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Court No. - 10

Case :- WRIT - C No. - 30049 of 2016
Petitioner :- Dinesh Pal Singh
Respondent :- Presiding Officer And 2 Others
Counsel for Petitioner :- Vijai Krishna Agnihotri
Counsel for Respondent :- C.S.C.,Piyush Bhargava

with

Case :- WRIT - C No. - 30052 of 2016
Petitioner :- Digvijay Govil
Respondent :- Presiding Officer And 2 Others
Counsel for Petitioner :- Vijai Krishna Agnihotri
Counsel for Respondent :- C.S.C.,Piyush Bhargava

Hon'ble Kshitij Shailendra,J.

1. Arguments in Writ-C No.30049 of 2016 were heard and judgment was reserved on 16.05.2023, whereas arguments in Writ-C No.30052 of 2016 were heard on 18.05.2023 and the judgment was reserved on the same day noting the fact that the controversy involved in the writ petition heard later was identical to the writ petition heard earlier.

2. Both the learned counsel jointly agree that exactly identical questions are involved in both the writ petitions and even the notes and case law supplied by both the learned counsel, according to them, would cover controversy of both the cases. Therefore, both the writ petitions are

being decided by a common judgment. For the sake of convenience, Writ-C No.30049 of 2016 is being treated as the leading case.

3. This petition has been filed challenging the impugned award dated 10.09.2015, published on the notice board on 05.05.2016 passed by the Presiding Officer, Industrial Tribunal (4), U.P., Agra with a further prayer in the nature of mandamus commanding the respondent no.3 to reinstate the petitioner on the post of Clerk Grade-III along with 50% back-wages and pay him salary according to law as and when due in future.

The Writ Petition

4. The facts of the case are that the respondent no.3 (hereinafter referred to as the Company) appointed the petitioner on the post of temporary Clerk Grade-III on 01.06.1994 and, according to the petitioner, he was permitted to work till 07.01.1995, approximately for a period of 221 days, whereafter his services were disengaged. The petitioner was further engaged on 16.06.1995 on the same post and such engagement ended on 07.01.1996 i.e. he was allowed to work for a period of 206 days. Thereafter, the petitioner kept getting rehired, relieved and again engaged on the same pattern consecutively for four years until 08.02.2000. The case of the petitioner is that artificial breaks in service were created so that he might not complete 240 days in continuous employment and the intention of the Company was to deprive him of his statutory rights and benefits. The petitioner has given details of his engagements in the following manner:

“01.06.1994 to 07.01.1995 (221 days)
16.06.1995 to 07.01.1996 ((206 days)
14.04.1997 to 22.11.1997 (223 days)

08.07.1998 to 07.02.1999 (215 days)
08.07.1999 to 07.02.2000 (215 days)"

5. The case of the petitioner is that the Company was aware of the fact that in case the petitioner would complete 240 days in a calendar year, he would attain the deemed status of a permanent employee and the Company would be obliged to confirm him in services as per the provisions of Industrial Disputes Act, 1947 (hereinafter referred to Act, 1947).

6. The entire case of the petitioner, as per the writ petition and also as per the detailed arguments advanced by the learned counsel for the petitioner, is that the Company adopted "unfair labour practices" as defined under Section 2 (ra) which means any of the practices specified in the 5th Schedule. Learned counsel argued and in the present case Entry No.10, contained in 5th Schedule, is attracted which reads as follows:-

> *"10. To employ workmen as "badlies", 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."*

7. The case of the petitioner is that his services were terminated on 08.02.2000, whereafter he represented to the authorities but having failed in his attempt to seek re-engagement/ re-employment, matter was agitated before the authorities under the U.P. Industrial Disputes Act, 1947 and, ultimately, the matter was referred to the Industrial Tribunal, 4th, Agra where it was registered as Adjudication Case No.2 of 2006. After considering the case of the parties, the Tribunal, by impugned award dated 10.09.2015, dismissed the adjudication case.

