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HIGH COURT OF GUJARAT *(D.B.)*

DHARI GRAM PANCHAYAT
V/S
BRAHAD SAURASHTRA SAFAI KAMDAR MANDAL, RAJKOT

Date of Decision: 28 April 1970

Citation: 1970 LawSuit(Guj) 45

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Hon'ble Judges: D A Desai, P D Desai

Eq. Citations: 1971 GLR 287, 1971 (1) LLJ 508

Case Type: Special Civil Application

Case No: 347 of 1968

Subject: Constitution, Labour and Industrial

Head Note:

Industrial Disputes Act (XIV of 1947) S.2(g)(i),S.2(g),S.2(j) S.2(s) - Nothing in the Definition of word employer the relationship of master and servant can come into existence only by contractual relationship between the parties- The moment any person is employed would be presumed to be existing between parties - Different industrial activities carried on by the state - authority prescribed the head of the department will be employer in respect of each individual activity. - Panchayat service may be a service under the state -Purpose of industrial disputes Act Panchayat is the employer- It activity carried on by state falls within the definition of word industry - under Industrial Disputes Act worker entitled to take recourse - It service is organised activity by local authority such activity would fall within the definition of industry Activity of concerned safai Kamdar falls within the definition of Industry Under S.2(j) of the Act. Industrial Disputes Act (XII of 1947) -S.2(v)- Constitution of India,1950 - Art.227 -17 the workers are illegally discharge -

Quantum of compensation has direct relation to the conduct of employee under the labour court such matter not within the exclusive jurisdiction - Discretion must be exercised judicially - Imposing penalty without any fault is against all cannon of justice - High court entitled to interfere under Art.227.

There is nothing in the definition of the word employer within the meaning of secs. 2(g)(i) and 2(g)(ii) of the Industrial Disputes Act to suggest that only that person would be employer who has contracted relation with the workman and master and servant relationship would come into existence only by contractual relationship entered into between the parties. In fact the definition of the word workman in sec. 2(s) of the Act when read with the definition of the word employer would leave no room for doubt that the master and servant relationship must be subsisting at the relevant time when the dispute arises. The word employee in its broad outlines is understood to mean engaged for doing work or rendering service. Therefore the moment any person is employed in any industry and that industry is carried on by the local authority or on behalf of the local authority the chief executive officer will be employer and the workman-employer relationship for the purpose of the Act shall be presumed as existing between them. This presumption would arise notwithstanding the fact that the actual contract of employment may have been entered into by another person empowered to employ workmen. (Para 9). If the State itself carrying on different industrial activities though technically the State would be the employer of all workmen working in the different industrial activities carried on by the State but for the purposes of the Act the authority prescribed in that behalf or where no such authority is prescribed the head of the department will be employer in respect of each individual activity. Even though different industrial activities are carried on primarily by the State the employer for the purpose of the Act in respect of such industrial activity would be different. Even if the Panchayat service is like any other branch of service a service under the State nonetheless for the purposes of the Act the Panchayat and not the State would be the employer of the workmen employed by the Panchayat. (Para 10). All the servants employed by the State even if they are to be treated as civil servants they are not excluded from the purview of the Industrial Disputes Act. The broad submission that a dispute between the State and civil servants cannot be adjudicated by the machinery set up under the Industrial Disputes Act cannot be accepted. If the activity carried on by the State falls within four corners of the definition of the word industry in sec. 2(j) of the Industrial Disputes Act and the dispute raised by the workers working in the industry carried on by the State is an industrial

dispute certainly the workers would be entitled to take recourse to the machinery for adjudication of the industrial dispute set up under the Industrial Disputes Act. (Para 12). The test to find out whether dispute is an industrial dispute it must be shown to be a dispute between the employer and employees who are associated together the former following a trade business manufacture undertaking or calling of employers in the production of material goods and material services and the latter following any calling service employment handicraft or industrial occupation or avocation of workmen in aid of the employers enterprise. It would be necessary to find out what is meant by material service. (Para 16). The service must be an organised activity and not of a casual nature. It is immaterial whether it is organised by the local authority. The fact that it is an organised activity offering service would certainly make it material service and the activity would fall within the definition of the word industry Therefore the activity in which the concerned Safai Kamdars were employed would fall within the definition of the word industry. (Para 17). The activity of the Panchayat in which the Safai Kamdars are employed is an activity of running conservancy and sanitary services and therefore that activity would be an industry within the meaning of the word. Therefore the special Labour Court had jurisdiction to entertain the dispute. (Para 18). Industrial Disputes Act (XIV of 1947)-Sec 2(v)-Constitution of India 1950 227 discharge of workers-Quantum of compensation has direct relation to the conduct of employee-Such matter not within the exclusive jurisdiction of Labour Court-Discretion must be exercised judicially- Imposing penalty without fault against all cannons of justice-High Court entitled to interfere under Art. 227. If the workman during the period is not gainfully employed and if it is shown that the termination of his service by whatever order brought out was neither correct proper nor justified it is always necessary to find out what compensation he would be entitled to. if the workman is exonerated in respect of the charge levelled against him which resulted in termination of his service there is no reason why in any manner directly or indirectly any penalty should be imposed upon him. When it is held that termination of service was neither proper nor justified it would not only show that the workman was always willing to serve but if he renders service he would legitimately be entitled to the wages for the same. If the workman was always ready to serve but he was kept away therefrom on account of the act of the employer there is no justification for refusing full compensation to the extent of wages to the workman because any other order would indirectly impose penalty on the workman for no fault of his. (Para 21). The

quantum of compensation has a direct relation to the conduct of the employee in question. It cannot be said to be a matter exclusively within the discretion of the special Labour Court. Even if it is a matter within the discretion of the Labour Court the discretion must be exercised in judicial and judicious manner. (Para 22). Held that in the instant case the discretion could not be said to have been exercised on sound judicial principle and if the order of the Tribunal is confirmed the Court would be party to inflicting penalty on the workmen for no fault of theirs. Imposing penalty without fault is against all cannon of justice and fair play. The High Court is therefore entitled to interfere and modify the award of the Tribunal. (Para 22). Madras Gymkhana Club Employees v. The Management of the Gymkhana Club G. L. Shukla and another v. The State of Gujarat and ors. 2 D. N. Benerji v. P. R. Mukherjee and others The Corporation of the City of Nagpur v. Its employees Jayantilal Purshottamdas v. State of Bombay v. Hospital Mazdoor Sabha Cricket Club of India v. Bombay Labour Union and anr. The Management of Safdarjung Hospital New Delhi v. The Workmen The Management of M/s. T. B. Hospital New Delhi v. The State of Bihar and ors. Daljeet & Co. (Private) Ltd v. State of Punjab & ors. Susaunah Sharn v. Wakefield referred to.

