IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5588 OF 2017

Shankar Bhimrao Kadam & Ors.] … Petitioners

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4375 OF 2019

Ashok Gangadhar Sontakke] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4393 OF 2019

Shripal Dhanraj Jawale] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4396 OF 2019

Bajrang Shripati Patil] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4377 OF 2019

Dattatray Maruti Joshi] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4397 OF 2019

Bhausaheb Dagdu Chemate] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4399 OF 2019

Ashok Jagannath Mote] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4379 OF 2019

Balu Bapuji Shelke] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4373 OF 2019

Sanjay Dinkar Kale] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4398 OF 2019

Balasaheb Devrao More] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4382 OF 2019

Gajanan Laxman Patil] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4376 OF 2019

Suresh Siddheshwar Mhetre] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4371 OF 2019

Sahebrao Thakaji Gund] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4378 OF 2019

Balasaheb Vasantrao Kumbhar] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4381 OF 2019

Ramdas Madhavrao Maind] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4389 OF 2019

Maruti Anant Jadhav] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4388 OF 2019

Sampatrao Anandrao Bhad] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4372 OF 2019

Sambhaji Shankar Salunkhe] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4390 OF 2019

Ganesh Rambhau Narkhede] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4394 OF 2019

Gajanan Kashinath Thakare] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4395 OF 2019

Bajirao Hanumant Suryavanshi] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4392 OF 2019

Bhagwan Ratan Patil] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4384 OF 2019

Prakash Ramchandra Chavan] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4387 OF 2019

Kisan Hanumant Jadhav] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4385 OF 2019

Narayan Dnyadev Gatfane] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4380 OF 2019

Subhash Yashwantrao Sasane] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4391 OF 2019

Basappa Shivmurti Awati] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4386 OF 2019

Raju Babulal Baburle] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4374 OF 2019

Bhausaheb Chandu Jasood] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4383 OF 2019

Balasaheb Dhondiba Waghmode] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4945 OF 2019

Madan Bhikaji Ramole] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4935 OF 2019

Punju Kashinath Patil] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4947 OF 2019

Satish Wamanrao Pisal] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4957 OF 2019

Satish Lahu Chavan] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4936 OF 2019

Pandurang Damodar Doiphode] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4937 OF 2019

Ashok Gurupadappa Madgyal] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4938 OF 2019

Arun Pandurang Ghate] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4958 OF 2019

Mahesh Anandrao Pol] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4959 OF 2019

Ramdas Dashrat Channe] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH

WRIT PETITION NO.4949 OF 2019

Sadashiv Ganeshlal Jaiswal] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4939 OF 2019

Sandu Shriram Shejul] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4950 OF 2019

Shivaji Lahanu Lotake] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4951 OF 2019

Madhukar Pralhad Ghate] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4952 OF 2019

Arun Champalal Jaiswal] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4953 OF 2019

Dilip Lahu Bhadane] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4940 OF 2019

Yashwant Dattatray Aapune] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4941 OF 2019

Ramesh Bhimaji Kalaskar] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4961 OF 2019

Ankush Asaram Gayke] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4942 OF 2019

Ashok Laxman Kakad] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION (ST.) NO.11375 OF 2019

Raju Nanasaheb Chavan] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4954 OF 2019

Shital Bhaurao Ghate] … Petitioner

Vs.

Tata Motors Limited] … Respondent

ALONG WITH
WRIT PETITION NO.4955 OF 2019

Ramdas Namdev Bhise] … Petitioner

Vs.

Tata Motors Limited] … Respondent

…

Mr. Sanjay Singhvi, Senior Advocate i/b. Mr. Rahul Kamerkar for the petitioners in all the petitions.

Mr. C.U. Singh, Senior Advocate with Mr. Kiran Bapat i/b Haresh Mehta & Co. for the respondents in all the petitions.

…

CORAM : RAVINDRA V. GHUGE, J.

RESERVED ON : 18TH FEBRUARY, 2022.
PRONOUNCED ON : 26TH FEBRUARY, 2022.

JUDGMENT :-

1. The petitioners have put forth the following prayers:

> *"a) That this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for records relating to the 30 incidental Orders passed between 21st March 2015 to 28th November 2016 by the Learned Labour Court at Pune in 30 identical IDA References annexed*

above as Exhibits A-1 to A-30 and after going through the legality, validity and propriety thereof be pleased to quash and set aside the same.

b) That this Hon'ble Court be pleased to declare that the Respondents have engaged in unfair labour practices.

c) That this Hon'ble Court be pleased to grant the Petitioners reinstatement with full back wages the same as those paid to permanent workmen, at 18% annual compound interest, and all other consequential benefits since the completion of 240 days from their respective dates of first appointment.

d) That pending the final hearing and disposal of this petition, this Hon'ble Court be pleased to Order the Respondents to pay the Petitioners 50% of the lumpsum amount prayed for in Prayer Clause (c) above, which may be offset against the final relief.

e) That pending the final hearing and disposal of this petition, this Hon'ble Court be pleased to order the Respondents to pay the Petitioners 50% of the wages presently being paid to permanent workmen at the plant, which may be offset against the final relief.

f) That pending the final hearing and disposal of this Petition, this Hon'ble Court may be pleased to order the Respondents to give preference to the Petitioners for appointment to any permanent employment vacancies that come up."

2. In all these writ petitions, a common questions of facts and law are involved affecting 52 petitioners. Each of them had raised an industrial dispute under Section 2-A of the Industrial Disputes Act, 1947 (for short, **"the 1947 Act"**). Each of them has referred to his last disengagement / termination from the service of the respondent. The Conciliation Officer, upon failure of the conciliation proceedings, had submitted his reports. The Appropriate Government passed identical orders of referring the industrial dispute to the Labour Court at Pune. Vide the identical

judgments and awards, impugned in these petitions, the Labour Court answered all the Reference cases in the negative.

3. Since all the demand notices, failure reports and the Appropriate Government's Orders of Reference are identical, I am not required to go into each of the demand notices and such documents, to avoid unnecessary enlarging of this judgment.

4. Identical demand notices were issued by these 52 petitioners on a single day i.e. 23/07/2005. The demands were two-fold viz. (a) that the worker be reinstated in service with continuity and (b) that the worker be paid entire back wages for the period of his unemployment. Copies of these demand notices were served upon the respondent-management and were also forwarded to the Assistant Commissioner of Labour, District Pune. Thereafter, the conciliation proceedings commenced and as the said proceedings failed, the Conciliation Officer submitted his failure report in each of these cases to the Appropriate Government i.e. the Deputy Commissioner of Labour. One such failure report is dated 21/06/2006. The Conciliation Officer exercised his jurisdiction under Section 12(4) of the 1947 Act and caused various conciliation meetings. It is recorded in the report that the management did not participate in the conciliation proceedings. Neither did it oppose the demand notice, nor did it express any view before the Conciliation Officer. It is in the light of such failure report that the Appropriate Government referred the dispute to the Labour Court.

5. In the above backdrop, the Appropriate Government considered the failure report and the documents annexed thereto and passed an order of referring the dispute to the Labour Court, since the Conciliation Officer *prima facie* noticed the existence of an industrial dispute within the meaning of Section 2A. Section 2A defines a deemed industrial dispute.

6. These petitioners filed identical statements of claims on various dates before the Labour Court in their Reference cases. The contentions and averments of these petitioners can be summarized as under:

(a) There are more than 12000 employees working in the factory on regular basis, excluding those working in clerical cadre.

(b) The respondent is a passenger cars, LMV, HMV and commercial vehicle manufacturer.

(c) Each of the petitioners was interviewed by the respondent.

(d) They were issued with specific appointment orders for specific periods, mostly 7 months, 6 months, 5 months. However, not a single such worker was granted an appointment order for more than 7 months, notwithstanding the fact that the work being done by the petitioners in the various Sections and Cells of the respondent and the manufacturing activity continued.

(e) Not a single worker was given an appointment order for a period more than seven months.

(f) The intention of the respondent was to ensure that none of the workers completed 240 days of continuous service in 12 calendar months, preceding the date of his disengagement.

(g) Each of these petitioners have performed work in the core manufacturing activities of the respondent, which is crystal clear in the light of their appointment orders, which indicate their deployment as painters, press operators, grinders, fitters, welders / gas cutters, turners, core finishers, auto mechanics, millers, electronic testers, etc. Each one of them was nomenclatured as a temporary, so as to make them believe that some day, they would be made permanent in the service of the respondent.

(h) The respondent committed Unfair Labour Practices (ULP) under Items Nos.9, 10, 13 and 14 of Schedule V of the 1947 Act.

(i) The permanent workforce of 12000 workers were treated as a privileged set and were paid higher wages. These petitioners were treated as an underprivileged set and were paid a consolidated meager amount of around Rs.4,600/- per month.

(j) These workers came from poor families, had no source of income and had no bargaining power.

(k) Each of these workers were unorganized, as there was a growth in unemployment. These gullible workers had no option, but to accept the employment in any form that was offered to them, so as to survive.

(l) The permanent workers as well as these temporaries were discharging the same duties/ work and operating the same machineries as like the permanent workers. Yet, they were paid paltry amounts as monthly wages.

(m) The management devised a scheme for keeping such workers as temporaries and deprived them of the salary at par with the permanent employees.

(n) Each of these petitioners was ever willing and eager to work, as they had no source of income and their life depended upon the employments offered by the respondent-employer.

(o) None of these petitioners were allowed to complete 240 days in the 8 calendar months, during their appointments.

(p) The respondent was manufacturing motor vehicles and the demand was ever growing.

(q) Each of these petitioners was given breaks in service in order to ensure that none of them would complete 240 days in continuous employment.

(r) By making the workers like these petitioners, work on paltry fixed amounts, the management extracted work from these petitioners at par with the permanent workforce. However, the principle of 'equal pay for equal work', which is applicable even to the temporaries, was not applied to them. This became a source of profit for the management and, at the same time, it extracted the same amount of work, in comparison to the work performed by the permanent workers.

(s) Actually, in the very first appointment of each petitioner, he should have been inducted in the regular service of the employer.

(t) Such appointment orders, which were shrewdly designed, so as to fall short of completion of 240 days in 8 calendar months, were opposed to the relevant provisions set out in the model standing orders.

(u) The clause of termination was introduced in the order of appointment to create a picture that the petitioners would be disengaged by efflux of time, as soon as they completed 7 months in such employment or before they could complete 240 days.

(v) There was no data of work available or a specific project, which would indicate that the work offered to the petitioners would last only for 7 months i.e. 210 days and not there-

beyond, since such identical pattern of engagement of temporaries had already commenced in another automobile industry in Pune, by name, Bajaj Auto Limited.

(w) The respondent-employer shrewdly ensured that not a single temporary worker would be allowed to complete 240 days, since he would be entitled to the deemed status of a permanent employee in the light of the Industrial Employment (Standing Orders) Act, 1946 (for short, **"the 1946 Act"**).

(x) The appointment orders indicated only 7 months of employment and before any petitioner could enter the 8th month, the petitioner was terminated under the guise of efflux of time.

(y) The core industrial activity of the respondent-employer of manufacturing cars and vehicles, did not stop even for a single day. In fact, the demand for their vehicles, was ever rising and the work available in the manufacturing activity was of a continuous and uninterrupted nature.

(z) The employer was aware that the moment the petitioners would complete 240 days in a period of 8 months, they would be attaining the deemed status of a permanent employee and the respondent would be legally obliged to confirm him in service, as a permanent employee.

(aa) The intention of making such workers, work as temporaries for only 7 months, was to ensure a duel advantage to the employer.

Firstly, that such workers would be precluded from claiming permanency and secondly, the same work being done by the permanent workers, could be extracted from these temporaries by payment of one-third salary.

(cc) Ever since automobile manufacturing companies and the respondent herein began engaging temporaries for 7 months each, these companies stopped engaging probationers and avoided growth in permanent workers, since the same work being done by these petitioners, was being done by the permanent employees at the rate of three-fold salary.

(dd) The only intention of the employer to engage temporaries like these petitioners, was to avoid granting of permanency to any more employees.

(ee) Even the employer has not taken the stand that it was engaging such temporary workers purely on account of a particular project. No data of any project, was available with the respondent.

(ff) An ULP be declared against the respondent under Item Nos.9, 10, 13 and 14 of Schedule V of the 1947 Act.

(gg) Considering the artificial breaks in service created by the employer and the involuntary employment, having been suffered by these petitioners, the breaks in service be bridged and it be concluded that the petitioners have been retrenched from service.

(hh) The respondent-management be directed to reinstate the petitioners as permanent workmen with continuity of service and full back wages.

7. The learned senior advocate on behalf of the petitioners, has relied upon the following judgments:

(i) *Judgment delivered by the learned Division Bench of this court [Coram: B.R. Gavai (as his Lordship then was) and Mridula Bhatkar, JJ.] in 13 Letters Patent Appeals filed by* ***Mahindra & Mahindra Limited v. Chandrashekhar T. Titarmare & Ors***[1].

(ii) ***State of Madras v. C.P. Sarathy & Anr***.[2]

(iii) ***Delhi Cloth & General Mills Co. Ltd. v. Their Workmen & Ors.***[3]

(iv) ***H.D. Singh v. Reserve Bank of India & Ors.***[4]

(v) ***S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka***[5]

(vi) ***Haryana State Electronics Development***

1 Judgment dated 04/03/2015 in 13 LPA Nos.164 of 2005 & connected appeals
2 AIR 1953 SC 53
3 1967 Vol. I LLJ 423
4 (1985) 4 SCC 201
5 (2003) 4 SCC 27

Corporation Ltd. v. Mamni[6].

(vii) ***Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited***[7]

(viii) ***U.P. Drugs & Pharmaceuticals Co. Ltd. v. Ramanuj Yadav & Anr***.[8]

(ix) ***Jairaj N. Shetty v. Union of India, (Bombay Division Bench)***[9].

(x) ***Mehboob v. Executive Engineer, Agriculture Constriction Division & Anr.***[10]

(xi) ***Bhikku Ram v. The Presiding Officer, Industrial Tribunal cum Labour Court, Rohtak & Anr***.[11]

(xii) ***Sunil Pralhad Khomane & Ors. v. Bajaj Auto Limited***[12]

(xiii) ***Praveen Krishna Jadhav & Ors. v. Rashtriya Chemicals & Fertilizers Limited, Chembur***[13]

8. The learned Senior Advocate Shri C.U. Singh and advocate Shri Kiran Bapat for the Respondent have strenuously opposed these petitions. It is submitted that the respondent-management entered it's identical written statements in all these matters. While denying the averments and the claims of these petitioners, it has contended in it's written statement, in brief, as under:

(a) The demand of the workers is not legal and is not *bona fide*.

6 (2006) 9 SCC 434
7 (2014) 11 SCC 85
8 (2003) 8 SCC 334
9 2005 (4) Mh.L.J. 163
10 (2012) 134 FLR 1082
11 (1996) 1 ILR P&H 241
12 (2021) I CLR 857 (Bom)
13 2000 (4) Mh.L.J. 382

(b) The statement of claim contains such averments, which are beyond the terms of reference and also beyond the jurisdiction of the court.

(c) The scope of the Reference Order cannot be expanded.

(d) Allegations made by the workers is beyond the jurisdiction of the court.

(e) The subject matter of the 5th Schedule is beyond the scope of the Labour Court.

(f) An industrial dispute only falling within Section 10(1)(c) of the 1947 Act, pertaining to matters included in the Second Schedule can be taken up by the Labour Court and, only in special circumstances, some matters can be taken up from the Third Schedule.

(g) The respondent engaged temporary workmen, only when there was a temporary rise in work.

(h) They were employed considering their skills.

(i) Whenever the work allotted to the petitioner was over, he was terminated.

(j) None of the petitioners have completed 240 days in continuous employment and was, therefore, not entitled for

permanancy.

(k) After every appointment order, the petitioner was issued with a termination order by bringing his contract of employment to an end, because of non-renewal of contract. Therefore, Section 2(oo)(bb) of the 1947 Act would become applicable.

(l) Clause 32 of the Standing Orders would apply to this case.

(m) It was denied that artificial breaks were deliberately introduced in the service tenure of the petitioners.

(n) It was denied that unemployment was involuntarily foisted on the petitioners.

(o) It was denied that the petitioners were deliberately not allowed to complete 240 days in continuous service.

(p) The period of engagement of the petitioners was dependent upon the temporary rise in the manufacturing work with the respondent.

(q) The work allotted to the petitioners was not of a continuous character.

(r) It was denied that the petitioners were employed on permanent posts or were shown as temporary workmen with the intention to deny them the benefit of permanency.

(s) It was denied that the petitioners could have been nomenclatured as probationers.

(t) It is denied that they were entitled to be made permanent after six months, by treating their initial period as probation period.

(u) The petitioners cannot claim permanency in Reference proceedings under Section 2A of the Central Act.

(v) Item 6 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1972 (for short, **"the State Act"**), cannot be invoked in such Reference proceedings.

(w) It is denied that the petitioners were willing and ready to work even after their tenure of 7 months came to an end.

(x) It is denied that unemployment was forced upon the petitioners.

(y) In the present Reference proceedings, the only aspect to be considered is, as to whether the termination of the petitioners was legal or not.

(z) The demand of the petitioners for benefits flowing under the long term settlement with the permanent workers, is beyond the scope of the Reference.

(aa) It is denied that artificial breaks were deliberately introduced, so as to prevent the petitioners from completing 240 days in continuous service.

(bb) It is reiterated that, as the work for which the petitioners were engaged, came to an end, the petitioners were disengaged.

(cc) It is denied that fresh employees were recruited in place of the petitioners, after their disengagement.

(dd) It is denied that their appointment orders were violative of Article 21 of the Constitution of India.

(ee) It is denied that the petitioners were compelled to sign on dotted lines in the appointment orders.

(ff) The court cannot compel the management to create jobs.

(gg) It is denied that the petitioners were exploited by continuing them as temporaries for years together.

(hh) There was no system available with the respondent of employing the petitioners as temporary employees, in batches.

(ii) The work allotted to the petitioners was available only for a maximum period of 7 months.

(jj) The management was itself not sure about the availability of work and, therefore, no guarantee could be given to the petitioners

regarding the work being available for a particular duration.

(kk) The petitioners have approached the court after a lapse of several years and the Reference cases deserve to be dismissed / answered in the negative, only on the ground of delay.

(ll) There was no industrial dispute pending and, therefore, the Reference cases had to be rejected.

(mm) None of the petitioners have filed the cases for seeking permanency in employment.

(nn) On each occasion, the petitioners applied in writing, seeking temporary employment and based on the same, they were interviewed after fresh written tests and medical examination.

(oo) On each occasion, the petitioners have accepted their appointment orders knowing fully well that they are engaged only for 7 months.

(pp) Their each employment tenure was distinct and separate and was a contract of employment.

(qq) The gaps between two employments cannot be bridged and they cannot be granted any relief.

(rr) As there used to be a temporary rise in work, the respondent was required to engage temporary workers to perform such work, considering the rise in work available.

(ss) The nature of work and the techniques of manufacturing are constantly changing and there is no substance in the contention of the petitioners that the work is available perennially.

(tt) There was no breach of Section 9-A of the Central Act.

(uu) It is the prerogative of the management to manage the factory by deploying the workforce.

(vv) It was denied that non availability of the work is a farce or unreal.

(ww) It was denied that the work performed by the petitioners was allotted to contract labourers or vendors.

