SUPREME COURT OF INDIA

Before :- S.B. Majmudar and U.C. Banerjee, JJ.

Civil Appeal No. 7764 of 1997. D\d. 16.12.1999

Management of M.C.D. - Appellant

Versus

Prem Chand Gupta - Respondents

For the Appearing Parties :- Ms. Binu Tamta, Mr. Ranjeet Kumar, Mr. G.D. Gupta and Mr. Ashok K. Mahajan, Advocates.

Cases referred :

1. Senior Superintendent R.M.S., Cochin and another v. K.V. Gopinath Sorter, 1973(3) SCC 867.

2. Union of India and others v. Arun Kumar Roy, 1986(1) SCC 675.

3. Raj Kumar v. Union of India and others, 1975(4) SCC 13.

4. The State Bank of India v. Shri N. Sundara Money, 1976(1) SCC 822.

5. Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court, Chandigarh and other etc. etc., 1990(3) SCC 682.

6. Birla VXL Ltd. v. State of Punjab and others, 1999(1) SCT 263 (SC).

7. Rajasthan Adult Education Association and another v. Ashoka Bhattacharya (Km.) and another, 1998(1) SCT 332 (SC).

8. Sunilkumar S.P. Sinha v. Indian Oil Corporation Ltd., Delhi and another, 1983 Vol. 16 Lab.I.C. 1139.

JUDGMENT

S.B. Majmudar, J. - This appeal on grant of special leave to appeal under Article 136 of the Constitution of India by the Management of Municipal Corporation of Delhi against Respondent No. 1, who is the only contesting party, has brought in challenge the judgment and order of the Division Bench of the High Court of Delhi in Letters Patent Appeal No. 93 of 1982 by which the High Court directed reinstatment of Respondent No. 1 in service with continuity entitling him to receive all salaries and allowances from the appellant-Corporation. In order to appreciate the grievance of the appellant-Corporation against the said order, a few relevant introductory facts need to be noticed at the outset.

Background Facts :

2. Respondent No. 1 (hereinafter referred to as the `respondent-workman') was appointed by the appellant-Corporation on the temporary post of Section Officer (Civil) on 5.5.1964 with the condition that he would be considered for confirmation after one year of satisfactory service. It is the case of the appellant-Corporation that the respondent-workman was never considered for confirmation. On 1.8.1964 he was informed that his services were not required by the Corporation w.e.f. 1.9.1964. Thus he ceased to be the employee of the appellant-Corporation from that date. However, from 1.10.1964 he was re-appointed on a vacant post caused by the termination of services of another employee. It is not in dispute between the parties that he contained to be in the service of the appellant-Corporation without any break till 31.3.1965. According to the appellant-Corporation, he was again re-employed on 1.4.1965 and he continued to be in service till 29.4.1966 when his services were terminated. It becomes at once clear that though, according to the appellant-Corporation, the respondent-workman's services were terminated on 31.3.1965 and he was re-employed on the next day i.e. 1.4.1965, in substance there was no break in his service. It is, therefore, to be taken as a well established fact on record that from 1.10.1964 till 29.4.1966 for about 18 months the respondent-workman was in continuous service as a temporary Section Officer (Civil) and was working on a vacant substantive post caused by the termination of services of another employee.

3. On account of the aforesaid termination of service, the respondent-workman raised an industrial dispute and got it referred by the appropriate Government for adjudication to the Labour Court, Delhi. The terms of reference were as follows :

"Whether Prem Chand Gupta, Section Officer (Overseer) has been wrongly and\or illegally discharged from service and if so, what relief is he entitled ?"

The Labour Court, after hearing the parties, came to the conclusion that as the respondent-workman's services were terminated by the appellant-Corporation in exercise of its powers under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1949 (hereinafter referred to as the `Rules') and the said action of the appellant-Corporation was not punitive in nature, the respondent-workman was not entitled to any relief. However, the Labour Court further held on facts that the respondent-workman could be said to have been terminated from service without payment of retrenchment compensation as a condition precedent to such retrenchment. Still it was held that the said retrenchment could not be covered under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the `I.D. Act') as he was not terminated due to the staff being in excess of the requirement of the Corporation. Thus even on the ground of violation of Section 25-F he was not entitled to any relief. The said decision was rendered on 7.1.1970.

