SUPREME COURT OF INDIA

Harjinder Singh

Vs.

Punjab State Warehousing Corp.

C.A.No.587 of 2010

(G.S. Singhvi and Asok Kumar Ganguly, JJ.)

05.01.2010

ORDER

1. Leave granted.

2. This appeal is directed against order dated 6.2.2009 passed by the learned Single Judge of the Punjab and Haryana High Court in Writ Petition No.372 of 2001 whereby he modified the award passed by the Labour Court, Gurdaspur (for short, `the Labour Court') in Reference No.43 of 1996 and directed that in lieu of reinstatement with 50% back wages, the appellant herein shall be paid Rs.87,582/- by way of compensation.

3. The appellant was employed in the services of the Punjab State Warehousing Corporation (hereinafter described as `the corporation') as work charge Motor Mate with effect from 5.3.1986. After seven months, the Executive Engineer of the corporation issued order dated 3.10.1986 whereby he appointed the appellant as Work Munshi in the pay scale of Rs.350-525 for a period of three months. The same officer issued another order dated 5.2.1987 and appointed the appellant as Work Munshi in the pay scale of Rs.400-600 for a period of three months. Though, the tenure

specified in the second order ended on 4.5.1987, the appellant was continued in service till 5.7.1988 i.e., the date on which the Managing Director of the corporation issued one month's notice seeking to terminate his service by way of retrenchment. However, the implementation of that notice was stayed by the Punjab and Haryana High Court in Writ Petition No.8723 of 1988 filed by the appellant. The writ petition was finally dismissed as withdrawn with liberty to the appellant to avail remedy under the Industrial Disputes Act, 1947 (for short, `the Act'). After two months, the Managing Director of the corporation issued notice dated 26.11.1992 for retrenchment of the appellant and 21 other workmen by giving them one month's pay and allowances in lieu of notice as per the requirement of Section 25F(a) of the Act.

4. As a sequel to withdrawal of the writ petition, the appellant raised an industrial dispute which was referred by the Government of Punjab to the Labour Court. In the statement of claim filed by him, the appellant pleaded that the action taken for termination of his service by way of retrenchment is contrary to the mandate of Sections 25F and 25M of the Act and that there has been violation of the rule of last-come-first go inasmuch as persons junior to him were retained in service. In the reply filed on behalf of the corporation, it was pleaded that the appellant's service was terminated by way of retrenchment because the projects on which he was employed had been completed. It was also pleaded that the impugned action was taken after complying with Section 25F of the Act. However, it was not denied that persons junior to the appellant were retained in service.

5. The learned Presiding Officer of the Labour Court considered the pleadings of the parties and evidence produced by them and passed award dated 15.12.1999 for reinstatement of the appellant with 50% back wages.

The Labour Court held that even though the appellant was retrenched after complying with Section 25-F of the Act, the principle of equality enshrined in Section 25G of the Act was violated and persons junior to the appellant were allowed to continue in service. This is evident from paragraph 12 of the award, which reads as under:

"However, the contention of the AR of the workman about gross violation of the principles of equality as enshrined in Section 25G of the Act is full of substance. Ved Prakash, MW1, when cross-examined, admits that as per the salary record, the workman had drawn his monthly wages from 10.3.86 to 26.11.92 regularly in every month. He admits that the workman namely Nirmal Singh, Anju Gupta, Harbans Singh mentioned in the seniority list are juniors to the workman concerned and they are still working with the respondent. He further admitted that the work is existing with the respondent against which the workman was employed. He also admits that persons who were retrenchment have been reinstated in job through the different Courts and they are working with the respondent.

Therefore, the grievance of the WW workman get support from the statement of MW1 that juniors

to him namely Anju Gupta, Shubh Dhayan and Joginder Singh are still working with the respondent and that his statement has not been put to cross-examination and as such his version must be assumed to be correct in the light of seniority list, Ex.X1. No reason whatsoever was assigned by the respondent to dispute with the services of the workman while retaining juniors. Even it is so mentioned in the appointment orders Ex. WI to W3 that seniors of the workman can be terminated on ten days notice, does not mean principle of "last come, first go" as envisaged in sec. 25G of the Act are not required to be complied with. Reliance is placed upon a Supreme Court case reported as 1999 (2). SCT. Page 284: Samishta Dube vs. City Board: Etaway: that wherein it was held that "rule of`first come, last go' could be deviated by the employer in cases of lack of efficiency or loss of confidence-But burden is on the employer to justify deviation. No such attempt made by the respondent Employer High Court was not correct in stating that rule of seniority is not applicable to daily wagers. There is clear violation of sec.25 G of the Act. Appellant is entitled for reappointment. There is also no evidence that the workman was appointed for specific period and for specific job and the further that the nature of job was casual one and as such the workman is entitled to reinstatement. Therefore, I hold that the termination of services of the workman is in contravention of sec.25G of the I.D. Act."