Acts Referred:

Constitution Of India Art 227

Industrial Disputes Act, 1947 Sec 2(g)(II), Sec 2, Sec 2(j), Sec 2(g)(i), Sec 2(s)

Advocates: K S Nanavati, C T Dam, R A Mehta, R A Mehta, K S Nanavati, I M Nanavati, B J Shelat, Harshad B Desai, H Desai & Co

Reference Cases:

Cases Cited in (+): **4**

Cases Referred in (+): **9**

Judgement Text:-

D A, Desai, J

[1] These petitions are directed against two awards between the same parties made by Mr. D. M. Vin, in Reference (IC-IDA) No. 52 of 1967 and Reference (IC-IDA) No. 79 of 1967.

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[2] The facts which are not in dispute lie within a narrow compass. Dhari Gram Panchayat is constituted under the Gujarat Panchayats Act, 1961. There were 23 Safai Kamdars in its employment at the relevant time. When the Safai Kamdars as usual reported for duty between 6-00 and 7-00 A.M. on 1st June 1967, they were told that they would not be taken up on work and they were asked to go away and subsequently they were dismissed. The Secretary of the Shri Brahad Saurashtra Safai Kamdar Mandal approached the Sarpanch of the Panchayat but the Sarpanch was not available and the Up Sarpanch who met him disclosed his inability to do anything in the matter. According to Safai Kamdars even after they were dismissed from service they continued to work in order that the town community may not be harassed. They were not paid their wages not only for the work done subsequent to dismissal but even for the month May 1967. The version of the Panchayat as to the circumstances in which Safai Kamdars were not paid their wages is slightly different. According to the Panchayat the concerned 23 Safai Kamdars were transferred to other place but they disobeyed the order and resorted to illegal strike from 1st November 1965 to 6th November 1965. The Panchayat held an inquiry against the Safai Kamdars for their misconduct of resorting to illegal strike. At the conclusion of the inquiry, the Safai Kamdars were held to be guilty of misconduct with which they were charged and punishment of compulsory retirement was imposed upon them with effect from 1st June 1967. It was admitted that the wages for the month of May 1967 were not paid but it was contended that the concerned workmen failed to return uniforms and implements and therefore, payment was stopped. The Government of Gujarat referred for adjudication an industrial dispute to wit : "the 23 Safai Kamdars who were discharged with effect from 1st June 1967 should be reinstated from that date with back wages" to the Special Labour Court. The Presiding Officer of the Special Labour Court by his award dated 15th December 1967 directed that the Panchayat should withdraw the order compulsorily retiring the Safai Kamdars from service and to reinstate all of them and to pay them one third of the wages which they would have earned from 1st June 1967 to the date of their reinstatement. The Panchayat was also directed to pay Rs. 150/- as costs to the Brahad Saurashtra Safai Kamdar Mandal. Special Civil Application No. 347 of 1968 is filed by Dhari Gram Panchayat challenging the aforementioned award. Special Civil Application No. 705 of 1968 is filed by the Brahad Saurashtra Safai Kamdar Mandal challenging that part of the awwd by which the Presiding Officer directed payment of one third of the wages for the period from 1st June 1967 to the date of reinstatement and claiming that the Court should have directed the Panchayat to pay full wages for the said period.

[3] Special Civil Application No. 32 of 1969 is directed against the award of the Special

Labour Court in Reference (IC-IDA) No. 79 of 1967. Six demands were submitted by the Brahad Saurashtra Safai Kamdar Mandal on behalf of its members employed by Dhari Gram Panchayat to the Panchayat. As the demands could not be settled during the conciliation proceedings, the Government of Gujarat referred for adjudication the said six demands concerning filling in vacant posts, framing of gratuity scheme, providing facilities for water, payment of medical expenses, unclean allowance and supplying of bullock carts, to the Special Labour Court. Presiding Officer of the Special Labour Court made his award in respect of the said six demands on 25th July 1968. Dhari Gram Panchayat has filed Special Civil Application No. 32 of 1969 challenging the validity of the award.

[4] A common question challenging the jurisdiction of the Special Labour Court to entertain the disputes and to make an award in respect of them was raised on behalf of the petitioner Dhari Gram Panchayat in Special Civil Applications No. 347 of 1968 and 32 of 1969. Before we proceed to consider that contention, it may be mentioned that the Panchayat had not specifically raised the question of jurisdiction before the Special Labour Court in Reference (IC-IDA) No, 52 of 1967 from which Special Civil Application No. 347 of 1968 arises. The question of jurisdiction was sought to be raised for the first time in this petition under Article 226 of the Constitution of India. At one stage, we were not inclined to give permission to the petitioners to raise this contention which was not raised before the Special Labour Court. However Special Civil Application No. 32 of 1969 which arises from the award made by the Special Labour Court m Reference (IC-IDA) No. 79 of 1967 is between the same parties and in that matter the question of jurisdiction was in terms raised before the Special Labour Court and therefore, it would be necessary for us to consider that question. Accordingly we considered it prudent to permit the petitioners to raise that question in Special Civil Application No. 347 of 1968.

[5] Mr. K. S. Nanavati, learned advocate for the petitioner Dhari Gram Panchayat formulated the following propositions for our consideration :

> (1) Looking to the various provisions of the Guj arat Panchayats Act, Safai Kamdars employed by the Dhari Gram Panchayat are members of the civil service of the State and accordingly, the State and not the petitioner Panchayat would be their employer and therefore, the reference of the disputes as against the Panchayat is incompetent and consequently the award made by the Special Labour Court is without jurisdiction.

(2) The provisions of the Industrial Disputes Act are not applicable to the civil service of the State and, therefore, also, the reference is incompetent.

(3) Even if the Safai Kamdars are held to be workmen employed by the petitioner Panchayat they are not workmen within the meaning of the word in sec. 2(s) of the Industrial Disputes Act, (hereinafter referred to as the Act) because they are not employed in any industry and therefore, also, reference is not competent and the award is without jurisdiction.

[6] At the outset, we may notice some of the provisions of the Industrial Disputes Act, 1947. Sec. 2(g) defines employer to mean-

"(i) In relation to industry carried by or under the authority of any department of the Central Government or a Government, the authority prescribed in this behalf or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority."

'Industry' is defined in sec. 2(j) which reads as under :

"'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen."

Word 'workman' is defined in sec. 2(s) which provides as under : " '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 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 consequence of, that dispute or whose dismissal, discharge or retrenchment has led to that dispute; but does not include any such person-

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(i) who is subject to the Army Act, XLVI of 1950, or the Air Force Act, XLV of 1960, or the Navy (Discipline) Act XXXIV of 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 mensum 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."