(xx) It was denied that the management was not providing work to the petitioners, though it was available, only to defeat their claim.

9. The learned Senior Advocate for the management has relied upon the following judgments:

(i) ***Calcutta Electric Supply Corporation Limited v. Calcutta Electric Supply Workers Union & Ors.***[14]

(ii) ***Gajanan v. Zilla Parishad***[15]

(iii) ***Firestone Tyre & Rubber Co. of India Pvt. Ltd. v. Workmen Employed, represented by FTEs Union***[16]

14 AIR 1959 SC 1191
15 (2015) SCC Online Bom. 3240
16 (1981) 3 SCC 451

(iv) ***Oshiar Prasad & Ors. v. Employers in relation to Management of Sudamdih Coal Washery of M/s. Bharat Coking Coal Limited, Dhanbad, Jharkhand***[17]

(v) ***Mahindra & Mahindra Ltd., Nagpur v. Sunil Namdeorao Zade & Anr.***[18]

(vi) ***Mohd. Ali v. State of Himachal Pradesh & Ors.***[19]

(vii) ***M. Venugopal v. Divisional Manager, LIC of India, Machilipatnam, Andhra Pradesh***[20]

(viii) ***Harmohinder Singh v. Kharga Canteen, Ambala Cantonment***[21]

(ix) ***Kishore Chandra Samal v. Orissa State Cashew Development Corporation Limited, Dhenkanal***[22]

(x) ***Haryana State Agricultural Marketing Board v. Subhash Chand & Anr.***[23]

(xi) ***Municipal Council, Samrala v. Raj Kumar***[24]

(xii) ***Bhavnagar Municipal Corporation v. Salimbhai Umarbhai Mansuri***[25]

(xiii) ***Nagpur District Central Co-operative Bank Limited v. Prashant Ashokrao Salunke & Anr.***[26]

10. I have gone through the record with the assistance of the parties. Both the parties have led oral and documentary evidence before the Labour Court. The appointment orders of these

17 (2015) 4 SCC 71
18 2021 (3) Mh.L.J. 589
19 (2018) 15 SCC 641
20 (1994) 2 SCC 323
21 (2001) 5 SCC 540
22 (2006) 1 SCC 253
23 (2006) 2 SCC 794
24 (2006) 3 SCC 81
25 (2013) 14 SCC 456
26 2016 (1) Mh.L.J. 706

petitioners and their termination orders, were not produced before the Labour Court. Since these matters were argued extensively for several days and the issue as regards Section 2(oo)(bb) of the Central Act was raised, I called upon the parties to atleast cite the appointment orders, if not the termination orders. It was admitted by the parties that though the issue of Section 2(oo)(bb) was extensively canvassed before the Labour Court, neither the appointment orders, nor the termination orders were placed before the Labour Court. Without actually perusing these documents, the Labour Court has delivered the Awards. I found it appropriate to direct the employer to produce the appointment and termination orders before me, as remanding the proceedings to the Labour Court after about 17 years of litigation, would not be in the interest of either of the parties. The learned advocate for the management has placed before the court, a compilation of 229 pages, which include the appointment and termination orders of all these 52 petitioners.

(A) Appointment and Termination Orders

11. Upon perusing the appointment orders and the termination orders, I find that each of these petitioners were trained in a particular trade of their profession required for utilizing their services in automobile industry. As recorded above, they had acquired skilled training in particular trades. They were competent to perform their jobs in automobile industry, based upon their expertise in particular trades. Each one of them, was appointed as a temporary against a temporary vacancy.

12. The words used in the appointment order, which are all identical, are as under:-

> *"Further to the trade, tests and interview, you had with us for a temporary post, we are pleased to inform you that you have been selected for appointment as a Temporary - xxx* (the trade is mentioned here) *against a temporary vacancy in our organization and now offer you temporary appointment on the following terms and conditions:-*
>
> *1. Your appointment will be purely on a temporary basis for a period of 7 months from the date of your joining duties. It will stand automatically terminated at the expiry of the above mentioned temporary period or even earlier, at the discretion of the management if the temporary work to be assigned to you comes to an end before the above mentioned period, without assigning any reason, notice or compensation in lieu thereof.*
>
> *2. Your temporary employment is also liable to be terminated forthwith, if at any time, during the period of the temporary employment, your attendance, performance, conduct and/or general behaviour is found by us to be unsatisfactory.*
>
> *3. During your temporary employment, you will receive total remuneration of Rs.4066.50 per month, including dearness allowance and other applicable allowances in the grade of - xxx.*
>
> *4. The company may consider, depending on availability, providing transport facility to you for your travel to the works and back, subject to the rules and regulations in force.*
>
> *5. Please note that your temporary appointment will*

in no way confer on you any right for claiming permanent or temporary employment in the company in future.

6. You will be governed by all the applicable rules and regulations in force in the company including standing orders.

……
……
……

13. The termination order, for example, dated 24/09/1995 issued to A.C. Jaiswal indicates as under:

"Please refer to the appointment order No. xxx xxx dated 27/02/1995 issued to you.

In accordance with para No.1 of your appointment letter referred above, since you have completed the period of your temporary services, you are relieved from your duties with effect from 20/10/1995 after duty hours.

Please contact Establishment Department at 9.00 a.m. on 15/10/1995 for your clearance formalities. Please note that dues if any will be settled only after you have completed the clearance formalities.

(Emphasis supplied)

14. From the above documents, it appears that A.C. Jaiswal has worked for about 7 months. A similar inference can be drawn with regard to Shripal Dhanraj Jawale, who was appointed from

01/08/1999 and was disengaged on 22/03/2000, after working for 7 months and 22 days. There are similar such examples, which can be seen from the appointment orders and the termination orders. In another case viz. Bajrang Shripati Patil, his salary structuring was that of a permanent employee, as is indicated by clause 1 of the appointment order dated 02/10/1992, when he was posted in the grade of OP-2. Both the parties have prepared ready reference chart. The one placed before the court by the petitioners is reproduced as under:

S. No	**Petitioner**	**Designation**	**WP No.**	**Period of 1st Employment**	**Period of 2nd employment**	**Period of 3rd employment**	**Period of 4th employment**
1.	Shankar Bhimrao Kadam	Miller	5588/17	07/07/1995 to 10/02/1996	21/09/1996 to 29/04/1997	04/02/2002 to 26/03/2002	03/05/2002 to 30/06/2022
2.	Basappa Shivmurti Awati	Auto miller	4391/19	19/08/1994 to 05/04/1995	05/11/1995 to 10/06/1996	05/03/1997 to 29/09/1997	
3.	Sahebrao Thakaji Gund	Welder cum gas cutter	4371/19	08/09/1993 to 05/04/1994	01/04/1997 to 19/11/1997	03/01/2000 to 20/08/2000	
4.	Sanjay Dinkar Kale	Pattern macker	4373/19	02/04/1995 to 17/11/1995	05/05/1997 to 15/12/1997		
5.	Suresh Siddhesh war Mhetre	Auto mechanic	4376/19	23/07/1995 to 17/02/1996	04/07/1997 to 23/02/1998	10/09/2003 to 06/04/2004	
6.	Maruti Anant Jadhav	Fitter	4389/19	11/09/1993 to 31/12/1993	21/05/1995 to 05/01/1996	16/08/1996 to 15/03/1997	
7.	Gajanan Kashinath Thakare	Fitter	4394/19	27/12/1993 to 13/08/1994	06/03/1995 to 21/10/1995	18/08/1996 to 15/03/1997	
8.	Balasaheb V. Kumbhar	Fitter	4378/19	01/01/1999 to 21/08/1999	12/06/2002 to 30/07/2002	28/08/2002 to 26/11/2002	20/08/2003 to 21/03/2004
9.	Bhagwan Ratan Patil	Welder cum gas cutter	4392/19	29/06/1994 to 24/01/1995	01/09/1995 to 30/03/1996	06/12/1996 to 16/07/1997	
10.	Raju Babulal Baburle	Auto mechanic	4386/19	30/07/1994 to 15/03/1995	01/10/1995 to 27/04/1996	03/03/1997 to 29/09/1997	

11.	Ashok Jagannath Mote	Fitter	4399/19	11/11/1994 to 28/06/1995	10/01/1996 to 14/08/1996	25/02/1998 to 22/03/1998	
12.	Ganesh Rambhau Narkhede	Auto production	4390/19	15/04/1996 to 04/12/1996	07/07/1997 to 25/02/1998	14/10/2000 to 06/06/2001	
13.	Gajanan Laxman Patil	Painter	4382/19	10/12/1995 to 15/07/1996	08/06/1997 to 25/01/1998	30/10/1998 to 20/06/1999	
14.	Sampatrao A. Bhad	Turner	4388/19	03/03/1996 to 29/09/1996	05/07/1997 to 24/02/1998	08/02/2000 to 06/09/2000	
15.	Shripal D. Jawale	Press operator	4393/19	09/01/1997 to 25/07/1997	01/08/1999 to 22/03/2000		
16.	Bhausaheb C. Jasood	Press operator	4374/19	03/09/1996 to 05/04/1997	16/06/1999 to 05/02/2000	17/10/2000 to 09/05/2001	
17.	Prakash R. Chavan	Core finisher	4384/19	06/10/1991 to 02/05/1992	05/04/1994 to 04/08/1994	13/06/1995 to 28/01/1996	06/09/1996 to 23/04/1997
18.	Kisan H. Jadhav	Auto mechanic	4387/19	04/07/1997 to 23/02/1998	22/05/2001 to 09/01/2002	17/12/2002 to 23/07/2003	
19.	Bhausaheb D. Chemate	Auto mechanic	4397/19	05/04/1995 to 20/11/1995	06/07/1996 to 29/01/1997	18/01/1994 to 04/09/1994	
20.	Dattatray M. Joshi	Auto miller	4377/19	11/09/1994 to 28/04/1995	11/12/1995 to 15/07/1996	06/07/1997 to 24/02/1998	
21.	Narayan C. Gatfane	Heat treater	4385/19	01/11/1995 to 28/05/1996	03/03/1997 to 29/09/1997	20/06/1999 to 30/01/2000	
22.	Balu Bapuji Shelke	Painter	4379/19	05/06/1996 to 22/01/1997	24/08/1997 to 27/03/1998	13/06/1999 to 05/02/2000	17/12/2001 to 17/03/2002
23.	Bajirao H. Suryavanshi	Grinder	4395/19	14/02/2000 to 06/09/2000	24/08/2002 to 27/11/2002	16/08/2003 to 21/03/2004	
24.	Balasaheb D. Waghmode	Grinder	4383/19	14/02/2000 to 06/09/2000	06/05/2002 to 29/06/2002	25/08/2002 to 10/12/2002	
25.	Sambhaji S. Salunkhe	Miller	4372/19	16/05/1992 to 20/06/1992	19/09/1992 to 18/01/1993	25/07/1994 to 11/03/1995	
26.	Balasaheb D. More	Welder cum gas cutter	4398/19	01/07/1994 to 25/01/1995	05/09/1995 to 10/04/1996	03/12/1996 to 29/06/1997	
27.	Subhash Y. Sasane	Turner	4380/19	08/09/1993 to 07/01/1994	07/05/1995 to 22/12/1995	10/12/1996 to 01/07/1997	

28.	Ashok G. Sontakke	Core finisher	4375/19	01/06/1994 to 16/01/1995	03/01/1996 to 29/07/1996	21/04/1997 to 29/11/1997	
29.	Ramdas M. Maind	Painter	4381/19	02/02/1996 to 15/09/1996	01/06/1997 to 19/01/1998	30/10/1998 to 20/06/1999	14/10/2000 to 24/03/2001
30.	Bajrang S. Patil	Grinder	4396/19	02/10/1992 to 04/04/1993	05/11/1993 to 22/06/1994		
31.	Madan B. Ramole	Fitter	4945/19	13/03/1996 to 15/10/1996	07/07/1997 to 25/02/1998	02/01/2000 to 11/07/2000	
32.	Punju K. Patil	Motor mechanical	4395/19	04/12/1995 to 15/07/1996	03/03/1997 to 29/09/1997	06/10/1999 to 24/05/2000	
33.	Satish W. Pisal	Fitter	4947/19	23/07/1995 to 17/02/1996	15/09/1996 to 29/04/1997		
34.	Satish L. Chavan	Welder cum gas cutter	4957/19	28/12/1996 to 17/08/1997	05/02/1999 to 22/09/1999	10/02/2001 to 29/09/2001	
35.	Pandurang D. Doiphode	Door assembly	4936/19	01/04/1996 to 30/10/1996	08/02/1998 to 10/06/1998	26/06/1999 to 14/02/2000	
36.	Ashok G. Madgyal	Fitter	4937/19	19/08/1992 to 30/03/1993	23/04/1995 to 08/12/1995	06/08/1996 to 15/03/1997	09/11/1993 to 20/06/1994
37.	Arun P. Ghate	Weler cum gas cutter	4938/19	03/02/1997 to 29/08/1997	05/09/1999 to 20/03/2000		
38.	Mahesh A. Pol	Turner	4958/19	16/04/1994 to 05/12/1994	01/10/1995 to 27/04/1996	03/12/1996 to 29/06/1997	
39.	Ramdas D. Channe	Welder cum gas cutter	4959/19	11/07/1994 to 25/02/1995	01/09/1995 to 30/03/1996	14/12/1996 to 16/07/1997	13/02/1998 to 29/09/1998
40.	Sadashiv G. Jaiswal	Welder cum gas cutter	4949/19	31/10/1998 to 20/06/1999	06/01/2001 to 09/05/2001		
41.	Sandu Shriram Shejul	Electronic tester	4939/19	29/01/1995 to 15/09/1995	08/05/1996 to 25/12/1996	07/03/1998 to 17/10/1998	
42.	Shivaji L. Lotake	Welder cum gas cutter	4950/19	10/12/1996 to 16/07/1997	03/10/1998 to 03/04/1999	01/02/2003 to 17/09/2003	
43.	Madhukar P. Ghate	Welder cum gas cutter	4951/19	17/04/1994 to 02/12/1994	12/06/1995 to 27/01/1996	16/08/1996 to 15/03/1997	
44.	Arun C. Jaiswal	Painter	4952/19	27/02/1995 to 20/10/1995			

45.	Dilip L. Bhadane	Fitter	4953/19	18/08/1996 to 15/03/1997	12/02/2000 to 27/09/2000	06/05/2002 to 22/12/2002	
46.	Yashwant D. Aapune	Welder cum gas cutter	4940/19	22/07/1994 to 08/03/1995	01/10/1995 to 27/04/1996	10/12/1996 to 16/07/1997	
47.	Ramesh B. Kalaskar	Welder cum gas cutter	4941/19	11/02/1996 to 15/09/1996	05/02/1997 to 14/02/1998		
48.	Ankush A. Gayke	Welder cum gas cutter	4961/19	04/06/1995 to 19/01/1996	06/08/1996 to 15/03/1997	20/02/1998 to 12/06/1998	
49.	Ashok L. Kakad	Core finisher	4942/19	10/02/1996 to 15/09/1996	25/02/1998 to 10/10/1998	25/10/2002 to 11/06/2003	
50.	Raju Nanasaheb Chavan	Welder cum gas cutter	(St) No. 11375 / 19	05/01/1994 to 22/08/1994	04/03/1995 to 18/10/1995	19/05/1996 to 30/12/1996	
51.	Shital B. Ghate	Mill wright mechanic	4954/19	24/09/2000 to 31/03/2001	02/01/2002 to 21/08/2002	25/05/1996 to 25/12/1996	
52.	Ramdas Namdev Bhise	Fitter	4955/19	17/02/1998 to 09/06/1998	04/07/2001 to 03/10/2001	06/01/2003 to 29/03/2003	26/05/2003 to 15/10/2003

15. In view of the above, the chart indicates examples (few are referred to) as under:

(i) Shankar Bhimrao Kadam has worked for 7 months and 3 days in his first round and, 7 months and 8 days in his second round. The gap between these two rounds is of 7 months. His third round was for 51 days and the gap was of almost 4 years and 10 months. His fourth round was for 59 days.

(ii) Basappa Shivmurti Awati worked for 7 months and 14 days in his first round. With a gap of 5 months, he did his second round for 7 months and 5 days.

With a gap of 8 months, he put in 6 months and 24 days. He was not engaged from 30/09/1997.

(iii) Sahebrao Thakaji Gund has put in 6 months and 27 days in the first round. With a gap of almost 3 years, he has put in 7 months and 15 days. Again with a gap of 2 years, he put in 7 months and 17 days.

(iv) Sanjay Dinkar Kale has put in 7 months and 15 days in his first round. With a gap of 18 months, he put in 7 months and 10 days in the second round.

(v) Suresh Siddheshwar Mhetre has put in 6 months and 24 days in the first round. With a gap of 17 months, he worked for 6 months and 19 days. This was followed by a gap of 5 years and 7 months, when he put in 6 months and 26 days in the third round.

(vi) Maruti Anant Jadhav has put in 7 months and 15 days in his second round. With a gap of 7 months, he put in 7 months in the third round.

(vii) Gajanan Kashinath Thakare has put in 7 months and 17 days in the first round. With a gap of 4 months, he put in 7 months and 16 days. After 10 months, he put in 7 months in the third round.

(viii) Balasaheb V. Kumbhar has put in 7 months and 20 days in the first round. With a gap of 2 years and 10 months, he worked for around 48 days in the second round. However, with a gap of 28 days, he put in 3 months in the third round.

(ix) Bhagwan Ratan Patil has put in 6 months and 25 days in the first round. With a gap of 8 months, he put in 7 months in the second round. With a gap of 8 months, he put in 7 months and 10 days in the third round.

(x) Raju Babulal Baburle has put in 7 months and 15 days in the first round. With a gap of 6 months, he put in 6 months and 26 days in the second round. With a gap of 11 months, he put in 6 months and 26 days in the third round.

16. Out of the 52 petitioners before this court, the above first 10 examples have been considered only to understand the pattern followed by the management in recruiting the petitioners as temporaries. After the matter was closed for judgment, the learned Senior Counsel Mr. Singhvi and the learned advocate Mr. Bapat delivered four pages' reference chart on 23/02/2022 to the court. The colour chart is on an 'A2 size' paper. I have found from the said chart as well as the chart submitted by the management (reproduced earlier), as regards those petitioners, who have drawn

close to the magic figure of completing 240 days in continuous employment, in a particular round, as under:

(i) Arun C. Jaiswal has put in 236 days in his first round.

(ii) Shripal D. Jawale has put in 235 days in the second round.

(iii) Bajrang S. Patil has put in 230 days in his second round.

(iv) Satish W. Pisal has put in 227 days in his second round.

(v) Ramesh B. Kalaskar has put in 218 days in the first round and 236 days in the second round.

(vi) Dilip L. Bhadane has put in 229 days in the second round and 231 days in the third round.

(vii) Sampatrao A. Bhad has put in 224 days in the second round and 229 days in the third round.

(viii) Narayan C. Gatfane has put in 225 days in his third round.

(ix) Raju Babulal Baburle has put in 228 days in the

first round.

(x) Sahebrao Thakaji Gund has put in 233 days in his second round and 231 days in his third round.

(xi) Suresh Siddheshwar Mhetre has put in 235 days in his second round.

(xii) Gajanan Kashinath Thakare has put in 230 days in the first round and 230 days in the second round.

(xiii) Ashok Jagannath Mote has put in 230 days in the first round and 218 days in the second round.

