SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Sarva Shramik Sangh, Sangli

C.A.No.2565 of 2006

(H.L.Gokhale and Ranjan Gogoi JJ.)

21.10.2013

JUDGEMENT

H.L. GOKHALE J.

1. Civil Appeal No.2565 of 2006 seeks to challenge the judgment and order dated 12.9.2005 passed by a Division Bench of the Bombay High Court in Letter Patents Appeal No.184 of 2005, as well as the judgment and order dated 14.9.2004 passed by a Single Judge of that High Court in Writ Petition No.2699 of 1993, wherefrom the said Letters Patent Appeal arose. The said Writ Petition had been filed by the respondents to challenge the award dated 21.5.1992 rendered by the Labour Court, Sangli, in a group Reference under the Industrial Disputes Act, 1947 (I.D. Act, for short). The learned Single Judge had allowed the said Writ Petition, by the above referred order, and the Division Bench had left the said decision undisturbed.

2. The State of Maharashtra through Secretary Irrigation Department, and Executive Engineer Irrigation Department, Sangli, are the appellants herein, whereas Sarva Shramik Sangh, Sangli, a Trade Union representing the workmen concerned, and two of the workmen in the concerned Industrial Establishment are the respondents to this appeal. Facts leading to this appeal are this wise:-

3. The Government of Maharashtra established a corporation named as the Irrigation Development Corporation of Maharashtra Limited, sometimes in December 1973. This Corporation was a Government of Maharashtra undertaking. It set up 25 lift irrigation schemes to provide free services to farmers. The corporation was established in the aftermath of a terrible drought which afflicted the State in the year 1972. Some 256 workmen were employed to work on the

irrigation schemes of the said Corporation. Though it was claimed that the workmen were casual and temporary, the fact remains that many of them had put in about 10 years of service when they were served with notices of termination by the appellant No.2 on 15.5.1985. The notice sought to terminate their services w.e.f. 30.6.1985, and offered them 15 days compensation for every completed year of service. The retrenchment was being effected because according to the appellants the lift irrigation schemes, on which these workmen were working, were being transferred to a sugar factory viz. Vasantdada Shetkari Sahakari Sakhar Karkhana, Sangli.

4. It is not disputed that some of the workmen accepted the retrenchment compensation, though a large number of them did not. Some 163 out of them filed Writ Petition bearing No.2376 of 1985, through the first respondent Trade Union, against the above referred Corporation and the appellants, seeking to restrain the transfer of the undertaking. The petition was dismissed by the Bombay High Court and hence, a Special Leave Petition was preferred to this Court being SLP No.1386 of 1986. The appellants defended the said petition by pointing out that the workmen concerned were not employees of the Corporation, but were employees of the State. This Court, therefore, dismissed the said SLP by its order dated 11.11.1986 by observing as follows:-

> "Having regard to the statement in the counter affidavit of the Executive engineer, the State of Maharashtra, that the Petitioners were employees of the State and not the Corporation, we do not see how the reliefs sought against the Corporation can be granted in this petition. If the Petitioners desire to seek any reliefs against the State Government and if such relief is permissible, the Petitioners are at liberty to seek appropriate legal remedy in the matter. The SLP is, therefore, disposed of accordingly."

5. This led the workmen to seek Reference of the Industrial Dispute under the I.D. Act. These References were numbered as Ref. I.D. Nos.27 to 40, 42 to 70, 72 to 99/97, 1/88 to 35, 54, 63, 65, 72 to 92, 106 to 118/88, 17 to 29/89, 37, 38, 40 to 44/89 covering 163 applicants.

6. In these References, it was contended on behalf of the workmen that their retrenchment was illegal, inasmuch as the requirement of the adequate statutory notice as required under the I.D. Act, was not complied with. On the face of it, there was a shortfall of a few days in giving the notice. The learned Labour Court Judge noted that the notices were issued on 25.6.1985, and the services were terminated w.e.f. 30.6.1985. The workmen contended that the lift irrigation

schemes wherein they were working, were in fact Industrial Establishments, and that inasmuch as more than 100 workmen were employed therein, the provision of Section 25N of the I.D. Act (which requires three months' advance notice prior to termination) was applicable, but had not been complied with. The learned Judge of the Labour Court did not deal with that submission, but held that in any case there was a violation of Section 25F of the I.D. Act, inasmuch as not even one month's notice had been given and hence the termination was illegal.