4. Being aggrieved by the said decision of the Labour Court, the respondent-workman filed a writ petition under Article 226 of the Constitution of India before the High Court at Delhi. The learned Single Judge of the High Court dismissed the said writ petition and confirmed the findings recorded by the Labour Court. The learned Single Judge agreeing with the Labour Court held that the respondent-workman's termination was as per Rule 5 of the Rules and also did not amount to any retrenchment as per Section 25-F of the I.D. Act. The writ petition was accordingly dismissed by the learned Single Judge on 8.4.1981.

5. Being aggrieved by the said decision of the learned Single Judge, the respondent-workman filed Letters Patent Appeal No. 93 of 1982 before the Division Bench of the High Court. As noted earlier, the Division Bench of the High Court allowed the said appeal by taking the view that the respondent-workman's termination was contrary to Rule 5 of the Rules which was analogous to Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (hereinafter referred to as the `latter Rules'). For taking that view, the Division Bench of the High Court in the impugned judgment heavily relied upon a decision of this Court in the case of ***Senior Superintendent R.M.S., Cochin and another v. K.V. Gopinath Sorter, 1973(3) SCC 867.*** As the Division Bench reached the aforesaid conclusion, it did not examine another ground placed for consideration by the respondent-workman to the effect that the impugned termination was violative of Section 25-F of the I.D. Act. The Letters Patent Appeal was allowed accordingly and the relief, as noted earlier, was ordered to be granted to the respondent-workman.

Rival Contentions :

6. Learned counsel, Ms. Binu Tamta, appearing for the appellant-Corporation vehemently contended that the Division Bench of the High Court was patently in error in relying upon the judgment of this Court in Senior Superintendent, R.M.S., Cochin and another v. K.V. Gopinath, Sorter's case (supra) as the said decision was expressly overruled by treating it to be *per incuriam* by a later bench of this Court in the case of ***Union of India and others v. Arun Kumar Roy, 1986(1) SCC 675.*** It was submitted by her that on 29.4.1966 when the respondent-workman's services were terminated, Rule 5 of the Rules was not in force but only Rule 5 of the latter Rules as duly amended had come into force. By the latter Rules, the earlier Rules were superseded and, therefore, the reference to the Rules in Service Regulations of 1959 framed by the appellant-Corporation had to be treated as reference to the superseding and repealing rules i.e. the latter Rules and as per Rule 5 of the latter Rules then applicable, it was not necessary for the appellant-Corporation to pay compensation simultaneously with the order of termination and it could be paid even later on. Thus the amended Rule 5 could be said to have been duly complied with by the appellant-Corporation. That as this aspect was not noticed by the Division Bench, un-amended Rule 5 of the latter Rules was erroneously pressed in service for voiding the termination order. The judgment under appeal, therefore, suffers from a patent error of law. So far as the alternative contention about violation of Section 25-F of the I.D. Act is concerned, it was submitted by her that Section 25-F did not apply to the facts of the present case as the respondent-workman was a temporary hand and was not confirmed in service. That the conditions for applicability of Section 25-F were not fulfilled on the facts of the present case and as his appointment was for a fixed period, as seen from his appointment order dated 5.5.1964, Section 25-F did not apply.

7. Learned counsel for the respondent-workman, Shri Gupta, on the other hand, submitted that the service regulations framed by the Corporation referred to the Rules of 1949. Thus, these Rules were incorporated in the service regulations by reference and as Rule 5 of the said Rules had not undergone any amendment as was undergone by Rule 5 of the latter Rules, the decision of this Court in Senior Superintendent, R.M.S. Cochin and another v. K.V. Gopinath, Sorter's case (supra) squarely got attracted as it was rendered with reference to un-amended Rule 5 of the latter Rules which was *pari*

materia with Rule 5 of the Rules of 1949 and consequently the Division Bench had rightly held the termination of the respondent-workman to be violative of Rule 5 of the Rules. It was alternatively contended that the Labour Court on facts had found that the condition precedent to retrenchment of the respondent-workman was not satisfied when his services were terminated on 29.4.1966. That by that time, in any case, he had completed 18 months of continuous service starting from 1.10.1964 which obviously was for more than 240 days in a calendar year immediately preceding 29.4.1966. That there is no dispute between the parties that retrenchment compensation was not offered to the respondent-workman simultaneously with the termination order, though it was a condition precedent and hence the termination became null and void. He submitted that though factually the Labour Court held that Section 25-F would have been violated, it was in error when it took the view that because termination was not on account of the respondent-workman being an excess staff there was no retrenchment within the meaning of Section 25-F of the I.D. Act. He submitted that this view of the Labour Court relying upon earlier legal position cannot be sustained in view of the later decisions of this Court. Therefore, in any case, it should be held that the impugned termination was null and void and consequently the final order rendered by the Division Bench remains well justified on record of this case and the appeal accordingly deserves to be dismissed.