Sec. 10 provides for machinery for settlement of dispute by reference to the Industrial Tribunal or to the Labour Court or to the Court of Inquiry. The scheme of the Act shows that when the Government is satisfied that a dispute exists or is apprehended it can compel the parties to the dispute to seek adjudication of the dispute by resorting to the machinery provided by the Act. Before the Government refers the dispute for adjudication, the appropriate Government must be satisfied that the dispute either exists or is apprehended. The dispute must be an industrial dispute and it must be either between employer and workmen or between workmen and workmen or between employers and employers.

[7] When an industrial dispute is raised the parties to the dispute ordinarily would be workmen on the one hand and employer on the other. In the present case the dispute is between workmen and their employer. 23 Safai Kamdars are workmen and Dhari Gram Panchayat is the employer. At the relevant time when the dispute was referred to the Special Labour Court for adjudication the workmen were compulso-rily retired. The order of compulsory retirement was questioned when the dispute was raised and relief of reinstatment was sought. Safai Kamdars would be deemed to be workmen as their compulsory retirement led to the dispute.

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[8] Mr. Nanavati however very strenuously urged that notwithstanding the fact that at the relevant time, the Safai Kamdars were working for Dhari Gram Panchayat, there was no contract of employment between the concerned workmen and the Panchayat and reference of dispute as against the Panchayat was incompetent. In other words, it was contended that the Government could refer an industrial dispute for adjudication which must be between an employer and workmen and there must be contractual relationship of employer and workmen between the parties to the dispute. Proceeding on this assumption, it was urged that all the servants of the Panchayat are civil servants of the State or members of the civil service of the State and therefore, contractual relationship would be between the State and the concerned workmen, in this case, Safai Kamdars, and, therefore, if a reference was to be made for adjudication of an industrial dispute between them, the reference ought to have been made against the State and not against the Panchayat. The workmen concerned in the dispute are 23 Safai Kamdars who at the relevant time before their retirement were working under the Panchayat and the order of compulsory retirement was passed by the Panchayat and this order led to the dispute. The question in this context who was the employer of the concerned workmen at the relevant time. The definition of the word 'employer' shows that in relation to an industry carried on by or on behalf of the local authority, the chief executive officer of the authority would be the employer. It must be, remembered that the word 'employer' is defined to mean persons therein set out. It is not an inclusive definition. The definition in terms provides who would be employer in relation to workmen employed in a particular industry carried on by or on behalf of a particular body. There is nothing in the definition of the word 'employer' to indicate that there must be a contractual relationship of employment as between the employer therein named and concerned workmen. That will be reading in the definition something which is not there. The definition is quite simple and intelligible. In relation to an industry carried on by or on behalf of the local authority the chief executive officer of the local authority would be 'employer' of all the workmen employed in that industry. For the purposes of the Industrial Disputes Act, the employer workmen relationship shall be spelt out as per the meaning of the words used in the Act and it is not necessary to go in search of contractual relationship between the parties to the dispute.

[9] Mr. Nanavati however contends that the local authority is a mere agent of the State Government to carry on some of the activities which the State Government has to carry on and for that limited purpose enjoyed the delegated power of taxation. It was urged that the workmen of the local authority would none-the-less be workmen of the State Government. The local authority like the Gram Panchayat is a creature of the statute.

Since the concept of the local self government was introduced, the local authorities were created by one or other statute for carrying on different functions of local salf government. They are other than primary or inalienable functions of the State such as legislative, judicial or administration of law. The local bodies are primarily subordinate branches of governmental activity. They function for public purposes but some of their activities may come within the calling of employers although the municipalities may not be -trading corporations. Local authorities take over a part of the affairs of Government in local areas and they exercise the powers of regulation and subordinate taxation. They are political sub-divisions and agencies for the exercise of the governmental functions. But if they indulge in municipal trading or business or have to assume the calling of employers they are employers whether they carry on or not business commercially for purposes of gain or profit (Vide Madras Gymkhana Club Employees v. The Management of the Gymkhana Club, A.I.R. 1968 S.C. 554 (p. 558). If the local authority carries on some of the delegated functions of the Government and if the activity is such as would be covered by the definition of the word 'industry', the workmen employed to carry on the said activity would be the workmen of local authority and not of the government. In such a case doctrine of immediate and ultimate employer cannot be invoked. Once it is shown that the industry is carried on by local authority itself, the chief executive officer of the local authority would be the employer of all the persons employed in the said industry. The chief executive officer will none-the-less be employer even if the industry is not carried on by the local authority but by some one on behalf of the local authority. If, therefore, the local authority or its agent, carries on an industry it would be an industry carried on by the local authority or by its agent and in both the cases, the chief executive officer would be the employer of all the persons employed either by it or by the agent for the purpose of the said industry. It was attempted to be urged that if the contract of employment is entered into by or with the agent and yet the chief executive officer of the local authority would be the employer, he would be fastened with criminal liability for the acts of the agent and the Legislature could not have intended such a result. Mr. Nanavati referred to sec. 9A which provides that no employer, who proposes to effect any change in the condition of service applicable to any workman in respect of any matters specified in the fourth schedule shall effect such a change without giving to the workmen likely to be affected by such change, a notice in the prescribed manner of the nature of the change proposed to be effected; or within twentyone days of giving such notice. If a change is effected in contravention of sec. 9A, it would be an offence punishable under sec. 31(2). It was contended that if the local authority had engaged an agent to carry on an industry and the agent employed workmen for carrying on the said industry and if that agent affected change in condition

of service in contravention of sec. 9A, yet without any control over that agent, the chief executive officer would be criminally responsible for the change so effected and such would not be the intention of the Legislature. Approaching the case from this angle, it was urged that it is implicit in the scheme of the Industrial Disputes Act that employer would be one with whom there is contractual relationship of master and servant. We see no merit in this contention. If the local authority itself carries on an industry the persons employed in the industry would be the workmen of the local authority and chief executive officer of the local authority would be employer irrespective of the fact as to who employed the workmen to work in the industry. If the industry is carried on not by the local authority but on behalf of the local authority, yet. If it is an industry carried on behalf of the local authority, the chief executive officer will none-the-less be the employer and it would be his duty to see that the provisions of the Act are obeyed. He may be vicariously liable for the acts of the agent and the criminal vicarious liability is non unknown to law. Therefore, there is nothing in the definition of the word 'employer' to suggest that only that person would be employer who has contractual relation with the workman and master and servant relationship would come into existence only by contractual relationship entered into between the parties. In fact the definition of the word 'workman' when read with the definition of the word 'employer' would leave no room for doubt that the master and servant relationship must be subsisting at the relevant time when the dispute arises. A workman is one who is employed to do skilled or unskilled manual or clerical work for hire or reward in an industry. The word 'employed' in its broad outlines, is understood to mean engaged for doing work or rendering service. In the ultimate analysis in every case of employment there would be one who gave employment, and one who accepted the same. How the contract of employment was brought about is hardly material. In a case of a local authority where it has numerous branches of administation and various branches of official cadre and number of officers enjoying power of appointment or employing workman, it was necessary for smooth working of the statute that the liability of an employer is fastened on the highest executive officer irrespective of the fact that the power to employ anyone in any particular department may have been conferred on some person or officer other than the chief executive officer. Therefore, the moment any person is employed in any industry and that industry is carried on by the local authority or on behalf of the local authority the chief executive officer will be employer and the workmen-employer relationship for the purpose of the Act shall be presumed as existing between them, This presumption would arise notwithstanding the fact that the actual contract of employment may have been entered into by another person empowered to employ

workmen.