8. The petitioner contends that the Tribunal has not given any benefit to the petitioner whereas under similar circumstances, another employee, namely, Prabhat Kumar covered by Adjudication No.2 of 2000, was reinstated with back-wages and arrears under the award dated 28.02.2011.

Defence in Counter Affidavit

9. A counter affidavit has been filed on behalf of the respondent Company taking a stand that the petitioner was temporarily engaged for fixed terms and for short durations due to exigencies of work as and when his services were required by the Company and, accordingly, timely extensions were granted to the services. Further defence is that the petitioner never completed one year continuous service nor 240 days and hence he was not entitled for any relief.

10. As regards the contention based upon Prabhat Kumar's case, the defence of the Company is that the award passed in Adjudication Case No.2 of 2000 was illegal, perverse and without jurisdiction and has already been set aside by the High Court by its judgment dated 23.01.2017 passed in Writ-C No.52182 of 2011 (M/S Heinz India Pvt. Ltd. Vs. Presiding Officer, Industrial Tribunal and another) on the ground that the reference made was contrary to the notification dated 29.08.1990 whereunder only Deputy Labour Commissioner, Agra Region, Agra had the power and competence to make the reference, whereas in the case of Prabhat Kumar, as also in the present case, reference was made by Assistant Commissioner, Agra Region, Agra. Further defence of the respondent is that this Court, by the aforesaid order dated 23.01.2017, remanded the matter to the Tribunal to consider such objection concerning competence of the officer within

stipulated period of time and pursuant to the remand order the Industrial Tribunal dismissed the reference by order dated 13.04.2017 observing that the Assistant Labour Commissioner, Agra Region, Agra had no jurisdiction to refer the matter.

Rejoinder Affidavit

11. A rejoinder affidavit has been filed by the petitioner annexing therewith various letters of appointment as well as extension letters governing the services of the petitioner and stand taken is the same that the Company had maliciously dealt with the services of the petitioner in continuously engaging and disengaging him time and again so that he might be deprived of benefits under the Act. As regards the order of this Court in Writ-C No.52182 of 2011, it has been pleaded that the said order was passed solely on the ground of jurisdictional error and the concerned workman was permitted to approach the High Court again after the outcome of the dispute. Though not pleaded, learned counsel for the petitioner during the course of hearing, argued that Prabhat Kumar has already challenged the order dated 13.04.2017 before this Court and the writ petition to this effect is pending.

12. I have heard Sri Shikhar Kaushal, learned counsel for the petitioner, learned Standing Counsel for the State-respondent Nos. 1 and 2 and Sri Piyush Bhargawa, learned counsel representing respondent Company.

Petitioner's case and contentions

13. In sum and substance, the contention of Sri Kaushal is to the effect that the Company's action clearly falls under meaning and

import of "unfair labour practices", as defined under Section 2(ra) of the Act of 1947, as temporary engagement of the petitioner for short periods of time was with the object of depriving him of the status and privileges of a permanent workman and the Tribunal has not given consideration to this aspect but has simply dismissed the adjudication case on the ground that the petitioner was temporarily engaged from time to time and did not complete 240 days so as to attract the provisions of Act of 1947.

14. Learned counsel for the petitioner has placed very strong reliance upon a judgment dated 26.02.2022 of Bombay High Court in a bunch of writ petitions connected with Writ Petition No.5588 of 2017 (Shankar Bhimrao Kadam and others Vs. Tata Motors Limited) (hereinafter referred to as Bombay High Court case) and has argued that in the said case also, short term engagements of the concerned petitioners were treated to be "unfair labour practice". Learned counsel argued that in the Bombay High Court's case also, identical appointment letters were issued to the concerned workmen which reflected that they were employed for 225 days, 236 days, 237 days, 238 days etc. etc. and the Tata Motors Ltd did not allow any workman to complete 240 days and, therefore, after extensive analysis of the provisions of 1947 Act, the action of Tata Motors Ltd. was denounced and the concerned petitioners were granted compensation in lieu of their services. Learned counsel has referred to paragraph no.52 and 58 of the said judgment, which are reproduced as below:-

> *"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).

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."