8. In the light of the aforesaid rival contentions, the following points arise for our consideration :

1. Whether impugned termination order of the respondent-workman dated 29.4.1966 was violative of Rule 5 of the Rules or for that matter Rule 5 of the latter Rules ?

2. If the decision on the first point is in negative and in favour of the appellant-Corporation whether the impugned order of termination can be said to have violated Section 25-F of the I.D. Act and consequently the final decision rendered by the Division Bench can be sustained on that ground ?

3. What appropriate final order ?

We shall deal with aforesaid points seriatim.

Point No. 1:

9. It has to be kept in view that the Service Regulations of 1959 framed by the Government of India under Clauses (a) and (e) of Sub-section (1) of Section 98 read with Sub-Section (1) of Section 480 of the Delhi Municipal Corporation Act, 1957 defined `Rules' to mean, amongst others, the Rules of 1949. We may turn to Rule 5. The relevant provisions of the said Rule 5 of 1949 Rules read as under :

"5(a) The service of a temporary government servant who is not in *quasi-permanent* service shall be liable to termination at any time by notice in writing given either by the government servant to the appointing authority, or by the appointing authority to the government servant. ❒3;❒3_ ❒

(b) The period of such notice shall be one month, unless otherwise agreed to by the

Government and by the government servant :

Provided that the service of any such government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice or as the case may be, for the period by which such notice falls short of one month or any agreed longer period..."

A mere look at this Rule shows that if the service of a temporary government servant has to be terminated forthwith without waiting for one month, then as laid down by the first proviso to the said rule, concerned government servant has to be given simultaneous payment of the sum laid down therein. It is this payment as a condition precedent that can snap forthwith the relationship of employer and employee. It, therefore, becomes clear that any order of termination which is not simultaneously supported by payment of requisite amount as laid down by the proviso would not result in legal termination of the service of the concerned government servant as per the said Rule. It is not in dispute between the parties that along with the termination order the requisite compensation was not simultaneously offered by the appellant-Corporation to the respondent-workman. The Division Bench of the High Court took the view in the light of the said Rule that as it was analogous to Rule 5 of the said Rules of 1965 and as the latter Rule also provided a similar condition precedent to termination of service of temporary government servant, the termination of the respondent-workman was illegal and void. However, what was missed by the Division Bench, with respect was the salient fact that the respondent-workman's services were terminated on 29.4.1966 when the Rules of 1949 were no longer on the statute book. They stood superseded by the latter Rules of 1965. It is, of course, true that the service regulations referred to 1949 Rules but those Rules were superseded and got repealed and re-enacted under Article 309 of the Constitution of India by the President of India by promulgating 1965 Rules consequently as laid down by Section 8 of the General Clauses Act of 1897, reference in the service regulations of the appellant-Corporation to 1949 Rules will have to be read as reference to the re-enacted Rules of 1965 which had repealed the earlier Rules and had re-enacted 1965 Rules. Section 8 of the General Clauses Act, 1897 reads under :

"8. Construction of references to repealed enactments - (1) Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted."

Once this conclusion is reached, the result becomes obvious. We have to treat the relevant rules as defined by Regulation 2 of 1959 to mean the latter Rules of 1965 which operated in 1966 April when the impugned termination order was passed against the respondent-workman. In 1966, the relevant Rule of the latter Rules was Rule 5 which reads as under :

"5. Termination of temporary service - (1)(a) The services of temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing

authority or by the appointing authority to the Government servant ;

(b) The period of such notice shall be one month :

Provided that the services of any such Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of the services or as the case may be for the period by which such notice falls short of one month."

The aforesaid Rule 5 of the latter Rules as amended operated from 1st of May, 1965. The very same Rule prior to its amendment read as under :

"5. *Termination of Temporary Service.* - (1)(a) The service of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month :

Provided that the services of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of the one month."

