourable exercise of employer's right and with undue haste amounting to unfair labour practice under item 1(b&f) of schedule IV of the M.R.T.U. & P.U.L.P. Act 1.971.

28. The complainants admittedly had completed 240 days of work with respondent. They therefore were entitled to compliance of section 25 F of the Industrial Disputes Act i.e. Notice pay and retrenchment compensation. The provisions of section 25F of the Industrial Disputes Act, 1947 were not complied. Therefore, their termination is with undue haste. (Emphasis supplied)

29. The learned counsel for the complainants vehemently argued that the complainants' services be considered from the date of joining i.e. the date of training. It has been contended that the respondent was not entitled to uke employee as trainees. In that context it is to be noted that the complainants have accepted their status as trainees. They were not paid regular payment but were only paid stipend. In the next 6 months period they were appointed for fixed period, which came to an end by the end of the period of service. Their services therefore have to be considered as of probationer taking in service as probationer on the date of issuance of such letter.

30. It is to be noted that the letter of appointment of first as trainee, then appointing them for fixed period on temporary appointment and then on probation and then their terminating the services does not indicate bonafide action of the employer. However, for the period of entry in the service, it has to be taken as probationer as on the date of issuance of the letter of probation.

31. The complainants contend that junior to them are retained in service. They have supplied the names of some persons. However, there being no evidence that those persons are junior to the complainants, it cannot be concluded that their termination is without following the rule of last come first go.

32. The complainants were appointed on probation. They completed minimum period of probation. Their termination was not for unsatisfactory performance. In such circumstances, their termination amounts to unfair labour practice under item 1(b&f) of schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971.

33. As I mentioned earlier that the respondent terminated complainants' services by committing unfair labour practice under item 1(b&f) of schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971. In the light of above discussion, I answer issue No.1 to 3 accordingly.

34. Issue No.4 and 5:

I have held that the respondents engaged in unfair labour practice: under item 1 (b& f) of schedule IV of the M.R.T.U. & P.U.L.P. Act, 19'71 in terminating the complainants' services. Therefore, the complainants are entitled to the relief of reinstatement with continuity of service.

35. As far as the point of back wages are concerned, it is to be noted that, the complainants are skilled persons. They were working as operators with the respondent. Their termination is in the year 1998. The period of about 7 years has lapsed. Since complainants are trained and skilled persons, there is no possibility that the complainants are sitting idle for these 7 years. Moreover, there is delay in filling Complaint (ULP)No.157/1999. No doubt the delay in filing that complaint is condoned, but for the period of delay, the complainant in that complaint is not entitled to any back wages. The complainants have not stated as to what they were doing after their termination in the year 1998. In such circumstances, the respondent cannot be penalised by awarding full back wages as claimed by the complainants in the complaints. It is to be noted that complainants will get the amount of back wages whatever it may be without any physical strain or without any work with respondent after their termination in the year 1998. In these facts and circumstances, I am of the opinion that, ends of justice can be met if the complainants are granted 50% hack wages on the basis of last drawn wages of the complainants. Moreso, the complainant in Complaint (ULP)No.157/1999 is entitled to back wages at the above rate from the date of filing of the complaint i.e. From 17/8/1999. In the light of above discussion, I answer Issue No. 4 and 5 accordingly. In the result I proceed to pass following order.

ORDER

1. It is declared that the respondent engaged in unfair labour practice under item 1(b&f) of schedule IV of the M.R.T.U. & P.UL.P. Act, 1971 in terminating the services of complainants.

2. The complaints are entitled to reinstatement with continuity of service.

3. Complainants in Complaint (ULP) No.166 & 174/1998 are entitled to 50% back wages on the basis of their last drawn wages from the date of the termination of service.

4. Complainant in Complaint (ULP)No.157/1999 is entitled to 50% back wages on the basis of his last drawn wages from the date of filing of the complaint i.e. 17/8/1999.

5. The respondent is directed to reinstate all the complainants with continuity of service.

6. The respondent is further directed to pay, 50% back wages to the complainants in Complaint(ULP)No.166/1998 and 174/1998 on the basis of their last drawn wages from the date of their termination and to pay 50% back wages to the complainant in Complaint (ULP)No. 157/1999 on the basis of his last drawn wages from the date of filing the complaint i.e. 17/8/1999.

