HIGH COURT OF GUJARAT

C G KHAGRAM
Versus
MANAGER

Date of Decision: 17 July 2013

Citation: 2013 LawSuit(Guj) 2337

Hon'ble Judges: Sonia Gokani

Eq. Citations: 2014 140 FLR 772

Case Type: S C A

Case No: 1177 of 2003

Subject: Labour and Industrial

Acts Referred:
Industrial Disputes Act, 1947 Sec 17B, Sec 25F, Sec 10(1), Sec 2(s)

Advocates: T R Mishra, Nanavati Associates

Cases Referred in (+): 19

Sonia Gokani, J.

[1] The petitioner workman in Special Civil Application No. 1177 of 2003 has challenged award dated 11.6.2002 made by the Labour Court, Junagadh in Labour Reference (LCJ) No. 1386 of 1990, wherein the respondent-company has been directed to reinstate the petitioner workman in service with continuity of service with 40% of the backwages for intervening period.

This petition has been preferred by the petitioner challenging the order of 40% of the backwages on the ground that last drawn salary of the petitioner was considered at Rs. 2,200/- and without justification, 60% of the backwages has been denied by the Labour Court, without there being any cogent and convincing reasons.

Respondent company also filed petition being Special Civil Application No. 6774 of 2002 challenging this very award, particularly, the reinstatement as well as the

backwages. The respondent company by way of its petition being Special Civil Application No. 6774 of 2002 has challenged mainly the award on the ground that the petitioner Chandrakant G. Khagram is not a workman, as per the definition of the Act, since he was working in Supervisory and Managerial capacity and was drawing salary, which was more than Rs. 1600/- p.m. Therefore, both the petitions when arise out of identical set of facts and raise identical questions of law and facts to be determined then both workman shall be referred to as the 'petitioner' and the Company as the 'respondent' for the sake of convenience and are being decided by a common judgment hereinafter.

[2] Facts are capsulized for better comprehension of challenges as under:--

4.1 The petitioner worked as a Junior Instrument Engineer with the respondent company vide appointment letter dated 7.10.1987 and he had been working with the respondent as such with effect from 16.9.1986 at the monthly wage of Rs. 2200/-. Such service of the petitioner was terminated with effect from 8.6.1989 and he was served with the charge sheet-cum-suspension order. He was alleged of remaining absent without leave in the charge-sheet given to him. Departmental Enquiry was conducted before the Enquiry Officer and his services since were terminated, he raised industrial dispute, which was referred by Assistant Labour Commissioner, Porbandar under section 10(1) of the Industrial Disputes Act, 1947 (for short "the Act") for adjudication to Labour Court, Rajkot and the dispute was subsequently transferred to Labour Court, Junagadh.

[3] Statement of claim was filed by the petitioner challenging the action of the respondent company of termination and praying for reinstatement with full backwages.

The claim preferred by the company indicate appointment of the petitioner as Junior Instrument Engineer in supervisory and managerial capacity. It was, therefore, contended that the petitioner would not to be covered under the definition of workman as defined under section 2(s) of the Act. It was contended further that since the petitioner was remaining unauthorizedly absent without prior permission, it was a case of termination simpliciter so as to ensure that his future is not affected.

After recording the evidence and on hearing both the sides, Labour Court, Junagadh passed judgment and award dated 11.6.2002, whereby it directed the reinstatement of the petitioner in service with 40% of backwages. Both sides are aggrieved by order and judgment impugned and therefore, the present petitions.

[4] Learned advocate Mr. T.R. Mishra appearing for the petitioner has made extensive oral submissions and has also given in writing the gist of such submissions. It is urged

that the termination itself was illegal and the petitioner is entitled for 100% backwages, in absence of any proof of employment during the forced idle period.