7. In the Written Statement filed by the appellant No.2 before the Labour Court, it was stated in paragraph 3, that various schemes were carried out by the State Government at its own expense. In paragraph 4 it was contended that the workmen concerned were the employees of the Irrigation Department. In paragraph 14 thereof, it was stated that "the termination is not by way of victimization but as the irrigation scheme has been transferred to Shetkari Sahakari Sakhar Karkhana, Sangli, the employees are not entitled to retain in the services without any work."

8. In the written statement there was no specific reference to Section 25FF of the I.D. Act which deals with the transfer of undertakings. There was no reference to the said section in the judgment of the learned Judge either. We may however note that the learned Judge has noted this submission of the appellants in paragraph 8 of her order in the following words:-

> "8…..However, in the present case, it is clear that all those schemes where the Second Party workmen were working were sold by the State Government to the Vasantdada Shetkari Sahakari Sakhar Karkhana Ltd., Sangli and on said reason their services were terminated. As such, it is clear that those schemes are transferred to the Sugar Industry. Hence, there is no control of the First Party employer on those schemes……."

9. The learned Judge, however, noted that workmen concerned were employed on a temporary basis. Having noted that, the learned Judge relied upon a judgment of Karnataka High Court between Workmen of Karnataka Agro Protines Ltd. v. Karnataka Agro Proteins Ltd. and Ors. reported in 1992 LLJ page 712, on the application of Section 25F and 25FF, and held that the only claim that the workmen could make was for compensation. The Karnataka High Court had referred to and followed the law laid down in Anakapalle Co-operative Agricultural and Industrial Society Ltd. v. Workmen and Ors. reported in AIR 1963 SC 1489, and also the subsequent judgment of this court in Central Inland Water Corporation Ltd. v. The Workmen and another reported in (1974) 4 SCC 696 to the same effect. The Labour Court, therefore, directed that there would

not be any reinstatement, but the workmen will be given the compensation in accordance with Section 25F of the I.D. Act. The Award of the Labour Court reads as follows:-

> "Award:
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> I) The claim is partly allowed.
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> II) All the employees are entitled to receive the retrenchment compensation under Section 25F of Industrial Disputes Act, 1947 after calculating their service period with the First Party. The remaining claim stands rejected.
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> III) However, the First Party is hereby directed to give preference to all those employees whenever some additional work to new project are started or work is available.
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> IV) It is informed that some employees have died. In respect of such employees their legal heirs are entitled to receive the compensation amount.
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> V) The award be implemented within in a month from the date of publication of this Award.
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> VI) No order as to costs."

10. Being aggrieved by that judgment and order, the respondents filed Writ Petition bearing No.2699 of 1993 before a Single Judge of the Bombay High Court invoking Article 227 of the Constitution of India. The learned Single Judge who heard the matter took the view that the process of pumping water wherein the workmen were employed, amounted to a 'manufacturing process' under Section 2(k) of the Factories Act, 1948, and therefore, the lift irrigation schemes were in the nature of a 'factory' as defined under Section 2(m) of the said Act, and hence, an 'Industrial Establishment' to which the I.D. Act applied.

11. The learned Single Judge then held that since according to the State Government, the workmen were employed by the Irrigation Department, the plea that their services were required to be terminated on account of the transfer of the undertaking could not be accepted. This was on the footing since the other activities of the Irrigation Department continued even after the transfer of the lift irrigation schemes, the workmen concerned could certainly be absorbed into other activities of the irrigation department.

