8. In the case of *Ganesh Trading Co. v. Moji Ram*, AIR 1987 SC 484 the Supreme Court *inter alia* observed that mere failure to set out even an essential fact does not, by itself, constitute a new cause of action. The Supreme Court further observed that only if lapse of time has barred the remedy on a newly constituted cause of action that the Courts should, ordinarily, refuse prayers for amendment of pleadings. From the principles laid down by the Supreme Court in the aforesaid decision it becomes evident that for achieving ends of justice even infraction of the rules of procedural law may be ignored. The ultimate end is not to seek compliance of procedural rules, but the object of the procedural rules is to see that justice is done to the parties.

9. Mr. A. J. Patel, learned Advocate appearing for the respondent-plaintiff, has placed reliance on the case of *M/s. Modi Spinning & Weaving Mills Co. Ltd. & Anr. v. M/s. Ladha Ram & Co.*, AIR 1977 SC 680. The Supreme Court held in that case that application for amendment of written statement by substituting certain paragraphs and thereby introducing entirely different new case and seeking to displace the plaintiff completely from admissions made by defendants in written statement, application for amendment was liable to be rejected. In the facts of this case, the ratio laid down in the *case of M/s. Modi Spg. & Wvg. Co. Ltd.* (supra) would not be applicable, for in the present case the defendant has made no admission nor has sought to introduce entirely a different or new case. In the instant case, what is sought to be urged by the petitioner is that his case would be within the scope and ambit of Sec. 13(1)(g) of the Bombay Rent Act, on account of the existing construction on the land in question, and as such the said case was sought to be specifically pleaded by way of amendment in the written statement. It is not a different or new case seeking to disclaim the plaintiff completely. I, therefore, see substance in the submission of Mr. Dave that the learned Judge has exercised the jurisdiction vested in him by law with material illegality and irregularity in refusing to grant the amendment.

10. In view of the aforesaid discussion, Civil Revision Application is allowed. The impugned judgment and order of the learned Assistant Judge, Nadiad, is quashed. Application Exh. 37 in Civil Appeal No. 23 of 1990 on the file of the learned Assistant Judge, Kheda at Nadiad, stands granted. Rule is accordingly made absolute with no order as to costs.

Application allowed.

* * *

SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. Justice A. P. Ravani and
the Hon'ble Mr. Justice C. V. Jani.

SAURASHTRA MAJOOR MAHAJAN SANGH v. UNA TALUKA KHEDUT SAHAKARI KHAND UDYOG LTD. & ANR.*

Bombay Industrial Relations Act, 1946 (XI of 1947) — Sec. 85 — The Supervisory power vested in the Industrial Tribunal over Labour Courts is analogous to the jurisdiction vested in High Courts under Art. 227 of the

*Decided on 3/4-11-1993. Special Civil Application No. 269, 270 and 289 of 1988 for writs for quashing the orders passed by Industrial Tribunal, Rajkot.

Constitution and cannot be similar to appellate jurisdiction — Only errors apparent on the face of the record can be corrected.

The Labour Court has power to decide certain disputes which have been mentioned in Sec. 78 of the Act. Against certain decisions that may be made by the Labour Court appeal is provided under Sec. 84. It is an undisputed position that against an interim order passed under Sec. 119D of the Act an appeal does not lie to Industrial Court as provided under Sec. 84. Sec. 119D confers power on Labour Court to pass interim orders as it may consider just and proper. Sec. 85 of the Act provides that Industrial Court shall have superintendence over Labour Courts. If one compares the provisions of Art. 227 of the Constitution of India with the language of Sec. 85 of the Act, it becomes clear that the powers of superintendence conferred upon Industrial Court are similar to the powers of superintendence conferred upon High Court under Art. 227 of the Constitution of India. (Para 11)

It is not open to the authority conferred with power of superintendence analogous to the powers under Art. 227 of the Constitution of India to reweigh or reappreciate evidence and or to prefer another view if that other view is preferable or plausible. (Para 16)

It becomes evident that the Industrial Court has exceeded its jurisdiction while exercising the power of superintendence under Sec. 85 of the Act. (Para 27)

Sree Talkies v. Industrial Court (1), Ram Das v. Ishar Chander (2), Shri Raja Laxmi Dying Works v. Rangaswamy (3), Khalil Ahmed v. Tufilhussein (4), Venkatlal v. Bright Brothers (5), Beopar Sahayak (P) Ltd. v. Vishwa Nath (6), Satyanarayan Hegde v. Mallikarjun (7), Mohd. Yunus v. Mohd. Mustaqim (8), Amarsinh Swaroopsinh v. Jagdish Processors (9), relied on.