A mere look at the earlier un-amended Rule 5 of the latter Rules shows, as laid down by its the then un-amended proviso, that service of temporary government servant could not be terminated forthwith without payment to him of the compensation equivalent to the sum provided therein. Such offer of compensation, therefore, was a condition precedent to such termination prior to the amendment of the proviso to the said Rule with retrospective effect by the latter amended Rule, as seen above. The amended proviso to Rule 5 of the latter Rules with effect from 1.5.1965 deleted the words "by payment to him" which were earlier found in the un-amended proviso to Rule 5(1) of the latter Rules. Instead after the word "forthwith" the words "and on such termination the government servant shall be entitled to claim" were added. Thus what was condition precedent under the un-amended proviso to Rule 5 of the Rules became a condition subsequent. Consequently, after 1.5.1965, as per Rule 5 of the latter Rules there remained no necessity for the employer while forthwith terminating the services of temporary government servant to offer him compensation simultaneously with the termination order. Such service could be terminated forthwith and termination would immediately come into force. Payment of appropriate compensation as per the proviso to Rule 5 on or after 1.5.1965 could be effected even later on though, of course, within reasonable time thereafter. This change in the Rule with effect from 1.5.1965 directly got attracted on the facts of the present case as the respondent-workman's services were terminated after this amendment came into force as his services were terminated on 29.4.1966, as seen earlier. The Division Bench of the High Court placed reliance on the decision of this Court in Senior Superintendent, R.M.S., Cochin & Anr. v. K.V.

Gopinath Sorter's case (supra) which had unfortunately not noticed the amended provision of the proviso of Rule 5 of the latter Rules and that is why the said decision was treated to be *per incuriam* by two later decision of this Court. In the case of ***Raj Kumar v. Union of India and others, 1975(4) SCC 13,*** Alagiriswami, J. referring to the aforesaid amendment to Rule 5(1) of the latter Rules made the following pertinent observations in this connection in para 2 of the report :

"2. It was not brought to the notice of the High Court that the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, had been amended with retrospective effect from May 1, 1965."

After quoting the amended Rule 5 of the latter Rules, it has been observed as under :

"The effect of this amendment is that on May 1, 1965, as also on June 15, 1971, the date on which the appellant's services were terminated forthwith it was not obligatory to pay to him a sum equivalent to the amount of his pay and allowance for the period of the notice at the rate at which he was drawing them immediately before the termination of the services or as the case may be for the period by which such notice falls short. The government servant concerned is only entitled to claim the sums hereinbefore mentioned. Its effect is that the decision of this Court in Gopinath's case (supra) is no longer good law. There is no doubt that this rule is a valid rule because it is now well established that rules made under the proviso to Article 309 of the Constitution are legislative in character and therefore can be given effect to retrospectively. It follows that the decision of the Delhi High Court dismissing the appellant's writ petition is correct and this appeal will have to be dismissed."

The same view was taken in a later decision of this Court in the case of Union of India and others v. Arun Kumar Roy (supra) wherein Khalid, J. speaking for the two Judge Bench of this Court reiterated the view of this Court in the case of Raj Kumar v. Union of India (supra) for holding that the decision of this Court in Senior Superintendent, R.M.S., Cochin and another v. K.V. Gopinath, Sorter's case (supra) was no longer good law.

10. It must, therefore, be held that the impugned judgment of the Division Bench suffers from a patent error of law inasmuch as it relies upon the decision of this Court in Senior Superintendent, R.M.S., Cochin and another v. K.V. Gopinath, Sorter's case (supra) which has no longer remained a good law for deciding the validity of termination orders passed after 1.5.1965 when Rule 5 of the latter Rules got amended as aforesaid.

11. It is not possible to agree with the contention of learned counsel for the respondent-workman that only 1949 Rules would apply to the facts of the present case as they were incorporated by reference in the regulations. As seen earlier, reference to 1949 Rules even for the purpose of incorporation would be treated as reference to the latter Rules of 1965 which had superseded 1949 Rules resulting in repealing of 1949 Rules and their re-enactment under Article 309 of the Constitution of India by 1965 Rules as clearly indicated by Section 8 of the General Clauses Act, 1897.

12. But even that apart Regulation 4(1) of the very same Service Regulations of 1959

clearly provides as follows :

"4(1) Unless otherwise provided in the Act or these regulations, the Rules for the time being in force and applicable to Government servants in the service of the Central Government shall, as far as may be, regulate the conditions of service of municipal officers and other municipal employees."

excepted matters mentioned therein are not relevant for our present purpose. It, therefore, becomes clear that on a combined operation of Regulation 2(b)(ii) and Regulation 4(1) of the Service Regulations, 1959, the relevant Rules which were in force in 1966 when the respondent-workmen's services were terminated were the letter Rules of 1965 and could not be earlier Rules of 1949 which had got superseded and had ceased to exist on the statute book.