[10] We may at this stage notice one submission of Mr. Nanavati. It was urged that the servants of the Panchayat are members of the civil service of the State and Panchayat service like any other branch of State service is a service under the Gujarat State, and, therefore, master and servant relationship would be not between the Panchayat and workmen working under it but between State and the workmen. Mr. Nanavati in this connection referred to some of the provisions of the Gujarat Panchayats Act in support of the submission that the servants of the Panchayat are members of the civil service of the State. He rather emphatically relied upon some of the observations in the case of G. L. Shukla and another v. The State of Gujarat and others, VIII Guj.L.R. 833. It has been observed in that case that the Panchayat service is a distinct and separate service set up for serving the Panchayat Organization of the State and it is as much a civil service of the State as any other State service. The State can have many services such ad civil service, police service, engineering service etc.,' and Panchayat service is one of them. It is further observed that in the Panchayat service as in the State service, the State is the master and every officer or servant employed in the Panchayat service is the servant of the State and not of the Panchayat under which he may be serving for the time being. Relying on this observation it was very vehemently urged that it has been in terms held that relationship of master and servant in respect of the servants of the Panchayat is between the State as master and employees as servant and the Panchayat is not recognised as an employer. It is indeed true that in that case it has been in terms held that Panchayat service is like any other branch of service such as engineering service, educational service, medical service a service under the State. But these observations which were made in the context of the contention raised in that case cannot be bodily imported to urge that the State would be the employer of all persons employed to work under the Panchayat. Accepting the ratio of the case that Panchayat service is like any other branch of service a service under the State the question would still be wide open as to who is the employer of workmen working under the Panchayat for the purposes of Industrial Disputes Act. The answer is to be found again in the definition of the word 'employer' in the Act. If the State itself is carrying on different industrial activities though technically the State would be the employer of all workmen working in the different industrial activities carried on by the State, but for the purposes of the Act, the authority prescribed in that behalf or where no such authority is prescribed the head of the department will be employer in respect of each individual activity. It would at once appear that even though different industrial activities are carried on primarily by the State, the employer for the purpose of the Act in respect of

each industrial activity would be different. Accordingly, even if the Panchayat service is like any other branch of service a service under the State none-the-less for the purposes of the Act the Panchayat and not the State would be the employer of the workmen employed by the Panchayat.

[11] This conclusion can also be reached by a slightly different process of reasoning. Assuming that the observations of the Division Bench in G. L. Shukltfs case (supra) should be given its full effect meaning thereby that the servants of the Panchayat are the servants belonging to Panchayat service of the State, the question is : who is their employer ? As we have pointed out above, the local authority is a political subdivision and agency for exercise of governmental functions and primarily a subordinate branch of governmental activity, and therefore, the State would include a local authority. That branch of the state going under the designation of local authority would be the employer of workmen working under it. We are called upon to consider the question as to who is the employer of the workmen working at the relevant time under the Panchayat. The question is : who is the employer who would be liable for any demand that may be made by the workmen ? In the case of an industry carried on by the local authority, the benefit of which is being taken by the local authority, obviously, the local authority would be the employer and the local authority would also fall within the wider connotation of the word 'State'. Viewed from this angle, in our opinion, ratio decidendi in Shukla 's case (supra) would not come in the way of a reference being made by the State Government in respect of an industrial dispute raised by the workmen employed in an industry carried on by the local authority against the local authority.

[12] The next contention was that the provisions of the Industrial Disputes Act are not applicable to the civil servants of the State and, therefore, reference is incompetent. This submission is made on the assumption that all the servants of the Panchayat are civil servants working in administrative department of the State. The word 'civil service' is generally understood in contradistinction to military service. But all the servants employed by the State even if they are to be treated as civil servants they are not excluded from the purview of the Industrial Disputes Act. The question whether the workmen would be entitled to the benefit of the Industrial Disputes Act would depend upon whether the activity carried on by the State would be covered by the defininition of the word 'industry' and the dispute is an industrial dispute. The broad submission that a dispute between the State and civil servants cannot be adjudicated by the machinery set up under the Industrial Disputes Act cannot be accepted. It is now well-settled that if the activity carried on by the State falls within four corners of the definition of the word

'industry' in the Industrial Disputes Act and the dispute raised by the workers working in the industry carried on by the State is an industrial dispute, certainly, the workers would be entitled to take recourse to the machinery for adjudication of the industrial dispute set up under the Industrial Disputes Act.

[13] As the last limb of the argument it was urged that even if the concerned Safai. Kamdars were workmen of the petitioner Panchayat, they were not workmen within the meaning of the word as defined in the Industrial Disputes Act because the activity in which they are employed would not fall within the definition of the word 'industry' and the dispute raised by them would not be an industrial dispute. For the purpose of this submission, it was conceded that the concerned Safai Kamdars were working in the Conservancy and Sanitary Department of the Panchayat. It was also conceded that they were employed or engaged by the Panchayat and this activity is carried on by the Panchayat. The question is : whether the conservancy and sanitary activity carried on by the Panchayat would be covered by the word 'industry' as defined in the Industrial Disputes Act. In a number of cases, the Supreme Court has considered the definition of word 'industry' in sec. 2(j) of the Industrial Disputes Act. The Court examined various organised activities carried on by individual corporation, local authority and the State to find out whether they would be industries within the meaning of the word 'industry'. We will be more concerned with the Conservancy and Sanitary activity organised and carried on by a local authority. The earliest case in which this question "was considered was the case of D. N. Banerji v. P. R. Mukherjee and others, A.I.R. 1958 S. C. 58. At page 61 it is observed that "Even conservancy or sanitation may be so carried on, though after the introduction of Local Self Government, this work has in almost every country been assigned as a duty to local bodies like our Municipalities or District Boards or Local Boards. Dispute in these services between employers and workmen is an industrial dispute, and the proviso to sec. 10 lays down that where such a dispute arises and a notice under sec. 22 has been given, the appropriate Government shall make a reference under the sub-section." Further question was raised whether a service like conservancy and sanitary service which would be public utility service if carried on by the Corporation like municipality which is a creature of a statute and which functions under the limitations imposed by the statute but on that account would it cease to be an industry ? The answer was given in the negative observing that "the only ground on which one could say that what would amount to the carrying on of an industry if it is done by a private person ceases to be so if the same work is carried on by a local body like a municipality is that in the latter there is nothing like the investment of any capital or the existence of a profit earning motive as there generally is in a business. But neither