Spl. C. A. Nos. 269 & 289 of 1988 :

A. K. Clerk, for the Petitioners.

M. B. Buch, for *K. S. Nanavati,* for Respondent No. 1.

Mrs. T. M. Shaikh, A.G.P. for Respondent No. 2.

Spl. C. A. No. 270 of 1988 :

J. D. Ajmera, for the Petitioner.

M. B. Buch for *K. S. Nanavati,* for Respondent No. 1.

Mrs. T. M. Shaikh, A.G.P., for Respondent No. 2.

RAVANI, J. Can the Industrial Court reappreciate and reweigh the evidence in exercise of its revisional power under Sec. 85 of the Bombay Industrial Relations Act, 1946 ? Can it prefer another view simply becuase it is more preferable or plausible ? In short the question to be determined in these petitions is, what is the scope of the revisional powers of the Industrial Court under Sec. 85 of the Bombay Industrial Relations Act, 1946 ?

2. These petitions arise out of a common order dated January 15, 1988 passed by the Industrial Court, Rajkot in Revision Appli. Nos. 2, 3 and 4 of 1987. By this order the Industrial Court reversed and set aside the interim order passed by the Labour Court by which the Labour Court held that the management may take action of closure or retrenchment of the workmen or putting the workmen on lay off only after following the procedure of law and particularly the provisions of Secs. 25M, 25N and 25-O of the Industrial Disputes Act, 1947 (for short 'the ID Act').

(1) 1970 LIC 1354 (2) 1988 (3) SCC 131 (3) 1980 (4) SCC 259
(4) AIR 1988 SC 184 (5) AIR 1987 SC 1939 (6) AIR 1987 SC 2111
(7) AIR 1960 SC 137 (8) AIR 1984 SC 38 (9) 1993 (2) GLR 1398

3. Necessary facts leading to these petitions are as follows :

The petitioners, different Unions of workmen, who were the original applicants before the Labour Court filed applications Nos. 87 of 1987, 88 of 1987 and 89 of 1987 as they apprehended 'illegal change' by the employers. Necessary details with regard to the employer are as follows :

Sr. No.	Application No.	Name of the factory Employer	No. of permanent workmen	No. of seasonal workmen
1.	87/87	Talala Taluka Sahkari Khand Udyog Ltd., Talala	293	509
2.	88/87	Una Taluka Khedut Sahakari Khand Udyog Ltd., Una	305	360
3.	89/87	Bileshwar Khand Udyog Khedut Sahakari Mandali Ltd., Kodinar	534	469

In all the three applications, it was stated that till the date of the applications, i.e., November 11, 1987 crushing work of sugarcane was not started by the respective sugar factory nor any declaration was made for commencement of such crushing work. The applicants apprehanded that contrary to the provisions of Secs. 25-M, 25-N and 25-O of ID Act, the employers were likely to take actions which amounted to lay off, retrenchment of workmen or closure of undertaking. Such actions were to be taken without obtaining proper permission and without following the procedure. It was submitted that this action amounted to illegal change as provided under items Nos. 1 and 7 of Schedule II to the Bombay Industrial Relations Act, 1946 ('the Act' for short). Item No. 1 of Schdule II relates to reduction intended to be of permanent or semi-permanent character in the number of posts or persons employed or to be employed in any occupation or process or department or departments or in a shift not due to *force majeure.* Item No. 7 relates to withdrawal of any customary concession or privilege or change in usage. It was contended that the aforesaid proposed action to be taken was illegal change as per the provisions of Sec. 46(2) and 46(4) of the Act.

4. In view of the aforesaid position, the petitioners prayed that the employers be directed not to close the undertaking, not to retrench the workmen, and/or not to force them to proceed on leave or to take any action so as to adversely affect their income contrary to the provisions of Secs. 25-M, 25-N and 25-O of the ID Act. The applicants also prayed that till the hearing and final disposal of the application, the employer be directed not to force the employees to proceed on leave or to declare lay off or to retrench in any manner and also prayed for preventing them from taking any action so as to adversely affect them in income or concession or to close down the undertaking. Prayer was also made for direction to deposit 25 per cent of sale proceeds of the sugar cane in the Court till the hearing and final disposal of the application.