6. The corporation challenged the award of the Labour Court in Writ Petition No.372/2001 mainly on the grounds that the dispute raised by the appellant could not be treated as industrial dispute because the termination of his service was covered by Section 2(oo)(bb) of the Act; that the appellant was not a regular employee and he was not working against any sanctioned post; that the appellant had not worked for a period of 240 days and that there was no post against which he could be reinstated.

7. The learned Single Judge rejected the plea that the termination of the appellant's service is covered by Section 2(oo) (bb) by observing that from the evidence produced before the Labour Court, it was clearly established that the work against which the appellant was engaged was still continuing.

The learned Single Judge also agreed with the Labour Court that the action taken by the corporation was contrary to Section 25-G of the Act. He however, did not approve the award of reinstatement on the premise that initial appointment of the appellant was not in consonance with the statutory regulations and Articles 14 and 16 of the Constitution and, accordingly, substituted the award of reinstatement with 50% back wages by directing that the appellant shall be paid a sum of Rs.87,582/- by way of compensation.

8. Shri Dhruv Mehta, learned counsel for the appellant referred to the averments contained in the reply filed on behalf of the corporation before the Labour Court and the writ petition filed before the High Court to show that in the pleadings of the corporation there was not even a whisper that the appellant's initial engagement/appointment was illegal and argued that the learned Single Judge had no jurisdiction to interfere with the award of reinstatement by assuming that the appellant was

appointed in violation of Articles 14 and 16 of the Constitution and the regulations framed under Section 42 read with Section 23 of the Warehousing Corporations Act, 1962 (for short, `the 1962 Act'). Shri Mehta further argued that the question whether the appellant's appointment was made in contravention of the regulations framed under the 1962 Act or the doctrine of equality enshrined in the Constitution, is a pure question of fact which could be decided only on the basis of pleadings and evidence produced before the Labour Court and as no such evidence was produced before the Labour Court, the High Court was not at all justified in entertaining the new plea raised for the first time during the course of hearing of the writ petition.

9. Learned counsel for the corporation supported the impugned order and vehemently argued that the learned Single Judge did not commit any error by setting aside the award of reinstatement because the appellant's appointment was for a fixed period and his service was terminated after complying with Section 25-F of the Act. Learned counsel repeatedly emphasised that the initial appointment of the appellant was contrary to the Punjab State Warehousing Corporation Staff Groups C and D Service Regulations, 2002 (for short `the Regulations') and argued that the learned Single Judge rightly set aside the award of reinstatement because the appellant was appointed in violation of Articles 14 and 16 of the Constitution and the relevant regulations.

10. We have considered the respective submissions. In our opinion, the impugned order is liable to be set aside only on the ground that while interfering with the award of the Labour Court, the learned Single Judge did not keep in view the parameters laid down by this Court for exercise of jurisdiction by the High Court under Articles 226 and/or 227 of the Constitution - Syed Yakoob v. K.S. Radhakrishnan and others, AIR 1964 SC 477 and Surya Dev Rai v. Ram Chander Rai and others 2003 (6) SCC 675. In Syed Yakoob's case, this Court delineated the scope of the writ of certiorari in the following words:

"The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding

of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque 1955 (1) SCR 1104, Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam 1958 SCR 1240 and Kaushalya Devi v. Bachittar Singh AIR 1960 SC 1168).