6.1 It is urged by the learned advocate that the service of the petitioner was terminated on 8.6.1989 and such action was held to be illegal and unjustified by the Labour Court and when the petitioner has worked uninterruptedly for more than 240 days, no retrenchment compensation was offered while terminating the service and this was contrary to the mandatory provisions of section 25-F of the Act. Again, it is urged that though the petitioner is not proved to be gainfully employed, the Court directed only 40% of the backwages which is not in consonance with the legal provisions. Reliance is placed on the decision of various decisions of the Apex Court particularly on the decision rendered in the case of Anoop Sharma v. Executive Engineer, Public Health Division No. 1, Panipat, Haryana, 2010 125 FLR 629 . He urged that this authority is laying down once again the law as was settled in the case of Surendra Kumar Verma v. The Central Government, Industrial Tribunal-cum-Labour Court, New Delhi and another, 1980 41 FLR 357

[5] The Apex Court in the case of Anup Sharma v. Executive Engineer, Public Health Division No. 1, Panipat, Haryana , held thus:--

16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of section 25-F of the Act are satisfied. In terms of clause (a), the employer is required to give the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

The Apex Court in the case of Devinder Singh v. Municipal Council, Sanaur, 2011 130 FLR 337 has held thus:--

19. In Anoop Sharma v. Public Health Division the Court considered the effect of violation of section 25-F, referred to various precedents on the subject and held the termination of service of a workman without complying with the mandatory provisions contained in sections 25-F(a) and (b) should ordinarily result in his reinstatement.

He also relied upon the decision of the Apex Court in the case of Executive Engineer and another v. Lekh Raj and another, 2006 SCC(L&S) 650 where the Supreme Court reiterated the mandatory nature of section 25F of the Act and also further held that if the same is not complied with, reinstatement with full backwages need to follow.

Furthermore, reliance is placed on the decision of the Apex Court in the case of S.K. Verma v. Mahesh Chandra and another, 1983 47 FLR 313 where the Court has dealt with the definition of workman as under:--

3. "Workman' was originally defined by section 2(s) of the Industrial Disputes Act, 1947, as meaning:

any person employed (including an apprentice) in any industry to do any skilled manual or clerical work for hire or reward and includes, for the purpose of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute but does not include any person employed in the naval, military or air service of the Crown.

The definition underwent a substantial amendment in 1956 and this is how it stands now:

"Workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

(i) who is subject to the Army Act, 1950, or the Air Force Act, 1950 or the Navy (Discipline) Act, 1934; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

The words "any skilled or unskilled manual, supervisory, technical or clerical work" are not intended to limit or narrow the amplitude of the definition of "workman"; on the other hand they indicate and emphasis the board sweep of the definition which is designed to cover all manners of persons employed in an industry, irrespective of whether they are engaged in skilled work or unskilled work, manual work, supervisory work, technical work or clerical work. Quite obviously the board intention is to take in the entire "labour force" and exclude the "managerial force". That, of course, is as it should be.

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A perusal of the above extracted terms and conditions of appointment shows that a development officer is to be a whole time employee of the Life Insurance Corporation of India, that his operations are to be restricted to a defined area and that he is liable to be transferred. He has no authority whatsoever to bind the Corporation in any way. His principal duty appears to be to organise and develop the business of the Corporation in the area allotted to him and for that purpose to recruit active and reliable agents, to train them to canvass new business and to render post-sale services to policy holders. He is expected to assist and inspire the agents. Even so he has not the authority to appoint agents or to take disciplinary action against them. He does not even supervise the work of the agents though he is required to train them and assist them. He is to be the 'friend, philosopher and guide" of the agents working within his jurisdiction and no more. He is expected to stimulate and excite the agents to work, while exercising no administrative control over them. The agents are not his subordinates. In fact, it is admitted that he has no subordinate staff working under him. It is thus clear that the development, officer cannot by any stretch of imagination be said to be engaged in any administrative or managerial work. He is a workman within the meaning of section 2(s) of the Industrial Disputes Act.

This Court was considering whether the Development Officer of the Life Insurance Corporation of India was a workman or not, concluded that the Development Officer was a workman and he cannot be held to engaged in administrative or managerial work.