(xiv) Balasaheb D. More has put in 219 days in the second round.

(xv) Balasaheb V. Kumbhar has put in 233 days in his first round and 215 days in his fourth round.

(xvi) Balu Bapuji Shelke has put in 232 days in his first round, 216 days in the second round and 238 days in the third round.

(xvii) Basappa Shivmurti Awati has worked for 230 days in the first round and 219 days in the second round.

(xviii) Bhausaheb C. Jasood has put in 215 days in the first round and 235 days in the second round.

(xix) Bhausaheb D. Chemate has put in 230 days in the first round, 230 days in the second round and 208 days in the third round.

(xx) Sandu Shriram Shejul has put in 230 days in the first round, 232 days in the second round and 225 days in the third round.

(xxi) Mahesh A. Pol has put in 234 days in the first round and 231 days in the second round.

(xxii) Shital B. Ghate has put in 225 days in the first round and 232 days in the third round.

(xxiii) Madan B. Ramole has put in 217 days in the first round and 234 days in the second round.

(xxiv) Pandurang D. Doiphode worked for 213 days in the first round and 232 days in the second round.

(xxv) Punju K. Patil has put in 225 days in the first round, 211 days in the second round and 232 days in the third round.

(xxvi) Ankush A. Gayke has put in 230 days in the first

round and 222 days in the second round.

(xxvii) Raju Nanasaheb Chavan has put in 230 days in the first round, 229 days in the second round and 226 days in the third round.

(xxviii) Satish L. Chavan has worked for 215 days in the first round, 230 days in the second round and 229 days in the third round.

(xxix) Ashok L. Kakad has worked for 219 days in the first round, 228 days in the second round and 230 days in the third round.

(xxx) Madhukar P. Ghate worked for 230 days in the first as well as the second round and 212 days in the third round.

(xxxi) Maruti Anant Jadhav has put in 234 days in the first round, 230 days in the second round and 212 days in the third round.

(xxxii) Ramdas M. Maind has put in 227 days in the first round, 233 days in the second round and 234 days in the third round.

(xxxiv) Bajirao H. Suryavanshi has put in 206 days in the first round and 219 days in the fourth round.

(xxxv) Balasaheb D. Waghmode has put in 206 days in the first round.

(xxxvi) Ramdas D. Channe has put in 230 days in the first round, 212 days in the second round, 215 days in the third round and 229 days in the fourth round.

17. From the chart reproduced earlier in this judgment, it is seen that -

(i) Sanjay D. Kale worked for 225 days in the first round and 220 days in the second round.

(ii) Sadashiv G. Jaiswal worked for 230 days in the first round.

(iii) Dattatray M. Joshi worked for 228 days in the first round, 214 days in the second round and 228 days in the third round.

(iv) Ganesh R. Narkhede worked for 229 days in the first round, 228 days in the second round and 232 days in the third round.

(v) Kisan H. Jadhav worked for 229 days in the first round, 228 days in the second round and 216 days

in the third round.

(vi) Bhagwan R. Patil worked for 220 days in the third round.

(vii) Subhash Y. Sasane worked for 225 days in the third round.

(viii) Shivaji L. Lotake worked for 216 days in the first round and 217 days in the third round.

(ix) Yashwant D. Aapune worked for 226 days in the first round and 216 days in the fourth round.

(x) Gajanan L. Patil worked for 215 days in the first round, 227 days in the second round and 230 days in the third round.

(xi) Prakash R. Chavan worked for 225 days in the third round and 227 days in the fourth round.

(xii) Sambhaji S. Salunkhe worked for 226 days in the third round.

(xiii) Ashok G. Madgyal worked for 221 days in the first round, 225 days in the second round, 219 days in the third round and 221 days in the fourth round.

18. The petitioners have led oral evidence, through affidavits. The affidavits are identical and following are the aspects, on which the witnesses have identically deposed:-

(a) Each of the petitioners were interviewed.

(b) Most of the times, though each of them was appointed for exactly 7 months, several times, these petitioners have worked for more than 7 months.

(c) The work performed by these petitioners was a part of the manufacturing process in the factory.

(d) Each one of the petitioners has acquired formal education of the trade skills and, on the basis of the same, they have been deployed on the core manufacturing activity of the respondent.

(e) Several workers, like these petitioners, were engaged in rotation.

(f) All the petitioners have worked in various rounds with the respondent.

(g) The permanent workforce of the respondent form one set of workers and, hundreds of temporary workers, like these petitioners, form a second set of workers, who were appointed in rotation.

(h) Both sets of workers were performing identical jobs on manufacturing activities in the 12 Divisions.

(i) The permanent set of workers were granted benefits under the long term settlement and the second set of workers were made to work on almost one-third of their wages.

(j) On every day, in each month and in each year, there used to be a set of temporary workers, working on the manufacturing activities.

(k) By removing a temporary, before completion of 240 days, another temporary used to be engaged, as the manufacturing activity continued throughout the year.

(l) Since Standing Order 4C bestows the deemed status of a permanent employee on the temporary worker, the respondent ensured that none of the temporaries touched the figure of 240 days in continuous service.

(m) During the gap of 2 appointment orders, the management used to engage another temporary.

(n) The management maintained a pool of temporary workers, but did not disclose the official record before the court.

(o) Each of these temporaries worked in different rounds for periods mostly ranging between 200 days to 235 days with the hope that one day, they would be granted permanency.

(p) During the period of unemployment, they did not take up employment elsewhere with the hope of receiving an order for 7 months' working from the Respondent.

(q) These petitioners were helpless, as they came from a poor strata of the society and had no option, but to work on whatever conditions that were imposed upon them, by the respondent.

(r) Each one of the petitioners used to wait in expectation of receiving the next appointment order, which invariably would bring them back to work.

(s) These petitioners pray for reinstatement in service with continuity and full back wages.

19. The respondent-management conducted the cross-examination of these petitioners only in a single paragraph. The

petitioners admitted that they used to commence their work with the employer only after receiving the appointment letters. After disengagement in every round, they used to receive a service certificate. They denied that the company did not introduce rotational shift system. It was asserted that though work was available, the respondent did not allow completion of 240 days in continuous employment.

20. The management witness led evidence through an affidavit in lieu of examination-in-chief, which reproduced contents of the W.S.. In cross-examination of the management witness, his answers indicated as under:

(a) The respondent maintained a department for temporary recruitment, which was assigned to him.

(b) Even on the date of cross-examination, which is 25/11/2015 (in one case), he was dealing with the temporary recruitment department.

(c) He admitted that around 2500 to 3000 workers are working temporarily with the respondent factory.

(d) There are 10 to 12 Divisions in the company.

(e) Normally, the Division pertaining to production activities are having temporary workers.

(f) The temporary workers generally do the work of

assistance.

(g) Approximately, there are 4000 to 4500 permanent workers in the company.

(h) The production growth of Tata Motors is better than 1994 production.

(i) The witness volunteered to state that the production growth fluctuates.

(j) He admitted that there is no documentary evidence to establish rise and fall in production growth.

(k) In the process of recruitment of the temporary workers, the applications are scrutinized, record is maintained in the computer section, the candidates are interviewed by the technical panel, successful candidates are sent for medical and skill tests and the candidate, who is competent, gets selected for the temporary post.

(l) There is no specific period of rise in work, for a workman.

(m) The temporary, who has been appointed, will not be reappointed for a period of six months.

(n) The process of recruitment of temporaries is conducted in any part of the year, as per requirement.

(o) Rise in the market can happen at any point of time in a year.

(p) The temporary worker is terminated after the expiry of his tenure.

(q) It is not mentioned in the termination order that his work is terminated due to completion of one project.

(r) The monetary benefits allotted to permanent workers are different from those allotted to the temporary workers.

(s) One temporary worker is engaged only once, in the span of one year.

(t) Due to scope of work, one temporary worker is engaged only for six months, in a year.

(u) The witness could not recollect as to whether the seniority list, including the name of the petitioner workers, is produced before the Labour Court.

(v) It was denied that artificial break in two appointment letters was introduced.

(w) It was denied that rotational system was implemented in appointment of temporaries.

(x) It was denied that the temporaries completed 240 days in one year.

(B) Admissions of the Company's Witness.

21. The learned counsel for the management has vehemently canvassed his submissions. By placing reliance on several judgments, he has strenuously attempted to convey that there was no systematic design to ensure that not a single temporary worked for 240 days. However, I find that the statement of the senior officer witness of the company, in his cross-examination, clearly betrays the stand taken by the management before the court in it's written statement. Such falsity is recorded as under:

(a) A specific department for recruitment of temporaries was created and was in existence for several years, whereas an incorrect statement is made in the written statement.

(b) 2500 to 3000 workers were working temporarily in 10 to 12 Divisions of the company. There were about 4000 to 4500 permanent workers, which

indicate that almost two-third of the permanent strength, in proportion, was actually the temporaries working on the same manufacturing activities, which were being performed by such 4000 permanent workers.

(c) The management did not produce any record in support of their contention that there used to be a rise and fall in the production in growth.

(d) Candidates, who were interviewed by the technical panel and were selected, were appointed only as temporaries.

(e) No record is placed before the court to indicate that besides the 4000-4500 permanent workers, whether any temporary worker was made permanent in employment.

(f) There was no record to suggest a specific period, within which there was rise in the manufacturing activities.

(g) There was no record to indicate that when work allotted to a temporary, came to an end.

(h) It is admitted that the temporary would not be re-appointed by the company for a period of six

months after he completed his round of temporary employment.

(i) The process of recruitment of temporaries used to be conducted in any part of the year.

(j) The management has not placed before the court any record to indicate a particular project in which any temporary was engaged.

(k) It was specifically admitted that the benefits granted to permanent workers were different from those benefits made available to the temporary workers.

(l) It was also admitted that one temporary worker was engaged only once in a span of one year.

22. The above-referred examination and cross-examination of the management witness would indicate that, firstly, no temporary was engaged twice, in one year. Secondly, some of the temporaries worked for almost 238 days in one round. Several petitioners have worked in several rounds in between 225 to 235 days. These temporaries were disengaged when they were very close to 240 days and some were even short by 2 to 8 days.

23. It is thus apparent from the testimony of the company's witness that the stand taken by the management in the written

statement viz. there is no department for handling only temporary workers, all the temporaries were appointed on a project, manufacturing work for which temporaries were engaged used to conclude after seven months, work was not available for more than 7 months, etc., were totally falsified. He has clearly admitted that, for a long time, a department to handle only temporary workers, was established. The witness was heading the department. He had no material to be placed before the court to indicate that the work of a temporary ended exactly after 7 months. He admitted that the manufacturing process continued all round the year. He admitted that there were 2500 to 3000 temporaries. These temporaries were working in 10 to 12 Divisions in the factory. Each Division was undertaking production activities through temporary workers. There are about 4000 permanent workers in the factory. There was no material to indicate any project, on which the temporaries were engaged. There was no material available to show rise and fall in the market demand. The recruitment of temporaries was conducted in any part of the year. A temporary worker was never reengaged atleast for the next six months in a year.

24. The *modus operandi* adopted by the respondent-management has thus been fully exposed by the testimony of the management-witness. I have found out several instances, quoted above in paragraph Nos.15 and 16, which indicate that barring only one worker namely, Arun C. Jaiswal (who worked only in one round and put in 233 days), all the workers have been able to go very close to the figure of 240 days, in employment. Most of

them have worked in between 225 days to 238 days. The management neither has any explanation, which ought to be based on evidence and not by way of arguments, nor was any evidence placed before the Labour Court to establish a convincing reason as to why these temporaries were not allowed to complete 240 days, when most of them had reached in between 230 days to 238 days. This demolishes the case of the management that the temporaries' engagement were strictly co-related to the rise and fall of manufacturing activities exactly after completing seven months in employment.

25. Practically, all these temporaries before the court have atleast crossed 225 days, in one of the several rounds of temporary employment. It is astonishing that the management has no evidence before the Labour Court to justify the disengagement of a temporary, who was extremely close to completing 240 days and was discontinued before he could touch the 240th day. The dedicated temporary appointments department created by the management to deal with the temporary recruitments clearly appears to have kept a perfect track of the days of work performed by the temporaries and when, in many cases, the temporary had put in between 230 to 238 days, he was immediately discontinued. The design of the management in these circumstances is writ large on the face of the record.

26. Mr. Singh, the learned senior advocate along with Mr. Bapat have strenuously canvassed their submissions in marathon sessions in these matters. However, the oral and documentary

evidence on record does not support their legal submissions, save and except an often repeated argument that, none of the temporaries could complete 240 days in one round. When the oral and documentary evidence led by the parties are assessed in the backdrop of the fact situation that each of these temporaries had crossed 225 days at least in one round, and many of them had crossed 230 days, even 235 days, their abrupt disengagement before touching the magic figure of 240 days indicates the intention, object and design of the management. This fact situation clearly disproves three legal submissions of the management viz. (a) that involuntary unemployment was not foisted upon these temporaries, (b) that the management did not prevent them from completing 240 days and (c) it is only because the work came to an end before they completed 240 days.

27. These factors, in the light of the oral and documentary evidence, are quite glaring. The management has no evidence to adduce except putting forth oral submissions as to why was Arun Jaiswal unable to work for three more days to complete 240 days? Why was Shripal D. Jawale unable to work for five more days to complete 240 days? Why was Sahebrao T. Gund unable to work for seven more days, in his second round, and nine more days in his third round, to reach 240 days? Why was Suresh S. Mhetre unable to work for five more days to complete 240 days? Why were Gajanan K. Thakare (on two occasions) and Ashok J. Mote unable to work for ten more days to complete 240 days? Why was Balasaheb V. Kumbhar unable to work for seven more days to complete 240 days? Why was Balu B. Shelke unable to work for

eight more days (first round) and only two more days (third round) to complete 240 days? Why were B. S. Awati, B.D. Chemate, S.S. Shejul, A.A. Gayke, R.N. Chavan, S.L. Chavan, A.L. Kakad B.C. Jasood, M.A. Pol, P.D. Doiphode, and many many more such employees, unable to work for anything in between 2 days to 8 days to complete 240 days? Besides oral submissions, the management does not have an iota of evidence to indicate that the project had come to an end or that the work for which, the petitioners were engaged had ended, exactly on the 238th day or 237th day or 236th day, etc.

28. From the above, it is apparent that the management has withheld documents from the Labour Court. The entire story of the management of 'temporary rise in production and work coming to an end', exactly two days or three days before the candidate could complete 240 days, is a pretence. Even before me, the management had no material to cite that the work allotted to the temporaries in the 12 manufacturing Divisions of the factory, concluded anytime between 2 days to 15 days short of 240 days.

29. In view of the above, the case of the management that the temporaries were engaged on a project or for catering to such temporary rise in manufacturing activities, which would never be available beyond 238 days, is totally disproved. Such pretence of the management is exposed by the testimony of their own superior officer witness. These aspects were completely lost sight of by the Labour Court, while delivering the impugned Award. In fact, the Labour Court did not even take the pains to analyse the

documentary evidence available before it, in the light of the oral evidence and assess these aspects of the case.

(C) Section 2(oo)(bb) of the Central Act.

30. The learned counsel for the management has strenuously canvassed the applicability of this provision under the Central Act. This provision carves out an exception to the definition of retrenchment with the words *"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."*

31. The employer has contended that, because it did not renew the contract of employment, the case of termination of the temporaries would be covered by the exception to retrenchment. The question is, how many times can an employer enter into such contracts with helpless workers, who have no bargaining power and deploy them on the core manufacturing activities. Can an employer be permitted to enter into such contracts with thousands of workers and ensure that they do not complete 240 days in employment on the pretext of non renewal of contract. Can an employer be permitted to exploit the temporary workers by issuing them such appointment orders and contend that these are contractual appointments and operate the manufacturing activities with 4000 permanent workmen and 3000 temporaries all round the year.

32. This argument of the employer and, more so, in the absence of evidence, is further discredited by the fact that each of these temporaries were issued a temporary appointment order. Not once, has the employer mentioned the term 'CONTRACT' or 'CONTRACT FOR SERVICE' in any of it's appointment orders. In each of the appointment orders, the management has used it's letter-head and has specifically mentioned that the petitioner is appointed as a temporary employee of the company. In some places, it is also mentioned that he is being appointed as a temporary, in a particular grade against a temporary vacancy in the organization (See: Paragraph 12, in which one such appointment order is reproduced). Practically, in every paragraph, the company has used the term "*Your temporary appointment*". When the claims of the petitioners after termination and claims of several temporaries before termination, reached the court, the management found it convenient to fall back upon sub-section (bb) and contend that the disengagement of a temporary was only because the contract of employment came to an end.

33. Mr. Singh has relied upon ***Mohd. Ali (supra)*** to contend that when a worker has not completed 240 days, his disengagement would not amount to a retrenchment. He has relied upon ***M. Venugopal (supra)*** to contend that if the termination from employment is as per the termination clause in the contract of appointment, such disengagement would fall within the exception (bb). However, it cannot be lost sight of that ***M. Venugopal (supra)*** is completely on different set of facts. He was a probationer and admittedly the probation period of one year was

extended by another year. As the management found that though he was asked to improve his performance, he had failed in improving, that he was terminated from employment.

34. In the cases in hands, there was indeed a clause in the appointment order suggesting that, either his service would be terminated automatically after a period of 7 months or even earlier, at the discretion of the management, if the temporary work assigned to him came to an end. Surprisingly, there is no clause in the appointment order, which permits a temporary to work for 238 days or 237 days or 236 days, etc. If the appointment order of a temporary was for 7 months and he worked till completing 238 days and the management disengaged him after completing 238 days, obviously for the fear that he would complete 240 days if he worked for 2 more days, such termination would not fall within the exception sub-clause (bb). It may not sound retrenchment, since the worker technically did not complete 240 days. But, it would certainly not be covered by sub-clause (bb).

35. Mr. Singh has then relied upon ***Harmohinder Singh (supra).*** In this case, the appellant had joined in accordance with the Standing Orders of the respondent, which prescribed that he would be relinquishing service after completing 15 years. Para 3(a) introduced in 1998 to the Standing Orders applicable, permitted such disengagement. In the facts and circumstances of the said case, the Hon'ble Supreme Court concluded that the appellant was engaged purely on a contract for 15 years and, there was no provision for renewal of the contract. In the instant cases,

the respondent-company, assuming for the sake of assumption that the petitioners entered into a contract of service with the respondent, has been frequently renewing the contracts, every six to seven months or a year for several years. These facts are completely different from the facts in ***Harmohinder Singh (supra)***.