It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; hut it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

11. In Surya Dev Rai's case, a two-Judge Bench, after threadbare analysis of Articles 226 and 227 of the Constitution and considering large number of judicial precedents, recorded the following conclusions:

"(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction -- by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction -- by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if

not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

A reading of the impugned order shows that the learned Single Judge did not find any jurisdictional error in the award of the Labour Court. He also did not find that the award was vitiated by any error of law apparent on the face of the record or that there was violation of rules of natural justice. As a matter of fact, the learned Single Judge rejected the argument of the corporation that termination of the appellant's service falls within the ambit of Section 2(oo)(bb) of the Act, and expressed unequivocal agreement with the Labour Court that the action taken by the Managing Director of corporation was contrary to Section 25G of the Act which embodies the rule of last come first go. Notwithstanding this, the learned Single Judge substituted the award of reinstatement of the appellant with compensation of Rs.87,582/- by assuming that appellant was initially appointed without complying with the equality clause enshrined in Articles 14 and 16 of the Constitution of India and the relevant regulations. While doing so, the learned Single Judge failed to notice that in the reply filed on behalf of the corporation before the Labour Court, the appellant's claim for reinstatement with back wages was not resisted on the ground that his initial appointment was illegal or unconstitutional and that neither any evidence was produced nor any argument was advanced in that regard. Therefore, the Labour Court did not get any opportunity to consider the issue whether reinstatement should be denied to the appellant by applying the new jurisprudence developed by the superior courts in recent years that the court should not pass an award which may result in perpetuation of illegality. This being the position, the learned Single Judge was not at all justified in entertaining the new plea raised on behalf of the corporation for the first time during the course of arguments and over turn an otherwise well reasoned award passed by the Labour Court and deprive the appellant of what may be the only source of his own sustenance and that of his family.

12. Another serious error committed by the learned Single Judge is that he decided the writ petition by erroneously assuming that the appellant was a daily wage employee. This is ex facie contrary to the averments contained in the statement of claim filed by the workman that he was appointed in the scale of Rs.350-525 and the orders dated 3.10.1986 and 25.2.1987 issued by the concerned Executive Engineer appointing the appellant as Work Munshi in the pay scale of Rs.355-525 and then in the scale of Rs.400-600. This was not even the case of the corporation that the appellant was employed on daily wages. It seems that attention of the learned Single Judge was not drawn to the relevant records, else he would not have passed the impugned order on a wholly unfounded assumption that the appellant was a daily wager.

13. It is true that in the writ petition filed by it, the corporation did plead that the dispute raised by the appellant was not an industrial dispute because he had not worked continuously for a period of 240 days, the learned Single Judge rightly refused to entertain the same because no such argument was advanced before him and also because that plea is falsified by the averments contained in para 2 of the reply filed on behalf of the corporation to the statement of claim wherein it was admitted that the appellant was engaged as work charge Motor Mate for construction work on 5.3.1986 and he worked in that capacity and also as Work Munshi from 3.10.1986 and, as mentioned above, even after expiry of the period of three months' specified in order dated 5.2.1987, the appellant continued to work till 5.7.1988 when first notice of retrenchment was issued by the Managing Director of the corporation.

Therefore, it was not open for the corporation to contend that the appellant had not completed 240 days service. Moreover, it is settled law that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of `last come first go' without any tangible reason. In Central Bank of India v. S. Satyam (1996) 5 SCC 419, this Court considered an analogous issue in the context of Section 25-H of the Act, which casts a duty upon the employer to give an opportunity to the retrenched workmen to offer themselves for re-employment on a preferential basis. It was argued on behalf of the bank that an offer of re-employment envisaged in Section 25-H should be confined only to that category of retrenched workmen who are covered by Section 25-F and a restricted meaning should be given to the term `retrenchment' as defined in Section 2(oo). While rejecting the argument, this Court analysed Section 25-F, 25-H, Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1957, referred to Section 25-G and held:

"Section 25-H then provides for re-employment of retrenched workmen. It says that when the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons.

Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1957 prescribe the mode of re-employment. Rule 77 requires maintenance of seniority list of all workmen in a particular category from which retrenchment is contemplated arranged according to seniority of their service in that category and publication of that list. Rule 78 prescribes the mode of re-employment of retrenched workmen. The requirement in Rule 78 is of notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for re-employment. Shri Pai contends that Rules 77 and 78 are unworkable unless the application of Section 25-H is confined to the category of retrenched workmen to whom Section 25-F applies. We are unable to accept this contention.