13. In this connection, one submission of learned counsel for the respondent-workman may be noted. He submitted that as laid down by Regulation 4(1), the Rules for the time being in force as mentioned therein would refer to only those Rules which were in force when Service Regulations of 1959 were promulgated and not any latter Rules. It is difficult to countenance this submission. Rules for the time being in force will have a nexus with the regulation of condition of service of the municipal officers at the relevant time as expressly mentioned in Regulation 4(1). Therefore, whenever the question of regulation of conditions of service of the municipal officers comes up for consideration, the relevant Rules in force at the time have to be looked into. This is the clear thrust of Regulation 4(1). Its scope and ambit cannot be circumscribed and frozen only to the point of time in the year 1959, when the Service Regulations were promulgated. If such was the intention of the framers of the Regulation, Regulation 4(1) would have employed a different phraseology, namely, "rules at present in force" instead of the phraseology "rules for the time being in force". The phraseology "rules for the time being in force" would necessarily mean rules in force from time to time and not rules in force only at a fixed point of time in 1959 as tried to be suggested by learned counsel for the respondent-workman.

14. As a result of the aforesaid discussion, it must be held that the termination of the respondent-workman from service on 29.4.1966 was not violative of amended Rule 5 of the latter Rules of 1965 which only applied in his case. Therefore, there was no obligation, on the part of the appellant-Corporation to simultaneously offer requisite compensation to the respondent-workman as a condition precedent to such termination and such compensation could be offered to him within reasonable time later on. The termination had to be treated to have come into force forthwith when the order of termination was passed and served on the respondent-workman. Non-payment of requisite compensation as per the said Rules even later on did not attract any invalidating consequences. The first point of determination, therefore, is held in negative in favour of the appellant and against the respondent-workman.

Point No. 2 :

15. Once Point No. 1 is held in favour of the appellant-Corporation, the impugned judgment of the Division Bench of the High Court would have been required to be set aside as it had rested only on the applicability of Rule 5 of the Rules read with Rule 5

of the latter Rules. As a consequence we would have been required to remand these proceedings to the High Court for reconsideration of the remaining points in the letters patent appeal of the respondent-workman, as these points have not been considered by the Division Bench. However, we are not inclined to do so especially when the impugned termination order is dated 29.4.1966. Thus, after passage of 33 years, it would be unfair and unjust to both the sides to keep the matter pending for further couple of years which would be the inevitable result of such a remand order. It is necessary for both the sides to know where they finally stand in connection with this litigation. We are also inclined to take this view because of the fact that for all these years, the respondent-workman has remained out of the job and if after a couple of years he becomes entitled to appropriate relief against the appellant-Corporation, apart from it being too harsh and even too late for him to resume duties, the appellant-Corporation also would be saddled with avoidable further costs and liability to pay back-wages to the respondent-workman. Thus, in order to shorten the litigation between the parties, we thought it fit to consider the alternative contention canvassed by Shri Gupta, learned counsel for the respondent-workman in connection with the impugned order. Accordingly, we proceed to deal with the alternative question whether the impugned termination order was in violation of Section 25-F of the I.D. Act or not.

16. To recapitulise, it is a well established fact on the record of this case that the respondent-workman though initially appointed for one year from 5.5.1964 on a temporary post of Section Officer (Civil) was continued in service after expiry of that year. His very appointment order of 5.5.1964 mentioned that he could be considered for confirmation after one year of satisfactory service. Even though he was never confirmed, the appellant-Corporation did not terminate his services but continued him in service. Not only that, but on 1.10.1964 after giving a short break in service and he was re-appointed against a vacant post caused by termination of service of another employee. Thus, at least from 1.10.1964 even though in temporary service, he continued to work on a vacant permanent post of Section Officer (Civil) and continued to serve as such for further 18 months up to 29.4.1966 when he was visited with the impugned termination order. By that time he had completed not less than 240 days of continuous service for one calendar year immediately preceding 29.4.1966 i.e. from 1.4.1965 to 29.4.1966. Consequently, Section 25-F of the I.D. Act, 1947 got squarely attracted in his case. It reads as follows :

"25-F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice.

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by appropriate Government by notification in the Official

Gazette.)"