36. In ***Kishore Chandra Samal (supra),*** it was held that in all orders of engagement, specific periods had been mentioned and the workman was working for fixed periods. The Hon'ble Apex Court considered the earlier judgment delivered in *Marinda Co-operative Sugar Mills Limited* and held that such a case was squarely covered by 2(oo)(bb). Mr. Singh has laid heavy stress on paragraphs 2 to 11, which read as under:

> *"2. Factual background in a nutshell is as under:-*
>
> *The case of the appellant was that he was appointed as Junior Typist on N.M.R. basis by the respondent with effect from 12.7.1982. He continued in the said post for more than one year. All of a sudden another order was issued appointing him for 44 days with effect from 1.10.1983. On its expiry on 15.11.1983 another appointment order was issued on 5.12.1983 for a fixed period giving effect from 16.11.1983. Thereafter, he was allowed to continue for about 8 months. Later he was appointed on ad hoc basis in the usual scale of pay of Rs.255-5-285-EB-7-306-12-390/- with effect from 23.7.1985. Thereafter without any rhyme or reason, he was again kept in N.M.R. on payment of Rs.10/- per day for a period of 90 days from 1.12.1985 to 28.2.1986. Thereafter he was allowed to continue from 29.6.1986 to 25.9.1986 and further from 27.9.1986 to 24.12.1986. Thereafter, he was allowed to continue without any break till 11.8.1989. Alleging that refusal of work beyond 11.8.1989 amounting to retrenchment, he raised dispute giving rise to the above reference.*
>
> *3. The respondent's case before the Labour Court was that the appellant was working on N.M.R. basis as a Typist with effect from 12.7.1982. He was appointed for a specific period on daily wage basis. On consideration of the representation for further engagement and having regard to the requirement, he*

was engaged again and again on daily wage basis for specific period. The last order of appointment on N.M.R. basis was issued to him on 28.4.1989. Thereafter no further extension was given. Thereafter, his service automatically ceased and it is not a case of retrenchment.

4. The Labour Court on perusal of the evidence on record held that the appellant served continuously for many years covering the requisite period of continuous service in a calendar year. Although there is no evidence that the post of Typist was a permanent one, he was engaged from time to time and at the time of termination as the provisions of Section 25F of the Industrial Disputes Act, 1947 (in short the 'Act') had not been complied with, termination of his service is illegal and unjustified. On the basis of the said finding, the Labour Court directed the appellant to be reinstated in his former post.

5. The High Court accepted the stand of the respondent-Corporation that the appointment of the writ petitioner (appellant herein) was on N.M.R. basis for a fixed period of time on the basis of payment at different rates. The contractual period of engagement ended on 3.5.1989 and there was no renewal thereafter. Since the engagement was for a fixed period, the High Court held that the award of the Labour Court was to be set aside.

6. In support of the appeal, learned counsel for the appellant submitted that the High Court failed to notice that the period fixed was a camouflage to avoid regularization. Reliance was placed on a decision of this Court in S.M. Nilaikar and Ors. v. Telecom District Manager, (2003) II LLJ 359 SC where it was held that mere mention about the engagement being temporary without indication of any period attracts Section 25F of the Act if it is proved that the concerned workman had worked continuously for more than 240 days.

7. The position of law relating to fixed appointments and the scope and ambit of Section 2(oo)(bb) and Section 25F were examined by this Court in several cases. In Morinda Coop. Sugar Mills Ltd. v. Ram Kishan and Ors. (1996) I LLJ 870 SC it was observed as follows:

> *"4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.*
>
> *5. 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. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated hereinbefore and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work."

8. The position was re-iterated by a three-Judge Bench of this Court Court in Anil Bapurao Kanase v. Krishna Sahakari Sakhar Karkhana Ltd. and Anr. AIR 1997 SC 2698 . It was noted as follows: (SCC pp. 599-600, para 3)

"The learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned order dated 28.3.1995 in Writ Petition No.488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated under Section 25F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In Morinda Coop. Sugar Mills Ltd. v. Ram Kishan, in para 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing; in para 4 it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not 'retrenchment' within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application. However, this Court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the

respondent management to adopt such procedure as is enumerated above."

9. Recently, the question was examined in Batala Co- operative Sugar Mills Ltd. v. Sowaran Singh, AIR 2006 SC 5.6

10. Section 2(oo) of the Act reads as follows:

"Section 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 -

(a) ...

(b) ...

(bb) termination of the service of the workman as a result of the non-removal 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"

11. The decision in S.M. Nilaikar's case (supra) has no application because in that case no period was indicated and only indication was the temporary nature of engagement. In the instant case in all the orders of engagement, specific periods have been mentioned. Therefore, the High Court's order does not suffer from any infirmity."

37. The facts in these cases, are clearly distinguishable from the facts in the cases in hands. In these cases, there are almost 2500 to 3000 temporaries, who are being engaged for 7 months and have put in three to four rounds of such engagements. The evidence analyzed in the foregoing paragraphs, would indicate that they were working on core manufacturing activities in the factory. The *modus operandi* of the respondent in establishing a dedicated

department for recruitment and termination of thousands of temporaries, has clearly exposed the motive of the management in keeping such temporaries away from completion of 240 days, so as to take a stand that their disengagement is not retrenchment. Moreover, there is no evidence adduced by the management to indicate that some of these temporaries have been regularized in the employment. The witness of the management has admitted that there are about 4000 permanent employees. It cannot be ruled out that some of these permanent employees may have superannuated or vacancies may have been caused for any plausible reason. The management has not proved before the Labour Court that such vacancies were being filled in. In fact, the management suppressed the seniority list of the temporaries from the Labour Court. Despite creating a department for engaging temporaries, it is beyond comprehension as to why has this department not placed the complete list of 2500 to 3000 temporaries, who have been engaged for 7 months in various years.

38. In ***Kishore Chandra Samal (supra)***, there was no evidence of a post of permanent nature for a typist, having been created by the respondent-Corporation, which is a State instrumentality. It was also a case of a solitary employee. In the cases in hands, there are thousands of employees and such a *modus operandi* of the employer cannot be equated with the case of Kishore Chandra Samal, who was a typist on nominal muster roll (NMR).

39. Mr. Singh has relied upon ***Haryana State Agricultural Marketing Board (supra)***. In the said case, the two employees,

were appointed on seasonal contracts. The distinction in the said case with the cases in hands, is apparent. None of the petitioners herein, were appointed in a season, on seasonal contracts. Similar is the case in ***Municipal Council, Samrala (supra),*** wherein the Municipal Council had engaged the respondent Raj Kumar in view of one vacant post and, two employees, who were on leave. Heavy reliance is placed on paragraph Nos.6, 7, 8, 10, 11, 12, 13, 14, 15 and 16 of the said judgment by Mr. Singh, which read as under:

> *"6. It is, thus, not in dispute that the Respondent had worked intermittently. Furthermore, there does not appear to be any dispute that the terms of employment were as contained in the offer of appointment as noticed supra. The learned Presiding Judge, Labour Court in terms of his award dated 11-2-2003, on a finding that the said order of termination of the Respondent was in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 ("the Act" for short) directed that he be reinstated in service with 25% back wages. The Appellant herein filed a writ petition before the High Court of Punjab and Haryana, which by reason of the impugned judgment has been dismissed.*
>
> *7. Before the High Court as also before us, the Appellant contended that having regard to the provisions contained in Section 2(oo)(bb) of the Industrial Disputes Act, the Respondent having been appointed for a fixed period on contract basis, Section 25-F of the Act will have no application in the facts and circumstances of this case. Both the learned Judges of the Labour Court as also of the High Court negatived the said contention on the ground that the offer of appointment issued in favour of the Respondent did not indicate that the same was for a fixed period.*
>
> *8. Learned Counsel appearing on behalf of the Appellant raised a short question in support of this appeal. It was submitted that having regard to the definition of "retrenchment" as contained in Section 2(oo)(bb), the Respondent having been appointed on a contract basis, the provisions of Section 25-F will have no application. Learned Counsel appearing for the Respondent, on other hand, submitted that the terms and conditions of appointment of the Respondent nowhere suggest that the same*

was in relation to either in respect of a project or for a fixed period, and in that view of the matter the provisions of Section 2(oo)(bb) of the Act would have no application in the instant case. Learned Counsel furthermore urged that from a perusal of the order dated 22-5-1997, whereby the services of the Respondent were terminated, it would not appear that the services of the Respondent were not required or the Appellant did not consider it to be fit or appropriate or necessary to continue the Respondent in service and thus the condition precedent contained in the offer of appointment has not been complied with. It was moreover urged that in view of the finding of fact arrived at by the learned Labour Court that the Respondent herein was appointed intermittently without specifying any period of service as also the purpose for which he was appointed, the provisions of Section 25-F would be attracted.

9. Section 2(oo)(bb) of the Industrial Disputes Act reads as under:

> *2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-(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-*
>
> *(a) voluntary retirement of the workman; or*
>
> *(b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or*
>
> *(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;....*

10. Clause. (oo)(bb) of Section 2 contains an exception. It is in two parts. The first part contemplates termination of service of the workman as a result of the non-renewal of the contract of employment or on its expiry; whereas the second part postulates termination of such contract of employment in terms of stipulation contained in that behalf. The learned Presiding Officer of the Labour Court as also the High Court arrived at

their respective findings upon taking into consideration the first part of Section 2(oo)(bb) and not the second part thereof. The circumstances in which the Respondent came to be appointed have been noticed by us hereinbefore.

11. The Appellant is a Municipal Council. It is governed by the provisions of a statute. The matter relating to the appointment of employees as also the terms and conditions of their services indisputably are governed by the provisions of the relevant Municipal Act and/or the Rules framed thereunder. Furthermore, there is no doubt that the matter relating to the employment in the Municipal Council should be governed by the statutory provisions and thus such offer of appointment must be made by a person authorized therefor. The agenda in question was placed before the Executive Council with a view to obtain requisite direction from it where for the said letter was written. The reason for such appointment on contract basis has explicitly been stated therein, namely, that one post was vacant and two employees were on leave and in that view of the matter, services of a person were immediately required in the Council. Thus, keeping in view the exigency of the situation, the Respondent came to be appointed on the terms and conditions approved by the Municipal Council.

12. We have noticed hereinbefore that the Respondent understood that his appointment would be short-lived. He furthermore understood that his services could be terminated at any point of time as it was on a contract basis. It is only in that view of the matter, as noticed hereinbefore, that he affirmed an affidavit stating that the Municipal Council of Samrala could dispense with his services and that they have a right to do so.

13. In the decision of this Court in S.M. Nilajkar v. Telecom Distt. Manager where upon the learned Counsel for the Respondent placed strong reliance, this Court was concerned with a different fact situation obtaining therein. In that case, a scheme for absorption of the employees who were appointed for digging, laying cables, erecting poles, drawing lines and other connected works was made which came into force with effect from 1-10-1989, and only those whose names were not included for regularization under the said scheme, raised disputes before the Assistant Labour Commissioner, Mangalore. The termination of the services of casual mazdoors by the management of Telecom District Manager, Belgaum, thus came to be questioned in the reference made by the appropriate Government in exercise of its power conferred upon it Under Section 10 of the Industrial Disputes Act. This Court, having regard to the contentions raised by the Respondents that the

Appellant therein was engaged in a particular type of work, namely, digging, laying cables, erecting poles, drawing lines and other connected works in the project and expansion of the Telecom Office in the district of Belgaum was of the opinion: (SCC p. 37, para 13)

> *"13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of Sub-clause (bb) subject to the following conditions being satisfied:*
>
> *(i) that the workman was employed in a project or scheme of temporary duration;*
>
> *(ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project;*
>
> *(iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and*
>
> *(iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment."*

14. The decision of this Court is not an authority for the proposition that apart from a project or a scheme of temporary duration, Section 2(oo)(bb) of the Industrial Disputes Act will have no application. Furthermore, in the instant case, as has been noticed by this Court in S.M. Nilajkar (supra) itself, the Respondent was categorically informed that as per the terms of the contract, the same was a short-lived one and would be liable to termination as and when the Appellant thought it fit or proper or necessary to do so. Yet again, this Court in view of the facts and circumstances prevailing therein had no occasion to consider the second part of Section 2(oo)(bb) of the said Act.

15. There is neither any doubt nor any dispute that the terms and conditions contained in the offer of appointment on both the spells were the same. So far as the employment of a person in a Municipal Council which is "State" in the meaning of Article 12 is concerned, the same must be done in terms of the provisions of the statute and/or Rules framed thereunder. The Respondent therefore was not appointed on a permanent or a temporary basis. It is not the case of the Respondent that while

> *making an offer of appointment, the Municipal Council had complied with the requirements laid down in the statute or statutory Rules or even otherwise the same was in conformity with Articles 14 and 16 of the Constitution.*
>
> *16. For the reasons aforementioned we are of the opinion that the instant case is covered by the second part of Section 2(oo) (bb) of the said Act."*

40. It is thus clear from the ***Municipal Council case (supra)*** that there was no evidence of a permanent vacant post being filled in, by adopting the procedure of selection and appointment as would be applicable in public employment. It was noted by the Hon'ble Supreme Court that the appellant is a Municipal Council and the terms and conditions of recruitment are governed by the Municipal Act. So also, the Municipal Council was dealing with a solitary case. Per contra, the management in the cases in hands, has recorded it's evidence indicating that there were thousands of such workers, who were being continuously engaged every year and in some cases, in alternate years, for performing manufacturing work in the factory. With the evidence that has been recorded as discussed above, the *modus operandi* of the respondent – private Automobile factory, is fully exposed and such an employer engaging thousands of temporary employees with the intent and object of continuing them as temporaries, cannot be covered by ***Municipal Council, Samrala (supra)***.

41. It is in the above circumstances that the inescapable conclusion could be that Section 2(oo)(bb) cannot be made applicable to such cases in hands.

(D) Scope of adjudication in Reference cases under Section 2A, and 10(4) of the Central Act.

42. Mr. Singhvi has strenuously canvassed that all incidental issues in relation to the terms of reference, can be considered by the Reference Court. The judgment delivered in 1953 by the Hon'ble Apex Court (Five Judges) in the case of ***C.P. Sarathy (supra)*** clearly lays down the law that incidental issues, which are intricately connected with the terms of reference, can also be decided by the Reference Court. He places reliance upon paragraph Nos.5 and 15 to 18, which read as under:

> *"5. Thereupon the Government issued the G.O.M.S. No. 2227 dated 20th May, 1947, in the following terms :*
>
> > *"Whereas an industrial dispute has arisen between the workers and managements of the cinema talkies in the Madras City in respect of certain matters;*
> >
> > *And whereas in the opinion of His Excellency the Governor of Madras, it is necessary to refer the said industrial dispute for adjudication;*
> >
> > *Now, therefore, in exercise of the powers conferred by section 7(1) and (2) read with section 10(1)(c) of the Industrial Disputes Act, 1947, His Excellency the Governor of Madras hereby constitutes an Industrial Tribunal consisting of one person, namely, Sri Diwan Bahadur K. S. Ramaswami Sastri, Retired District and Sessions Judge, and directs that the said industrial dispute be referred to that tribunal for adjudication.*
> >
> > *The Industrial Tribunal may, in its discretion, settle the issues in the light of a preliminary enquiry which it may hold for the purpose and thereafter adjudicate on the said industrial dispute.*
> >
> > *The Commissioner of Labour is requested to send copies of the order to the managements of cinema talkies concerned.*

15. It was next contended that the reference was not competent as it was too vague and general in its terms containing no specification of the disputes or of the parties between whom the disputes arose. Stress was laid on the definite article in clause (c) and it was said that the Government should crystallise the disputes before referring them to a Tribunal under section 10(1) of the Act. Failure to do so vitiated the proceedings and the resulting award. In upholding this objection, Govinda Menon J., who dealt with it in greater detail in his judgment, said, "Secondly, it is contended that the reference does not specify the dispute at all. What is stated in the reference is that an industrial dispute has arisen between the workers and the management of the cinema talkies in the City of Madras in respect of certain matters. Awards based on similar references have been the subject of consideration in this Court recently. In Ramayya Pantulu v. Kutty and Rao (Engineers) Ltd. (1949)1MLJ231 , Horwill and Rajagopalan JJ. had to consider an award based on similar references without specifying what the dispute was." After referring to the decision of the Federal Court in India Paper Pulp Co. Ltd. v. India Paper Pulp Workers' Union 1949 F.C.R. 348, and pointing out that though the judgment of the Federal Court was delivered on 30th March, 1949, it was not referred to by the High Court in Kandan Textile Ltd. v. Industrial Tribunal, Madras (1949) 2 MLJ 789 , which was decided on 26th August, 1949, the learned Judge expressed the view than "the trend of decisions of this Court exemplified in the cases referred to by me above has not been overruled by their Lordships of the Federal Court." Basheer Ahmed Sayeed J., however, sought to distinguish the decision of the Federal Court on the facts of that case, remarking "that a reading of the order of reference that was the subject-matter of the Federal Court decision conveys a clear idea as to a definite dispute, its nature and existence and the parties between whom the dispute existed." It is, however, clear from the order of reference which is fully extracted in the judgment that it did not mention what the particular dispute was, and it was in repelling the objection based on that omission that Kania C.J. said :

> *"The section does not require that the particular dispute should be mentioned in the order; it is sufficient if the existence of a dispute and the fact that the dispute is referred to the Tribunal are clear from the order. To that extent the order does not appear to be defective. Section 10 of the Act, however, requires a reference of the dispute to the Tribunal. The Court has to read the*

order as a whole and determine whether in effect the order makes such a reference."

16. This is, however, not to say that the Government will be justified in making a reference under section 10(1) without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended in relation to an establishment or a definite group of establishments engaged in a particular industry, and it is also desirable that the Government should, wherever possible, indicate the nature of the dispute in the order of reference. But, it must be remembered that in making a reference under section 10(1) the Government is doing an administrative act and the fact that is has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination. No doubt, it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters. The observations in some of the decisions in Madras do not appear to have kept this distinction in view.

17. Moreover, it may not always be possible for the Government, on the material placed before it, to particularise the dispute in its order of reference, for situations might conceivably arise where public interest requires that a strike or a lock-out either existing or imminent should be ended or averted without delay, which under the scheme of the Act, could be done only after the dispute giving rise to it has been referred to a Board or a Tribunal (vide sections 10(3) and 23). In such cases the Government must have the power, in order to maintain industrial peace and production, to set in motion the machinery of settlement with its sanctions and prohibitions without stopping to enquire what specific points the contending parties are quarrelling about, and it would seriously detract

from the usefulness of the statutory machinery to construe section 10(1) as denying such power to the Government. We find nothing in the language of that provision to compel such construction. The Government must, of course, have sufficient knowledge of the nature of the dispute to be satisfied that it is an industrial dispute within the meaning of the Act, as, for instance, that it relates to retrenchment or reinstatement. But, beyond this no obligation can be held to lie on the Government to ascertain particulars of the disputes before making a reference under section 10(1) or to specify them in the order.

18. This conclusion derives further support from clause (a) of section 10(1) which provides in the same language for a reference of the dispute to a Board for promoting a settlement. A Board is part of the conciliation machinery provided by the Act, and it cannot be said that it is necessary to specify the dispute in referring it to such a body which only mediates between the parties who must, of course, know what they are disputing about. If a reference without particularising the disputes is beyond cavil under clause (a), why should it be incompetent under clause (c) ? No doubt, the Tribunal adjudicates, whereas the Board only mediates. But the adjudication by the Tribunal is only an alternative form of settlement of the disputes on a fair and just basis having regard to the prevailing conditions in the industry and is by no means analogous to what an arbitrator has to do in determining ordinary civil disputes according to the legal rights of the parties. Indeed, this notion that a reference to a Tribunal under the Act must specify the particular disputes appears to have been derived from the analogy of an ordinary arbitration. For instance in Ramayya Pantulu v. Kutty & Rao (Engineers) Ltd. (1949) 1 MLJ 231 , it is observed "that if a dispute is to be referred to a Tribunal the nature of the dispute must be set out just as it would if a reference were made to an arbitrator in a civil dispute. The Tribunal like any other arbitrator can give an award on a reference only if the points of reference are clearly placed before it." The analogy is somewhat misleading. The scope of adjudication by a Tribunal under the Act is much wider as pointed out in the Western India Automobile Association's case [1949-50] F.C.R. 321, and it would involve no hardship if the reference also is made in wider terms provided, of course, the dispute is one of the kind described in section 2(k) and the parties between whom such dispute has actually arisen or is apprehended in the view of the Government are indicated either individually or collectively with reasonable clearness. The rules framed under the Act provide for the Tribunal calling for statements of their respective cases from the parties and the disputes would thus

get crystallised before the Tribunal proceeds to make its award. On the other hand, it is significant that there is no procedure provided in the Act or in the rules for the Government ascertaining the particulars of the disputes from the parties before referring them to a Tribunal under section 10(1)."