Rule 77 requires the employer to maintain a seniority list of workmen in that particular category from which retrenchment is contemplated arranged according to the seniority of their service. The category of workmen to whom Section 25-F applies is distinct from those to whom it is inapplicable. There is no practical difficulty in maintenance of seniority list of workmen with reference to the particular category to which they belong. Rule 77, therefore, does not present any difficulty. Rule 78 speaks of retrenched workmen eligible to be considered for filling the vacancies and here also the distinction based on the category of workmen can be maintained because those falling in the category of Section 25-F are entitled to be placed higher than those who do not fall in that category. It is no doubt true that persons who have been retrenched after a longer period of service which places them higher in the seniority list are entitled to be considered for re-employment earlier than those placed lower because of a lesser period of service. In this manner a workman falling in the lower category because of not being covered by Section 25-F can claim consideration for re-employment only if an eligible workman above him in the seniority list is not available. Application of Section 25-H to the other retrenched workmen not covered by Section 25-F does not, in any manner, prejudice those covered by Section 25-F because the question of consideration of any retrenched workman not covered by Section 25-F would arise only, if and when, no retrenched workman covered by Section 25-F is available for re-employment. There is, thus, no reason to curtail the ordinary meaning of "retrenched workmen" in Section 25-H because of Rules 77 and 78, even assuming the rules framed under the Act could have that effect.

The plain language of Section 25-H speaks only of re-employment of "retrenched workmen". The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning of `retrenchment' given in Section 2(oo). Section 25-F also uses the word `retrenchment' but qualifies it by use of the further words "workman ... who has been in continuous service for not less than one year". Thus, Section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman ... who has been in continuous service for not less than one year". It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go"

which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25-F."

(emphasis supplied)

14. The ratio of the above noted judgment was reiterated in Samishta Dube v. City Board Etawah (1999) 3 SCC 14. In that case, the Court interpreted Section 6-P of the U.P. Industrial Disputes Act, 1947, which is pari materia to Section 25-G of the Act, and held:

Now this provision is not controlled by conditions as to length of service contained in Section 6-N (which corresponds to Section 25-F of the Industrial Disputes Act, 1947). Section 6-P does not require any particular period of continuous service as required by Section 6-N. In Kamlesh Singh v. Presiding Officer in a matter which arose under this very Section 6-P of the U.P. Act, it was so held. Hence the High Court was wrong in relying on the fact that the appellant had put in only three and a half months of service and in denying relief. See also in this connection Central Bank of India v. S. Satyam.

Nor was the High Court correct in stating that no rule of seniority was applicable to daily-wagers. There is no such restriction in Section 6-P of the U.P. Act read with Section 2(z) of the U.P. Act which defines "workman".

It is true that the rule of "first come, last go" in Section 6-P could be deviated from by an employer because the section uses the word "ordinarily". It is, therefore, permissible for the employer to deviate from the rule in cases of lack of efficiency or loss of confidence, etc., as held in Swadesamitran Ltd. v. Workmen. But the burden will then be on the employer to justify the deviation. No such attempt has been made in the present case. Hence, it is clear that there is clear violation of Section 6-P of the U.P. Act.

15. The distinction between Sections 25-F and 25-G of the Act was recently reiterated in Bhogpur Coop. Sugar Mills Ltd. v. Harmesh Kumar (2006) 13 SCC 28, in the following words:

"We are not oblivious of the distinction in regard to the legality of the order of termination in a case where Section 25-F of the Act applies on the one hand, and a situation where Section 25-G thereof applies on the other. Whereas in a case where Section 25-F of the Act applies the workman is bound to prove that he had been in continuous service of 240 days during twelve months preceding the order of termination; in a case where he invokes the provisions of Sections 25-G and 25-H thereof

he may not have to establish the said fact. See: Central Bank of India v. S. Satyam, Samishta Dube v. City Board, Etawah, SBI v. Rakesh Kumar Tewari and Jaipur Development Authority v. Ram Sahai."

16. In view of the above discussion, we hold that the learned Single Judge of the High Court committed serious jurisdictional error and unjustifiably interfered with the award of reinstatement passed by the Labour Court with compensation of Rs.87,582/- by entertaining a wholly unfounded plea that the appellant was appointed in violation of Articles 14 and 16 of the Constitution and the regulations.

17. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub-serve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J, opined that "the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State" - State of Mysore v. Workers of Gold Mines AIR 1958 SC 923.