12. The learned Single Judge observed that the plea invoking Section 25FF could not be permitted to be raised in the High Court, inasmuch as transfer was a mixed question of facts and law. According to the learned Judge, it was a case of breach of Section 25N, and not merely 25F of the I.D. Act. Section 25N lays down the conditions precedent to retrenchment of workmen from Industrial Establishments wherein more than 100 workmen are employed, and sub-section (1)(a) thereof provides for three months' notice or pay in lieu thereof in the event of retrenchment. The learned Judge, therefore, set-aside the award, since three months' advance notice or pay was not given, and held that the workmen were entitled to reinstatement with continuity of service. The learned Judge awarded 25% backwages to the workmen. The operative part of the order of the learned Judge as contained in paragraphs 11 to 14 of the judgment reads as follows:-

> "11. The award dated 21st May 1992 passed by the Labour Court, Sangli is set aside. The workmen concerned in the References are entitled to reinstatement with continuity of service and 25% backwages. All workmen who are interested in employment must report for duty within two months from the date of this order. The Respondents will give them employment by reinstating them with continuity of service within a month thereafter. Backwages shall be paid to the workmen, computed at 25% within three months of their reinstatement in service.
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> 12. There are some workmen who have been absorbed in other departments of the State Government or have secured employment elsewhere. These workmen shall be paid 25% backwages till the date they secured employment within six months from today.
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> 13. A few workmen have already reached the age of superannuation during the pendency of these proceedings. They shall be paid the backwages computed at 25% till the date they attained the age of superannuation within three months from today.
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> 14. I am informed that some workmen have expired during the pendency of the proceedings in court. The Respondents shall pay to the heirs of these workmen 25% of back wages upto the date of death of these workmen within three months from today."

13. It is this order which was challenged in the Letters Patent Appeal. The Division Bench, however, took the view that a Letters Patent Appeal was not available

against an order passed on the Wirt Petition filed under Article 227 of the Constitution of India, and therefore dismissed the said Letters Patent Appeal. Being aggrieved by this order of the Division Bench as well as of the learned Single Judge, this appeal has been filed. Leave was granted in this matter on 8.5.2006, and the operation of the impugned order was stayed subject to the compliance of the provisions of Section 17B of the I.D. Act, 1947. The appeal has been pending since then, and a number of I.As have been filed by both parties. When the appeal reached for final hearing, Ms. Madhavi Diwan, learned counsel appeared for the appellants, and Mr. Vinay Navare, learned counsel appeared for the respondents.

Submissions on behalf of the appellants:-

14. The principal submission of Ms. Madhavi Diwan, learned counsel for the appellants is that this is a case of transfer of an undertaking. That was the very plea taken in paragraph 14 of the written statement as noted above, and also reflected in the judgment of the Labour Court. The learned Single Judge had clearly erred in ignoring this fact. Ms. Diwan submitted that in fact it was also the case of the respondents themselves that retrenchment of their services took place because of the transfer of the undertaking. She submits that the lift irrigation schemes constituted an undertaking, and the ownership of the management of the undertaking was being transferred, and it was not relevant that the ownership of the Irrigation Department Corporation was not being transferred. Therefore, in her submission it is the Section 25FF which applies to the present case, and neither Section 25N nor Section 25F. Besides, Section 25F would apply only as a measure of compensation that is to be provided for, and nothing more as laid down by a Constitution Bench of this Court in Anakapalle Society's case (supra). In that matter this Court has observed in paragraph 16 as follows:-

> "16. The Solicitor-General contends that the question in the present appeal has now to be determined not in the light of general principles of industrial adjudication, but by reference to the specific provisions of s. 25FF itself. He argues, and we think rightly, that the first part of the section postulates that on a transfer of the ownership or management of an undertaking, the employment of workmen engaged by the said undertaking comes to an end, and it provides for the payment of compensation to the said employees because of the said termination of their services, provided, of course, they satisfied the test of the length of service prescribed by the section. The said part further provides the manner in which and the extent to which the said compensation has to be paid. Workmen shall be entitled to notice and