5. Together with the aforesaid applications, applications under Sec. 119-D of the Act praying for interim relief were submitted. Initially prayer in terms of para 9(1) of the application was granted. By this prayer the respondent-employer was

restrained from taking any action for closing down the undertaking or retrenching the workmen or forcing them to proceed on leave. The employers were also restrained from taking any action contrary to the provisions of Secs. 25-M, 25-N and 25-O of the Act which may adversely affect the workmen as far as their income was concerned.

6. In response to the notice, the opponent-employers appeared and resisted the main applications as well as the applications for interim relief on facts as well as on law points. The Labour Court heard the parties at length. A question was raised before the Labour Court that the sugar factories of the respondents were industrial establishments of seasonal character. On this point, the Labour Court came to the conclusion that it was not within the competence of the Labour Court to decide this question. In view of the provisions of Secs. 25-A(2) and 25-K(2) of ID Act, it was within the competence of the appropriate Government to decide this question. Hence the Labour Court did not decide the question as to whether the establishments of the respondents were seasonal in character or not. However, the Labour Court came to the conclusion that the shortage of sugar cane was not the result of natural forces, but it was man-made shortage. The Labour Court on the basis of the material placed before it came to the conclusion that the employers had permitted their members to sell sugar cane to outsiders. The sale was to be effected through the employer Society and an amount of Rs. 100 per tonne was deducted by the employer. Out of this amount of Rs. 100/-, Rs. 50/- per tonne were to be recovered towards drought relief fund. To this effect authority letters were obtained from the members. After referring to the documentary evidence on record and other materials, the Labour Court further held that the sugar cane which was sold outside was of good quality and it should have been utilised for manufacture of sugar. The Labour Court referred to several documents and figures mentioned therein. On appreciation and analysis of these documents, it came to the conclusion that the employer had permitted the members to sell sugar cane outside and it was sold through the Society. The amount of sale proceeds of sugar cane was kept with the employer as deposit. In view of this conclusion which was arrived at after appreciation of evidence, the Labourt Court held that the shortage of sugar cane was not the result of natural forces but it was man-made shortage. The Labour Court also found that the employer could have ascertained the quantity of sugar cane available and could have prevented the members from selling sugar cane to others. In the opinion of the Labour Court, the employer could have started manufacturing activities. On this basis, the Labour Court came to the conclusion that there was *prima facie* case in favour of the workmen.

7. From the point of view, balance of convenience also, the Labour Court held that the workmen belonged to lower middle class of the society. They were in service of the establishment for a period of about 15 to 20 years. They were permanent workmen. If they were rendered jobless otherwise than in accordance with law, they would be put to untold hardship and suffering. Therefore, the Labour Court held that the management may take action of closure of undertaking or retrenching the workmen or putting the workmen on lay-off only after following the procedure of law particularly as provided in Secs. 25-M, 25-N and 25-O of the ID Act. Therefore, the Labourt Court suitably modified the interim relief granted earlier and

continued the *ad-interim* relief in terms of para 9(2) of the application. In application No. 88 of 1987 this order was passed on December 7, 1987. In Application No. 89 of 1987 it was passed on December 10, 1987 while in application No. 87 of 1987 it was passed on December 15, 1987. It is an undisputed position that all the three orders are almost indentical in substance and in words.

8. Against the aforesaid interim orders passed by the Labour Court, respondents-employers preferred revision applications under Sec. 85 of the Act before the Industrial Court, Rajkot. The Industrial Court heard the parties and decided all the three revision applications by a common judgment and order delivered on January 15, 1988. The Industrial Court reversed and set aside the interim order passed by the Labour Court and vacated the interim relief granted by the Labour Court in all the three applications. It is against this judgment and order passed by the Industrial Court that these three petitions under Art. 227 of the Constitution of India are filed by the Union of workmen respresenting the workmen in each sugar co-operative society.