18. In Y.A. Mamarde v. Authority under the Minimum Wages Act (1972) 2 SCC 108, this Court, while interpreting the provisions of Minimum Wages Act, 1948, observed:

"The anxiety on the part of the society for improving the general economic condition of some of its less favoured members appears to be in supersession of the old principle of absolute freedom of contract and the doctrine of laissez faire and in recognition of the new principles of social welfare and common good. Prior to our Constitution this principle was advocated by the movement for liberal employment in civilised countries and the Act which is a pre-constitution measure was the offspring of that movement. Under our present Constitution the State is now expressly directed to endeavour to secure to all workers (whether agricultural, industrial or otherwise) not only bare physical subsistence but a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure. This Directive Principle of State Policy being conducive to the general interest of the nation as a whole, merely lays down the foundation for appropriate social structure in which the labour will find its place of dignity, legitimately due to it in lieu of its contribution to the progress of national economic prosperity."

19. The preamble and various Articles contained in Part IV of the Constitution promote social

justice so that life of every individual becomes meaningful and he is able to live with human dignity. The concept of social justice engrafted in the Constitution consists of diverse principles essentially for the orderly growth and development of personality of every citizen. Social justice is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic devise to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation of every section of the society. In a developing society like ours which is full of unbridgeable and ever widening gaps of inequality in status and of opportunity, law is a catalyst to reach the ladder of justice. The philosophy of welfare State and social justice is amply reflected in large number of judgments of this Court, various High Courts, National and State Industrial Tribunals involving interpretation of the provisions of the Industrial Disputes Act, Indian Factories Act, Payment of Wages Act, Minimum Wages Act, Payment of Bonus Act, Workmen's Compensation Act, the Employees Insurance Act, the Employees Provident Fund and Miscellaneous Provisions Act and the Shops and Commercial Establishments Act enacted by different States.

20. In Ramon Services (P) Ltd. v. Subhash Kapoor (2001) 1 SCC 118, R.P. Sethi, J. observed: "that after independence the concept of social justice has become a part of our legal system. This concept gives meaning and significance to the democratic ways of life and of making the life dynamic.

The concept of welfare State would remain in oblivion unless social justice is dispensed. Dispensation of social justice and achieving the goals set forth in the Constitution are not possible without the active, concerted and dynamic efforts made by the persons concerned with the justice dispensation system.

In L.I.C. of India v. Consumer Education and Research Centre and Others (1995) 5 SCC 482, K. Ramaswamy, J. observed that social Justice is a device to ensure life to be meaningful and liveable with human dignity. The State is obliged to provide to workmen facilities to reach minimum standard of health, economic security and civilized living. The principle laid down by this law requires courts to ensure that a workman who has not been found guilty can not be deprived of what he is entitled to get. Obviously when a workman has been illegally deprived of his device then that is misconduct on the part of the employer and employer can not possibly be permitted to deprive a person of what is due to him.

21. In 70s, 80s and early 90s, the courts repeatedly negated the doctrine of laissez faire and the theory of hire and fire. In his treaties: Democracy, Equality and Freedom, Justice Mathew wrote:

"The original concept of employment was that of master and servant. It was therefore held that a court will not specifically enforce a contract of employment. The law has adhered to the age-old

rule that an employer may dismiss the employee at will. Certainly, an employee can never expect to be completely free to do what he likes to do. He must face the prospect of discharge for failing or refusing to do his work in accordance with his employer's directions. Such control by the employer over the employee is fundamental to the employment relationship. But there are innumerable facets of the employee's life that have little or no relevance to the employment relationship and over which the employer should not be allowed to exercise control. It is no doubt difficult to draw a line between reasonable demands of an employer and those which are unreasonable as having no relation to the employment itself. The rule that an employer can arbitrarily discharge an employee with or without regard to the actuating motive is a rule settled beyond doubt. But the rule became settled at a time when the words `master' and `servant' were taken more literally than they are now and when, as in early Roman Law, the rights of the servant, like the rights of any other member of the household, were not his own, but those of his pater familias. The overtones of this ancient doctrine are discernible in the judicial opinion which rationalised the employer's absolute right to discharge the employee. Such a philosophy of the employer's dominion over his employee may have been in tune with the rustic simplicity of bygone days. But that philosophy is incompatible with these days of large, impersonal, corporate employers. The conditions have now vastly changed and it is difficult to regard the contract of employment with large scale industries and government enterprises conducted by bodies which are created under special statutes as mere contract of personal service.