15. It has further been argued that the aforesaid decision of Bombay High Court has been upheld by the Supreme Court while dismissing Special Leave Petitions filed by Tata Motors Ltd by its order dated 11.11.2022. Further reliance has been placed by the learned counsel

for the petitioner on a decision of the Supreme Court in the case of ***Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Ltd: (2014) 11 SCC 85***, with special reference to paragraph 26.1, 28, 28.1 and 28.2 which read as follows:-

> *"26.1 Firstly, in the light of the legal principle laid down by this Court in the case of U.P. State Sugar Corporation Ltd. Vs. Om Prakash Upadhyay, (2002) 10 SCC 89, the provisions of the U.P. I.D. Act remain unaffected by the provision of the I.D. Act because of the provision in s. 31 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956. Hence, s. 2 (oo) (bb) is not attracted in the present case.*
>
> *28. The respondent, in order to mitigate its conduct towards the appellant has claimed that the appellant was appointed solely on contract basis, and his service has been terminated in the manner permissible under Section 2 (oo) (bb) of the I.D. Act. However, we shall not accept this contention of the respondent for the following reasons:-*
>
> *28.1 Firstly, the respondent has not produced any material evidence on record before the Labour Court to prove that it meets all the required criteria under the Contract Labour (Regulation and Abolition) Act, 1970, to be eligible to employ employees on contractual basis which includes license number etc.*
>
> *28.2 Secondly, the respondent could not produce any material evidence on record before the Labour Court to show that the appellant was employed for any particular project(s) on the completion of which his service has been terminated through non-renewal of his contract of employment."*

16. Learned counsel, at the strength of the aforesaid decision, has argued that the defence taken by the Company that the petitioner was engaged on the basis of exigency of work was also taken in the aforesaid cases, however, the same was turned down by the Bombay High Court as well as by the Supreme Court. He has further argued that the allegation of the Company to the effect that every year the petitioner was re-hired, for his services being temporary in nature and

that it was a fresh appointment, is fallacious inasmuch as employee code, badge number etc of the petitioner was never changed and, therefore, it was not a case of fresh appointment.

17. The learned counsel has also argued that the reference made by the Assistant Labour Commissioner was not bad because that powers might have been delegated upon him by the Deputy Labour Commissioner, Agar Region, Agra.

Contentions of respondent-Company

18. Sir Piyush Bhargava, learned counsel for the respondent Company has vehemently opposed the writ petition and has argued that the Tribunal has recorded finding of fact that the petitioner never completed 240 days of working and that the appointment was for fixed period of time. He has further argued that the engagement was based upon exigency of work and that the argument of "unfair labour practices" is not only factually incorrect but also beyond the scope of reference as the reference was not made on the point of "unfair labour practices" but the question to be decided by the Industrial Tribunal was to the effect as to whether termination of services of the petitioner was according to law and, if not, what relief/damages the petitioner was entitled to. He has further argued that the petitioner cannot claim any relief inasmuch as reference itself was bad for want of jurisdiction as already held by this Court in the case of Prabhat Kumar in Writ-C No. 52182 of 2011 after analysing the concerned notification and in the present case also exactly the same position exists. He has also argued that whatever period the petitioner worked, he was paid remuneration and hence the Company has not committed any wrong. Further argument is that for "unfair labour practices" as covered by

Clause-10 of the 5th Schedule relied upon by the petitioner, it has to be established that the concerned workmen were employed as Badlies, casuals or temporaries and continued as such **for years** with the object of depriving them of the status and privileges of permanent workmen, however, in the present case, no such circumstances exist as would stand reflected from the letters of appointment issued to the petitioner. He has further argued that every appointment was independent in nature and whenever the services automatically ceased after the expiry of terms fixed under the letter of appointment, the petitioner never agitated any alleged rights and never made any claim either before the authorities or before the court, although there was a gap of six months and more in fresh engagements.

19. As regards the argument of the petitioner on alleged delegated powers, Sri Bhargava argued that the Deputy Labour Commissioner, Agra Region, Agra was himself exercising delegated powers by the State Government and it is well settled that a delegatee cannot further delegate the power delegated upon him.