7. Parties to bear their own costs.

8. The respondent is granted 8 month's time from the date of this order, to comply with this order:"

(Emphasis supplied)

19. The Industrial Court, however, in revision proceedings overturned the order of the Labour Court on various grounds, but primarily the thrust of the Industrial Court in revision proceedings in overturning the order of the Labour Court was that the Appellants had not raised any dispute with regard to the appointment first on traineeship and then on a temporary period of six months and thereafter on a probation of six months. It was also held that from the record it was clear that on completion of the trainee period, the relationship between the Appellants and the Respondent Company was brought to an end and also on completion of six months temporary employment, that relationship was also brought to an end. The probation period was specified in the letter of probation and on that basis the Industrial Court reached to the conclusion that it was settled law that once the concerned employee had full knowledge in so far as his period of employment was concerned, and did not raise any challenge in respect thereof, then it did not lie in the mouth of the Appellants to challenge the same.

20. The Industrial Court further held that the 240 days as prescribed in Section 25F of the ID Act were not satisfied in the facts of the present case and hence this was not a case of retrenchment whereby compensation had to be provided to the Appellants. The relevant paragraphs of the order of the Industrial Court are reproduced below:

> "12. Heard arguments advanced by the Learned Advocates for both the parties in consonance with the contentions raised as mentioned above as well as in the original complaints. I have perused the record and proceeding of the complaints as well as order passed by the Ld. Labour Court. There is no dispute as regards the appointment of the concerned employees a trainee, thereafter, as temporary for a period of 6 months and thereafter on probation period for 6 months. It is also crystal clear from the record that on completion of trainee period the relationship of the between the parties that was brought to an end as well as on completions of 6

months temporary employment the relationship brought to an end. The probation period was specified in the letter of probation. It is very much settling law that, when the employee accepts the fresh letter of appointment without recording his protest that amounts to unconditional acceptance of letter of appointment. The concerned employee was having full knowledge and accepted the letter of trainee, letter of temporary employment and thereafter, the letter of probation without recording any protest. The concerned employees during the period of their employment as probation also not challenge the act of the management of appointing them as trainee, temporary or probation and not their protest ever recorded. It is very much settled law, that on accepting the fresh appointment the employee does not have any right to challenge the said order in the absence of protest. The Ld. Labour Court, in the order on page No.7 specifically mentioned that the date of appointment as trainee, temporary and probation along with the dates of termination. The chart clearly shown the appointing concerned trainee, temporary and probational. As regards the letter trainee is concerned it is very much settle law, that the trainee is not employee withing the meaning of law and the trainee period cannot be considered as employment of the concerned persons for the purpose of counting 240 days. As regards the temporary appointment is concerned if the time is specified for temporary work and services came to an end on expiry of period such employment is not required to be consider for the purpose of counting 240 days. As regards the probation period is concern, there being specific mentioned about the probation period of 6 months in the order of probation and on completion of the said period if the services come to end the question of attracting section 25 F of the Industrial Dispute Act, 1947, in that case does not sustain. The letter of probation issued to the concerned employees very specifically shown the period of probation. If the employment of the concerned employees comes to an end on expiry of probation period as mentioned in the letter of appointment of probation, admittedly the question of completions of 240 days does not survive, as well as question of payment of compensation does not arise.

13. The Ld. Labour Court, in the order from page No.17 para-No. 18 onwards discussed as regards the applicability of the standing order provisions to the trainee and the act of the company to keep the concerned employees on 6 months probation period is appropriate or not. The Ld. Labour Court in para 27 on page No. 26 observe that "there is no provisions to grant separate letter of confirmation", that said observation appears to be contrary to the settle legal position, when the letter itself contains that only the services are confirmed in writing, there is no question that of there being any provisions of issuing separate letter of confirmation.

14. The citation of which reliance has been placed by the Ld. Advocate, for the applicant company clearly indicate that unless the order of confirmation issued, there is no question of confirmation in the eyes of law. The Hon'ble High Court, Madras, in the matter of Bharat Petroleum Corporation Ltd V/s D. Nagendra. Reported in 2006, 1 CLR page No.199 observe that, "automatic confirmation cannot be claimed as a matter of right because in terms of the Rules, work has to be satisfactory which is a pre-requisite condition for confirmation and, therefore, even if the probationer is allowed to continue beyond the period of two years as mentioned in the rules, there is not question of deemed confirmation." Considering the aforesaid observation, it is crystal clear that, even if the employees continue subsequent period of probation mentioned, even then also he does not get right to calming the confirmation automatically. There are no provisions as regards confirmation is concerned. The Hon'ble High Court, also observed in the said judgment that, " The function of confirmation completely vests with the management's corporation, which implied the exercise of judgment by the corporation with the confirming authority on the overall suitability of the employee

for permanent absorption of his services. That can be done only after the period of probation is completed".