the one nor the other seems a sine qua non or necessary element in the modern conception of industry." The Supreme Court in terms held that a dispute in conservancy or sanitary service conducted by the local authority and its workmen would be an industrial dispute and would be covered by Industrial Disputes Act. We would next refer to The Corporation of the City of Nagpur v. Its employees, A.I.R. 1960 S. C. 675. In that case, sone dispute arose between the Corporation and employees working in various departments of the Corporation in respect of wages, scales etc. The Government of the State of Madhya Pradesh by its order referred the said dispute under sec. 39 of the C. P. and Berar Industrial Disputes Settlement Act, 1947 to the State Industrial Court at Nagpur. The Corporation questioned the jurisdiction of the Industrial Court inter alia on the ground that the Corporation was not an industry as denned by the Act. That was heard as a preliminary objection and the Court held that the Corporation was an industry and that the further question whether any department of the Corporation was an industry or not would be decided on evidence. The Corporation challenged the correctness of the decision by a petition under Art. 226 of the Constitution in the High Court of Bombay at Nagpur. That petition was dismissed as the award was made before its hearing. After the Industrial Court made an award holding that the Corporation was an industry and further holding that all the departments of the Corporation were covered by the said definition, the Corporation filed another petition in the High Court questioning the validity and correctness of the award. The High Court rejected the contention of the Corporation that it was not an industry as defined in the C. P. and Berar Industrial Disputes Settlement Act. The Corporation took the matter to the Supreme Court and agitated the same question before the Supreme Court. The Supreme Court took into consideration the definition of the word 'industry' as given in sec. 2(14) of the said Act and also took into consideration the definition of the word 'industry' as given in sec. 2(j) of the Industrial Disputes Act and after referring to its earlier decision in D. N. Benarjee 's case (supra), which was decided under the provisions of the Industrial Disputes Act, observed that whatever little difference is there in the two definitions that does not justify taking a different view from that accepted by the Court in the earlier decision. The Supreme Court in terms held that the service rendered by the Corporation, if it complies with the conditions implicit in the definition, will be an industry within the meaning of the definition in the Act. After having observed thus, the Supreme Court examined the services rendered by the Corporation in its various departments including Sewage Department and Health Department and held that the Health Department looks after scavenging, sanitation, control of epidemics, control of food adulteration etc. and therefore, the Department satisfies the other tests laid down by the Supreme Court and is an industry within the meaning the word 'industry' in the C. P. & Berar Industrial

Disputes Settlement Act. We have also noticed the slight difference in the definition of the word 'industry' as given in sec. 2(14) of the C. P. and Berar Industrial Disputes Settlement Act and one given in sec. 2(j) of the Industrial Disputes Act. Even after noting the difference between the two definitions in its broad etymological sense or particular sense in which the word is used in both the Acts the word 'industry' means the same thing. If an activity would be an industry under one Act, in our opinion, it would also be an industry under the other Act. If, therefore, Sewage and Health Departments of the Nagpur Corporation were held to be an industry under the C. P. and Berar Industrial Disputes Settlement Act, they would nonethe-less be an industry within the meaning of the word in sec. 2(j) of the Industrial Disputes Act.

[14] If the matter were to rest with these two decisions there was nothing further to be done except after referring to them it must be observed that the point raised" in the case would stand concluded. But it was very strenuously urged that the tests applied by the Supreme Court in arriving at its conclusion in the aforementioned two cases that a particular activity carried on by the local authority would fall within the definition of the word 'industry' in sec. 2(j) have undergone a radical change in the subsequent decisions of the Supreme Court and therefore, keeping in view these new or altered tests we must examine and find out whether conservancy and sanitary activity carried on by the local authority would be an industry. We would presently refer to those subsequent cases in which according to Mr. Nanavati the new or radically altered tests have been laid down or prescribed. The submission was that the decision in D. N. Banerjee 's case (supra) and Nagpur Corporation's case (supra) are impliedly overruled in the later decision of the Supreme Court. But even at this stage, we must point out that in none of three subsequent cases the decision in D. N, Bamrjee 's case and in Nagpur Corporation's case (supra) have been expressly or impliedly overruled. If therefore, the ratio in the aforementioned cases would apply to the case before us, certainly we would be bound to apply the same and it would be binding on us and unless the decision in the earlier cases of the Supreme Court is overruled by the subsequent decision of the Supreme Court, the ratio of those cases would be good law and would be binding. It is of utmost importance to find out whether the ratio in earlier decision is overruled by a subsequent decision. If by the subsequent decision the previous decision is expressly overruled the matter presents no difficulty. But if in the subsequent decision, the previous decision is not referred to and it is urged that it is impliedly overruled or the old tests are given a go by the question would arise whether the earlier decision is still good law. . This aspect was recently considered by a Division Bench of this High Court consisting of Bhagwati C. J. and Vakil J. in Special Civil Application No. 1392 of 1968 and several other

petitions decided on 3rd June 1969 (Jayantilal Parshottamdas v. State, XI G.L.R. 403). In an identical situation, Vakil J. speaking for the Court has observed as under :

"We have given our anxious consideration to this submission. We are however unable to agree that the said decision can be deemed to have been overruled and that its ratio is not binding on this Court. Tt does appear that it is possible to say that the principle followed in the former decision has not been followed in the said subsequent decisions of the Supreme Court. Yet it would be for the Supreme Court to examine the question as to whether the test as approved by the later decisions would apply or not and also if the said principle is applied, the provisions of sec. 5(1) can be said to be such that a duty to decide judicially flows from them or not. It is indeed significant that the Supreme Court, even though it referred to the decision of State of Bombay v. Khushaldas Advant, in the decision of A. C. Companies v. P. N. Sharma, has not expressed any positive dissent nor has it been referred to or discussed in the other decisions."

At a later stage, it is further observed as under :

"We have not thought it necessary to enter into the question as to whether it is so or not. But we are unable to agree with the learned Counsel for the petitioners that it is open to us to disregard the said direct authority of the Supreme Court, We therefore, reject the submission of the petitioners."