Where large number of people are unemployed and it is extremely difficult to find employment, an employee who is discharged from service might have to remain without means of subsistence for a considerably long time and damages in the shape of wages for a certain period may not be an adequate compensation to the employee for non-employment.

In other words, damages would be a poor substitute for reinstatement.

The traditional rule has survived because of the sustenance it received from the law of contracts. From the contractual principle of mutuality of obligation, it was reasoned that if the employee can quit his job at will, then so too must the employer have the right to terminate the relationship for any or no reason. And there are a number of cases in which even contracts for permanent employment, i.e. for indefinite terms, have been held unenforceable on the ground that they lack mutuality of obligation.

But these case demonstrate that mutuality is a high-sounding phrase of little use as an analytical tool and it would seem clear that mutuality of obligation is not an inexorable requirement and that lack of mutuality is simply, as many courts have come to recognize, an imperfect way of referring to the real obstacle to enforcing any kind of contractual limitation on the employer's right of discharge, i.e. lack of consideration. If there is anything in contract law which seems likely to advance the present inquiry, it is the growing tendency to protect individuals from contracts of adhesion from over-reaching terms often found in standard forms of contract used by large commercial establishments. Judicial disfavour of contracts of adhesion has been said to reflect the assumed need to protect the

weaker contracting part against the harshness of the common law and the abuses of freedom of contract. The same philosophy seems to provide an appropriate answer to the argument, which still seems to have some vitality, that "the servant cannot complain, as he takes the employment on the terms which are offered to him."

(emphasis added)

22. In Government Branch Press v. D.B. Belliappa (1979) 1 SCC 477, the employer invoked the theory of hire and fire by contending that the respondent's appointment was purely temporary and his service could be terminated at any time in accordance with the terms and conditions of appointment which he had voluntarily accepted. While rejecting this plea as wholly misconceived, the Court observed:

"It is borrowed from the archaic common law concept that employment was a matter between the master and servant only. In the first place, this rule in its original absolute form is not applicable to government servants.

Secondly, even with regard to private employment, much of it has passed into the fossils of time. "This rule held the field at the time when the master and servant were taken more literally than they are now and when, as in early Roman Law, the rights of the servant, like the rights of any other member of the household, were not his own, but those of his pater familias". The overtones of this ancient doctrine are discernible in the Anglo-American jurisprudence of the 18th century and the first half of the 20th century, which rationalised the employer's absolute right to discharge the employee. "Such a philosophy", as pointed out by K.K. Mathew, J. (vide his treatise: "Democracy, Equality and Freedom", p.

326), "of the employer's dominion over his employee may have been in tune with the rustic simplicity of bygone days. But that philosophy is incompatible with these days of large, impersonal, corporate employers".

To bring it in tune with vastly changed and changing socio-economic conditions and mores of the day, much of this old, antiquated and unjust doctrine has been eroded by judicial decisions and legislation, particularly in its application to persons in public employment, to whom the Constitutional protection of Articles 14, 15, 16 and 311 is available. The argument is therefore overruled.

The doctrine of laissez faire was again rejected in Glaxo Labotratories (India) Ltd. v. Presiding Officer (1984) 1 SCC 1, in the following words:

"In the days of laissez-faire when industrial relation was governed by the harsh weighted law of hire and fire the management was the supreme master, the relationship being referable to contract between unequals and the action of the management treated almost sacrosanct. The developing notions of social justice and the expanding horizon of socio-economic justice necessitated statutory protection to the unequal partner in the industry namely, those who invest blood and flesh against those who bring in capital. Moving from the days when whim of the employer was suprema lex, the Act took a modest step to compel by statute the employer to prescribe minimum conditions of service subject to which employment is given. The Act was enacted as its long title shows to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them. The movement was from status to contract, the contract being not left to be negotiated by two unequal persons but statutorily imposed. If this socially beneficial Act was enacted for ameliorating the conditions of the weaker partner, conditions of service prescribed thereunder must receive such interpretation as to advance the intendment underlying the Act and defeat the mischief."

23. Of late, there has been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalisation are fast becoming the raison d'etre of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman-employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer - public or private.