15. In the light of aforesaid observation of the Hon'ble High Court, Madras are relaying the judgment of Hon'ble Apex Court, in the matter of Venugopal V/s Divisional Manger, Life Insurance Corporation of India (1994) 2 SSC 323 and Registrar, High Court, of Gujarat V/s C.G. Sharma, (2004)5 C.T.C. 525, clearly indicates that the observation of the Ld. about the reliance on standing order and there is no provisions of issuing the letter of confirmation are totally baseless and without applicability of the proper mind.

16. In my opinion, observation of the Ld. Judge, about indulgence in unfair labour practice, of colourable exercise of the employers right and with undue haste are totally baseless. As regards undue haste is concerned there is no reasons given as to how the act of the respondent amounts to undue haste, as well as for attracting item 1(b) and no reasons has given as to how the act of the company was fall under the colourable exercise of the employers right. Merely mentioned of attractive item1 (b & f) without giving any details and reasons thereof, the observation of the Ld. Court, about attracting item 1(b &f) is completely without any base. The Ld. Labour Court, for the purpose of attracting Sec.25F of the Industrial Dispute Act, considered there, the employees have completed 240 days with the company, however, termination of the concerned employees for want of compliance of the provisions of law, i.e. notice pay and retrenchment compensation has been termed as undue haste. In my opinion, nonpayment of notice or retrenchment compensation under no circumstances can be held the undue haste for the purpose of attracting item 1(f) latter part of this, that undue haste. Haste is required to be action of the management which is nothing to do but is required to be unnecessarily and which is not at all appearing in the present matter. Even assuming that notice pay and retrenchment compensation not paid that can be claim by the employees and action of payment of the same, but that will not amount to attracting item 1(f) letter part with undue haste.

17. The observation of the Ld. Labour Court, in para 29 appears to be in presumption only and there is no legal base for such observation. Further observation of the Ld. Judge, that the complainants were appointed on probation. They completed minimum period of probation. Their termination was not for unsatisfactory performance. In such circumstances, there termination amounts to unfair labour practice under item 1(b &f) of schedule IV of the MRTU & PULP Act, 1971 is totally misconceived particularly in the light of observation of the Hon'ble Apex Court, in the matter of Kishore Chandra Samal V/s Divisional Manager, Orissa State, Cashew Development Corporation Ltd. Reported in 2006 1 CLR page No.29, wherein the Hon'ble High Court, pleased, to held that " the appointment was for specific period- No legality in the order of the Hon'ble High Court. The Hon'ble Apex Court, in para 7 of the judgment observe that, In Morinda Co-op Sugar Mills Ltd. V/s Ram Kishan and Ors. Reported in 1996, 1 CLR 17. SC; wherein the Hon'ble Apex Court, observe that, " The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in clause (bb) of Section 2(oo) of the Act."

18. In my opinion, considering the aforesaid ratio and observation of the Ld. Labour Court, about attracting the item 1 (b & F) in the judgment is totally without applying the mind and without any base. It appears that the Ld. Labour Court, passed the said order on presumption and further appears to miscarriage of justice and therefore, there is no reasons as to why item 1(b & f) are attracting and what act of the employee shown attracting the item 1(b & f) of schedule IV of the MRTU &

PULP Act, and if at all there is any sort of violation of standing order, however, the same is not within the ambit of item 1 of schedule IV of the MRTU & PULP Act, and mainly on the background that there is no challenge any of the order issued by the employer to the concerned employees and there is no protest made before accepting the appointment orders. In this circumstance, I do not find any reasons to uphold the order passed by the Ld. Labour Court, and therefore, answer the issue in affirmative holding that the order passed by the Ld. Labour Court appears to be perverse.

19. As regards the granting of relief and holding indulgence of employer in unfair labour practice I, therefore of the opinion, that such order deserves to be set aside in totally and therefore, question of considering the Revision filed by the concerned employees does not sustain in this circumstance, I, pass the following order.