Analysis of Rival Contentions

20. There are various aspects of this matter. One is the validity of reference made by the Assistant Labour Commissioner which aspect has already been dealt with by this Court in its order dated 23.01.2017 passed in Writ-C No.52182 of 2011 in which following notification and schedule was considered:-

> *"[263] English translation of Shram Anubhag-2, Noti.No.2513 (III) XXXVI-2-155 (SM)-90, dated August 29, 1990, published in the U.P. Gazette, Extra, Part , Section (kha), dated 29th August, 1990, pp.2-3*

In exercise of the powers under Section 11-A of the U.P. Industrial Disputes Act, 1947 (U.P. Act No.28 of 1947), the Governor is pleased to direct that the powers exercisable by the State Government under Section 4-K of the said Act, in relation to disputes regarding dismissal, retrenchment of termination of services of an individual workman as contemplated under Section 2-A of the said Act shall be exercisable also by the officers mentioned in column 2, within the area mentioned against their names in column 3 of the schedule given below:

SCHEDULE

Sl. No.	*Name of the officer*	*Area of jurisdiction*
1.	*Additional Labour Commissioner, at Head Quarters*	*Whole State*
2.	*Additional/ Deputy Labour Commissioner, Kanpur Region, Kanpur*	*Kanpur (Nagar), Kanpur (Dehat), Etawah, Farrukhabad and Unnao districts*
3.	*Deputy Labour Commissioner, Agra Region, Agra*	*Agra, Firozabad, Aligarh, Etah, Mainpuri and Mathura districts*
4.	*Deputy Labour Commissioner, Allahabad Region, Allahabad*	*Allahabad, Pratapgarh and Fatehpur districts*
5.	*Deputy Labour Commissioner, Kumaun Region, Haldwani (Nainital)*	*Nainital, Almora and Pithoragarh districts*
6.	*Deputy Labour Commissioner, Garhwal Region, Dehradun*	*Dehradun, Chamoli, Garhwal (Pauri), Tehri Garhwal and Uttar Kashi districts*
7.	*Additional/ Deputy Labour Commissioner, Ghaziabad Region, Ghaziabad*	*Bulandshahar and Ghaziabad districts*
8.	*Deputy Labour Commissioner, Gorakhpur Region, Gorakhpur*	*Gorakhpur, Basti, Siddharth Nagar, Deoria, Azamgarh, Mau and Mahrajganj*

		districts
9.	*Deputy Labour Commissioner, Jhansi Region, Jhansi*	*Jhansi, Lalitpur, Banda, Hamirpur and Jaluan districts*
10.	*Deputy Labour Commissioner, Bareilly Region, Bareilly*	*Bareilly, Badaun, Pilibhit and Shahjahanpur districts*
11.	*Deputy Labour Commissioner, Meerut Region, Meerut*	*Meerut, Muzaffarnagar, Saharanpur and Haridwar districts*
12.	*Deputy Labour Commissioner, Moradabad Region, Moradabad*	*Moradabad, Rampur and Bijnor districts*
13.	*Deputy Labour Commissioner, Mirzapur Region, Pipri*	*Mirzapur and Sonbhadra districts*
14.	*Deputy Labour Commissioner, Faizabad Region, Faizabad*	*Faizabad, Bahraich, Barabanki, Gonda and Sultanpur districts*
15.	*Deputy Labour Commissioner, Lucknow Region, Lucknow*	*Lucknow, Hardoi, Kheri, Rae Bareli and Sitapur districts*
16.	*Additional/ Deputy Labour Commissioner, Varanasi Region, Varanasi*	*Varanasi, Ghazipur, Ballia and Jaunpur districts.*

21. Therefore, it is clear that it was Deputy Labour Commissioner, Agra Region, Agra only who was competent to make a reference and, hence, reference made by the Assistant Labour Commissioner was found to be without jurisdiction and even if the matter was remanded to the Industrial Tribunal for dealing with the objection to the aforesaid effect, the Industrial Tribunal, by its order dated 13.04.2017 passed in the case of Prabhat Kumar, held that the Assistant Labour Commissioner had no jurisdiction to make a reference.