This observation would apply with greater force to the case before us. As staled earlier, the decision in D. N. Banerjee 's case (supra) and Nagpur Corporation's case (supra) have at no time been overruled in the three subsequent decisions, namely, Madras Gymkhans Club 's case, Cricket Club's case and Safderjung Hospital's case on which reliance is placed by Mr. Nanavati to urge that the tests for deciding whether a particular activity is an industry or not have been radically changed. Therefore, the ratio of the decision in the aforementioned two cases would be binding on us as they have a direct bearing on the question raised before us. Following these two decisions, it would appear that conservancy and sanitary activity carried on by the Panchayat would certainly fall within the definition of the word

'industry' in sec. 2(j) of the Industrial Disputes Act.

[15] Having said this, we would like to point out that all the tests laid down in the aforementioned two cases to decide whether a particular activity falls within the four-corners of the definition of the word 'industry' have not at all been radically changed. More than one test is prescribed in the aforementioned cases. Those tests except as to the manner of application of one of them still hold good. This would necessitate finding out what were the tests prescribed by the Supreme Court to find out whether particular activity would be an industry or not. In D. N. Banerjee's case (supra) which was the earliest case on the subject, to which our attention was invited, the municipality was held to be an industry and dispute was held to be an industrial dispute. In reaching this conclusion, the Supreme Court interpreted the word 'undertaking' in the definition of the word 'industry'. It was defined by the Supreme Court as any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade. Having said this, the Court included non-profit undertaking in the concept of industry even if there was no private enterprise. A dispute in the public utility service was an industrial dispute notwithstanding the fact that the enterprise was financed by taxation and not by capital. Particularly considering the case of the activity undertaken by the municipality, it was observed that the very idea underlying the entrustment of such duties and functions to local bodies is not to take them out of the sphere of industry but to secure substitution of public authorities in the place of private employers and to eliminate the motive of profit-making as far as possible. The levy of taxes for the maintenance of the services of sanitation and conservancy or the supply of light and water is a method adopted and devised to make up for the absence of capital. In Nagpur Corporation's case (supra), after referring to earlier cases following tests were suggested to determine whether an activity is an undertaking. It is observed as under :

> "The result of the discussion may be summarised thus : (1) The definition of 'industry' in the Act is very comprehensive. It is in two parts : one part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition, it will be an industry within the meaning of the Act. (2) The history of industrial disputes and the legislation recognises the basic concept that the activity shall be an organised one and not that which pertains to private or personal employment. (3) The legal functions described as primary and inalienable functions of State though statutorily delegated to a corporation

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are necessarily excluded from the purview of the definition. Such legal functions shall be confined to legislative power, administration of law and judicial power. (4) If a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation. (5) If a service rendered by a corporation is an industry, the employees in the departments concerned with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act. (6) If a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be criterion for the purposes of the Act."

Mr. Nanavati urged that the fourth test that if a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation, is no more accepted as a correct test. It was seriously contended that apart from other tests the only test applied right upto the case of State of Bombay v. HospitalMazdoor Sabha (1960) 2 S.C.R. 866, was that if any service rendered by an individual or a private person would be an industry it would be equally an industry in the hands of the corporation. In our opinion, that was not the only test. Different tests were applied and even in the Nagpur Corporation case (supra) Public Health Department was considered an industry because it satisfied the other tests laid down by the Supreme Court. Mr. Nanavati however referred to The Secretary, Madras Gymkhana Club Employees Union v. The Management of the Gymkhana Club, A.I.R. 1968 S.C. 554. After referring to earlier case on the subject, the Supreme Court observed as under:

"Primarily therefore, industrial disputes occur when the operation undertaken rests upon co-operation between employers and employees with a view to production and distribution of material goods in other words, wealth, but they may arise also in cases where the co-operation is to produce material services. The normal cases are those in which the production or distribution is of material goods or wealth and they will fall within the expression trade, business and manufacture."

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At other stage it is observed as under :

"It is, therefore, clear that before the work engaged in can be described as an industry, it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must be capable of being described as an undertaking in material goods or material services."

It has also been observed at one stage that when private individuals are the employers, the industry is run with capital and with a view to profits. These two circumstances may not exist when Government or a local authority enters upon business, trade, manufacture or an undertaking analogous to trade. There is nothing to show in this judgement that the tests earlier prescribed have been either set at not or radically changed. The definition of the word 'industry' has been minutely analysed. Its division into two parts has been considered. It is laid down that to be an 'industry' the activity must be any business, trade, manufacture or calling or undertaking analogous thereto of the employers and it must be calling, service, employment, handicraft or industrial occupation or avocation of workmen. The activity on behalf of the employers and the employees when taken together must cover both parts of the activity to be an industry within the meaning of the Act. It may incidently be mentioned that Nagpur Corporation 's case was specifically referred to and considered but it was neither expressly overruled nor dissented from.

[16] Mr. Nanavati next referred to Cricket Club of India v. Bombay Labour Union and another, A.I.R. 1969 S.C. 276. In that case, the question was whether the Cricket Club of India was an industry, This case need not detain us because after referring to the decision of the Supreme Court in Madras Gymkhana Club case (supra), the decision more or less proceeds on the facts of that case. It may only be mentioned that the activities of the Cricket Club of India were held not to fall within the definition of the word 'industry'. We would now refer to the case on which considerable time was spent at the hearing of the matter. There is a recent decision of the Supreme Court in The Management of Safdarjung Hospital, New Delhi v. The Workmen and The management of M/s T E. Hospital New Delhi v. The State of Bihar and others, in Civil Appeals Nos. 171 of 1969 and 1781 of 1969 respectively decided on 1-4-1970. One other petition was also disposed of by the same judgment. The question that was in terms raised in that