ORDER

1. Revision (ULP)Nos. 126,127 & 128/2005 are allowed.

2. The order passed by the Id. Labour Court, in Complaint (ULP)Nos.166, 174/98 & 157/99 are hereby set aside.

3. The complaints filed by concerned employees i.e. Complaint (ULP)Nos. 166,174/98 & 157/99 stands dismissed as the termination of the concerned employees falls within the ambit of Section 2(oo) (bb) of the Industrial Dispute Act, 1947.

4. Revision Application (ULP) Nos. 9,10,11/2006 stands dismiss.

5. The record and proceeding be sent back to the Labour Court.

6. No order as to costs."

(Emphasis supplied)

21. We find ourselves in complete agreement with the observations as made by the learned Member of the Industrial Court noting the relevant decisions of the Supreme Court, that the probationer appointed certainly requires confirmation, which was not granted to the appellants and in the absence of such confirmation being granted, merely placing reliance on item 4A of Schedule I, the appellants cannot canvass a proposition that they shall be entitled to be made permanent on the basis of which they are appointed. The Industrial Court is correct in its approach not only on the applicability of item 4 of Schedule I read with Model Standing Order No.32, but also on the settled principle of law governing

confirmation of probation. At the most, a probationer could have canvassed the proposition that they have become entitled to claim permanency on the completion of probation and for which, if the employer has not undertaken appraisal for such permanency, the employer would be required to undertake the same. However, this cannot be comparable to the probationer, *de hors* the requirement of the second proviso under item 4A and the requirement of a specific order of confirmation / being made permanent, seeking a declaration of any automatic permanency. On this position, the following discussion would aid our conclusion.

22. The sample appointment letter dated 1st February 1998 issued in favour of Appellant No. 4 provided that once the probation period was completed and if the company was satisfied by the overall performance of the Appellant, then a separate letter confirming the appointment would be issued to the Appellant. In the facts of the present case, there was no such letter of confirmation issued to the Appellants and therefore they would not be automatically entitled to the permanency benefits from the date of probation i.e. a period of 3 months as per the Model Standing Orders as held by us. In fact, in the present case, sample letters dated 1st February 1998, and 31st July 1998 were issued to the Appellant No. 4 wherein it was informed to the Appellant No. 4 as follows:-

Letter dated – 1st February 1998

KIRLOSKAROIL ENGINS LIMITED
VALVE PLANT-NASHIK UNIT

FEB.1, 1993.
REF : KOEL/NSK/_____/APT/RBM/FEB.98

Mr. Rajesh Baburao More,

Type _____ H.A.L. (Township),
Tal.Niphad, Dist. Nashik.

Dear Mr.Rajesh,

This has reference to your interview, you had with us on 31-01-1998, the medical examination and on the basis of the information given by you, we are pleased to offer you an appointment as Operator _____ ll in our Organisation on the following terms and conditions:

01. You will be on Probation for a period of six months from 01/02/98 to 31/07/98. At the end of the probation period, based on the recommendation of the immediate superintendent, depending on your performance, attendance, conduct and medical reports, if your overall performance is found satisfactory, your services will be confirmed in writing by a separate letter. Otherwise, your employment will come to an end as soon as your probationary period is completed.

Your probation period may be extended by the company if found necessary. We also reserve the right to terminate your services during the probation period at any time without providing any reason whatsoever and without notice or pay in lieu thereof.

02. You will be paid a basic salary of Rs.18/- per day and other allowances applicable to your grade.

03. After confirmation, your services will be liable to be terminated by giving one months' notice or pay in lieu thereof on either side.

04. You will be subject to the provisions of Certified Standing orders as applicable from time to time.

05. You will be required to attend duties in any shift. It should not be presumed that the scope of your duties is circumscribed or limited by your designation, and it should not be clearly understood that We reserve to ourselves the absolute right to allot you any type of duties whatsoever consistent with the work requirements and the nature of your employment.

06. During the tenure of your employment with the company, you will be, liable to be transferred to any other department, section, establishment of the company, or at any other place, where the work of the company is carried out. You will also be liable to be transferred to such establishments which may be newly established after your joining the company. You will be covered by the rules and regulations and the terms and conditions applicable at the place where you shall be posted/ transferred/ deputed.

07. Your continuation in the employment will always be subject to your remaining physically and mentally fit and alert. The management shall have every right to get you medically examined at any time and in the findings of doctor will be final and binding on you.