43. He then relies upon the view taken by the Hon'ble Apex Court in ***Delhi Cloth & General Mills Co. (supra)*** and relies upon the following observations of the Hon'ble Apex Court.

"On behalf of the respondents, Mr. Chari put before us four propositions which according to him the Tribunal had to consider before coming to a decision on these two issues. They were:

(i) The fact that there was a recital of dispute in the order of reference did not show that the Government had come to a decision on the dispute;

(ii) The order of reference only limited the Tribunal's jurisdiction in that it was not competent to go beyond the heads or points of dispute;

(iii) Not every recital of fact mentioned in the order of Government was irrebuttable; and

(iv) In order to fix the ambit of the dispute it was necessary to refer to the pleadings of the parties. No exception can be taken to the first two points. The correctness of the third proposition would depend on the language of the recital.

So far as the (vi) is concerned, Mr. Chari argued that the Tribunal had to examine the pleadings of the parties to see whether there was a strike at all. In our opinion, the Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble. In this case, the order of reference was based on the report of the Conciliation Officer and it was certainly open to the Management to show that the dispute which had been referred was not an industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the

> *order of reference was non-existent and that the true dispute was something else. Under S. 10(4) of the Act it is not competent to the Tribunal to entertain such a question."*

44. It was thus concluded that, in most of the cases the Order of Reference is very cryptic and it is impossible to cull out therefrom, the various points about which the parties were at variance. The Hon'ble Supreme Court in ***C.P. Sarathy (supra)*** has held that the scope of adjudication by a tribunal under the Act is much wider as pointed out in ***Western India Automobile Association***[27], which was referred to in ***C.P. Sarathy (supra)*** and it would involve no hardship if the Reference also is made in wider terms.

45. Mr. Singhvi has contended that when this court deals with the aspect of whether the law of retrenchment would be applicable or not, it has to be necessarily considered as to whether the employee has completed 240 days in continuous employment. He, therefore, submits that while making such assessment, it will also have to be seen as to whether the employer restrained the employee from completing 240 days. In the cases in hands, it is obvious that the employer has systematically prevented each temporary from completing 240 days. He, therefore, submits that the involuntary unemployment foisted on the employee should also be taken into account, so as to conclude that the employer has committed an unfair labour practice by terminating a temporary, when he was extremely close to completing 240 days.

46. Mr. Singh submits that even if it is assumed that the

27 1949 (5) FCR 321

employer prevented an employee from completing 240 days in employment, the fact that an employee has not completed 240 days, in the light of Section 25B, would be enough to draw a conclusion that the law of retrenchment prescribed under Section 25F would not be applicable. Once it is established that the aggrieved employee has not completed 240 days, his termination cannot be deemed to be retrenchment. Section 25B mandates completion of 240 days and does not take into account the possibility of an employee having been prevented by the employer from completing 240 days. He identifies a distinction between the cases of terminated temporaries, who have approached the court and the in-service temporaries, who have sought permanency and protection while being in service. He further adds that Section 25B(1) leaves no room for doubt.

47. Mr. Singhvi rebuts the said submission by contending that the words ‘cessation of work which is not due to any fault on the part of the workman’, has to be considered while computing 240 days in continuous service.

48. In the cases in hands, considering the analysis of evidence in the foregoing paragraphs, it is obvious that the respondent-management systematically monitored the working of the temporaries, through it’s special department. The said department clearly appears to be carefully monitoring these temporaries and, it was ensured that none of them would complete 240 days. Instances discussed above, would prove this aspect. It is glaring that several workers had worked more than 225 days and the

special department of the respondent ensured that they were disengaged before touching 240 days, when the consistent stand of the Management is that the work never lasted more than 7 months and no temporary worked beyond 7 months.

49. Cessation of work has not been described under the Central Act. Neither of the litigating sides have relied upon any judicial pronouncement on the aspect of 'cessation of work'. Sub-section (1) of Section 25B includes '*cessation of work',* which is not due to any fault on the part of the workmen, while defining continuous service under Section 25B. There does not appear any judicial pronouncement dealing with this aspect. In my view, cessation of work would mean and include such cessation in any particular section or department or in an office. Cessation of work would have a broader meaning, so as to include an establishment or several workers. The terms 'cessation of work' would apply to an individual worker, as the said term is to be applied broadly since the interruption in service under sub-section (1), will apply to a worker as well as the Management. Such appointment and disengagement of a temporary as like the cases in hands, would also mean cessation of work, taking into account the words 'or a cessation of work …...'. However, this term is not to be read out of context so as to canvass that every disengagement of a worker would bring his case within the ambit of Section 25-B(1). Each case will have to be considered in it's own facts.

50. Mr. Singhvi then submits that if this court comes to a conclusion that the employer has committed an unfair labour

practice of preventing the workers from completing 240 days, it may either grant reinstatement with continuity and back wages or may simply grant back wages in lieu of reinstatement in service. In the alternative, he submits that this court may follow the view taken by the learned Single Judge of this court in the matter of ***Sunil Pralhad Khomane & Ors. v. Bajaj Auto Ltd.*** : (2021) 1 CLR 857. He contends that hundreds of workers in those 20 petitions were identically placed, as like the petitioners in the present cases. They were also terminated. They had raised industrial disputes and the disputes were referred to the Labour Court at Pune. Similar to the cases in hands, the Labour Court had answered the Reference cases in negative. The petitioners approached this court and, vide the judgment dated 01/02/2021 delivered in ***Sunil Pralhad Khomane (supra),*** the petitions were disposed off by granting monetary compensation to each of the petitioner workmen. The Management has approached the Hon'ble Supreme Court. However, the judgment is not stayed.

51. Mr. Singhvi relies upon paragraph Nos.4 to 11, 13 to 19 and 22 to 53. He submits that the view taken in ***Sunil Pralhad Khomane (supra),*** would perfectly apply to these cases and is virtually a tailor-made judgment for the present cases, in the light of the earlier judgments delivered in identical fact situations by the Hon'ble Supreme Court. It would be apposite to reproduce the said paragraphs, which read as under:

> *4. Before we assess the submissions made at the Bar in the light of individual facts, it would be convenient to note the broad contours of the controversy in the present petition. Mr.*

Singhvi, learned Senior Counsel appearing for the Petitioners, flags the following three main areas of controversy, namely, (i) the treatment of rotational arrangement leading to termination of services of temporary workmen in the light of the definition of retrenchment and its exception provided in Section 2(oo) of the ID Act, (ii) reckoning of 240 days of continuous service within a year for the concerned workmen, and (iii) claims of permanency of the petitioning workmen and their consideration in industrial disputes concerning the workmen's terminations.

5. The precise issues, which arise for the consideration of this Court, based on the submissions made across the Bar on these controversies, may be formulated thus:

(I) Whether the termination of services of temporary workmen in the present case could be termed as termination as a result of non-renewal of the contract of employment on its expiry or under a stipulation in that behalf contained in the contract and thus, amounting to an exception to the definition of 'retrenchment' contained in Clause (oo) of Section 2 of the ID Act? Or whether the rotational arrangement, such as the one in the present case, where there are continuous temporary engagements of the same workmen over long periods of time (adopted as a strategy to deny benefits of permanency to the concerned workmen), does not amount to an engagement on a fixed period contract so as to form an exception under sub-clause (bb) of Clause (oo) of Section 2 of the ID Act?

(II) Whether, (a) Sundays and holidays during the period of service could be counted within 240 days as per the applicable Standing Orders so as to make up aggregate service of 240 days in a year within the meaning of the Standing Orders and (b) such 240 days should be reckoned as forming part of the calendar year of 12 months immediately preceding the dates of termination?

(III) Should a Labour Court dealing with terminations of workmen in a reference under the ID Act refuse to consider their claim of permanency?

6. On Issue (I) above, Mr. Singhvi refers to appointments and removals of temporary workmen in the light of their applications for appointment as also oral evidence of six workmen. Based on this material, learned Counsel submits that the work at the factory, for which these workmen were engaged, was really of a permanent nature; the appointments were not made as a result of any temporary increase in work;

the work was always there, but appointments were made in a rotational manner for temporary periods so that at any given time workmen were appointed for a period of upto seven months, giving them breaks and appointing other workmen in their place similarly for periods of upto seven months, whilst re-employing of the former through the same pattern again so that they do not complete 240 days of continuous service, thus, keeping them away from permanency. Learned Counsel submits that such breaks cannot be termed as terminations within the meaning of Clause (bb) of Section 2(oo) of the ID Act. Learned Counsel refers to the case of Haryana State Electronics Development Corporation Ltd. v. MAMNI 1 in this behalf.

7. Mr. Naik and Mr. Cama, learned Senior Counsel for the Respondent, preface their submissions on this issue by stating that in the present case, we are not concerned with prior terminations of the concerned workmen, which were anyway not the subject matter of challenge before the Labour Courts, but with the last terminations which led to the present references. Learned Counsel submit that these last terminations constitute an exception to the definition of retrenchment under Section 2(oo)(bb) of the ID Act. Learned Counsel submit that engagements of the concerned temporary workmen in our case were purely for business exigencies, as pleaded by the Respondent in its written statement and supported by the oral evidence of its two witnesses. Learned Counsel in this behalf rely on several judgments on the subject, particularly the cases of Bajaj Auto Ltd. v. Shrikant Vinayak Yogi 2 and Rohini Kurghode v. E. Merck (I) Ltd.

8. Mr. Singhvi, for his part, distinguishes the case of Rohini Kurghode (supra) and, alternatively, submits that the judgment of Rohini Kurghode, which takes a view that whenever Section 2(oo)(bb) and Standing Orders 4C and 4D are in conflict, Section 2 (oo)(bb) would prevail, is, in any event, per incurium.

9. Taking up Issue No. (I) formulated above, let me first outline the context in which this issue arises and the broad aspects to be considered for deciding it. The argument of Mr. Singhvi is that the rotational pattern adopted by the Respondent company in engaging the concerned workmen, namely, employing them and terminating them at intervals interspersed with similar engagement and termination of others from the same pool of workmen, gives rise to a case of retrenchment under Section 2(oo) of the ID Act. Such retrenchment, it is submitted, is not covered by the exception

contained in clause (bb) of Section 2 (oo), which excepts from the definition of retrenchment any termination of service as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry or as a result of termination of such contract under a stipulation in that behalf contained therein. Learned Counsel submits that such retrenchment is in breach of the workmen's rights to tenure and permanency under the Industrial Employment Standing Orders Act ("Standing Orders Act") and amounts to an unfair labour practice. (It is Mr. Singhvi's submission that an industrial adjudicator hearing a reference under the ID Act is as much bound to take note of such unfair labour practice and prevent it as a labour court or industrial court would under the PULP Act; but this would be considered whilst discussing Issue No. III below.) In any event, it is alternatively submitted that such retrenchment, being contrary to Section 25F of the ID Act, is in any event bad in law and liable to be set aside and the concerned workmen reinstated.

10. There are two factual aspects involved here. The first is, whether for our inquiry we can simply focus on the last termination of each of these workmen and disregard their earlier engagements and terminations. And the second, which is intricately connected with the first, is about the rotational pattern said to have been adopted for engagement of these workmen - whether such pattern exists, for if it does, the legal question as to whether the terminations, including the last, come within the definition of retrenchment under Section 2(oo) and not within the excepting clause, namely, clause (bb) thereof, would have to be answered in its light. After all, for any termination to be within clause (bb), that is to say, to be claimed as a result of non-renewal of an expired contract of employment or as a result of termination under a specific contractual stipulation, the contract of employment should be based on a business exigency and not a regular rotational pattern involving periodical artificial breaks to the same set of workmen over a long period of time. The latter basis would imply that the nature of the work was perennial and the manner of engagement a mere device to avoid the benefit of permanency to the concerned workmen.

11. The requisite pleadings concerning permanent nature of the work, workmen from a pool being employed and terminated on rotation and after artificial breaks, in each case after a period of upto 7 months, are very much to be found in the statement of claim. Six workmen of the Respondent from different departments deposed by examining themselves in chief on behalf of all second party workmen and cross-

examination of one of them (Balaji Ramchandra Ghodake) was treated as cross-examination of all six. (Ghodake was a machinist who had incidentally worked in most departments.) All six workmen deposed to details of rotation and how they were periodically engaged and replaced with other employees including those that were junior to them; they deposed how in some cases termination letters themselves indicated future dates of rejoining the company, whilst in many others, appointments were on chits given by their Supervisor stating the name of the worker to be replaced. They deposed how only for their initial appointments, interviews and trade tests were taken and medical examinations done and not for their later appointments. They deposed to the number and period of their appointments over long periods of time. Their depositions bring out that this practice was followed for nearly thirteen years, i.e. between 1984 and 1997-98; there was not a single day when there were no temporaries employed at the factory, their number ranging from about 4 to 8 thousands throughout this period. The company's witness, who was their Manager-Personnel, admitted to this practice of employing temporaries between 1984 and 1998. He admitted that permanent and temporary workmen worked together in rotational shifts; their work was no different from each other; no specified jobs were indicated in appointments of temporaries; and there were no reports of completion of any particular jobs for which temporaries were appointed. He admitted that a seniority list, which was really treated as a waiting list, was maintained of the temporaries. In particular individual cases (several of them), the company's witness admitted the company having employed individual workmen each between 8 to 14 times over a period. There was no record produced by the company to show any temporary increase in work, necessitating appointment of temporaries. The evidence on record clearly indicates that the work, for which the concerned temporary workmen were engaged from time to time by giving breaks and employing others in their place during such breaks, was of a perennial nature; a pool of temporary workmen (whether as a seniority list or waiting list) was maintained; workmen from this pool were engaged for varying lengths of period on a rotational basis and this went on for about 13-14 years, a period with which we are concerned in these petitions.

13. All this evidence clearly supports the Petitioners' case on the nature of their engagements, the nature of breaks given to them, appointments of other temporaries from the list in their place from time to time, all of which lends credence to their case of rotational employment from a pool of workmen maintained by the Respondent.

14. Let us now consider the provisions of Section 2(oo) (along with the excepting clause (bb) thereof) and apply them to our facts noted above to see whether the terminations, which are challenged here, amount to retrenchments. Section 2(oo) of the ID Act defines 'retrenchment' as follows:

"(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 (a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(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

(c) termination of the service of a workman on the ground of continued ill-health."

15. It is clear from the definition quoted above that any termination otherwise than as a punishment inflicted by way of a disciplinary action comes within the main part of Section 2(oo), whereas Clauses (a) to (c), which follow, enacts exceptions to such termination. We are here concerned with clause (bb), which is relied upon by the Respondent Company for excluding the subject terminations from retrenchment. Clause (bb) applies to two situations : (i) where the termination is a result of non-renewal of the contract of employment between the employer and the concerned workman upon its expiry; and (ii) where such termination is the result of a contractual stipulation contained in the contract of employment. In our case, it is nobody's case that there was any contractual stipulation as a result of which the contract of employment was terminated. The company's case here is under (i) above, i.e. of a contract made for a specific period and its non-renewal upon expiry.

16. To be sure, the employment contracts in our case were all fixed period contracts; they did have an expiry date; and they were obviously not renewed after that date. They did

thereby fall within clause (bb) of Section 2(oo) (i.e. under (i) above) - so goes the argument of Mr. Naik and Mr. Cama. That is taking a rather too simplistic or literal view of the matter. The facts of our case demonstrate, as I have noted above, a deliberate rotational scheme employed by the Respondent company over more than thirteen years. A pool of temporaries is maintained and anywhere between four to eight thousand temporaries from out of this pool are employed in rotation, some of them on 8 to 14 times, each time for a duration not exceeding seven months. The classical idea behind retrenchment has been surplussage; an employee, who has become surplus due to any reason of economy, rationalisation in industry, new technology, improved plant, etc., and hence, no more required, is retrenched. A fixed period contract, on the other hand, implies either that for some particular work or project or due to a spurt in the demand and the resultant need for increased activity, there is a special need for a certain employee or number of employees and accordingly, need for a contract of employment for the particular work or project, or for the particular fixed period. In our case, however, what one finds is perennial work, work which is no different from what was performed by permanent workmen of the company, for which temporaries were engaged. The engagement was throughout a long period of over thirteen years. Though the actual number varied throughout, being anywhere between four to eight thousand, surely a minimum of four thousand temporary workmen were required to be engaged throughout. In the case of each of these workmen (with whom we are concerned here), we can see such rotational pattern even going by the Respondent's own documents. Based on this evidence, the only reasonable conclusion to be drawn was that their employments were neither for any particular work or project nor were brought to an end after a fixed period due to want of work upon expiry of the period of contract. The engagements were brought to an end purportedly at the expiry of the stipulated period of contract only to see that they get an artificial break (during which others from the waiting list were employed) only to be re-employed and this went on - again and again. The whole pattern clearly appears to have been designed with a view to avoid any legitimate claim of permanency of tenure on the part of the concerned workmen. That is a clear recipe of an unfair labour practice, notorious in the industry, of employing 'badlis', casuals or temporaries and continuing them as such for years, with the object of depriving them of the status and privileges of permanent employees.

17. Mr. Naik and Mr. Cama contend that it is, however,

impermissible for this court in its writ jurisdiction to hold the employment to be an unfair labour practice. Learned Counsel urge three important grounds in this behalf. It is firstly submitted that whether or not the engagement of the concerned workmen was with a view to avoid the benefits of permanency and, more particularly, by adopting a rotational pattern, is a question of fact (or, at any rate, a mixed question of fact and law) and it is not permissible to reappreciate the evidence on record and come to a conclusion different from the reference court. Secondly, it is submitted that the questions as to whether or not there was any unfair labour practice and a case for giving substantive relief to the concerned workmen based on such practice are not within the remit of a reference court hearing an industrial dispute under the ID Act. Learned Counsel, thirdly, submit that no such questions, which really reflect on the tenure of the employment (and not on the legality of the last termination, which alone, according to Counsel, was the subject matter of the reference), were reflected in the terms of reference and hence, could not have been decided by the reference court; and no interference is accordingly called for in the writ jurisdiction of this Court.

18. No doubt, the nature of engagement of workmen in the present case – whether on a fixed tenure contract or colourable engagement on a fixed term, the real engagement being on a long term basis by adopting a rotational pattern, so as to avoid any claim of permanency, is a mixed question of law and facts. Particularly, whether or not the Respondent employed a rotational pattern is a pure question of fact, and accordingly, a writ court would not interfere with the conclusion of a reference court on the question by reappreciating the evidence. It is, however, perfectly legitimate to interfere if the conclusion is perverse. And to assess perversity, what the writ court ordinarily employs are the Wednesbury Principles, one of them concerning the reasonableness of the conclusion, having regard to the material placed before the Court. If, seen from that standpoint, the conclusion is not a reasonably possible conclusion, the writ court would be well justified in interfering with it.