22. Though, learned counsel for the petitioner has argued that writ petition filed by Prabhat Kumar against the order dated 13.04.2017 is still pending, mere pendency of the writ petition does not impress the Court about validity of the reference made by the Assistant Labour Commissioner and I am not inclined to take a different view what has been taken by this Court in its judgment in the case of Prabhat Kumar or by the Tribunal, after remand, as there is no other material before the court to form an opinion contrary to the aforesaid finding on the reference being without jurisdiction.

23. I also find that the Company had taken a specific plea in its written statement dated 02.01.2008 filed before the Industrial Tribunal that the reference made by Sri S.P. Shukla as Assistant Labour Commissioner, Aligarh was without jurisdiction and without any authority and, therefore, the Tribunal could not proceed with the case. For a ready reference, paragraph no.24 of the said written statement is being reproduced herein below:-

> *"24. That the reference has been made by Sri S.P. Shukla as D.L.C., Aligarh in exercise of powers under G.O. 2513 dated 29.08.1990 whereas the D.L.C., Aligarh is not one of them and the said exercise is without jurisdiction and without any authority and this Tribunal cannot proceed with the case.*

24. Learned counsel for the petitioner has strongly opposed the submission of the learned counsel for the respondent-company with regard to jurisdictional aspect in relation to the power to make reference in the present case and he has placed reliance upon following authorities in this regard:-

(i) H.R. Sugar Factory Vs. State of Uttar Pradesh, 1996 SCC Online All 793;

(ii) Swadeshi Polytex Ltd. Labour Court, U.P., 1992 SCC OnLine All 558;

(iii) Laxmibai Vs. Bhagwantbua, (2013) 4 SCC 97;

(iv) Sardar Amarjit Singh Kalra, Vs. Pramod Gupta, (2003) 3 SCC 272.

25. Placing reliance on the aforesaid authorities, it has been argued that the Industrial Dispute Act is meant to resolve the disputes expeditiously and the practice of dragging a workman from court to court for adjudication of peripheral issues, avoiding decision on issues more vital would be a condemnable approach. It has further been argued that taking preliminary objections by the employer has become a fashion and delaying decision on the real disputes for years and sometimes for decades would be contrary to the spirit of the Act, 1947 and, hence, the submission of the respondent-company regarding alleged incompetence of reference should be turned down.

26. I have considered the aforesaid submissions of the learned counsel for the petitioner, however, I am not inclined to accept the same for the simple reason that competence of Assistant Labour Commissioner, Agra to make a reference is of significance in the present case, particularly, when it has already been agitated before this Court and dealt with in its order dated 23.01.2017 passed in Writ-C No.52182 of 2011 and, thereafter, by the Tribunal itself in its order dated 13.04.2017 holding that the aforesaid officer had no power to make a reference.

27. The judgment in this petition can end on this point alone holding that the Assistant Labour Commissioner had no jurisdiction to

refer the dispute, however, since arguments on merits have been heard at length and the court feels it necessary to deal with the same, I proceed to consider the arguments advanced by both sides on other aspects of the case also.

Scope of Reference

28. A perusal of reference shows that it was made to the effect as to whether termination of services of the petitioner was according to law and if not, what relief/damages the petitioner was entitled to. No reference was made with respect to "unfair labour practices" allegedly adopted by the respondent-company.

29. In this regard, learned counsel for the respondent-company has placed reliance upon the judgment of the Supreme Court in the case of ***Mukund Ltd. Vs. Mukund Staff and Officers' Association, (2004) 10 SCC 46*** in which the Apex Court has held that the dispute referred to by the order of Reference is only in respect of workmen employed by the appellant-Company. It is, therefore, clear that the Tribunal, being a creature of the Reference, cannot adjudicate matters not within the purview of the dispute actually referred to it by the order of Reference. In the facts and circumstance of the present case, the Tribunal could not have adjudicated the issues of the salaries of the employees who are not workmen under the Act nor could it have covered such employees by its award.