It is not in dispute between the parties that these requirements were not complied with by the appellant-Corporation while terminating the respondent-workman's service. The Labour Court rightly held accordingly. However, having so held on facts, the Labour Court found that Section 25-F would not apply for the reason that the respondent-workman's services were not terminated because of his being an excess staff. The said reasoning of the Labour Court ran parallel to the earlier decisions of this Court which had taken such a view on interpretation of Section 25-F. But the said line of reasoning no longer held the field in the light of the later decisions of this Court. In the case of ***The State Bank of India v. Shri N. Sundara Money, 1976(1) SCC 822,*** a three Judge Bench of this Court interpreting Section 25-F read with Section 2(oo) of the I.D. Act, speaking through Krishna Iyer, J. in para 9 of the report clearly laid down that in Section 2(oo) the word `termination' for any reason whatsoever is the key word. Whatever the reason, every termination spells retrenchment. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. The said decision of the three Judge Bench was approved by a Constitution Bench of this Court in the case of ***Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court, Chandigarh and other etc. etc., 1990(3) SCC 682.*** In view of this settled legal position, therefore, it must be held that termination of services of the respondent-workman on 29.4.1966 which was admittedly not by way of punishment clearly amounted to retrenchment attracting Section 25-F of the I.D. Act.

17. Learned counsel for the appellant-Corporation, Ms. Binu Tamta, in order to salvage the situation invited our attention to a decision of this Court in the case of ***Birla VXL Ltd. v. State of Punjab and others, 1998(5) SCC 632 : 1999(1) SCT 263 (SC)*** and submitted that when the appointment is given for a fixed period, on expiry of the said period the appointment would cease by efflux of time and it could not be said to be a retrenchment. In the aforesaid case, a two Judge Bench of this Court was concerned with appointment order given to the third respondent before this Court on 1.1.1983 which clearly stated that it was appointment for two years up to 31.12.1984. When the said termination by efflux of time took place, Section 2(oo) of the I.D. Act had already got amended by insertion of exception Clause (bb) therein which reads as under :

"termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or;"

Thus, it was a case of automatic termination of employment in the light of the stipulation contained in the appointment itself. Such termination could not be treated as retrenchment in the light of the excepted category indicated by Clause (bb) inserted in Section 2(oo) by the amending Act of 1984. It has to be kept in view that respondent-workman's termination was prior to 1984 amendment to Section 25-F. Hence, it was squarely governed by the ratio of decision of this Court in case of The State Bank of India v. Shri N. Sundara Money (supra). It is, therefore, not possible to agree with the contention of learned counsel for the appellant that termination of the respondent-workman on 29.4.1966 would not be retrenchment. It has also be seen that even though

the earlier appointment of the respondent-workman was for one year from 5.5.1964 his re-appointment from 1.10.1964 was not for a fixed period and on the contrary it continued up to 18 months and it was against a clear vacancy of a permanent post caused on account of the termination of another employee. Consequently, reliance placed by learned counsel, Ms. Binu Tamta for the appellant-Corporation on the aforesaid decision of this Court is of no avail to her. She then invited our attention to a later decision of this Court in the case of ***Rajasthan Adult Education Association and another v. Ashoka Bhattacharya (Km.) and another, 1998(9) SCC 61 : 1998(1) SCT 332 (SC).*** In that case this Court was concerned with the termination of a probationer temporary servant on account of unsatisfactory performance. A probationer employee was found to have not satisfactory worked during his probation and her services were terminated w.e.f. 31.5.1989. This is also a case where after the amendment of Section 2(oo) by insertion of Clause (bb) from 1984 such termination of probationers for unsatisfactory work would remain outside the sweep of Section 25-F read with Section 2(oo). In the present case, as seen earlier, the termination was years back of 29.4.1966 when Section 2(oo)(bb) was not on the statute book. Reliance was then placed by learned counsel for the appellant-Corporation on a decision of a learned Single Judge of the Gujarat High Court in the case of ***Sunilkumar S.P. Sinha v. Indian Oil Corporation Ltd., Delhi and another, 1983 Vol. 16 Lab.I.C. 1139.*** This decision also cannot be of any avail to her for the simple reason that the said decision proceeded on its own facts. In para 14 of the report, it has been clearly mentioned by the learned Single Judge that the employee in that case was not a workman and again there was no evidence to show that all the requirements of Section 25-F were complied with for its applicability. It was a direct writ petition in the High Court and in absence of relevant data the said Section was held to be not applicable. The said judgment rendered on its own facts, therefore, cannot be pressed in service in the light of clear findings of fact reached by the Labour Court in the present case, which have remained well sustained on record, as seen by us earlier for applicability of Section 25-F to the impugned termination of the respondent-workman's services. As a result of the aforesaid discussion, it must be held that termination of the respondent-workman's service on 29.4.1966 was violative of Section 25-F of the I.D. Act and was, therefore, null and void. The second point for determination is answered in affirmative against the appellant-Corporation and in favour of the respondent-workman, subject to our decision about appropriate relief to be given to the respondent-workman as will be indicated while considering the last point for determination.