The Apex Court in this very issue as to who can be called a workman' in the case of Devinder Singh v. Municipal Council, Sanaur has held thus:--

11. Section 2(s) contains an exhaustive definition of the term 'workman'. The definition takes within its ambit any person including an apprentice employed in

any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and it is immaterial that the terms of employment are not reduced into writing. The definition also includes a person, who has been dismissed, discharged or retrenched in connection with an industrial dispute or as a consequence of such dispute or whose dismissal, discharge or retrenchment has led to that dispute. The last segment of the definition specifies certain exclusions. A person to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, is applicable or who is employed in the police service as an officer or other employee of a prison or who is employed mainly in managerial or administrative capacity or who is employed in a supervisory capacity and is drawing specified wages per mensem or exercises mainly managerial functions does not fall within the definition of the term 'workman'.

12. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of section 2(s) of the Act.

13. It is apposite to observe that the definition of workman also does not make any distinction between full-time and part-time employee or a person appointed on contract basis. There is nothing in the plain language of section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole-time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

This Court in the case of Mayank Desai v. Sayaji Iron & Engg. Co. Ltd. and another, 2011 130 FLR 663 has held that as the petitioner's functions were neither supervisory nor managerial, he was held to be a workman.

In yet another decision on the identical question as to who can be called a workman, reliance is placed on the decision rendered in the case of Shankarbhai Nathalal Prajapati v. Maize Products, 2003 96 FLR 829 wherein this Court has held as under:--

3.5 When the person is found to be discharging technical work he can certainly be covered under the sweep of the definition of the workman. In the decision cited by Mr. Iyer of the Apex Court rendered in the case of S.K. Verma v. Mahesh Chandra, 1983 47 FLR 313it has been held that:--

The words any skilled and unskilled manual, supervisory, technical or clerical work' are not intended to limit or narrow the amplitude of the definition of 'workman'. On

the other hand they indicate and emphasis the broad sweep of the definition which is designed to cover all manner of persons employed in an industry, irrespective of whether they are engaged in skilled work or unskilled work, manual work, supervisory work, technical work or clerical work. Quite obviously, the broad intention is to take in the entire 'labour force' and exclude 'the managerial force'. That, of course is as it should be.

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5. For the foregoing discussion, I find that the Labour Court has committed grave error in throwing out the reference at the threshold by holding that the petitioner is not a workman. The award of the Tribunal therefore, deserves to be quashed and set aside. This petition, is therefore, required to be allowed. It is clear from award of the Labour Court that the matter has been dealt with on the question of the preliminary issue only and rest of the issues are still to be decided. It is therefore, desirable that the matter be now remanded back to the Labour Court to consider and given its decision on the other issues. For that purpose, the matter is hereby remanded back to the Labour Court with a direction that whatever evidence that has already gone on record will remain as it is. The parties are given liberty to adduce further fresh evidence, if they so desire. Upon completion of the recording of the evidence, the Labour Court may decide the rest of the issues on their merits and give its decisions as early as possible preferably before 31st December, 2002.

With the aforesaid direction, the petition stands allowed. Rule is made absolute with no order as to costs.

Decision of the Apex Court rendered in the case of Anand Bazar Patrika (Private), Ltd. v. Its Workman,1969 6 SCC 670 is also relied upon.

This Court in the case of Arun Mills Ltd. v. Dr. Chandraprasad C. Trivedi, 1976 32 FLR 323 has discussed at length as to who can be called a workman.

Various other decisions of different High Courts have also been sought to be relied upon to make good his point that the designation of the person concerned is not determinative of status of an employee nor his salary to specify his status but, the nature of job performed by the person will decide as to whether he can be termed as a 'workman' or not. He urged that if a person has power to control, give direction and initiation are some of the elements which, if are absent, he can be deemed to be a workman. He, therefore, urged that the petitioner of Special Civil Application No. 1177 of 2003 has been rightly held a workman by the Labour

Court. However, the Court committed a mistake in not granting 100% full backwages, particularly, in absence of any cogent evidence having come on the record in respect of the gainful employment.

[6] Per contra, learned Advocate for M/s. Nanavati Associates has forcefully submitted that the petitioner, being a Junior Instrument Engineer, was working in the Supervisory and/or Managerial capacity. He was also acting in administrative capacity, which would not permit him to be called a workman. He also urged further that the person was drawing salary of more than Rs. 1600/- per month as his starting salary itself was Rs. 2200/- p.m. It was not being disputed that he was working as a Junior Instrument Engineer from 16.9.1987. However, it is being disputed that he worked from 16.9.1986. His termination according to the respondent came on 8.6.1989 as he was unauthorizedly remaining absent. His termination came as per Clause 15 of the appointment letter. Moreover, he was gainfully employed elsewhere and, therefore, also his reinstatement nor the backwages ought to have been granted. He also further urged that all provisions of law have been duly complied with, therefore, also there is a flaw in the decision of the Labour Court, which requires intervention by this Court.