case was whether a hospital can be said to be an industry falling within the Industrial Disputes Act and under what circumstances. On this very point, there was an earlier decision of the Supreme Court in State of Bombay v. Hospital Mazdoor Sabha (supra). In that case it was held that the hospital even if run by the State would be an industry and dispute between the hospital and its workmen would be an industrial dispute. If that decision was held to hold the field, the point raised in the case of Safdarjung Hospital would be covered. But it was very strenuously canvassed before the Supreme Court that the Hospital Mazdoor Sabha case took an extreme view of the matter which was not justified. That contention ofcourse has been upheld. While reaching this conclusion, the Supreme Court referred to a number of its earlier decisions on the subject. Considering the question as to when an industrial dispute could be said to have been raised, it was observed that there must be first established a relationship of employer and employees associating together, the former following a trade, business, manufacture, undertaking or calling of employers in the production of material goods and material services and the latter following any catting, service, employment, handicraft, or industrial occupation or avocation of workmen in aid of the employers" enterprise. It is not necessary that there must be a profit motive but the enterprise must be analogous to trade or business in a commercial sense. Referring to the Hospital Mazdoor Sabha case, it was observed that the test applied in Hospital Mazdoor Shabha case was : "Can such activity be carried on by private individuals or group of individuals ?" The answer given in that case was that hospital can be run as a business proposition and for profit. It was further held that the hospital run by Government without profit must bear the same character. The aforementioned test laid down in the Hospital Mazdoor Sabha case was in terns disapproved and not accepted by the Supreme Court in Safdarjung Hospital case. The question is then : whether that is the only test to determine whether a particular activity would be an industry within the meaning of the word in sec. 2(j), Mr. Nanavati very emphatically contended that all through out that was the only test applied and it is now held to be not correct test. It is not correct to say that that was the only test applied for determining whether particular activity would be an industry. In fact, as pointed out in Nagpur Corporation case, number of tests including the one whether such activity can be carried on by individuals were laid down to find out whether a particular activity would be an industry. Assuming that the tests prescribed in Nagpur Corporation case are not correct, we may also examine the present case keeping in view the test laid down in the Safdarjung Hospital case. The test to find out whether a dispute is an industrial dispute it must be shown to be a dispute between the employer and employees who are associated together, the former following a trade, business, manufacture, undertaking or calling of employers in the production of material

goods and material services and the latter following any calling, service, employment, handicraft, or in industrial occupation or avocation of workmen in aid of the employers' enterprise. It would be necessary to find out what is meant by material service. This has been explained by the Supreme Court as under :

> "Material services are not services, which depend wholly or largely upon the contribution or professional knowledge, skill or dexterity for the production of a result. Such services being given individually and by individuals are services no doubt but not material services. Even an establishment where many such operate cannot be said to convert their professional services into material services. Material services involved an activity carried on through co-operation between employers and employees to provide the community with the use of something such as electric power, water, transportation, mail delivery, telephone and the like. In providing these services there may be employment of trained men and even professional men, but the emphasis is not on what these men do but upon the productivity of a service organised as an industry and commercially valuable. Thus the services of professional men involving benefit to individuals according to their needs, such as doctors, teachers, lawyers, solicitors etc. are easily distinguishable from an activity such as transport service. The latter is of a commercial character in which something is brought into existence quite apart from the benefit to particular individuals. It is the production of this something which is described as the production of material services."

[17] Applying this test can it ever be said that conservancy and sanitary services rendered by the Panchayat would not come within the definition of the word 'industry' ? At one stage, it was attempted to be urged that material services are those services in which something when produced at an intermediate stage when offered for consumption, the service would be a material service. The submission, in our opinion, proceeds on a fallacy that something like tangible material goods must be produced which when offered for consumption, the activity in producing the same would be an industry. In transport service nothing is produced like tangible Material goods. It is a service Offered Which would be material service. In the case of water, no doubt by activity undertaken, water is supplied to the consumers for consumption. But service like transport service in our opinion, would be on par with service like conservancy and sanitary service. This service is certainly commercial in character. It is an organised

activity and not of a casual nature. It is immaterial whether it is organised by local authority. The fact that it is an organised activity offering service would certainly make it material service and the activity would fall within the definition of the word 'industry'. Therefore, approaching the case from the test laid down in the latest case also, the activity in which the concerned Safai Kamdars are employed would fall within the definition of the word 'industry.'

[18] There is one more aspect which we may refer to at this stage. Sec. 2(n) defines 'public utility service' which amongst other things means any system of public conservancy or sanitation. The legislature itself by defining 'public utility' inter alia to mean 'public conservancy or sanitation" has clearly indicated that conservancy and sanitary services would fall within the definition of the word 'industry'. Sub-clause (vi) of sec. 2(n) confers power on the Government to declare services other than those mentioned in the definition as public utility service. Armed with this power, the First Schedule to the Industrial Disputes Act was amended to include services in hospitals and dispensaries to be public utility service. Relying on this entry it was urged in the Safdarjung Hospital case before the Supreme Court that in view of the amendment, there is no scope for saying that the hospitals are not industries. Negativing this contention, the Supreme Court has held that when Parliament conferred power upon the Government by adding the sixth clause under which other industries could be brought within the protection afforded by the Act to public utility services, it did not intend that the entire concept of industry in the Act, could be ignored and anything brought in. It is the industry that could be declared a public utility service. Therefore, before any service is declared a public utility service it has to be an industry. Simultaneously however, the Court in terms held that named public utility services in the definition answers the test of an industry. The observation is pertinent and would completely negative the contention of Mr. Nanavati. It reads as under :

> "The named services in definition answer the test of an industry run on commercial lines to produce something which the community can use. These are brought into existence in commercial way and are analogous to business in which material goods are produced and distributed for consumption."

> Therefore, apart from anything alse, the considered view of the Supreme Court in its latest decision is that the industry named in the definition of public utility service would be an industry within the meaning of Industrial

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Disputes Act. If the case is approached from this angle, no further discussion is necessary because the activity of the Panchayat in which the Safai Kamdars are employed is an activity of running conservancy and sanitary services and therefore, that activity would be an industry within the meaning of the word.

[19] Thus, approaching the case from every angle, it appears that the activity in which conservancy and sanitary service is rendered by the local authority, namely, the Panchayat, would be an industry within the meaning of the word and the Safai Kamdars employed in that activity would be workmen within the meaning of the word and as this activity is carried on by the local authority, the chief executive officer would be the employer and dispute between the workmen and employer would be an industrial dispute and the Special Labour Court would have jurisdiction to entertain the dispute. Accordingly, the triple contention of Mr. Nanavati, firstly, that the reference against the Panchayat is not competent as the State is the employer and secondly that Panchayat service is like any other branch of civil service under the State and thirdly that the conservancy and sanitary service carried on by the Panchayat is not an industry and the Safai Kamdars are not workmen within the meaning of the word in the Industrial Disputes Act and, therefore, the Special Labour Court had no jurisdiction to entertain the dispute cannot be accepted.

[20] This was the only contention raised in Special Civil Application No. 347 of 1968 and Special Civil Application No. 32 of 1969 and therefore, both the petitions would be dismissed. It may be mentioned that some other contentions were taken in both these petitions but except the one mentioned above, none was pressed by Mr. Nanavati appearing for the petitioner.