9. After the petitions were filed and admitted, this Court (Coram : A. M. Ahmadi, J. as he then was and P. M. Chauhan, J.) passed order dated February 8, 1988 and directed the State Government to decide the question as to whether the respondents-establishments were seasonal in character or whether work was performed intermittently as provided under Sec. 25A(2) and Sec. 25K(2) of the ID Act. Thereafter on February 15, 1988, the Court passed the following order :

> "We have heard the learned Advocates for the concerned parties. The question whether an establishment is of seasonal character has been referred to the State Government for decision by our order of 8-2-1988. Unless this basic question is decided the question of application of Secs. 25-M, 25-N and 25-O cannot be decided one way or the other. In the meantime, therefore, till the State Government renders its decision, we direct that the workmen may be paid wages at the rate of 50% subject to adjustment, if need be in future from their wages or terminal benefits (in the case of those retire in the meantime) depending on the decision of the State Government. This interim arrangement will enure upto the date of the decision of the State Government. The above arrangement will take effect from February 1988. The order as to maintenance of *status quo* will lapse from tomorrow.
>
> Liberty to parties to seek further directions after the decision of the State Government is received".

Pursuant to the aforesaid order the workmen have been paid 50% of the wages during the period commencing from February 15, 1988 to May 9, 1988. Pursuant to the order passed by this Court on February 8, 1988, the State Government of Gujarat has rendered its decision on May 9, 1988. These decisions have been challenged by the Union of workmen by filing two different writ petitins, i.e., Special Civil Applications No. 6303 and 6304 of 1988. Both these petitions have been admitted and are pending final hearing. They are likely to be taken up for hearing very soon.

10. In all the three petitions, a common question of law is raised. What is the scope of revision before the Industrial Court under Sec. 85 of the Act ? In view of the language of Sec. 85 of the Act the power of superintendence conferred upon the Industrial Court is akin to the power of High Court under Art. 227 of the Constitution of India. Therefore, it is submitted that the Industrial Court could not

have reappreciated the evidence in revision applications. The Industrial Court at the most could have corrected the error apparent on the record, if there be any. In the instant case, the Industrial Court has reappreciated the evidence and has, therefore, exceeded the jurisdiction conferred upon it. The learned Counsel appearing for the respondents submitted that the finding arrived at by the Labour Court that the shortage of sugarcane was man-made was based on the reading of certain documents on record. It is submitted that the Industrial Court has come to a different finding on the basis of the same evidence. The Industrial Court has come to this finding because in its opinion the Labour Court has committed material irregularity. It is also submitted that according to the Industrial Court, the quality of sugarcane was inferior and it was not fit for manufacture of sugar. In his submission, the Industrial Court had acted within the ambit of powers conferred upon it. It was also submitted that the powers of this Court under Art. 227 of the Constitution are very limited and, therefore, this Court should not disturb the order passed by the Industrial Court in exercise of its revisional power under Sec. 85 of the Act.

11. In order to decide the aforesaid controversy, let us examine certain provisions of the Act. The Labour Court has power to decide certain disputes which have been mentioned in Sec. 78 of the Act. Against cetain decisions that may be made by the Labour Court appeal is provided under Sec. 84. It is an undisputed position that against interim order passed under Sec. 119D of the Act appeal dies not lie to Industrial Court as provided under Sec. 84. Section 119D confers power on Labour Court to pass interim orders as it may consider just and proper. Section 85 of the Act provides that Industrial Court shall have superintendence over Labour Courts. Since the controversy is with regard to the scope of the powers of the Industrial Court under Sec. 85 of the Act, it would be proper to reproduce the section itself. Section 85 of the Act reads as follows :

> "85. (1) The Industrial Court shall have superintendence over all Labour Courts and may-
>
> (a) call for returns;
>
> (b) make and issue general rules and prescribe forms for regulating the practice and procedure of such Courts in matters not expressly provided for by this Act, and in particular, for securing the expeditious disposal of cases;
>
> (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts;
>
> (d) settle a table of fees payable for process issued by a Labour Court or the Industrial Court.
>
> (2) The Industrial Court may, by order in writing and for reasons to be stated therein withdraw any proceeding under this Act pending before a Labourt Court and transfer it for disposal to another Labour Court which may, subject to any special directions in the order of trasfer, proceed in the matter either *de novo* or from the stage at which it is so trasferred."