It is further urged that in a matter between Pramod Jha v. State of Bihar, 2003 97 FLR 110 the Apex Court has held that the termination notice directing the retrenched employee to collect retrenchment compensation from the divisional office is a sufficient compliance within the provisions of Clause (b) of section 25-F of the Act. It is further urged that 40% of the backwages is wrongly granted. In a matter between P.V.K. Distillery Limited v. Mahendra Ram, 2009 121 FLR 381 the Apex Court has held that the employer is not to be compelled to pay for the period during which the workman contributed little or nothing and for period that was spent unproductively.

Yet another decision on this point relied upon is of State of Maharashtra v. Reshma Ramesh Meher, 2009 121 FLR 348 and of Novartis India Limited v. State of West Bengal, 2009 120 FLR 618

He urged that several factors ought to have been taken note of including the nature of appointment, mode of recruitment, length of service etc. In the instant case, the petitioner has worked for only one year and nine months and, therefore, he ought not to have been granted any backwages much less 40% of the backwages.

[7] Upon thus hearing both the sides, and on due consideration of detailed submissions and the material placed on record, this petition is being decided.

[8] Three vital aspects require consideration while determining all the issues raised in both the petitions:--

(1) Whether the petitioner Chandrakant G. Khagram can be held as a workman under section 2(s) of the Workman's Compensation Fund Act, 1947 (sic Industrial Disputes Act, 1947).

(2) Whether there was due compliance of the provisions of section 25-F of the said Act by the respondent while retrenching the petitioner?

(3) Whether any interference is required in the operative order of the reinstatement and backwages?

[9] Taking firstly, the aspect of 'workman', as can be noted from the award of the Labour Court, while addressing to the first issue learned Presiding Officer, at length, has discussed as to why the petitioner falls under the definition of 'workman' given under the law. Section 2(s) of the Act defines 'workman' as under:--

2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an office or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason for the powers vested in him, functions mainly of a managerial nature.

A person drawing salary of more than Rs. 1600/- and whose responsibility is more of an administrative and managerial nature, does not fall under the definition of a workman.

The Supreme Court in the case of National Engineering Corp. Ltd. v. Kishan Bhageria and others, 1988 56 FLR 148 has laid down that the principal duties,

which are performed by the employees, require consideration for the purpose of determining the real status of an employee. What needs to be considered is as to whether such employee discharges the administrative, managerial or supervisory work or not. And, even the occasional duties in managerial or supervisory capacity would not determine his real status, but, the principal and major duties performed by the person will determine his real status.

The Supreme Court in the case of Burmah Shell Oil Storage and Distributing Co. of India v. The Burmah Shell Management Staff Association, 1971 22 FLR 11 held that whether or not particular employee has been discharging the managerial, administrative or supervisory duties, principally and essentially, is the question of fact to be determined with reference to the facts and circumstances of the case.

In yet another decision rendered in the case of H.R. Adyanthaya etc. v. Sandoz (India) Ltd., 1994 69 FLR 593 the Apex Court has held that the person qualified to be a workman must be doing the work, which falls under any of the following categories:--

Manual or clerical, supervisory or technical, thus, what is essential is to determine correctly not the designation or the nomenclature of the post, but the nature of the duties performed by the employee. If, essentially and substantially, nature of work performed by employee brings him under the definition of 'workman', he is to be considered as a workman. While determining such questions, the facts and circumstances of every case will have to be taken into consideration.

In the case of Mukesh K. Tripathi v. Sr. Divisional Manager, L.I.C. and others, 2004 103 FLR 350 Apex Court was deciding the question whether Apprentice Development Officer in Life Insurance Corporation was a workman. Court held that the person failed to prove change of status from apprentice to workman, he was not shown to be performing any skilled, unskilled, manual, technical or operational duties and thus was held not to be construed under definition of 'workman'.