30. Further reliance has been placed upon in the case of ***Telco Convoy Drivers Mazdoor Sangh and another Vs. State of Bihar and others, (1989) 3 SCC 271***, laying down the same ratio. Identical ratio

has been laid down in the case of ***M/s Tata Iron and Steel Co. Ltd. Vs. State of Jharkhand and others, (2014) 1 SCC 536***.

31. Similar view has been taken by the Delhi High Court while deciding ***Civil Writ No.1109 of 1995, Eagle Fashions Vs. Secretary (Labour) & others*** in which it has been held that where the factum of employment and termination itself were in dispute, the reference could not have been framed presuming employment and its termination.

32. The aforesaid decisions have been relied upon by this Court in its judgment dated 14.03.2019 passed in ***Writ-C No.14416 of 1998 (Malloys India Agra Vs. Presiding Officer Labour Court Agra and another)***.

33. Further reliance has been placed upon the judgment of this Court in the case of ***Rajendra Prasad Mishra Vs. Union of India and another (Civil Misc. Writ Petition No.5714 of 2009, decided on 03.02.2009)*** in which also it has been held that the scope of reference was different from the nature of plea raised and hence it was irrelevant to the main controversy.

34. Learned counsel for the respondent-company has also relied upon the judgment of Madras High Court in the case of ***K. Manikam Vs. The Management, Tamil Nadu Electricity Board and another (Writ Petition No.21278 to 21280 of 2018 decided on 14.10.2022): 2023 LLR 66*** in which it has been held that the scope of Section 2A of the Act, 1947 is restricted to only see if the dismissal, termination or retrenchment is just and valid and the scope does not cover other aspects including regularization and permanent absorption.

35. Learned counsel for the respondent has also relied upon a decision of Apex Court in the case of ***Madhyamik Shiksha Parishad, U.P. Vs. Anil Kumar Mishra and others: (2005) 5 SCC 122*** in which it has been held that the completion of 240 days' work does not, under that law import the right to regularisation. It merely imposes certain obligations on the employer at the time of termination of the service. It is not appropriate to import and apply that analogy, in an extended or enlarged form here.

36. Further reliance has been placed upon a decision of this Court in the case of ***B.K. Sharma Vs. State of U.P and others: 1976 Labour Industrial Tribunal 1092*** in which it has been held that under the provisions of Section 2-A of the Central Act even an individual dispute is deemed to be an industrial dispute and the State Government is empowered to refer even an individual dispute for adjudication but before an individual dispute can be referred to be adjudicated upon the Labour Court the condition precedent as laid down in Section 2-A must be fulfilled. Section 2-A contemplates a dispute arising out of discharge, dismissal, retrenchment or termination of an individual workman and it further includes any dispute or difference between the workman or employer connected with or arising out of such discharge, dismissal retrenchment or termination. The section does not contemplate any dispute relating to other service conditions in relation to an individual workman. The legislature intended that any dispute arising out of dismissal, discharge or termination or any matters connected therewith of an individual workman should be treated as industrial dispute.

37. Further reliance has been placed upon another decision of this Court in the case of ***Baij Nath Bhattacharya Vs. The Labour Court, Allahabad and another (Civil Misc. Writ Petition No. 16454 of 1985, decided on 02.05.1994)*** in which it has been held that before a workman can be considered to have completed one year of continuous service in an Industry it must be established as a fact that he was employed for a period not less than 12 calendar months and, next that during those calendar months had actually worked for not less than 240 days. In the present case, as per his own case, the petitioner has not all been employed for a period of 12 months.