Point No. 3 :

18. We have now reached the stage for considering appropriate relief to be granted in the light of our findings on Point No. 2. Once it is held that termination of the respondent-workman on 29.4.1966 was null and void being violative of Section 25-F of the I.D. Act, the logical consequence would be that he would be entitled to be re-instated in service with continuity and in normal course would be entitled to full back-wages. However, in our view on the peculiar facts of this case, it will not be appropriate to grant full back-wages to the respondent-workman even though he will be entitled to be re-instated in service of the appellant-Corporation with continuity and all further consequential benefits on that score, save and except the grant of full back-wages, as indicated herein below.

19. The reasons for non-granting full back-wages from the date of his termination of 29.4.1966 till actual re-instatement pursuant to the present order can now be indicated. Firstly, for no fault of the contesting parties, the litigation has lingered on for more than three decades. The termination order was as early as on 29.4.1966 and after 33 years and more it is being set aside. To saddle the appellant-Corporation and its exchequer, which is meant for public benefit, with full back-wages for entire period would be too harsh to the appellant-Corporation. It is the delay in disposal of cases in the Courts that has created this unfortunate situation for both the sides. Respondent-workman is also not at fault as he was clamouring for justice for all these years. However, this delay in Court proceedings for no fault of either side permits us not to burden the appellant-Corporation, being a public body, with the full back-wages for the entire period of respondent-workman's unemployment, especially when for no fault of either side actual work could not be taken from the respondent-workman by the appellant-Corporation. It is true that the respondent-workman was always willing to work but he could not be permitted to work so long as the termination order stood against him. The Labour Court as well as the learned Single Judge upheld that order. Only the Division Bench set aside that order. This Court at SLP stage itself while granting leave stayed re-instatement order on 17.11.1997. Two more years since elapsed during the pendency of this appeal before this Court. All these factors together point in the direction of not saddling the appellant-Corporation, a public body, with the burden of entire full back-wages to be granted to the respondent-workman after the passage of 33 years since his order of termination. The second reason is that the respondent-workman for all these years could not have remained totally unemployed though there is no clear evidence that he was gainfully employed and was so well off that he should be denied complete backwages. But keeping in view the fact that for all these long years fortunately the respondent-workman had survived and has still two more years to reach the age of superannuation as we are told, not granting him full back-wages on the peculiar facts of this case, would meet the ends of justice. We, therefore, pass the following order :

1. The impugned order of the Division Bench of the High Court insofar as it holds that the termination order of the respondent-workman dated 29.4.1966 was violative of Rule 5 of the relevant Rules is set aside.

2. However, the final order passed by the High Court ordering re-instatement of the respondent-workman with continuity of service is upheld on the alternative ground holding termination of services of the respondent-workman on 29.4.1966 to be violative of Section 25-F of the I.D. Act.

3. So far as back-wages are concerned, the impugned order of the High Court is modified by directing that the respondent-workman will be entitled to get 50% of back-wages from the date of his terminating i.e. from 29.4.1966 till his actual re-instatment in service of the appellant-Corporation with continuity of service. The respondent-workman will also be entitled to all other consequential benefits including increments in the available time scale and revisions of the time scale, if any, and also further service benefits as per the rules and regulations of the appellant-Corporation being treated to have been in continuous service of the appellant-Corporation from 29.4.1966 all throughout till re-instatment. The appellant-Corporation shall reinstate the respondent-workman with continuity of service within 8 weeks from today and will also pay 50% back-wages as directed hereinabove within that period. The appellant-

Corporation will also grant all other consequential benefits to the respondent-workman in the light of this judgment. Appeal stands allowed as aforesaid with no order as to costs in the facts and circumstances of the case.

Appeal allowed.