19. As noted above, there was abundance of material before the reference court on the rotational pattern adopted by the Respondent for work at its factory, which was of a perennial nature, by engaging the concerned workmen for temporary periods, but successively. The conclusion of the Labour Court in its common award impugned herein that the second party workmen failed to prove that a rotational system was adopted by the first party, appears to have been rendered in a rather

cavalier fashion, by disregarding the entire burden of evidence pointing to adoption of such system. The only reasons cited by the Court in support of its aforesaid conclusion are these :

(i) Considering cross-examination (Pgs. 21 to 23) of Diwakar Vishnu Kulkarni, the first witness of the first party, it cannot be said that service of any one temporary workman was terminated and in his place and category and department another temporary workman was employed; and (ii) it is not established that appointment orders were successively given with intermittent artificial breaks. In the first place, this appears to be a thoroughly unsatisfactory way of reading Kulkarni's evidence. Kulkarni had admitted in his cross-examination that the seniority list of temporaries, which was, according to him, a waiting list, was maintained by the first party company, though not published or notified. He admitted all individual instances of terminations of individual temporaries and near simultaneous appointments of others from this list and re-appointments of the former after terminations of the latter, who were, to start with, juniors in many cases. (Besides, terminations of workmen and appointments of others either simultaneously or in close proximity of time can well be deduced from the employment charts produced by the Respondent itself.) He admitted that there was no documentary proof of any of the second party workmen being employed elsewhere during their breaks save and except the solitary case of Ghodake. Kulkarni admitted the Respondent's practice of employing temporaries for the entire relevant period, i.e. from 1984 till 1998. He admitted that permanent and temporary workmen were working together in rotational shifts and their work was no different; there was no record to show that the temporaries were appointed for particular jobs or any particular jobs were completed when they were terminated. He admitted that he had no idea about production figures or number of workmen required for production. He admitted that there was no record of temporary increase in work or advertisements for recruitment during the relevant period. If anything, thus, Kulkarni's cross-examination supports the case of the second party workmen. Secondly, the Labour Court appears to have totally disregarded the admitted facts as well as the evidence of second party workmen. It is an admitted fact that appointments of temporaries at the Respondent's Akurdi plant went on for over thirteen years, from 1984 to 1997-98. (Prior to that, workmen were appointed on probation, then terminated and re-appointed and so on and some were eventually made permanent.) The figures of temporaries appointed in a year did differ; they were in the range of 4000

to 8000, that is to say, at least about 4000 at any given point of time during this period. The Respondent did maintain what it called a seniority list and what it says was like a waiting list (though it was never published or notified). Admittedly, the temporaries, who used to be appointed without any advertisement for recruitment, worked alongside permanent workers of the Respondent. The six workmen, who deposed on behalf of all and who were drawn from different departments, deposed to their successive appointments, showing details of rotation. (Appointments, terminations and replacements by others from the list were not, as noted above, matters of dispute, since the parties proceeded before the Labour Court on the Respondent company's own records and charts.) The communications of appointment and termination, which were part of the record, lend great credence to the rotation theory urged by the second party workmen, as we have noted above. So also, the fact that interviews, trade-tests and medical examinations were taken only at the time of their initial appointments and not for the further and successive appointments. Some of the witnesses (Kumbhar, Dhamnaskar and Tilekar) actually gave names of workmen appointed in their place (in most of the cases, being junior to them).

22. It may now be appropriate to advert to the remit of a reference court under the ID Act, which really forms Issue No. (III) set out in para 5 above. No doubt, it is axiomatic, as the Supreme Court has said in the case of Bengal River Transport Association v. Calcutta Port Shramik Union 4 , that the labour court or tribunal, in exercising its reference jurisdiction, is only bound by the terms of reference; its jurisdiction is confined to the actual points of disputes referred to. Whilst assessing the content of the terms of reference, which are laconically phrased, one cannot, however, take a pedantic or literary view; one has to approach the matter rather holistically, having regard to the original demand, which led to the conciliation proceedings, the statements made before the conciliation officer by rival parties and the report of the conciliation officer proposing a reference, to assess the actual points of dispute referred under Section 10 of the ID Act. This is particularly so, where the reference order refers to the conciliation report and speaks of terms of reference in the light of such report. As Andhra Pradesh High Court put it in Management of Divisional Engineer, Telecommunications, Mahaboobnagar District v. Venkataiah, an order of reference, which ought to be framed carefully, but instead hastily drawn or drawn in a casual manner often gives rise to disputes; even so, courts must attempt to construe the reference not too technically or in a pedantic manner, but fairly and reasonably.

Secondly, everything which is "incidental" to the consideration of the disputes referred is open for examination before the reference court. As the Supreme Court put it in the case of Bengal River Transport Association (supra), a "thing is said to be incidental to another when it appertains to the principal thing; it signifies a subordinate action". When a grievance is so connected with the main dispute raised that its consideration is necessary to determine the main dispute, it may very well be said to be incidental to the latter.

23. As for the terms of reference in our case, it is important to note at the outset that the statements of justification filed by the concerned workmen before the Conciliation Officer did refer to their initial engagements with the first party employer (the Respondent herein) and terminations and successive appointments and terminations following those - so on and so forth. The statements did take up a position that the workmen were given artificial breaks and, contrary to their expectations, were not made permanent. The workmen submitted in their statements that want of 240 days' of continuous service on their part with the Respondent company was a result of an unfair labour practice on the part of the latter; that it was incumbent on the Respondent to have made them permanent; and their last terminations were, in any event, illegal, amounting to retrenchment without one month's notice or pay or payment or offer of any retrenchment compensation. The report of the Conciliation Officer does make it clear that what was submitted by the workmen before him was their demands of reinstatement with continuation of service and full back wages for the whole intervening period. The gist of submissions on behalf of the workmen reflects their case of having worked continuously and regularly over long periods of time and their terminations without payment of legal dues despite such work. What was submitted by the Respondent in response was that the workmen were engaged from time to time for temporary periods according to exigencies of work and terminated each time without their having completed 240 days of continuous service and therefore their last terminations were legally justified. The reference order clearly refers to this report and the workmen's demand for reinstatement with full back wages and continuity of service on the basis thereof.

24. In the face of the foregoing narration, it would be a travesty of justice to hold that the reference did not involve any consideration of past engagements of the concerned workmen and their impact, on the footing of an unfair labour practice, on the workmen's last terminations which were

challenged before the reference court. Mr. Singhvi is right in submitting that the order of reference cannot be seen out of the context. The judgment of Supreme Court in the case of Indian Farmers Fertilizers Co-operative Ltd. v. Industrial Tribunal-I, Allahabad 6 is a case in point. What was before the reference court in that case was the workmen's claim that their services were wrongly terminated by the appellant. The stand of the appellant was that the workmen were not employees of the appellant, but were working under a contractor. The Supreme Court held that an issue as to the nature of their employment necessarily arose as a result; the nature of their employment, whether directly under the appellant or through the contractor, was necessarily to be decided by the tribunal and there was no merit in the appellant's contention that the tribunal had, in deciding that issue, traveled beyond the scope of the reference.

25. Even otherwise, the consideration as to whether the workmen were liable to be treated as permanent employees, having regard to the impermissible unfair labour practice of engaging them over long periods of time with artificial breaks only to see that they were denied benefits of permanent tenure, was clearly incidental to the main questions to be decided in the reference, namely, whether the workmen were illegally retrenched; whether, by reason of their employment (i.e. the last employment) being for a fixed tenure, their retrenchment formed an exception to the main part of Section 2(oo) of the ID Act, by falling within clause (bb) thereof.

26. It is also clear that the subject not only formed part of the terms of reference or, at any rate, was incidental to the dispute referred, but was very much a part of the inter partes contest before the reference court. The case in this behalf of 115 second party workmen, with whom we are concerned in the present writ petition, stated in their separate individual statements of claim, as culled out in a nutshell by the Second Labour Court in its award, was as follows:

"115 second party workmen were employed on different posts on different initial dates of employment and thereafter time and again they were terminated and appointed. This was done with a view to avoid second parties status of permanent employee. The entire mode of appointments and terminations shows that first appointment was normally given for 7 to 8 months with cautious approach that second party workmen should not able to complete 240 days in any year. Though, 115 second party workmen were termed as temporary actually breaks by way of aforesaid termination were artificial breaks. Each and every time termination was affected even though

there was work available to these categories. The work which 115 second party workmen were doing was of permanent nature and they were doing same work as that of permanent employees. 115 second party workmen were bound by production norms of permanent employees who were not given similar facilities which were given to permanent employees. In short first party company has carved out a scheme of rotating the employees treating them as temporaries replacing one employees by other. As much with a view to flout the monetary provisions of Industrial Dispute Act as per Sec. 25(F) and 25(H) of I.D. Act and Model standing orders temporary services were shown by way of merely eye wash. Company has also misused provisions of Sec.2(oo)(bb) of I.D. Act as illegally taken the shelter to cover up the unscrupulous model of by which the 115 second party workmen and thousand of other employees were kept at disposal with a view to utilize them and thrown them on the streets after the use is over. As such termination of 115 workmen is illegal, improper and malafide."

27. On the other hand, the case in this behalf of the first party company in its written statement, as culled out by the court in the impugned award, was the following:

"The second party workmen were employed as temporary workmen for a fixed period. They were employed when there was a temporary increase in work or when there was temporary work available. The requirement additional manpower was assessed by the company for which the company issued advertisements in the local newspaper. Based upon the advertisement and the word of mouth spread by the workmen already employed in the company the workmen made application for employment. Interviews of these workmen were taken and they had to undergo the trade test and medical examination. Subject to their being found medically fit, they were given appointment order for a fixed period. The said period in the appointment order was bases on the information provided to the personnel department by the concerned department clearly stating the period for which the work should be available on a temporary period. In the event the work exceeded beyond the time specified in the appointment order, the second party workmen were issued with letter of extension for a fixed period. Finally on completion of the work and after the period specified in the appointment order was concluded, the second party workmen were officially intimated with regard to the same. Thereafter, whenever there was a need for these workmen on account of the work being again available the workmen were called back in accordance with

their seniority and categories in which they were working depending upon the work which was available. The first party company along with written statement is producing a detailed chart showing the exact number of days worked by the second party workmen during each period of appointment. The first party company the final party shall also produce the appointment orders and termination order and relevant document to show the number of days worked by the second party workmen. These details would clearly indicate that the second party workmen had not completed 240 days uninterrupted service in a period of preceding 12 calendar months. The terminations of services of 115 second party workmen is on account of completion of period and work not being available and hence does not amount to retrenchment."

28. Evidence was given by the workmen on this case and there was extensive cross -examination of the deposing workmen on each of these aspects, namely, (i) terminations and re-appointments of individual temporary workmen so as to avoid the status of permanent employees to them, (ii) artificial breaks given to the workmen, not allowing them to complete 240 days of continuous service, (iii) availability of work despite terminations, (iv) permanent nature of the available work, (v) common nature and production norms for the temporaries as of permanent employees, and (vi) the scheme of rotation, replacing one employee by another. Both parties made submissions on each of these aspects. And, finally, the Labour Court in its impugned award, after considering the material placed before it by the rival parties, held on this subject as follows:

> *18. It can be seen from the cross-examination of second parties that second party failed to establish their contention that they were not allowed to complete 240 days seniority/waiting list was not adhered to and rotation system was adopted by first party with a view not to allow second party workmen to complete 240 days. Further it is difficult to accept the contention of Second Parties that the breaks were artificial considering the fact that second parties were employed in companies like Bajaj Tempo, Telco, Graves, etc. during the alleged artificial breaks. Further it is to be noted that the alleged artificial breaks are not of short duration i.e. few days but are considerably long duration. Temporary workman is defined under clause – 2(d) of model standing orders as under:*

> *"Temporary workmen means a workman who has been appointed for limited period for work which is of an essentially temporary nature and who is employed temporarily as an addition workman in connection with temporary increase in work of a permanent nature."*
>
> *19. It is the case of first party that the demand of 2 & 3 Wheeler vehicle manufactured by it from time to time depends on several factors and hence it is necessary to employees in addition to permanent workmen whenever there is temporary work available and whenever there is temporary increase in work. It is admitted position that the demand of two and three vehicle fluctuates from time to time and hence I do not find any substance in the contention of Advocate Shri. Gore that work was available and services of Second parties are terminated in spite of it.*
>
> *Thus, Sec. 2(F) of I.D. Act is not attracted even after considering holidays and weekly off as none of 115 second parties have not completed continuous services of 240 days during 12 months preceding last termination.*
>
> *20. Letter dtd. 07.11.1990 Exh. 31 shows that Shri. Balaji Ramchandra Ghodake has joined Bajaj Tempo Ltd. Akurdi his period there is till 04-01-1991 and he will join lately first party company after first period is over."*

29. In the face of the foregoing narration, it cannot be gainsaid that both parties, being fully aware of the terms of reference and its scope, made their cases in extenso on the aspects of past engagements of the concerned workman in a rotational pattern and artificial breaks given to them so as to avoid completion of 240 days of continuous service and these were very much part of the trial before the Labour Court. It was thus clearly within the remit of the reference court to decide the issue.

30. Coming now to the power of the reference court to consider an unfair labour practice and grant substantive reliefs based thereon, Mr. Singhvi submits that while adjudicating an industrial dispute and making an award, the Labour Court or the Industrial Tribunal, as the case may be, may well consider whether the actions of the employer

complained of in the reference amount to an unfair labour practice. Learned Counsel submits that after all, unfair labour practices are specifically prohibited as per Section 25-T of the ID Act including the one specifically complained of here. Learned Counsel, in this behalf, refers to the cases of Durgapur Casual Workers Union v. Food Corporation of India, OIL And Natural Gas Corporation Ltd. v. Petroleum Coal Labour Union, Umrala Gram Panchayat v. Secretary, Municipal Employees Union, and Bhikku Ram v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak.

31. Mr. Naik and Mr. Cama, learned Senior Counsel appearing for the Respondent company, submit that the jurisdictions of courts and adjudicators under the PULP Act and the ID Act are different, the objects of the two Acts themselves being different. Learned Counsel submit that it is not for the Labour Court or Tribunal to adjudicate upon an unfair labour practice whilst hearing a reference under the ID Act. Learned Counsel submit that in that case neither Section 25-F nor Standing Orders 4C or 4D are available for adjudication so far as the present references are concerned. Learned Counsel submit that in any event, these would be individual disputes and not collective disputes. Learned Counsel submit that the case of U.P. Drugs is not applicable to the facts of our case. Learned Counsel submit that under Section 25-T read with Section 25-U and Section 34 of the ID Act, unfair labour practices cannot be tried under the ID Act; only the offences of unfair labour practice could be tried on complaints of appropriate Governments. Learned Counsel, in this behalf, refer to Section 2(ra) read with Fifth Schedule. Counsel also refer to the Second Schedule and the definition of 'industrial dispute' under Section 2(k) read with Section 2(a) and Section 7 of the ID Act in this behalf.

32. "Industrial dispute" is defined under clause (k) of Section 2 of the ID Act as any dispute between employees and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. Under Section 10 of the ID Act, it is this dispute which is, when it exists or is apprehended, referred to a court or a tribunal. Any matter appearing to be connected with or relevant to such dispute may also be referred to the court or the tribunal. Choice of the court or tribunal for referring such dispute or matter depends on (a) the Schedule to the ID Act in which the matter to which it is related is specified, (b) relation of the dispute to any public utility service, (c) the identity of the appropriate

Government in relation to such dispute, etc. Chapter V, VA and VB of the ID Act make particular provisions concerning prohibition or legality of strikes, lock-outs, closures, lay-offs, retrenchments, etc. Chapter VC prohibits unfair labour practices and provides for penalty. Section 25-T in this chapter mandates that no employer or workman or trade union shall commit any unfair labour practice. Section 25-I makes the provision of penalty for any such unfair labour practice. "Unfair labour practice" has been defined to mean any practice specified in the Fifth Schedule [Section 2(ra)]. The schedule separately provides for unfair labour practices on the part of employers or unions of employers and of workmen and trade unions of workmen. To employ workmen as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen, is an unfair labour practice on the part of an employer under the Fifth Schedule (Item 10 thereof). In the face of this scheme, it would be idle to hold that the industrial adjudicator, upon reference of a dispute or a matter relating to such dispute involving an unfair labour practice, say, as in our case, under Item 10, has no power or authority to prevent such unfair labour practice; all that he can do is to order a penalty for such practice. This appears to me to be clear at least on principle. Even other prohibitions such as prohibition of strikes or lockouts (Section 22) are simply referred to as prohibitions and there is a provision of penalty for illegal strikes or lock-outs. Is it to be then suggested that the industrial adjudicator only has the power or authority to order penalty and not any ameliorative measure or redressal for such strikes or lock-outs. If not, there is nothing in particular, at least as a matter of principle, in Section 25-T to hold that the adjudicator cannot enforce or implement the prohibition contained therein.

33. The case of Durgapur Casual Workers Union (supra) relied upon by Mr. Singhvi arose out of a reference made to the Central Government Industrial Tribunal under Sections 10(1) (d) and (2-A) of the ID Act. The demand of the union before the reference court was for absorption of casual workmen represented by it. The Tribunal held that continued casualisation of services of workmen amounted to unfair labour practice defined in Item 10 in Part I of the Fifth Schedule of the ID Act and ordered their absorption. The Supreme Court, whilst affirming the award of the Tribunal, observed that if any unfair labour practice was committed by an industrial establishment, pursuant to a reference made by the appropriate Government, the Labour Court/Tribunal would decide the question of unfair labour practice. The Court

concluded that the Tribunal having held that the Respondent Corporation had committed an unfair labour practice against its workmen, depriving them of the status and privileges of permanent workmen, the workmen were entitled to the relief of absorption.