If one compares the provisions of Art. 227 of the Constitution of India with the language of Sec. 85 of the Act, it becomes clear that the powers of superintendence conferred upon Industrial Court are similar to the powers of superintendence conferred upon High Court under Art. 227 of the Constitution of India. The

difference is that the powers of superintendence of High Court are in relation to all Courts and Tribunals throughout the territory in relation to which it exercises jurisdiction, while the powers of superintendence of Industrial Court are in relation to "all Labour Courts".

12. The question as regards the scope of powers under Sec. 85 of the Act came up for consideration before Division Bench of the Bombay High Court in the case *Sree Talkies v. Industrial Court, Maharashtra*, reported in 1970 LIC 1354. In that case an employee of the cinema talkies filed application before the Labour Court making grievance that his services were illegally terminated and he was unlawfully prevented from discharging the duties as employee. The Labour Court rejected the application. Against the decision of the Labour Court appeal under Sec. 84 of the Act was preferred before the Industrial Court. The Industrial Court allowed the appeal and held that the employer was under duty to hold inquiry even after serving show cause notice and take suitable action after holding the inquiry. The Industrial Court, therefore, reversed and set aside the order of the Labour Court and remanded the matter for disposal according to law. Against this order of the Industrial Court a petition under Art. 227 of the Constitution of India was preferred before the Bombay High Court. It was contended that no appeal is provided under Sec. 84 as far as decisions rendered in applications under Sec. 78(1) of the Act are concerned. This contention was upheld by the Bombay High Court. However, the Court considered the powers of the Industrial Court under Sec. 85 of the Act. In para 8 of the reported decision the Bombay High Court has observed that the powers of superintendence conferred upon Industrial Court under Sec. 85 of the Act were almost similar to that of the power of High Court under Art. 227 of the Constitution of India. The Division Bench of the Bombay High Court has observed as follows :

> "This power of superintendence appears *prima facie* to be unlimited and the language of Sec. 85 is almost identical with the languge of Art. 227 of the Constitution. Now the scope of the power of superitendence has been well settled and in view of the language of Sec. 85 of the Bombay Act it will be only reasonable to hold that the Industrial Court possesses powers to interfere with the orders of the Labour Courts, provided any errors apparent on the face of the record are evident from any orders passed by such Labourt Courts and not in findings of facts recorded by them."

We are in respectful agreement with the aforesaid position of law expressed by the Division Bench of the Bombay High Court.

13. The scope and width of revisional powers are to be considered by the language of the statute which provides for revision. This is the law laid down by Hon'ble Supreme Court in the case of *Ram Dass v. Ishar Chander & Ors.*, reported in 1988 (3) SCC 131. In paras 13, 14 and 15 of the reported decision the Supreme Court has considered the procisions of E. P. Urban Rent Restriction Act, 1949. In the context of the provisions of Sec. 15(5) of the said Act it was held that the High Court had much wider jurisdiction because the language of Sec. 15(5) of the Act empowered the High Court to satify itself as to the legality and propriety of the order under revision. As far as the nature and scope of revisional jurisdiction and appellate jurisdiction is concerned, the Hon'ble Supreme Court referred to its

decision in *Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar,* reported in 1980 (4) SCC 259 thus :

> "Appeal" and "revision" are expressions of common usage in Indian statute and the distinction between "appellate jurisdiction' and "revisional jurisdiction" is well known though not well defined. Ordinarily, appellate jurisdiction involves a rehearing, as it were, on law as well as fact and is invoked by an aggrieved person. Such jurisdiction may, however, be limited in some way as, for instance has been done in the case of second appeal under the Code of Civil Procedure, and under some Rent Acts in some States. Ordinarily, again, revisional jurisdiction is analogous to a power of superintendence and may sometimes be exercised even without its being invoked by a party. *The extent of revisional jurisdiction is defined by the statute conferring such jurisdiction* ..... Revisional jurisdiction as ordinarily understood with reference to our statutes is always included in appellate jurisdiction but not *vice versa.* The question of the extent of appellate or revisional jurisdiction has to be considered in each case with reference to the language employed by the statute." (Emphasis supplied).