compensation in accordance with the provisions of s. 25-F, says the section, as if they had been retrenched. The last clause clearly brings out the fact that the termination of the services of the employees does not in law amount to retrenchment and that is consistent with the decision of this Court in Hariprasad's case [1957]1SCR121 : AIR 1957 SC 121. The Legislature, however, wanted to provide that though such termination may not be retrenchment technically so-called, as decided by this Court, nevertheless the employees in question whose services are terminated by the transfer of the undertaking should be entitled to compensation, and so, s. 25-FF provides that on such termination compensation would be paid to them as if the said termination was retrenchment. The words "as if" bring out the legal distinction between retrenchment defined by s. 2(oo) as it was interpreted by this Court and termination of services consequent upon transfer with which it deals. In other words, the section provides that though termination of services on transfer may not be retrenchment, the workmen concerned are entitled to compensation as if the said termination was retrenchment. This provision has been made for the purpose of calculating the amount of compensation payable to such workmen; rather than provide for the measure of compensation over again, s. 25FF makes a reference to s. 25-F for that limited purpose, and, therefore, in all cases to which s. 25FF applies, the only claim which the employees of the transferred concern can legitimately make is a claim for compensation against their employers. No claim can be made against the transferee of the said concern."

This judgment in Anakapalle (supra) has been consistently followed thereafter, including in a recent judgment of this Court in Maruti Udyog Ltd. v. Ram Lal and Ors. reported in 2005 (2) SCC 638. Reply on behalf of the respondents:-

15. As far as the respondents are concerned, they have principally contended that Section 25FF has no application to the present case, and the learned Single Judge of the High Court has rightly held that this is a case which is covered under Section 25N. It is submitted that in view of Section 25N(1)(a), the workmen had to be given three months' prior notice or notice pay. That having not been done, and the prior permission under 25N(1)(b) of the appropriate government not having been sought, the retrenchment will have to held illegal under sub-Section (7) of 25N. The learned Judge of the Labour Court had in any case held that it was a case of breach of Section 25F, and the High Court had held that it was a case of breach of Section 25N. Either of those findings justified the reinstatement with full backwages. Reliance was placed in this behalf on the judgment of this Court

in Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat (Haryana) reported in 2010 (5) SCC 497.

16. However, more than that, the respondents have pointed out that another set of 10 workmen (Pandurang Vishnu Sandage and 9 others) working on the same lift irrigation schemes had subsequently filed separate References in the Labour Court bearing Ref. (I.D.A.) No.37 to 45 of 1991 and 1 of 1992, and the Labour Court gave an award on 30.12.1996, that those 10 workmen were entitled to reinstatement with 25% backwages. That judgment was challenged by the State of Maharashtra by filing Writ Petition No.2729 of 1997. The said Writ Petition was dismissed by a Single Judge of Bombay High Court, relying upon the decision in Writ Petition No.2699 of 1993 in the present matter. An appeal was filed by the appellants by preferring SLP (C) No.773 of 2006. This Hon'ble Court dismissed the said SLP on the ground of delay. A Review Petition (Civil) bearing No.379 of 2006 was filed. That was dismissed by the order passed on 26.9.2006. Thereafter a Curative Petition No.164 of 2007 was filed. That also came to be dismissed on 21.2.2008. It was, therefore, submitted that the appellants are bound by the decision in the aforesaid case of 10 workmen, and in any case this Court should not allow the present appeal as it will lead to a different result in the case of workmen who are similarly situated. The respondents relied upon an order of this Court in the case of Warlu v. Gangotribai and Anr. reported in 1995 (Supp) 1 SCC 37. It was a matter relating to the tenancy rights of the appellant, concerning the land spread over three survey numbers, which belonged to the Respondent no.1. Three writ petitions arising out of the revenue proceedings filed by him were dismissed by the High Court. Two SLPs therefrom were found to be time barred and therefore dismissed. As far as the third SLP is concerned, this Court declined to entertain the same for the sole reason that any such interference will result in making conflicting orders regarding tenancy rights in the same land. It was therefore, submitted by Mr. Navare, the learned counsel for the respondent that the appellants should suffer by the principle of estoppel by record.