08. You will not, without the consent of the management, disclose or divulge, aur make public, except on legal obligations any information, Regarding company matters and demonstrations on the research carried out whether the same to be confined to you or be known to you in the course of your service or otherwise.

09. You will be responsible for safe keeping and return in good condition order, the companies property which may be in your use/custody/care or charge. The company reserves the right to deduct money value of all such items from your emoluments and/or take search action as it deems proper in the event of your failure to account for them to the satisfaction of the company.

Letter dated - 31st July 1998

"REF : KOEL/P&A/NSK/DIS/RBM/JULY,98

Mr.Rajesh Baburao More,
Type A/2896.H.A.L. (Township),
Tal.Niphad, Dist. Nashik.

Dear Sir,

This is to inform you that in accordance with terms and conditions of your Appointment Letter No. KOEL/NSK./PROB./APPT./REM/FEB.98 dated 1st Feb. 1998, your services are discontinued with effect from 31/07/98 on completion of your probation period and you will be released on 31/07/98 after working hours.

Kindly handover the necessary charge of your present assignment and company property immediately if any in your possession to your immediate superior and complete the required clearance formalities.

You are also requested to collect your legal dues from the Finance Department on submission of clearance certificate."

(Emphasis supplied)

23. On a reading of the letter dated 1st February 1998, it is clear that a written confirmation letter was required, which would be a separate letter post the probation period of the Appellants. The same was not issued in the facts of the present case. It would therefore be correct to hold that, considering that there was no confirmation letter issued in favour of the Appellants, they would not be entitled to be made permanent post the completion of the probation period.

24. Our view above is supported by the following cases, wherein it has been held that where there is no written confirmation letter post probation period, permanency benefit cannot be granted to the employees.

25. In the case of **Durgabai Deshmukh Memorial Senior Secondary School and Anr. v/s. J. A. J. Vasu Sena and Anr.**[4], the Supreme Court had occasion to consider the question of "deemed confirmation" of a probationer with reference to the requirements contained in the relevant statutory provisions. The said decision lends support to the contention advanced on behalf of the employer that, in view

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of the mandate of Clause 4A of Schedule I of the Model Standing Orders, an employee cannot be deemed to have been confirmed in service unless a written order is issued by the Manager, recording satisfactory completion of the probationary period. However, the Court opined that certain undisputed facts in the case required consideration. The employees concerned were appointed on probation for a period of six months, as expressly stipulated in their respective appointment orders, and they duly completed the said probationary period in accordance with the terms of their contracts of service. Thereafter, each of them was formally confirmed in service through the issuance of appropriate orders. It was not the case of the employer that the services of any of the employees were unsatisfactory, or that the probationary period was required to be extended. In these circumstances, the Court held that each employee successfully completed the prescribed probationary period of six months and was thereafter confirmed in service. The Supreme Court in Durgabai Deshmukh (supra), after referring to its earlier decision in **High Court of M.P. Through Registrar and Ors. v/s. Satyanarayan Jhavar v. State of Rajasthan**[5], observed that where the applicable rule requires the employer to perform a specific positive act prior to confirming the services of a probationer, the mere continuation of service cannot lead to a presumption of deemed confirmation. In such circumstances, even if the probationer continues in service beyond the maximum prescribed probationary period, such continuation does not confer a right to be treated as confirmed in service. Confirmation can arise only upon the issuance of a formal order by the

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Appointing Authority, declaring that the probationary period has been satisfactorily completed.

26. In the facts of the present case, there was no confirmation letter issued to the Appellants, and hence there could not be deemed confirmation as held in the case of Durgabai Deshmukh (supra). Further, the Appellants have been paid their full dues post the probation period, and hence granting any back wages or reinstatement benefits in the facts of the present case would not be warranted. The letter dated 31st July 1998 categorically has specified that all the legal dues of the Appellants should be collected from the finance department of the Respondent Company.