After referring to the aforesaid decision the Hon'ble Supreme Court held that in that particular case the High Court was conferred with much wider jurisdiction and it could reappraise evidence if the finding of the appellate Court were found to be infirm in law. However, the law laid down by the Supreme Court is that the scope and width of powers of revisional authority is required to be determined by the language of the statute which confer such jurisdiction.

14. In the instant case, the revisional jurisdiction of Industrial Court is conferred by Sec. 85 of the Act. As indicated hereinabove it is analogous to the provisions of Art. 227 of the Constitution of India. Therefore, it would be necessary to examine the scope of powers of High Court under Art. 227 of the Constitution of India. In this connection reference may be made to a decision of the Supreme Court in the case of *Khalil Ahmed v. Tufilhussein Somasbhai,* reported in AIR 1988 SC 184. In para 13 of the decision the Supreme Court has referred to its earlier decisions in the case of *Venkatlal G. Pittie v. Bright Bros. (Pvt.) Ltd.,* AIR 1987 SC 1939, and *Beopar Sahayak (P) Ltd. v. Vishwa Nath,* AIR 1987 SC 2111. Thereafter, it observed that where it cannot be said that there was no error apparent on the face of the record, the error if any has to be discovered by long process of reasoning, the High Court should not exercise jurisdiction under Art. 227 of the Constitution. In this connection the Supreme Court has also referred to its decision in the case of *Satyanarayanan Laxminarayanan Hegde v. Mallikarjun Bhavanappa Tirumale,* AIR 1960 SC 137 and thereafter the Supreme Court observed as follows :

> "Where two views are possible and the trial Court has taken one view which is a possible and plausible view merely because another view is attractive, the High Court should not interfere and would be in error in interfering with the finding of the trial Court or interfering under Art. 227 of the Constitution over such decision".

15. Here reference may be made to decision the Supreme Court in the case of *Mohd. Yunus v. Mohd. Mustaqim,* reported in AIR 1984 SC 38. In para 6 and 7 of the decision the Hon'ble Supreme Court has observed that mere wrong decision without anything more is not enough to attract jurisdiction of the High Court under Art. 227. Supervisory jurisdiction conferred upon the High Court under Art. 227 of the Constitution is limited to "seeing that the inferior Court or Tribunal functions

within the limits of its authority" and not to correct error apparent on the face of the record, much less error of law. The Hon'ble Supreme Court further observed that in the case before it (1) there was no error of law, much less an error apparent on the face of the record; (2) there was no failure on the part of the learned Subordinate Judge to exercise jurisdiction; (3) nor did he (learned Subordinate Judge) act in disregard of the principles of natural justice; (4) nor was the procedure adopted by him not in consonance with the procedure established by law. Thereafter the Hon'ble Supreme Court in para 7 of the judgment has observed :

> "In exercising supervisory power under Art. 227 High Court does not act as appellate Court or tribunal. It will not review or reweigh the evidence upon which determination of the inferior Court or tribunal purports to be based or to correct errors of law in the decision."

16. The aforesaid decision of the Hon'ble Supreme Court indicate the scope of the powers of the High Court in exercise of powers under Art. 227 of the Constitution of India. In view of the identical language of Sec. 85 of the Act, the scope of revisional power of Industrial Court will be the same as that of the High Court, under Art. 227 of the Constitution of India. Apart from other aspects one thing is very clear that it is not open to the authority conferred with power of superintendence analagous to the powers under Art. 227 of the Constitution of India, to reweigh or reappreciate evidence and or to prefer another view if another view is preferable or plausible. From the parameters of the powers laid down by the Hon'ble Supreme Court let us examine the question as to whether the Industrial Court has exceeded its jurisdiction under Sec. 85 of the Act or not.

17. The Labour Court in terms held that it was not open to it to decide as to whether the establishment was seasonal in character or not. This decision was arrived at by the Labour Court in view of the provisions of Sec. 25K(2) of the ID Act. The Industrial Court in para 14 of its order discussed this aspect elaborately and came to the conclusion that it did find it necessary to obtain order of the appropriate Government under Sec. 25-K(2) on the question as to whether the industrial establishment is seasonal in character or not. On this basis, it came to the conslusion that the provisions of Secs. 25-M, 25-N and 25-O of the ID Act were not applicable to the opponent establishments.