24. In the result, the appeal is allowed. The impugned order of the High Court is set aside and the award passed by the Labour Court is restored. The appellant shall get cost of Rs.25,000/- from the corporation.

ORDER BY ASOK KUMAR GANGULI, J.

1. I entirely agree with the views expressed by my learned Brother Justice G.S. Singhvi. Having regard to the changing judicial approach noticed by His Lordship and if I, may say so, rightly, I may add a few words. I consider it a very important aspect in decision making by this Court.

2. Judges of the last Court in the largest democracy of the world have a duty and the basic duty is to articulate the Constitutional goal which has found such an eloquent utterance in the Preamble. If we look at our Preamble, which has been recognised, a part of the Constitution in His Holiness Kesavananda Bharati Sripadagalvaru and others vs. State of Kerela and another - [1973 SC 1461], we can discern that as divided in three parts. The first part is a declaration whereby people of India adopted and gave to themselves the Constitution. The second part is a resolution whereby people of India solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic. However, the most vital part is the promise and the promise is to secure to all its citizens:

"JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

And to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;"

[See Justice R.C. Lahoti, Preamble- The Spirit and backbone of the Constitution of India, Anundoram Barooah law Lectures, Seventh Series, Eastern Book Company, 2004, at p. 3]

3. Judges and specially the judges of the highest Court have a vital role to ensure that the promise is fulfilled. If the judges fail to discharge their duty in making an effort to make the Preambular promise a reality, they fail to uphold and abide by the Constitution which is their oath of office. In my humble opinion, this has to be put as high as that and should be equated with the conscience of this Court.

4. As early as in 1956, in a Constitution Bench judgment dealing with an Article 32 petition, Justice Vivian Bose, while interpreting the Article 14 of the Constitution, posed the following question:

"After all, for whose benefit was the Constitution enacted?"

[Bidi Supply Co. vs. Union of India and others - AIR 1956 SC 479 at Para 23, pg. 487]

5. Having posed the question, the Learned Judge answered the same in his inimitable words and which I may quote:

"I am clear that the Constitution is not for the exclusive benefit of Governments and States; it is not only for lawyers and politicians and officials and those highly placed. It also exists for the common man, for the poor and the humble, for those who have businesses at stake, for the "butcher, the baker and the candlestick maker". It lays down for this land a "rule lof law" as understood in the free democracies of the world. It constitutes India into a Sovereign Democratic Republic and guarantees in every page rights and freedom to the individual side by side and consistent with the overriding power of the State to act for the common good of all."

[Ibid, Emphasis supplied)

6. The essence of our Constitution was also explained by the eminent jurist Palkhivala in the following words:

"Our Constitution is primarily shaped and moulded for the common man.

It takes no account of "the portly presence of the potentates, goodly in girth". It is a Constitution not meant for the ruler "but the ranker, the tramp of the road, The slave with the sack on his shoulders pricked on with the goad, The man with too weighty a burden, too weary a load.""

[N. A. Palkhivala, Our Constitution Defaced and Defiled, MacMillan, 1974, p. 29]

7. I am in entire agreement with the aforesaid interpretation of the Constitution given by this Court and also by the eminent jurist.

8. In this context another aspect is of some relevance and it was pointed out by Justice Hidayatullah, as His Lordship was then, in Naresh Shridhar Mirajkar and others vs. State of Maharastra and Anr. - [AIR 1967 SC 1]. In a minority judgment, His Lordship held that the judiciary is a State within the meaning of Art. 12. [See paras 100, 101 at page 28, 29 of the report]. This minority view of His Lordship was endorsed by Justice Mathew in Kesavananda Bharati (supra) [at page 1949, para 1717 of the report] and it was held that the State under Article 12 would include the judiciary.

9. This was again reiterated by Justice Mathew in the Constitution bench judgement in the case of State of Kerela and another vs. N. M. Thomas and others [AIR 1976 SC 490] where Justice Mathew's view was the majority view, though given separately. At para 89, page 515 of the report, his Lordship held that under Article 12, `State' would include `Court'.