38. In so far as Entry 10 of Schedule-5 is concerned, reliance has been placed by respondent-employer upon judgment of this Court in ***Hindustan Lever Limited Vs. Industrial Tribunal IV, New Agra and another: 2007 (115) FLR 76*** in which it has been held that before an action can be termed as an unfair labour practice it would be necessary for the Labour Court to come to a conclusion that the badlis, casuals and temporary workmen had been continued for years as badlis, casuals or temporary workmen, with the object of depriving them of the status and privileges of permanent workmen. To this has been added the judicial gloss that artificial breaks in the service of such workmen would not allow the employer to avoid a charge of unfair labour practice. However, it is the continuity of service of workmen over a period years which is frowned upon. Besides, it needs to be emphasised that for the practice to amount to unfair labour practice it must be found that the workman had been retained on a casual or temporary basis with the object of depriving the workman of the status and privileges of a permanent workman.

39. In view of the aforesaid law, I find that "unfair labour practices" was not under consideration before the Tribunal and it was beyond the scope of reference. Even if the action of the respondent-company is analyzed from the angle of alleged "unfair labour practices", learned counsel for the respondent-company has referred to various appointment letters issued to the petitioner all of which are identical in nature. One such letter of appointment is being referred to herein below:-

"Date 31.05.1994

D-0145

Mr. Dinesh Pal Singh

S/o Mr. Ram Singh

Dear Sir,

We are pleased to offer you temporary employment as a Temporary Clerk III with effect from. 01.06.1994 on these terms and conditions :

1. You will be paid at the rate of Rs. 105/- p.m. plus Dearer Living Allowance at the applicable rate.

2. Your services shall stand automatically terminated on 07.07.1994. However your services are liable to termination without notice or without assigning any reason even before this date.

3. You will observe the company's Rules and Regulations for the time being in force and as varied from time to time.

If these terms and conditions of service are acceptable to you please signify your acceptance of this temporary appointment by signing and returning the copy of this letter."

40. It is also necessary to refer to one of the extension letters whereby services of the petitioner were extended and it is reproduced herein below:-

"Dated: 05/07/1994

<u>Extension letter</u>

Employee No.: D0145 (13390)

MR DINESH PAL SINGH

S/O MR RAM SINGH

Aligarh

Dear Sir,

With reference to our letter dated 31.05.1994 we take pleasure in advising you that we are extending your temporary services upto 07TH AUGUST, 1994 on which date your services will stand automatically terminated. Your services, however, may be terminated without notice even before this date."

41. A perusal of the appointment letter shows that the company had offered to the petitioner temporary employment with effect from 01.06.1994 with a clear stipulation that his services shall stand automatically terminated on 07.7.1994. The letter of appointment contained clear recital to the following effect:-

"If these terms and conditions of service are acceptable to you please signify your acceptance of this temporary appointment by signing and returning the copy of this letter."

42. There is no dispute about the fact that the petitioner accepted the terms and conditions of appointment and also extended services. Therefore, the question arises as to whether issuance of such kind of appointment letters, in itself, amounts to "unfair labour practices" as per Clause-10 of the 5th Schedule of the Act, 1947. In this regard, learned counsel for the respondent has relied upon judgment of the Bombay High Court in the case of ***Bajaj Auto Ltd, Akurdi, Pune Vs. R.P. Sawant and others: 2000 (84) FLR 524*** in which it has been held that every employment need not necessarily be of permanent nature and it can be casual, badli or temporary also. None of such employments by itself is an unfair labour practice. To attract the Item

6, such employment should continue for years with the object of depriving them of the status and privileges of permanent employees.

43. The Bombay High Court in the case of ***Bajaj Auto Ltd (supra)*** has held that the industrial law can never be oblivious of these normal and usual occurrences in the industries. None can deny temporary seasonal increase in work would require more temporary hands to meet the situation. We also cannot be blind to the fact that at least for a temporary period unemployed people would get employment and solve their problem of bread if not butter. And furthermore, how can we force the employer to continue these temporary employees on permanent basis after his needs are completed and if there is no work available for them? Had it been so, it would have adverse effect as no employer would offer any temporary employment and he might better not accept increased orders and would remain satisfied with what he has. A kind of stagnation in the society would come to stay. Our industrial wheels would be on slow motion. Such a situation would have very serious repercussions in the long run. Besides, the legislature has not been unaware of the fact that every industry has its own season for increase or reduction in the demands resulting in increase or reduction in the requirement of the number of employees. It is, therefore, not possible to hold that temporary employment for every seasonal increase in the industrial activities is also an unfair labour practice.