27. The reliance on behalf of the appellants on the decision of the Division Bench of this Court in **Raymond Uco Denim Pvt. Ltd. Vs. Praful Warade and Others** (supra) in our opinion, would not assist the Appellants inasmuch as in the said case the employees were initially appointed as trainees for a period of one year. After completion of the training period of one year, the employees were appointed on probation for a period of six months. Significantly, the employer however had confirmed the employees in service on completion of eighteen months service and not on completion of three months as per the requirement of Model Standing Order 4A, while treating them as regular and permanent employees after completion of twenty four months service. According to the workmen under Model Standing Order 4A the probationary period prescribed was of three months and after completion of that probationary period, the employees were required to be made permanent/regular, on their respective posts. These basic facts in the

context of which the Court considered the provisions of Order 4A of Schedule 1 are required to be noted which read thus:-

> "2. For considering the challenges raised in this appeal it would be necessary to refer to the factual aspects that are available on record. The employer is an industrial establishment which is governed by the provisions of the Maharashtra Industrial Relations Act, 1946 (hereinafter referred to as 'the Act of 1946') as well as the Model Standing Orders for Operatives framed thereunder. It is the case of the employees that initially they were appointed as trainees for a period of one year. After completion of the training period of one year, the employees were appointed on probation for a period of six months. According to them under Model Standing Order 4A the probationary period prescribed is only of three months and hence after completion of that probationary period, the employees had become permanent and regular on their respective posts. The employer however confirmed the employees in service on completion of eighteen months service and treated them as regular and permanent employees after completion of twenty four months service. Having made oral representations to the employer for grant of benefit of regularisation and permanency, the employees on 22.03.2007 filed a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, 'the Act of 1971'). In the said complaint the employees sought relief of declaration that on completion of one year training period, it be declared that they had become regular and permanent employees. In the alternate, the relief 6 LPA299.10(j) of they having become permanent in service on completion of probationary period of three months was prayed for. Other ancillary reliefs in monetary terms was also prayed for. The complaint was filed invoking Item 9 of Schedule IV of the Act of 1971. There were 53 complainants and the complaint was supported by the affirmation of the complainant no.1."

28. Thus, the facts in **Raymond Uco Denim Pvt.Ltd. Vs. Praful Warade and others** (supra) stand on completely different footing as compared to the facts in the present case. Firstly in the present case, the appellants were never confirmed as noted by us hereinabove. Thus, to confirm an employee who is on probation, itself is a completely independent assessment of the employer, which as held by the Supreme Court cannot be in any manner be diluted, wished away, discarded or given a go by when it comes to confirmation of probation or any regular appointment. Thus, in these glaring distinguishing facts of the case, in our opinion, the decision would not assist the appellants.

29. We are also of the view that once no permanency benefits can be given to the Appellants and also that the legal dues have been paid to the Appellants, then the contention as raised by the Appellants, that the provisions of Section 25-F of the ID Act are applicable would not be correct, inasmuch as the Appellants in the present case have not been in continuous service for a period of one year and also post probation they were not confirmed as permanent employees and the legal dues have been paid to them, and hence no retrenchment benefits can be awarded to the Appellants. Therefore, once the provisions of Section 25-F of the ID Act did not apply to the Appellants, then the question of payment of any retrenchment compensation does not arise, and the Appellants would not be entitled to the same. For the sake of reference, it will be beneficial to reproduce the provisions of Section 25-F of the ID Act:-

> **"25F. Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
>
> * * * * *
>
> (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and
>
> (c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

30. Further, the Respondent Company has also submitted that the provisions of Sections 2(oo) and (bb) of the ID Act are attracted in the facts of the present case, inasmuch as the employment of the Appellants/ Workmen was terminated on

account of efflux of time i.e. end of the period of probation of 6 months as stipulated in the appointment letter and hence the same was not in the nature of retrenchment. It will be therefore beneficial to reproduce the provisions of Sections 2(oo) and (bb) of the ID Act, which read thus:

> "2. (oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—
>
> (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or"

31. We are of the view that though the Respondent has contended that the termination of the Appellants has been made on account of the non-renewal of the contract of employment, and hence it is not a case of retrenchment as covered under section 2(oo) and (bb) of the ID Act, the same would not be a covered position inasmuch as the probation period of the Appellants was governed by Clause 4A of Schedule I of the Model Standing Orders and was for a period of 3 months ,and hence the question of non-renewal of contract did not arise at all, and termination was not on account of efflux of time. It was only because confirmation letters were not issued to the Appellants post probation that we have held that "deemed confirmation" could not be awarded to the Appellants. Further, the legal dues of the Appellants have been paid post probation. The contention of the Respondent Company, therefore, ought to be dismissed as the ingredients of section 2(oo) and (bb) of the ID Act are not satisfied.

32. In the light of the above discussion, we are of the opinion that no interference is called for in the impugned judgment and order. The appeal is without merit. It is accordingly rejected. No costs.

(AARTI SATHE, J.) (G. S. KULKARNI, J.)