10. In view of such an authoritative pronouncement the definition of State under Article 12 encompass the judiciary and in Kesavananda (supra) it was held that "judicial process" is also "state action" [Para 1717, pg. 1949]

11. That being the legal position, under Article 38 of the Constitution, a duty is cast on the State, which includes the judiciary, to secure a social order for the promotion of the welfare of the people. Article 38(1) runs as follows:

"The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

This is echoing the preambular promise

12. Therefore, it is clearly the duty of the judiciary to promote a social order in which justice, economic and political informs all the institution of the national life. This was also made clear in Kesavananda Bharati (supra) by Justice Mathew at para 1728, p. 1952 and His Lordship held that the Directive Principles nevertheless are:

"...fundamental in the governance of the country and all the organs of the State, including the judiciary are bound to enforce those directives. The Fundamental Rights themselves have no fixed content; most of them are mere empty vessels into which each generation must pour its content in

the light of its experience."

13. In view of such clear enunciation of the legal principles, I am in clear agreement with Brother J. Singhvi that this Court has a duty to interpret statutes with social welfare benefits in such a way as to further the statutory goal and not to frustrate it. In doing so this Court should make an effort to protect the rights of the weaker sections of the society in view of the clear constitutional mandate discussed above.

14. Thus, social justice, the very signature tune of our Constitution and being deeply embedded in our Constitutional ethos in a way is the arch of the Constitution which ensures rights of the common man to be interpreted in a meaningful way so that life can be lived with human dignity.

15. Commenting on the importance of Article 38 in the Constitutional scheme, this court in Sri Srinivasa Theatre and Others vs. Government of Tamil Nadu and others [(1992) 2 SCC 643], held that equality before law is a dynamic concept having many facets. One facet- the most commonly acknowledged- is that there shall be not be any privileged person or class and that none shall be above the law. This Court held that Art 38 contemplates an equal society [Para 10, pg. 651].

16. In Indra Sawhney and Others vs. Union of India and Others [1992 Supp. (3) SCC 217], the Constitution Bench of the Supreme Court held that:

"The content of the expression "equality before law" is illustrated not only by Articles 15 to 18 but also by the several articles in Part IV, in particular, Articles 38, 39, 39-A, 41 and 46."

[at Paras 643, pg. 633]

17. Therefore, the Judges of this Court are not mere phonographic recorders but are empirical social scientists and the interpreters of the social context in which they work. That is why it was said in Authorised Officer, Thanjavur and another vs. S. Naganatha Ayyar and others - [(1979) 3 SCC 466], while interpreting the land reforms Act, that beneficial construction has to be given to welfare legislation. Justice Krishna Iyer, speaking for the Court, made it very clear that even though the judges are "constitutional invigilators and statutory interpreters" they should "also be responsive to part IV of the Constitution being "one of the trinity of the nation's appointed instrumentalities in the transformation of the socio-economic order". The Learned Judge made it very clear that when the Judges "decode social legislation, they must be animated by a goal oriented approach" and the Learned Judge opined, and if I may say so, unerringly, that in this country "the judiciary is not a

mere umpire, as some assume, but an activist catalyst in the constitutional scheme." [Para 1, p. 468]

18. I am in entire agreement with the aforesaid view and I share the anxiety of my Lord Brother Justice Singhvi about a disturbing contrary trend which is discernible in recent times and which is sought to be justified in the name of globalisation and liberalisation of economy.

19. I am of the view that any attempt to dilute the constitutional imperatives in order to promote the so called trends of "Globalisation", may result in precarious consequences. Reports of suicidal deaths of farmers in thousands from all over the country along with escalation of terrorism throw dangerous signal. Here if we may remember Tagore who several decades ago, in a slightly different context, spoke of eventualities which may visit us in our mad rush to ape western ways of life. Here if I may quote the immortal words of Tagore:

"We have for over a century been dragged by the prosperous West behind its chariot, choked by the dust, deafened by the noise, humbled by our own helplessness and overwhelmed by the speed. We agreed to acknowledge that this chariot-drive was progress, and the progress was civilization. If we ever ventured to ask "progress toward what, and progress for whom", it was considered to be peculiarly and ridiculously oriental to entertain such ideas about the absoluteness of progress. Of late, a voice has come to us to take count not only of the scientific perfection of the chariot but of the depth of the ditches lying in its path."

20. How stunningly relevant are these words and how deep are the ditches created in our society by the so called advance of globalization.

21. At this critical juncture the judges' duty, to my mind, is to uphold the constitutional focus on social justice without being in any way misled by the glitz and glare of globalization.