34. The case of Petroleum Coal Labour Union (supra) also arose out of a reference made under Section 10 of the ID Act. The workmen concerned there were employed by the appellant Corporation initially through contractors. Upon issuance of a contract labour abolition notification for the particular jobs in the Corporation, a settlement was arrived at between the Corporation and the workmen, under which the latter were appointed directly and thereafter continued to work without written orders of the Corporation. The Corporation's case was that the appointments being without any procedure of selection or as per recruitment rules, the workmen were not entitled to regularization. The corporation also contended that in the absence of any plea taken by the workmen in their claim statement regarding the alleged unfair labour practice, no such plea could be entertained. The Supreme Court, negativing this contention, held as follows:

> *"49. ..... it is an undisputed fact that the workmen have been appointed on term basis vide memorandum of appointment issued to each one of the concerned workmen in the year 1988 by the Corporation who continued their services for several years. Thereafter, they were denied their legitimate right to be regularised in the permanent posts of the Corporation. The said fact was duly noted by the High Court as per the contention urged on behalf of the Corporation and held on the basis of facts and evidence on record that the same attracts entry Item No. 10 of Schedule V of the Act, in employing the concerned workmen as temporary employees against permanent posts who have been doing perennial nature of work and continuing them as such for number of years. We affirm the same as it is a clear case of an unfair labour practice on the part of the Corporation as defined under Section 2(ra) of the Act, which is statutorily prohibited under Section 25T of the Act and the said action of the Corporation warrants penalty to be imposed upon it under Section 25U of the Act. In fact, the said finding of fact has been recorded by both the learned single Judge and the Division Bench of the High Court in the impugned judgment*

> *on the ground urged on behalf of the Corporation. Even if, this Court eschews the said finding and reason recorded in the impugned judgment accepting the hyper technical plea urged on behalf of the Corporation that there is no plea of unfair labour practice made in the claim statement, this Court in this appeal cannot interfere with the award of the Tribunal and the impugned judgment and order of the High Court for the other reasons assigned by them for granting relief to the concerned workmen. Even in the absence of plea of an act of unfair labour practice committed by the Corporation against the concerned workmen, the Labour Court/High Court have got the power to record the finding of fact on the basis of the record of the conciliation officer to ensure that there shall be effective adjudication of the industrial dispute to achieve industrial peace and harmony in the industry in the larger interest of public, which is the prime object and intendment of the Industrial Disputes Act. This principle of law has been well established in a catena of cases of this Court. In the instant case, the commission of an unfair labour practice in relation to the concerned workmen by the Corporation is ex-facie clear from the facts pleaded by both the parties and therefore, the courts have the power to adjudicate the same effectively to resolve the dispute between the parties even in the absence of plea with regard to such an aspect of the case."*

35. In Umrala Gram Panchayat (supra), the industrial dispute referred to the adjudicator concerned the workmen's claim that after rendering services for a number of years, they were entitled to the benefit of permanency. They invoked Entry 10 in the Fifth Schedule to the ID Act. Whilst holding in favour of the workmen on this point, the Supreme Court held as follows:

> *"10. ..... It is an admitted fact that the work which was being done by the concerned workmen was the same as that of the permanent workmen of the appellant-Panchayat. They have also been working for similar number of hours, however, the discrepancy in the payment of wages/salary between the permanent and the non-permanent workmen is alarming and the same has to be construed as being an unfair labour practice as defined under Section 2(ra) of the ID Act r/w Entry No. 10 of the Fifth*

Schedule to the ID Act, which is prohibited under Section 25(T) of the ID Act. Further, there is no documentary evidence produced on record before the Labour Court which shows that the present workmen are working less or for lesser number of hours than the permanent employees of the appellant-Panchayat. Thus, on the face of it, the work being done by the concerned workmen has been permanent in nature and the Labour Court as well as the High Court have come to the right conclusion on the points of dispute and have rightly rejected the contention of the appellant-Panchayat as the same amounts to unfair labour practice by the appellant-Panchayat which is prohibited under Section 25(T) of the ID Act and it also amounts to statutory offence on the part of the appellant under Section 25(U) of the ID Act for which it is liable to be prosecuted."

36. The Court also noted as follows:

"13. Further, Section 25(T) of the ID Act clearly states that unfair labour practice should not be encouraged and the same should be discontinued. In the present case, the principle "equal work, equal pay" has been violated by the appellant-Panchayat as they have been treating the concerned workmen unfairly and therefore, the demand raised by the respondent-Union needs to be accepted. The High Court has thus, rightly not interfered with the Award of the Labour Court as the same is legal and supported with cogent and valid reasons."

37. The Court affirmed the relief of treating the workmen as permanent employees after completion of five years of initial appointment and payment of salaries as per regular pay scale.

38. In Bhikku Ram's case (supra), the Supreme Court held as follows:

"(37) .....If the Court finds that the exercise of rights by the employer is not bona fide or the employer has adopted the methodology of fixed term employment as a conduct or mechanism to frustrate the rights of the workman, the termination of the service will not be covered by the exception contained in Clause (bb). Instead the action of the employer will have to be treated as an act of unfair

> *labour practice, as specified in the Fifth Schedule of the Act. The various judgments rendered by the different High Courts and by the Supreme Court clearly bring out the principle that only a bona fide exercise of the powers by the employer in cases where the work is of specified nature or where the temporary employee is replaced by a regular employee that the action of the employer will be upheld. In all other cases, the termination of service will be treated as retrenchment unless they are covered by other exceptions set out hereinabove."*

39. Both on principle and authority, thus, Mr. Singhvi's submission that industrial adjudicator has the requisite power and authority, whilst deciding a reference, to take note of an unfair labour practice and provide an ameliorative remedy so as to avoid such practice or order redressal, deserves to be accepted. Besides, a contrary approach would clearly lead to an avoidable anomaly. Exactly similarly placed workmen of the Respondent, who happened to take the route of the PULP Act to seek redressal of the very same grievance, got reliefs of either reinstatement or compensation in lieu thereof, whereas the workmen in the present case would be denied such relief only because they resorted to references under the ID Act. The anomaly can only be termed as the very antithesis of industrial peace and is best avoided.

40. Coming now to the argument concerning inclusion of Sundays and holidays for counting 240 days' work in a calendar year, Mr. Naik and Mr. Cama rely on the judgement of a learned Single Judge of our Court in the case of Bajaj Auto Ltd., Akurdi, Pune v. Ashok D. Dhumal 11 confirmed by a Division Bench in Ashok V. Dhumal v. Bajaj Auto Ltd. 12 Relying on these judgments, learned Counsel submit that Sundays and holidays cannot be considered for counting 240 days of service of daily wagers employed in a factory. Mr. Singhvi, on the other hand, relies on three judgments of the Supreme Court in the cases of Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation, H.D. Singh v. Reserve Bank of India 14 and Management of Standard Motor Products of India Ltd. v. A. Parthasarathy. He submits that the learned Single Judge of our court as well as the Division Bench holding to the contrary has clearly not noticed the later two of these three judgments. It is submitted that the proposition laid down by these three Supreme Court judgments is even more true for Standing Order No. 4C than for Section 25-B; whereas Section 25-B of the ID Act uses the

words "days ..... actually worked", Standing Order No. 4C uses the term "uninterrupted service". Mr. Singhvi submits that many of the workmen involved in these references, by that token, could be said to have actually completed 240 days of continuous service in a calendar year, and would be accordingly entitled to be regularized as permanent workmen.

41. Our court in Ashok Dnyanoba Dhumal's case did consider this very question in the context of a similarly placed workman of this very Respondent. The court, after referring to the relevant provisions of the Factories Act, 1948 and rules and applicable GR in connection with employment in engineering industry, held that the scheme of these provisions showed that in a week, workers in a factory were required to work for six days with eight daily working hours each so that in a week they worked for 48 hours; there was no provision under the Factories Act for payment for weekly holidays as was the case under the Delhi Shops and Establishments Act. The court held that the expression "actually worked under the employer" must necessarily comprehend all those days during which the workman was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute or standing orders. The court observed that it had come on record that Model Standing Orders were applicable to the Respondent's factory and they did not prescribe any payment for weekly rest days. The court held that Sundays and holidays were, thus, not to be counted for computing actual work of 240 days in a calendar year for daily rated workmen. The workman concerned in that case appealed to the Division Bench, which affirmed the decision of the learned Single Judge, holding that the appellant could not be given the benefit of weekly-offs whilst calculating 240 days of continuous service.

42. In the case of Workmen of American Express International Banking Corporation (supra) relied upon by Mr. Singhvi, the workman concerned was governed by the Delhi Shops and Establishments Act. Under that Act, even in the case of daily wagers, wage was to be paid for closed days or holidays. The observation in that judgement that the expression "actually worked under the employer" could not mean those days only when the workman worked with hammer, sickle or pen, but must comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders, etc., has to be understood in that context. In our case, going by the ratio of Dhumal's case, there is nothing in the express or implied

contract of service or statute or standing orders warranting payment of wages to the concerned workmen for Sundays and holidays. In fact, that is precisely how the judgment of Workmen of American Express International Banking Corporation was distinguished by our court in Dhumal's case. The former case, accordingly, cannot be cited as an authority to detract from the principle stated in Dhumal's case.

43. In Management of Standard Motor Products of India Ltd. (supra), relying on Section 25-B(2) of the ID Act, the Supreme Court held that the workman was in uninterrupted service; even if the period of illegal strike was excluded, the number of days for which he actually worked would be more than 240 days if Sundays and other holidays for which he was paid wages were included. What distinguishes this case is that the workman concerned there was actually paid wages for Sundays and holidays, unlike in our case, where neither under express or implied terms of the contract of service nor under any statute or standing order the workmen concerned were paid wages for Sundays or holidays.

44. The case of H.D. Singh (supra) involved a Tikka Mazdoor employed with Reserve Bank of India, whose name was struck off the register despite his having completed, according to him, 240 days of continuous service. No doubt he was a daily rated employee and in his case, Sundays and holidays were indeed counted by him to compute such continuous service. His case of more than 240 days of continuous service on that basis appears to have been accepted by the court, since he had stated so on affidavit, and despite the service record being with the Bank, nothing was produced to contradict his case. In the absence of any evidence to the contrary, the court drew an inference that his case that he had worked for more than 240 days in a particular calendar year was true. It is difficult to hold that this case is an authority for holding that in every case, irrespective of the contract of service (in express or implied form) or statute or standing orders, a daily rated employee must be said to have worked on Sundays and holidays for the purposes of counting continuous service and that for not having considered this case, the judgement of the learned Single Judge and Division Bench in Dhumal's case (supra) can be said to be per incurium.

45. The judgements of our court in Dhumal's case are binding on me and there is nothing on principle or authority to persuade me to take a different view so as to refer this point to a larger Bench. I do not, accordingly, accept Mr. Singhvi's submission that some of the workmen involved in these

references have actually completed a minimum 240 days of continuous service in any calendar year.

46. Even if, however, I were to accept Mr. Singhvi's submission, there is yet another unsurmountable difficulty in his way for bringing his case under the relevant Standing Order to support his clients' claim to permanency for having completed 240 days of continuous service. The impugned awards hold that the concerned workmen had to complete 240 days in the calendar year immediately preceding the respective terminations of their services. Mr. Singhvi submits that it does not have to be so. He argues that 240 days can be counted in any previous year, that is to say, any year prior to the date of termination and not necessarily in the year immediately prior to the termination of service. Learned Counsel relies on the judgments of the Supreme Court in the case of U.P. Drugs & Pharmaceuticals Co. Ltd. v. Ramanuj Yadav 16 and of our Division Bench in the cases of Jairaj N. Shetty v. Union of India 17 and Mehboob v. Executive Engineer, Agriculture Construction Division, Nagpur 18 in support of this proposition.

47. Standing Order 4C is in the following terms:

> *"4. C. A badli or temporary workman who has put in 190 days' uninterrupted service in the aggregate in any establishment of seasonal nature or 240 days "uninterrupted service" in the aggregate in any other establishment, during a period of preceding twelve calendar months, shall be made permanent in that establishment by order in writing signed by the Manager, or any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the establishment throughout the period of the said twelve calendar months.*
>
> *Explanation.-For purpose of this clause any period of interrupted service, caused by cessation of work which is not due to any fault of the workman concerned shall not be counted for the purpose of computing 190 days or 240 days, or, as the case may be, for making a badli or temporary workman permanent.*

48. Section 25-B of the ID Act, which is another provision bearing on the subject, provides as follows:

"25-B. Definition of continuous service.— For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer -

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation : For the purpose of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which -

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act,

> *1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;*
>
> *(ii) he has been on leave with full wages, earned in the previous year;*
>
> *(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and*
>
> *(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks."*

49. As is apparent, both provisions use with the expression "240 days in a calendar year" the word "preceding". The word "preceding", in its natural meaning, implies "coming before something in order, position or time". If the word is used in the sense of order in point of time, it does imply "the period of time immediately before the one being talked about". The natural meaning of the word, thus, does not support Mr. Singhvi's contention.

50. Let us now see if any authority suggests otherwise. Mr. Singhvi relies on mainly the case of U.P. Drugs & Pharmaceuticals Co. Ltd. (supra). That was a case, where the court was concerned with Section 6N, read with Section 2(g) of the Uttar Pradesh Industrial Disputes Act, 1947 (for short, "U.P. Act"). Section 6N provided for condition precedent to retrenchment of workmen. It used the expression "continuous service for not less than one year" under the employer as a condition applicable for retrenchment under Section 6N. The expression "continuous service" was defined in Section 2(g) of the U.P. Act, which read as follows:

> *"2.(g) 'Continuous service' means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman, and a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry.*

Explanation.—In computing the number of days on which a workman has actually worked in an industry, the days on which—

(i) he has been laid off under the agreement or as permitted by standing order made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the industrial establishment, the largest number of days during which he has been so laid off being taken into account for the purposes of this clause,

(ii) he has been on leave with full wages, earned in the previous year, and

(iii) in the case of a female, she has been on maternity leave; so however that the total period of such maternity leave shall not exceed twelve weeks, shall be included."

51. The court noted that Section 2(g) of the U.P. Act did not require a workman, to avail the benefit of the deeming provision of completion of one year of continuous service in the industry, to have worked for 240 days during "preceding" period of twelve calendar months. The court noted that the word "preceding" had been used in Section 25-B of the ID Act (incorporated in the year 1964), whereas Section 2(g) did not use the word "preceding". The court observed that if the viewpoint propounded before it were to be accepted (implying that 240 days were to be completed in the immediately preceding year before retrenchment), then every year the workman would be required to complete more than 240 days; if in any one year the employer gives him actual work for 240 days, the service of the workman could be terminated. The court, in the premises, proceeded on the footing that there was no requirement of completing not less than 240 days during a period of twelve calendar months immediately preceding the retrenchment under the U.P. Act. The absence of the word "preceding" in the U.P. Act is, in my view, a determinative factor for the ruling of the court in UP Drugs and Pharmaceuticals. In fact, the reasoning proceeds on an express footing of distinction between amended Section 25-B of the ID Act, which uses the word "preceding", and Section 2(g) of the U.P. Act, which does not use the word "preceding", which is the very pointer for my conclusion.

52. Mr. Singhvi also relies on the cases decided by our court. The case of Jairaj N. Shetty was under Section 25-B of the ID Act. The court's view in that case that if a workman had worked for more than 240 days in an earlier year or in one of the earlier years, he would be deemed to be in continuous service, was on the basis of concession made by learned Counsel for the respondent Railways in the case before it. It was accepted by learned Counsel for the Railways in that case that in the light of the judgment in U.P. Drugs and Pharmaceuticals, the legal position crystalised under Section 25-B of the ID Act implied that if a workman had worked for more than 240 days in the earlier year or any one of the earlier years, he would be deemed to be in continuous service. Though the Division Bench did say that, in its view, that was a correct reading of U.P. Drugs and Pharmaceuticals, evidently the point was decided, at any rate, at best subsilentio, and, at worst on a concession made by Counsel. The other judgment of Nagpur Bench in the case of Mehbooba (supra) simply noted the judgment in Jairaj N. Shetty and, on that basis, remanded the matter to the Single Judge for a fresh hearing and decision on the question of validity of termination after having completed 240 days of continuous service in one of the previous years. This case cannot be said to be an authority for the proposition that 240 days of continuous service preceding the date, with reference to which such calculation is to be made within the meaning of Standing Order 4C, can be any period of 240 days in any one or other of the previous years.

53. There is, accordingly, nothing in the authorities cited by Mr. Singhvi to support his case that the word "preceding" used in Standing Order 4C does not imply the immediately preceding twelve calendar months. Accordingly, neither on principle nor on authority am I persuaded to hold that these workmen were liable to be made permanent under Standing Order 4C by reason of completion of 240 days of continuous service in twelve preceding calendar months within the meaning of Standing Order 4C. I hold Issue No. (II), on both counts, accordingly, against the Petitioners.

(Emphasis supplied)

(E) Whether, the temporaries were prevented from completing 240 days?

52. I have independently assessed the entire oral and documentary evidence adduced before the Labour Court in these

cases and upon analysis of the same, I have come to a firm conclusion that in hundreds of cases, the present respondent has created a farcical picture by posing that the work allotted to the temporaries was limited only to the maximum extent of 7 months. As discussed above, the dedicated department for engagement of temporary workers, apparently kept a close watch on the duration of employment of these petitioners and in a case like Balu Bapuji Shelke, who had put in 232 days in his first round and 238 days in his third round, his service was abruptly intercepted and he was disengaged. He had almost reached the figure of 240 days and was thrown out, after completing 238 days. This indicates that the respondent-management has created an eye-wash and paper-work with the intention of creating evidence that no worker had completed 240 days. Even in ***Sunil Pralhad Khomane (supra),*** the learned judge of this court, after analyzing the entire evidence before him, concluded that the company has apparently misused Section 2(oo)(bb). For the reasons assigned by me and my esteemed brother in ***Sunil (supra)***, I find that the said conclusion was justified and in all these cases in hands, Section 2(oo)(bb) will not be applicable. To hold otherwise, would create a mockery of Section 2(oo)(bb).

53. In fact, most of the grounds raised by Mr. Singh and Mr. Bapat on behalf of the respondent-management, in the cases in hands, are identical to the grounds formulated and submissions advanced by the management in the ***Sunil Pralhad Khomane (supra)***.

54. Mr. Singh has relied upon a judgment delivered by the learned Single Judge Bench of this court in ***Mahindra & Mahindra Limited, Nagpur (supra)***. In the said judgment, the learned Single Judge dealt with the case under Item No.5 of Schedule IV of the State Act. Since the workers failed to plead and lead evidence to show that they were continuously willing to work, that my esteemed brother held, that the workers had failed in pleading and proving completion of 240 days in continuous employment. It was observed in paragraph 24 to 27 and 29 to 32 as under:

> *"24. But, before considering the aspect of continuous and recurring cause of action, it would be appropriate to first analyze as to whether the respondents-workmen were rightly held to be in 'uninterrupted service' of the petitioner-Company as per clause 2(g)(viii) of the Model Standing Orders. A finding in favour of the respondents-workmen on this question would repel the contention raised on behalf of the petitioner-Company that the complaints filed by the respondents-workmen were not maintainable before the Industrial Court as they were not in employment of the petitioner-Company. The pleadings and evidence led by the rival parties do show that the petitioner-Company failed to regularly maintain waiting list of workmen employed on temporary basis, although mandated under clauses 4-B, 4-C, 4-D and 4-E of the Model Standing Orders. It has come in the evidence of the officer of the petitioner-Company that waiting list was prepared in the year 2000, in which also the names of the respondents-workmen were not included. It is found in the evidence available on record that workmen, who were temporarily employed after the respondents-workmen herein, were later granted permanency in service, while the respondents-workmen herein were not even considered. Therefore, there appears to be violation of clauses 4-B, 4-C, 4-D and 4-E of the Model Standing Orders by the petitioner-Company, to that extent. But, the question is whether this should ipso facto lead to an order in favour of the respondents-workmen.*
>
> *25. A crucial aspect of the matter has neither been adverted to nor considered by the Industrial Court in the impugned*

judgments and orders with regard to the nature of pleadings and evidence expected from the respondents-workmen to successfully claim that unemployment was involuntarily foisted upon them. The chart showing details of the periods of employment of the respondents-workmen would show that they were employed for specific periods and upon completion of such periods, their employment with the petitioner-Company ceased. There is nothing on record in the pleadings and the evidence on behalf of the respondents-workmen that they showed their willingness to work with the petitioner-Company at any point of time after their last dates of employment with the petitioner-Company. In the complaints filed on behalf of the respondents-workmen, there is no whisper about such willingness and/or about any steps taken by the respondents-workmen to approach the petitioner-Company for work. In fact, it is only in the cross-examination of the respondents-workmen before the Industrial Court that they have made bald statements that they had approached the petitioner-Company for work. Interestingly, respondent No. 1 in Writ Petition No. 7085 of 2019 has stated in cross-examination that he last approached the petitioner-Company for work in the year 1999, while the complaint was filed years later, in the year 2011. The said assertion is also not supported by any evidence.