[10] The petitioner herein admittedly was working as a Junior Instrument Engineer with the pay of Rs. 2,200/-. In the deposition recorded by the Labour Court, it emerges that he was working with Instrument Department. His entire work function was related to the instruments and the control room. His remaining function was to attend to the break down. His work related sometimes to the supervision and in the event of any default, he was to instruct the helper or the mechanic. Thus, his work as an Junior Instrument Engineer was mainly to attend to the break down in the factory and at times to help the helper or the fitter relating to the machine if any time fault arises. It also further emerged that while acting as Shift Engineer, he used to receive the

complaints. However, they only needed to be forwarded to the Chief Engineer. He used to allocate the duty also and in the event of someone's absence, he would call for more men-power. Any leave report, he shall have to forward it to the Senior Officer. All these details have come-forth in the deposition of the Senior Deputy Manager, who had deposed for and on behalf of the company. No documentary evidence to substantiate these details have come-forth. The Labour Court on the basis of this concluded that the person falls under the definition of a 'workman' under section 2(s) of the Act relying on the decision of this Court in the case of Keshod Nagarpalika v. Pankajgiri Jhavergiri,2000 85 FLR 488 Labour Court also relied on the decision of the Bombay High Court rendered in the case of Sudhirkumar Surinderkumar Roy v. M/s. Ferro Employees Kochen Limited,1992 LLR 423 to conclude its findings.

> No fault can be found in the said findings. Admittedly, the petitioner had no power to appoint nor of termination of service of any of the employees. He had no power to suspend any employee also. Principal nature of the job of the petitioner was not administrative in nature, what is required to be determined is the true nature of the duties performed by the petitioner and the designation allowance also should not be determinative of his real status. The petitioner was not appointed either on administrative post or managerial post though he was required to call for the man-power in absence of some people and also was authorized to forward the leave reports. However, he had no authority to sanction those reports nor had he any authority to sanction the leave nor to give any appointment nor any charge-sheet to any delinquent. Of course, whenever called for by helpers or the fitters, he used to help them. Cumulatively, it can be held that the main function of the petitioner was to attend to the breakdown in the factory and occasionally and sporadically, he was being called to attend on administrative side, but, essentially and substantially, nature of his work cannot come under the definition of supervisory, administrative or managerial work and, therefore, in the opinion of this Court, no error is committed by the Labour Court in holding the petitioner as 'workman' under section 2(s) of the Act. No intervention, therefore, is necessary as far as this aspect concerned.

[11] As far as the second aspect is concerned, admittedly the retrenchment has come under section 25-F of the Act. It is alleged by the company that the petitioner was remaining absent unauthorizedly without sanction of the leave by the management, therefore, his termination was a discharge simpliciter . As per clause 14 of the appointment, there could be no stigma on the service of the petitioner. It is further urged that the petitioner continued to exhibit irresponsible and careless attitude in respect of his duties and therefore, company lost confidence in the petitioner. Therefore, the termination order is justifiable and deserves no interference. Clause 14

of the appointment letter terminated the service of the petitioner by the respondent company by paying one month salary in lieu of notice. Such discharge was given on 8.6.1989. The petitioner according to the company, since is not a workman, section 25-F of the Act would not come into play.

[12] When the award is examined, it appears that the Labour Court noted that the show cause notice-cum-charge sheet and suspension order was given which was replied to by the petitioner. No Departmental Enquiry was conducted. The Court also noted that the request could have been made by the company for initiating departmental enquiry. However, no formal such application had been moved at any stage except during the submissions having noted that the petitioner had completed 240 days of service. His order of termination could not have come without due compliance of section 25-F of the Act, which required minimum pay of 1 month at the time of terminating the service. Such compensation allowance was never offered. Neither in the affidavit-in-reply nor in the petition preferred by the company, it is emerging on the record that such compensation allowance in lieu of the termination was offered to the petitioner. In such circumstances, Labour Court was justified in holding this issue in favour of the petitioner. Since such termination was in breach of the mandatory provisions of law and the order was rightly quashed and set aside. Ratio laid down in the case of Devinder Singh v. Municipal Council, Sanaur would apply to the case of petitioner and as termination was in breach of mandatory provisions, reinstatement ordinarily needs to follow.