18. Sec. 25-K occurs in Chapter V-B of the ID Act. It relates to special provisions relating to lay off, retrenchment and closure in certain establishments. Sec. 25K(2) provides that if a question arises whether an industrial establishment is of a seasonal character or whether work is performed therein only intermittently, the decision of the appropriate Government thereon shall be final. It is not understood how the Industrial Court could have come to the finding that it was not necessary to obtain the decision of the appropriate Goverment on this question. The finding of the Labour Court on this point was in accordance with law. The Industrial Court has acted without jurisdiction in giving decision on the question has to whether the establishment was seasonal in character or not. In view of the provisions of Sec. 25K of the ID Act, such disputes were reguired to be decided by the appropriate Government. Such decision of the appropriate Government has been made final by the legislature itself. This is the first infirmity in the order of the Industrial Court.

19. The Labour Court proceeded to examine the question with regard to applicability of Secs. 25M, 25N and 25-O of ID Act on the assumption that the said provisions were applicable. The Labour Court was justified in doing so because the industrial establishments, i.e., sugar factories were not declared to be industrial establishment of seasonal character. While dealing with this aspect the Industrial Court reappreciated the evidence on record. It dealt with different aspects of the availability of sugar cane. The Industrial Court elaborately discussed the evidence on this point, referred to the figures of sugar cane which was made available in preceding two years. Then it again referred to the estimated figures supplied by the District Registrar; then it held that the figures supplied by the District Registrar were estimated figures and therefore, the same cannot be treated as giving indication of availability of sugar cane because they were held to be uncertain. The finding on this aspect was arrived at by the Labour Court on the basis of this very evidence. This evidence has been reappreciated by the Industrial Court without indicating any error apparent on the face of the record. The Industrial Court has not come to the finding that while appreciating evidence the Labour Court had applied erroneous principles of law or had committed gross error in appreciating the evidence so as to call for interference in exercise of its powers of superintendence.

20. Again the Industrial Court referred to the rain-fall in Saurashtra area. It proceeded on the footing that it was accepted fact (માન્ય હકિકત છે.) that in the monsoon season of 1987-88 the rain-fall was very much meagre. This observation is made without there being any evidence on record. The expression "accepted position" means what ? Accepted by whom? Nothing is indicated in the order that it was accepted by the Union of employees. It was on the contrary the case of the employees that crop of sugar cane was available and it was being sold in the market and that too with the permission and connivance of the employers. With regard to the water level having gone down in wells also observations have been made by the Industrial Court without there being any evidence. On this aspect also the Industrial Court has reappreciated and reweighed the evidence. In fact, as far as rain -fall and the water level of the wells in the area is concerned, the Industrial Court has given finding without there being any evidence at all.

21. As far as the question of payment of wages during the forced unemployment period is concerned, the Industrial Court held that the workmen would be entitled to full wages during the period of lay off. However, while making these observations, it has forgotten that it was not the case of the employers that the workmen were being laid off. Therefore, observation made in this behalf is also erroneous.

22. The Industrial Court referred to the declaration made on behalf of the employers that they were not closing down the establishment nor they intended to retrench the workmen, but they merely wanted to suspend the operations. It is difficult to understand if the words "suspension of operation"could mean anything else, except closure of the undertaking. When operation of a factory is suspended, all that happens is that the manufacturing activity of the factory is not in operation. Similarly, when an establishment is closed, manufacturing activity will not be in operation. The phrase "suspension of operation" is merely user of a different phraseology under the belief that by using different words one can get out of the

clutches of law. But mere user of different phraseology cannot mean that in substance it is not closure. Be that as it may. We do not express any final opinion on the question of the phrase "suspension of operation" because the question directly does not arise in this petition. As far as this petition is concerned, it is evident that by adopting this approach the Industrial Court has entered in the realm of appreciation of evidence which was not permissible to do under the provisions of Sec. 85 of the Act.

23. Again the Industrial Court has referred to the standing orders of all the three different establishments and has come to the finding that the respondents-employers had power to lay off the workmen as per the relevant provisions of the Standing Orders. Even if there be such power the same can be exercised only in accordance with law, i.e., Sec. 25-M of the ID Act.