44. In view of the above discussion, this Court is of the firm view that the petitioner has failed to establish that it was a case of "unfair labour practices" as the nature of appointment offered to the petitioner and accepted by him would not be covered by Clause-10 of 5th

Schedule. Moreover, the said entry speaks of appointment of collective nature and not of individual nature as is apparent from use of words "workmen" and "them". Therefore, the intention of the legislature is that the action of the Company in relation to appointment of all the workmen has to be examined so as to invoke Clause-10 of 5th Schedule and not the case of individual workman. Even if a contrary interpretation is accepted to the effect that a single workman can allege "unfair labour practice", this case does not involve any such aspect.

Judgment of Bombay High Court in the case of Shankar (supra) not a binding precedent

45. Reliance placed by the learned counsel for the petitioner on the judgment of the Bombay High Court in the case of Shankar (supra), is found to be misplaced inasmuch as Bombay High Court was dealing with a matter in which dozens of workmen had assailed the action of Tata Motors and Bombay High Court considered the nature of appointment of all such workmen and formed the opinion which has already been discussed herein above. Further, the nature of appointment letters issued to the workmen were quite different from the one which was issued to the petitioner in the present case. Even otherwise, specific termination orders were passed in the case before the Bombay High Court whereas the case of respondent-company is clear that services of the petitioner were co-terminus with the end of period stipulated in the appointment letters and no termination letter was issued which could fall within the definition of "retrenchment".

46. In so far as the confirmation of the said decision of Bombay High Court by the Supreme Court is concerned, I have perused the

order dated 11.11.2022 passed by the Apex Court in Special Leave Petitions filed by Tata Motors Ltd where the Supreme Court observed that **IN THE PECULIAR FACTS AND CIRCUMSTANCES** when it is reported that the petitioner's company (Tata Motors Ltd) has made the payment as per the impugned judgment of the High Court and some of the workmen have refused to accept the amount, **KEEPING THE QUESTION OF LAW OPEN**, the special leave petitions were dismissed with a further observation that in case any of the workmen has not accepted the amount as per the impugned judgment of the High Court, the petitioners would pay the same to the concerned workmen by way of demand drafts.

47. Therefore, the Supreme Court, though did not interfere with the decision of the Bombay High Court, it **KEPT THE QUESTION OF LAW OPEN** and directed payment of compensation to the concerned workmen in terms of the order of High Court. Hence. I am not inclined to treat judgment of Bombay High Court, with due respect, as a binding precedent as decision of the Bombay High Court was on the facts before it and would be of no help to the petitioner in the present case, particularly, in the light of observation of the Supreme Court that the question of law has been left open.

48. At this stage, reference to the definition of "retrenchment" as contained in Section 2(oo) can also be made which means termination of the services of a workman for any reasons 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 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 stipulated in that behalf contained therein. Therefore, once the Court has noticed that term of appointment/engagement of the petitioner was co-terminus as per the specific stipulations contained in the letter of appointment as well as letters of extensions, automatic cessation of his services would not fall within the meaning of "retrenchment".

49. For all the aforesaid reasons, where the reference has been found to be incompetent and without jurisdiction and also the fact that the action of the respondent-company does not amount to "unfair labour practices", I do not find any factual or legal error in the judgment of the Industrial Tribunal.

50. Accordingly, the writ petition fails and is **dismissed**.

51. In so far as connected Writ-C No.30052 of 2016 is concerned, the factual and legal points involved in the same are identical to the points involved and raised in Writ-C No.30049 of 2016. For all the reasons assigned in this judgment in connection with the leading case, Writ-C No.30052 of 2016 also fails and is accordingly **dismissed**.

52. No order as to cost.

53. Before concluding this judgment, this Court records all its appreciation for both the learned counsel for arguing the case in a most efficient manner.

Order Date :- 6.7.2023
AKShukla/-