[21] We would now take up Special Civil Application No. 705 of 1968 filed by the Brahad Saurashtra Safai Kamdar Mandal against that part of the award in (LC-IDA) No. 52 of 1967 by which the Safai Kamdars were awarded one third of their salary for the period commencing from 1st June 1967 till the date of their reinstatement. The Safai Kamdars were employed by the Panchayat in conservancy and sanitary service. According to the Panchayat after holding an inquiry into their misconduct, disciplinary action was taken against them and penalty of compulsory retirement was imposed upon them. According to the Safai Kamdars they were dismissed from service without any inquiry. Safai Kamdars put forth a demand that they should be reinstated with effect from the date of their discharge and with back wages. The Tribunal held that the action of compulsorily

retiring the concerned Safai Kamdars was illegal inasmuch as the inquiry held by the Inquiry Officer was not in accordance with the mandatory provisions of rule 7 and the evidence on record was not sufficient to hold that the charge framed against the concerned Safai Kamdars was proved. Having thus held the Special Labour Court directed that the concerned Safai Kamdars should be reinstated in rervice. Having granted the relief of reinstatement, the Court proceeded to consider whether the Safai Kamdars would be entitled to full wages for the period commencing from 1-6-1967 till the date of their reinstatement. In this connection, the Special Labour Court has observed as under :

> "But so far as compensation is concerned, I do not think it should be granted as demanded. Even though it cannot be held to have been proved on the evidedce before the Court, that they had resorted to an illegal strike, it does appear that they did create some troubles at least for about five days though, no doubt, they had a good extenuating circumstance in their favour. Considering all the circumstances of the case, it seems to me that if they are paid one-third of the wages which they would have earned during the period of their unemployment as compensation, it would serve the ends of justice."

Mr. Mehta urged that the Court having held that the misconduct alleged against the workmen was not proved and in the absence of any evidence that the workmen were gainfully employed during the period in question, it was but just and proper that full compensation should have been awarded to them. It was urged that the Court in fact having exonerated the workmen, has imposed a penalty on them by depriving them of two-thirds of their wages to which they were legitimately entitled without any charge of misconduct having been established or proved against them. When a workman is dismissed, discharged or compulsorily retired from service and validity of the order is questioned, the Court, if it is of the opinion that the discharge, dismissal or compulsory retirement of the workman was not proper and directs reinstatement of the workman, would ordinarily consider that the workman has been wrongfully deprived of his wages and would be entitled to compensation to the extent of his wages. Of course, if it is satisfactorily shown that during the period in question, the workman was gainfully employed, he is not entitled to obtain double advantage for himself. But if the workman during the period is not gainfully employed and if it is

shown that the termination of his service by whatever order brought out was neither correct, proper nor justified, it is always necessary to find out what compensation he would be entitled to. We do not for a moment suggest that in all cases and in all circumstances, the workman would be entitled to full compensation commensurate with his wages. But if the workman is exonerated in respect of the charge levelled against him which resulted in termination of his service, there is no reason why in any manner directly or indirectly any penalty should be imposed upon him. If the service was not terminated, ordinarily, the workman would have continued in services and would have earned his wages. When it is held that termination of service was neither proper nor justified it would not only show that the workman was always willing to serve but if he renders service he would legitimately be entitled to the wages for the same. If the workman was always ready to serve but he was kept away therefrom on account of the act of the employer, we see no justification for refusing full compensation to the extent of wages to the workman because any other order would indirectly impose penalty on the workman for no fault of his. The effect of the order of the Special Labour Court would be that even though the service of the concerned Safai Kamdars was wrongfully terminated by compulsorily retiring them they would yet be denied two-third of their wages which would be a sort of penalty. Unless imposition of the penalty is justified it need not be inflicted. The only reason for not awarding two third of their wages given by the Special Labour Court is that for about 5 days these workman had created some trouble. But immediately that sentence is qualified, by saying that the workmen had good extenuating circumstances in their favour. If such be the position of the workmen we are at a loss to understand why they should in any manner be penalised. Reading the award of the Special Labours Court, it appears that the Court was not impressed with the allegation of misconduct nor did it find any fault with the workmen. Therefore, ordinarily, full commpensation should have been awarded. In this connection we may refer with advantage to a decision of the Punjab High Court in Daljeet & Co. (Private) Ltd. v. State of Punjab and others, 1966 1 L.L.J. 875 wherein it is observed that the only ground one can think of which would justify giving of compensation less than the wages would be that during the period in question the dismissed employee had obtained employment and been paid wages by another employer and it is for the employer to raise this contention in the course of the inquiry and to prove that the employee had been earning wages for the

whole or any part of the period in question. In the case before us, there was no allegation that concerned Safai Kamdars were gainfully employed during the period. Ordinarily, they would be entitled to compensation to the extent of their full wages.

[22] It was however urged that the compensation is a matter within the discretion of the Special Labour Court and this Court in exercise of its extra-ordinary jurisdiction, unless it is shown that the exercise of discretion by the Special Labour Court was perverse, would not interfere with the exercise of discretion by the Special Labour Court. The workmen had specifically raised the dispute about the compensation payable to them and their demand was referred to the Court. The matter was before the Tribunal and the Tribunal has to decide it after keeping in view the facts and circumstances of the case. The quantum of compensation has a direct relation to the conduct of the employee in question. It cannot be said to be a matter exclusively within the discretion of the Special Labour Court. Even if it is a matter within the discretion of the Labour Court, the discretion must be exercised in a judicial and judicious manner. The reasons for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that that something is to be done according to the rules of reason and justice, according to law and not humour. It is to be, not arbitrary, vague and fanciful but legal and regular (vide Susaunah Sham v. Wakefield, 1891 A.C. 173 at p. 179). The only reason considered by the Court proper for depriving these workmen of two-third of their wages was that the workmen concerned had created some trouble for five days. But in respect of this finding, the Court found that there were extenuating circumstances in favour of the workmen. Therefore, in fact there was no reason for denying full compensation. The discretion could not be said to have been exercised on sound judicial principle and if the order of the Tribunal is confirmed we would be party to inflicting penalty on the workmen for no fault of theirs. Imposing penalty without fault is against all cannon of justice and fairplay. Viewed from this angle, it is a case in which we must interfere and modify the award of the Tribunal by directing that the Dhari Gram Panchayat should pay to the concerned Safai Kamdars full wages which they would have earned from 1st June 1967 to the date of their reinstatement. Rule to that extent would be made absolute in this petition.

[23] Special Civil Applications Nos. 347 of 1968 and 32 of 1969 are dismissed and rule in each case is discharged with costs. Special Civil Application No. 705 of 1968 is partly

allowed by issuing a direction that the award of the Special Labour Court in Reference No. (IC-IDA) No. 52 of 1967 is modified to the extent that Dhari Gram Panchayat should pay to the concerned Safai Kamdars full wages which they would have earned from 1-6-1967 to the date of their reinstatement. Rule made absolute with costs against the Dhari Gram Panchayat.

Orders accordingly.