24. The Industrial Court in para 20 of the order has observed that approach letter was written on November 4, 1987 while applications were filed on November 11, 1987. Therefore, it was held that thee applications were premature inasmuch as they were filed before expiry of 15 days of the receipt of the approach letter. This view is patently erroneous. Such application cannot be rejected on the ground that application were filed before expiry of 15 days. This is the principle laid down by Division Bench of this High Court in the case of *Amarsinh Swaroopsinh v. Jagdish Processors*, reported in [1993 (2)] XXXIV (2) GLR 1398. As held therein, if application is filed before expiry of 15 days from the date of receipt of the approach letter the Labour Court would not be in a position to proceed further with the application. Only after expiry of the period of 15 days the Labour Court can proceed with the application. In case the application is filed within the prescribed period, the Labour Court may and should refrain from passing any order on the application. The application can be proceeded with by the Labour Court only after ascertaining as to whether agreement could be arrived at between the parties within prescribed period of 15 days or within such period as might have been mutually fixed by the parties concerned. The Division Bench has, after examining relevant provisions of the Act and the Rules come to the conclusion that the provisions of Sec. 42(4) of the Act and Rule 53 of the Rules were in relation to the procedural matters. This provision is not with respect to any substantial right and obligation of the parties. Such provisions were required to be considered directory unless by necessary implication it could be shown that the intention of the Legislature was to make the same mandatory. Therefore, the Division Bench has held that the prescribed period of 15 days is not an iron-clad rigid time limit. If the application is filed within the prescribed period, it may be open to the employer to point out to the Labourt Court that the application has been filed, say on 7th day of the receipt of the approach letter or on 10th day or any time during the balance of the prescribed period, agreement has been arrived at in respect of change. If the employer proves that within the balance period the agreement has been arrived at, then only the application may be liable to be rejected. In para 21 of the decision the Division Bench has held that all that the Legislature mandates is that in respect of the change in question there should not have been any agreement within the prescribed period. Thus, in view of the law laid down by this Court, the finding arrived at by the Industrial Court

that the main applications before the Labour Court were not maintainble is not correct. This is an error apparent on the face of the record as far as the decison of Industrial Court is concerned. Therefore, also this High Court has to exercise its power under Art. 227 of the Constitution of India.

25. Again, it may be noted that the case of the employees was that the applications were in relation to illegal change as defined under Sec. 46 of the Act. As far as the applications in relation to the illegal change is concerned, provisions of Sec. 42(2) are not attracted. Therefore, in such cases no approach letter as provided under Sec. 42(2) of the ID Act is required to be addressed. However, we may make it clear that we are not deciding the question as to whether the application is in relation to illegal change or it is in relation to change only. We have referred to this aspect only with a view to indicate that even if it is considered to be an application in relation to change which may require approach letter as provided under Sec. 42(4) read with Sec. 78(1)(a)(i), then also the decision of the Industrial Court is contrary to law laid down by this Court.

26. Here it may be noted that as stated at the Bar, Applications No. 88 of 1987, 89 of 1987 and 87 of 1987 are pending before the Labour Court. Application No. 87 of 1987 relating to Talala Sugar Factory was dismissed for default and the original applicants have filed application for restoration and the same is pending. Thus, all the three proceedings are pending before the Labour Court at one or the other stage. Since the main applications are pending, it needs to be clarified that the observations made by this Court in the course of this judgment as regards the conclusion arrived at by the Industrial Court on factual aspects, the same shall not be taken into considerations finally. In short, the applications shall be decided by the Labour Court on merits in accordance with law on the basis of the evidence which may be led before the Labour Court.

27. In above view of the matter, it becomes evident that the Industrial Court has exceeded its jurisdiction while exercising the powers of superintendence under Sec. 85 of the Act. Therefore, the impugned decision rendered by the Industrial Court in revision applications No. 2, 3 and 4 of 1987 are required to be quashed and set aside and the same are hereby quashed and set aside. In view of the order passed by this Court on February 8, 1988 and February 15, 1988 which has been reproduced hereinabove in para 9, it is further directed that the payment of 50% of wages made to the workmen concerned will be subject to adjustment, if need be, in future from the wages of the workmen concerned or the terminal benefits (in the case of those who retired in the meantime) depending upon the decision of this Court in Special Civil Application Nos. 6303 and 6304 of 1988. Subject to the aforesaid clarifications, the petitions are allowed. Rule made absolute accordingly in each petition with no order as to costs.

(ATP) *Rule made absolute.*

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