26. This is the nature of evidence on behalf of the respondents-workmen with regards to the aspect of willingness on their part to work with the petitioner-Company. It was necessary for the respondents-workmen to have pleaded and led cogent evidence to show that while they were continuously willing to work with the petitioner-Company, they were not offered work while others were granted employment by the petitioner-Company. If such pleading and evidence was on record it could certainly be concluded that unemployment was involuntarily foisted upon the respondents-workmen, thereby showing that they deserved to be treated as being in 'uninterrupted service' under clause 2(g)(viii) of the Model Standing Orders. In absence of any such pleading and evidence on record, the Industrial Court certainly erred in holding in favour of the respondents-workmen.

27. It becomes evident that the respondents-workmen seemed to have voluntarily chosen unemployment with the petitioner-Company, while choosing to work with other employers. In such a situation, it cannot be said that the respondents-workmen had been able to prove that they were in 'uninterrupted service' with the petitioner-Company. The fact that the respondents-workmen chose to raise their grievance against the petitioner-Company for the first time after 9 to 23 years of their last dates of employment with the petitioner-

Company, shows that they cannot be covered under clause 2(g)(iii) of the Model Standing Orders. The cessation of employment of the respondents-workmen on the last dates of their employment with the petitioner-Company, as demonstrated in the chart above, clearly shows that they could not be held to be in 'uninterrupted service' of the petitioner-Company for maintaining complaints before the Industrial Court.

29. It was sought to be argued on behalf of the respondents-workmen that the aforesaid judgment of the Hon'ble Supreme Court would not apply to the facts of the present case because in the said case, the Hon'ble Supreme Court was considering an industrial dispute under section 10 of the Industrial Disputes Act, 1947, which necessarily referred to the concept of 'continuous service' under section 25-B of the Act of 1947, as distinguished from clause 2(g)(viii) of the Model Standing Orders with which this Court is concerned in the present cases. But, the said distinction sought to be made on behalf of the respondents-workmen is unacceptable because this Court finds that the respondents-workmen cannot be said to be in a situation of unemployment being involuntarily foisted upon them under clause 2(g)(viii) of the Model Standing Orders. Once such a finding is rendered, it cannot be held that the respondents-workmen continued in 'uninterrupted service' despite the fact that their last dates of employment were between 9 and 23 years before they chose to approach the Industrial Court in the years 2010-2011. The ratio laid down by the Hon'ble Supreme Court in the aforesaid judgment applies to the present cases also and the Industrial Court could not have entertained the prayer for permanency and regularization made on behalf of the respondents-workmen when they had ceased to be in employment of the petitioner-Company between 9 and 23 years before filing the complaints.

30. In this context, judgment of a learned Single of this Court in the case of Kinetic Engineering Ltd., Ahmednagar v. Barku, reported in 2020(1) Mh.L.J. 709 is also relevant. By referring to clause 2(g)(viii) of the Model Standing Orders, this Court in the said judgment rejected the contention raised on behalf of the workmen that few months of employment in a particular year and then another few spells of such employment after three years would have to be clubbed together to hold that the workmen had been working for five continuous years in the establishment. This Court held that if such interpretation was given to the concept of uninterrupted service, it would lead to disastrous consequences.

31. It is also relevant that the contention raised on behalf of the respondents-workmen that they had completed more than 240 days of work in a calendar year if the artificial breaks in their employment were ignored, cannot be accepted. It is of significance that such a contention is sought to be raised on behalf of the respondents-workmen while claiming permanency, by filing complaints 9 to 23 years after their last dates of employment. Having failed to show any willingness to work with the petitioner-Company for all these years, it cannot lie in the mouth of the respondents-workmen that their intermittent service with the petitioner-Company in temporary capacity all these years ago deserves to be clubbed together to hold that they had completed 240 days in a calendar year, thereby justifying their claim for permanency in service. Such a contention can certainly not be accepted.

32. In the case of Mohd. Ali v. State of H.P., reported in (2018) 15 SCC 641, the Hon'ble Supreme Court considered a case where workmen had worked for different number of days in calendar years with the employer. After taking into consideration the undisputed data on record and the concept of 'continuous service' as it then existed, the Hon'ble Supreme Court found that the workmen had not completed 240 days in a calendar year in the immediate preceding year of their dismissal and, therefore, the reliefs claimed by them could not be granted. Although, it is vehemently submitted on behalf of the respondents-workmen herein that the said case pertained to the provisions of the Act of 1947 and in the present case this Court is concerned with the concept of 'uninterrupted service' under clause 2(g)(viii) of the Model Standing Orders, this Court is not impressed with the distinction sought to be made. Even if clauses 4-B, 4-C, 4-D and 4-E of the Model Standing Orders are taken into consideration, it cannot be said by any stretch of interpretation that in the complaints filed by the respondents-workmen herein after 9 to 23 years of their last dates of employment with the petitioner-Company, they could successfully claim that they had completed 240 days of continuous and uninterrupted service on the basis that they were covered under clause 2(g)(viii) of the Model Standing Orders. Therefore, it becomes clear that the Industrial Court committed an error in holding in favour of the respondents-workmen in this context."

55. It appears from the facts set out in ***Mahindra & Mahindra, Nagpur (supra)*** that 'the workmen seemed to have voluntarily

chosen their unemployment with the company while choosing to work with other employers'. Their ULP complaints before the Industrial Court, Nagpur, were filed after 9 to 23 years of their last dates of disengagement. After their intermittent cessation of employment, they appeared to have worked elsewhere. This significant aspect is completely missing in the cases in hands. Before me, the evidence indicates that the management did not even put forth a suggestion to the workers in cross-examination that after their disengagement in any particular round, they had worked in any other automobile or engineering company. Actually, the evidence indicates that whenever they received resumption orders, which are termed by the management as fresh appointment orders, they reported for duties and worked with the respondent herein, till they were disengaged. In many cases, though their terms of employment set out in the appointment order indicated a maximum of 7 months, they were still continuing till they came excruciatingly close to 240 days and when the management realized that some of them were about to complete 240 days, they were abruptly disengaged. Such glaring evidence was not brought before the court in ***Mahindra & Mahindra Ltd., Nagpur (supra)***. Such type of evidence is also not found in ***Oshiar Prasad (supra)***, ***Mohd. Ali (supra)***, ***Prabhakar v. Joint Director of Sericulture Department***[28] or ***Kinetic Engineering Ltd. Ahmednagar v. Barku***[29], which was referred to by this court in ***Mahindra & Mahindra Ltd., Nagpur, (supra)***.

56. This court further held in ***Mahindra & Mahindra, Nagpur,***

28 (2015) 15 SCC 1
29 2019 (III) LLJ 660 (Bom)

(supra), that the workers cannot claim permanency by filing ULP complaints 9 to 23 years post their disengagement from temporary service. The court rightly believed that a worker, who remained away from work for 9 to 23 years after his last disengagement, cannot claim that he was ever willing to work with the petitioner-company and that all his temporary rounds of employment, prior to his last disengagement be clubbed together for grant of permanency, after they were away from work in between 9 to 23 years.

57. In ***Kinetic Engineering Limited, Ahmednagar (supra)***, it was a solitary case of a worker. Similarly, ***Mohd. Ali (supra)*** and ***Prabhakar (supra)***, were solitary cases. In the cases in hands, the prime sole witness of the management conceded that the factory had about 4000 to 4500 permanent workers and that about 3000 temporary workers were working on the core manufacturing activities in 12 Divisions. On any given day, there were hundreds of temporary workers, working in the respondent-factory. The witness further admitted that there was a dedicated department to monitor the recruitment of temporary workers and the said witness was the chief of the department.

58. It cannot be ignored from the various rounds of temporary employments of these temporaries that after one disengagement, they used to look forward for the next appointment order. As expected, they used to receive such appointment orders. They used to perform their duties not only till the tenure mentioned in the appointment order was completed, but even upto reaching any

duration between 225 days to 238 days in one single stint of temporary employment. None of the temporaries in such cases, ever received an appointment order that a particular temporary would work for 238 days or 236 days, etc. The maximum tenure was an appointment for 7 months. This was not the pattern followed in ***Mahindra & Mahindra Ltd., Nagpur (supra),*** inasmuch, as it was noticed by this court in the said case that the workers used to work in other factories during their disengagement and had actually approached the Industrial Court after about 9 to 23 years.

59. It is apparent from the impugned Award that the Labour Court did not apply it's mind to these factors. In paragraph 25, the Labour Court in four sentences noted that *"the witness of first party has narrated consistently with it's averments. There are no contradictions in his testimony. Nothing helpful is extracted during cross-examination by second party. Thus, oral testimony of witness of first party is acceptable to believe contention of first party."* These conclusions are absolutely without reasons and are perverse. For the sake of clarity, I can refer to the averments of the management in the written statement and the actual statement of the prime witness in his cross-examination, as follows:

Written Statement		***Oral Evidence***
The respondent engaged temporary workmen only when there was a temporary rise in work.		*The respondent maintained a department for monitoring temporary recruitment and the recruitment used to occur any time in the year.*

Whenever the work allotted to the petitioner was over, he was terminated.		*There are 10 to 12 Divisions in the company and around 2500 to 3000 workers were working as temporary in the manufacturing activity.*
Whenever there was rise in work, the temporaries were engaged.		*There is no documentary evidence to establish rise and fall in production growth.*
The period of engagement of the petitioners was dependent upon temporary rise in the manufacturing work.		*There is no specific period of rise in work.* *Rise in the market can happen at any point of time in a year.*
Whenever the temporary work got reduced, the temporaries were terminated.		*Due to scope of work, one temporary worker is engaged only for six months in one year.*

60. It is, therefore, obvious from the impugned Award that the above factors were not noticed by the Labour Court. In fact, in paragraph No.27 of the Award (the Awards are identical, except that some paragraph numbers would differ), it held that there is no evidence produced by the workman to show that his work was of permanent nature. I find from the evidence that the respondent engaged temporaries in the 12 Divisions, throughout the year, and has shrewdly avoided bringing the date-wise recruitment of the temporaries, because such information would have further exposed the rotational recruitment pattern and the planned termination of the temporaries by the management.

61. In the impugned Award, the Labour Court accepted the contention of the management at it's face value without properly analyzing the oral and documentary evidence. I am of the considered view that these petitioners were systematically prevented from completing 240 days.

(F) Whether Industrial Disputes were raised belatedly?

62. The respondent-management has raised the issue of delay in raising industrial disputes. It is it's strenuous contention that the industrial disputes were raised after about 9 to 10 years. This stand of the management is misconceived. Several temporaries worked till 1999, 2000, 2001, 2002, 2003 and even upto 2004. There are several employees, who have worked till 2004 and the industrial dispute was raised on 23/07/2005. It appears that, when a large chunk of temporaries developed an apprehension that they may not be reappointed, that they rushed to the Labour Court by raising an industrial dispute on 23/07/2005. Those temporaries, who were suffering silently and awaiting further orders for temporary engagement, that they came along with the other temporaries and raised industrial disputes.

63. When they realized that many of the temporaries are raising industrial disputes so as to approach the court, that these temporaries became organized and joined the rest, to raise an industrial dispute. In these circumstances, these temporaries have been litigating for the past about 17 years. Hence, I do not find that it could be said that such cases of the temporaries should not be entertained on the ground of delay.

(G) Earlier pronouncements of this court and the Hon'ble Supreme Court in similar set of facts in different cases.

64. In ***Sunil Prahlad Khomne (supra),*** this court has referred to ***Bajaj Auto Limited v. R.P. Sawant***[30], ***Bajaj Auto Limited v. Bhojane Gopinath D.***[31], ***Bajaj Auto Limited v. Rajendra Kumar Jagannath Kathar***[32], ***Ghanshyam Sukhdeo Gaikwad v. Bajaj Auto Limited***[33].

65. In ***Chandrashekhar T. Titarmare (supra)***, the learned Division Bench of this court concluded that the learned Single Judge was right in holding that there is no evidence led by the management to establish that the workers were given breaks in service as work was not available. It was further held that the learned Single Judge was right in holding that artificial breaks were given to the employees only to deprive them of permanency. The management of Mahindra & Mahindra carried this judgment to the Hon'ble Supreme Court. During the pendency of the special leave petitions (12 Nos.), the management filed an application for withdrawal of all the special leave petitions, as the parties had mutually settled the matters. It was only on account of the agreement that the parties requested the Hon'ble Supreme Court that the judgment of the learned Appeal Bench of the Bombay High Court should not be treated as a binding precedent. Therefore, the Hon'ble Supreme Court observed that the orders of the High Court shall not operate as binding precedents. However,

30 Judgment dated 11/09/2003 decided by Supreme Court in Civil Appeal No.4999 of 2002
31 (2004) 9 SCC 488
32 (2013) 5 SCC 691
33 (2016) 13 SCC 295

the law laid down by the Hon'ble Supreme Court in ***R.P. Sawant (supra)***, ***Rajendra Kumar Jagannath Kathar (supra)***, ***Ghanshyam Sukhdeo Gaikwad (supra)***, and ***Bhojane Gopinath (supra)*** has now settled the legal position in such cases.

66. In view of the above, I find that the respondent-management has systematically prevented these temporaries from completing 240 days in continuous employment and had foisted involuntary unemployment on these temporaries before they could complete 240 days only to paint an imperfect picture that the work had come to an end and, therefore, these temporaries were disengaged by efflux of time, which is an exception to retrenchment u/s 2(oo)(bb).

(H) Whether breaks in service could be bridged to calculate continuous service?

67. In catena of judgments, the Hon'ble Supreme Court has bridged such involuntary unemployment spells to compute continuous service. This has been done in such cases, wherein reinstatement in service could be granted. Wherever reinstatement in service was practicable, the Hon'ble Supreme Court has bridged such breaks / gaps. In cases, where despite bridging such gaps, reinstatement was not practicable, the Hon'ble Supreme Court granted lumpsum compensation by taking into account the financial condition of the employer.

(I) Conclusion

68. These Writ Petitions are partly allowed. The impugned

Awards are quashed and set aside for being perverse and unsustainable. The Reference IDA cases are partly allowed and it is declared that the respondent/ Management has indulged in unfair labour practices under Items 5(a), 5(b), 9 and 10 of the Fifth Schedule, in the light of Section 7 and Items 1 and 3 of the Second Schedule of the Industrial Disputes Act, 1947.

(J) Prayers and Relief

69. In view of my conclusions on the various aspects of this case discussed hereinabove, the nature of relief to be granted to these workers will have to be decided. Mr. Singhvi has canvassed that, if this court finds it inappropriate to reinstate the petitioners in employment, they should be paid full back wages for their entire period of unemployment, till today. In the alternative, he has also stated that the court may quantify a compensation package to each of these petitioners.

70. Mr. Singh and Mr. Bapat have strenuously canvassed that none of these reliefs can be granted to any of these petitioners and, on instructions, they state that the management is not willing to consent for payment of a compensation package to these petitioners.

71. In ***Assistant Engineer, Rajasthan State Agricultural Marketing Board, Kota v. Mohanlal***[34], ***Assistant Engineer, Rajasthan Development Corporation v. Gitam Singh***[35], ***B.S.N.L.***

34 (2013) LLR 1009
35 (2013) 5 SCC 136

v. Mansingh[36] and ***Jagbir Singh v. Haryana State Agricultural Marketing Board***[37], it was noticed that the employees had worked for shorter duration and were away from employment for quite longer duration. They were, therefore, granted compensation at the rate of Rs.30,000/- to Rs.50,000/- per year of service put in by the employees. The financial capacity of the respondent was also taken into account. In ***Ghanshyam Sukhdeo Gaikwad (supra),*** the Hon'ble Supreme Court, while exercising it's power under Article 142 of the Constitution, directed the management to pay each workman, an amount of Rs.10,00,000/- as compensation plus gratuity at the current rate of wages. This was in 2016. In ***Bhojane Gopinath (supra)***, by considering minimum monthly wage to be Rs.8,000/-, 85 days' for each year's work, was the compensation. I am told that presently, the monthly salary of a permanent workman working in the manufacturing activity of the respondent herein, is in between Rs.60,000/- to Rs.75,000/-.

72. Considering the law laid down in ***Mohanlal (supra)***, ***Gitam Singh (supra)***, ***Mansingh (supra)***, ***Jagbir Singh (supra)*** and ***Bhojane Gopinath (supra)***, ***Ghanshyam Sukhdeo Gaikwad (supra)*** and ***Sunil Prahlad Khomne (supra)***, I find that the compensation to be awarded to these petitioners, per tenure, would be as follows:

Term of 211 days and above	-	Rs.75,000/-
Term in between 180 to 210 days	-	Rs.65,000/-
Term in between 150 to 179 days	-	Rs.55,000/-

36 (2012) 1 SCC 558
37 (2009) 15 SCC 327

Term in between 120 to 149 days - Rs.45,000/-
Term in between 90 to 119 days - Rs.35,000/-
Term in between 60 to 89 days - Rs.25,000/-
Below 60 days - No compensation.

Illustration:			
Person-"A"	Round No.1	Worked for 230 days	Rs.75,000/-
	Round No.2	Worked for 210 days	Rs.65,000/-
	Round No.3	Worked for 180 days	Rs.65,000/-
	Round No.4	Worked for 119 days	Rs.35,000/-
		Total ….	Rs.2,40,000/-

73. The respondent-company shall meticulously calculate the number of days actually worked by these petitioners in each round and make the payments to these petitioners within 60 days. Details of such calculations shall be handed over to each of the petitioners at the time of making the payment to them.

74. Since the Registry has informed that the petition paper-book in many cases have been destroyed by white ants, the learned advocate for the petitioners is requested to supply one set of the petition paper-book in the following petitions, as expeditiously as possible :-

Sr. No.	**Writ Petition**
01.	Writ Petition No.4371 of 2019
02.	Writ Petition No.4388 of 2019
03.	Writ Petition No.4389 of 2019
04.	Writ Petition No.4390 of 2019
05.	Writ Petition No.4391 of 2019

06.	Writ Petition No.4392 of 2019
07.	Writ Petition No.4393 of 2019
08.	Writ Petition No.4394 of 2019
09.	Writ Petition No.4395 of 2019
10.	Writ Petition No.4396 of 2019
11.	Writ Petition No.4397 of 2019
12.	Writ Petition No.4398 of 2019
13.	Writ Petition No.4399 of 2019
14.	Writ Petition No.4935 of 2019
15.	Writ Petition No.4936 of 2019
16.	Writ Petition No.4937 of 2019
17.	Writ Petition No.4938 of 2019
18.	Writ Petition No.4939 of 2019
19.	Writ Petition No.4940 of 2019
20.	Writ Petition No.4941 of 2019
21.	Writ Petition No.4942 of 2019
22.	Writ Petition No.4945 of 2019
23.	Writ Petition No.4947 of 2019
24.	Writ Petition No.4949 of 2019
25.	Writ Petition No.4950 of 2019
26.	Writ Petition No.4951 of 2019
27.	Writ Petition No.4952 of 2019
28.	Writ Petition No.4953 of 2019
29.	Writ Petition No.4954 of 2019
30.	Writ Petition No.4955 of 2019
31.	Writ Petition No.4957 of 2019
32.	Writ Petition No.4958 of 2019
33.	Writ Petition No.4959 of 2019
34.	Writ Petition No.4961 of 2019
35.	Writ Petition (St.) No.11375 of 2019

75. No order as to costs.

[RAVINDRA V. GHUGE, J.]

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