[13] As far as last question of reinstatement is concerned, much emphasis is placed on some of the decisions of the Apex Court to emphasize that much water has flown and order of reinstatement be quashed. Learned advocate Mr. Nanavati has contended that, at this stage, the Court may not direct the reinstatement but instead, a lump sum compensation be granted to the petitioner in lieu of the reinstatement.

> However, on this point this Court found no justification to uphold the version of the respondent company. The petitioner workman has not shown any lethargy nor has he contributed, in any manner, to the long drawn litigation of 22 years. No fault can be found of his, if the legal process has taken nearly more than two decades. When the very order of termination made by the company has been found faulty and contrary to the provisions of law, Labour Court was justified in giving the consequent direction of reinstatement as it is not only legitimate expectation of any litigant to be reinstated if the time has elapsed without any contributory delay on the part of the petitioner but the reinstatement should ordinarily follow when termination is held in breach of mandatory provisions.

There is neither any jurisdictional infirmity in the award of the Labour Court nor can it be said to have been vitiated by an error of law apparent on the face of the record. Even initial appointment/engagement cannot be said to be contrary to law so as to hold that to approve the award of reinstatement would be against the public interest. The Apex Court in the case of performed any skilled, unskilled, manual, technical or operational duties, set aside the order of High Court by a detailed discussion on the issue and award passed by the Labour Court for reinstatement was restored.

[14] As far as backwages are concerned, as could be noted the petitioner also is perturbed by the fact that he was not gainfully employed elsewhere during the entire period from 1989 till the date of the award. The Court had granted only 40% of the backwages instead of 100% and the company is aggrieved by the fact that without work having been rendered to the petitioner when reinstatement is being directed, the Court ought not to have been granted even 40% of the backwages. It would not be out of place to mention that the interim directions were issued by this Court on 22.4.2003 in Special Civil Application No. 6774 of 2002, whereby the Court granted ad interim relief in terms of para 32(B) and directed the company to pay the last drawn monthly wages inclusive of maintenance allowance to the petitioner workman with effect from the date of the award dated 11.6.2002 till 31.3.2003, and thereafter, pay regularly last drawn monthly wages inclusive of maintenance during the pendency of the petition.

[15] Affidavit also has been filed under section 17-B of the Act by the petitioner wherein he stated on oath that he has not done any employment in any establishment nor is he being received any remuneration from any establishment. He also had approached the company soon after the award was passed but the company also has challenged the reinstatement order and the stay has been granted all these years. Thus what emerges clearly is the fact that not only the reinstatement has been challenged but the stay also has been obtained by the respondent company and in such circumstances, fruit of the award till the date is not being enjoyed by the petitioner workman.

[16] From the award of the Labour Court, the Court found such punishment of termination disproportionate to the allegations of the absence of the petitioner, particularly, in wake of non-compliance as also considering the overall facts and circumstances of the case. This Court sees no reason to interfere with the conclusion and findings of the Labour Court as far as the reinstatement of the petitioner is concerned. The petitioner has worked for nearly two years with the respondent company. As various factors are required to be considered while granting the backwages, the Court also cannot disregard the fact that for all these years, the petitioner workman was unable to contribute to the productivity and, therefore, grant

of 100% backwages automatically is not found to be acceptable. However, keeping in mind, the nature of appointment, mode of recruitment, length of service as also subsequent facts and circumstances, whereby his earning to the tune of Rs. 500/- per month is emerging on record, it would be in the fitness of things to direct 50% of the backwages to the petitioner. Accordingly, the petition of the petitioner workman being Special Civil Application No. 1177 of 2003 is partly allowed. The respondent company shall pay arrears to the petitioner within the period of 3 months from the date of receipt of copy of this order, whereas Special Civil Application No. 6774 of 2002 preferred by the respondent company is dismissed.

Civil Application No. 990 of 2011 in Special Civil Application No. 1177 of 2003

In view of the judgment passed in Special Civil Application No. 1177 of 2003, Civil Application stands disposed of.