17. In support of the contention that the orders passed by this Court in the case of the other 10 workmen should be followed in the present case, reliance was placed on paragraph 21 of a judgment in the case of Nirmal Jeet Singh Hoon v. Irtiza Hussain and Ors. reported in 2010 (14) SCC 564. The judgment impugned in that matter directing eviction of tenant had already been upheld in an earlier SLP, wherein the Petitioner was also a party. Entertaining the second petition, on his behalf, would have amounted to reviewing the earlier order of this Court. This Court dismissed the petition by observing "The law does not permit two contradictory and inconsistent orders in the same case in respect of the same

subject matter". It was therefore submitted that the order of the Labour Court in the case of the other 10 workmen had attained finality, and the appellants cannot be permitted to take a different position in the present matter when the workmen in both the matters were similarly situated.

18. The appellants had submitted that the Irrigation Department is not an industry. In that behalf, it was pointed out on behalf of the workmen that it is too late to raise this submission in view of the judgment of this Court in Bangalore Water Supply and Sewerage Board v. A. Rajappa & Ors. reported in 1978 (2) SCC 213. As against that, the counsel for the appellants pointed out that the judgment in Bangalore Water Supply (supra) is pending for re-consideration before a larger bench of this Court in view of the order passed by the Constitution Bench in State of U.P. v. Jai Bir Singhreported in 2005 (5) SCC 1. The respondents, however, submitted that in the meanwhile the judgment in Bangalore Water Supply (supra) will have to be followed until it is overruled, since the proposition therein continues to hold good. Reliance is placed in that behalf, on the approach adopted by this Court in such a situation, in a matter concerning Arbitration in State of Orissa v. Dandasi Sahu reported in 1988 (4) SCC 12. In that matter this Court has held that in the exercise of this Court's discretion under Article 136, it would not be justified to allow a party to further prolong or upset adjudication of old and stale disputes till the decision of the larger bench is received. Consideration of the rival submissions:-

19. (i) To begin with, we must note that the workmen concerned were engaged as pump operators and chowkidars etc. on 25 lift irrigation schemes, which were carrying out the process of pumping water. The process of pumping water is specifically covered under the definition of "manufacturing process" under Section 2 (k)(ii) of The Factories Act, 1948. Thus, the workmen concerned were engaged in a "manufacturing process". Once that is established, it follows that the activity of the undertaking in which they were working, constituted a "factory" within the meaning of Section 2(m) of the said Act. (ii) The explanation (i) to Section 25A of I.D. Act, 1947, covers the "factories" within the definition of an "industrial establishment", and therefore Chapter VA of the I.D. Act, 1947 applies to "manufacturing process" of pumping water. Hence, it cannot be denied that the undertaking in which the workmen concerned were employed was covered under the provisions of I.D. Act.

20. It is, however, contended on behalf of the appellant that the said undertaking was being run by the irrigation department of the first appellant, and the activities of the irrigation department could not be considered to be an "industry" within the

definition of the concept under Section 2(j) of the I.D. Act. As noted earlier, the reconsideration of the wide interpretation of the concept of "industry" in Bangalore Water Supply and Sewerage Board (supra) is pending before a larger bench of this Court. However, as of now we will have to follow the interpretation of law presently holding the field as per the approach taken by this Court in State of Orissa v. Dandasi Sahu (supra), referred to above. The determination of the present pending industrial dispute cannot be kept undecided until the judgment of the larger bench is received.

21. Having stated that however, the objection raised by the appellants to the judgment rendered by the Single Judge of the Bombay High Court is required to be looked into viz. that the appellants had effected a transfer of an undertaking which resulted into termination of services of the workmen concerned, and that this was not a case of retrenchment simpliciter. It was submitted that the 25 lift irrigation schemes by themselves constitute an undertaking. It may be that all the activities of irrigation department may not have been transferred, but a separate unit thereof, consisting of these 25 lift irrigation schemes, has come to be transferred to a sugar factory. As held in Anakapalle Society's case (supra), in such a matter the only claim which the employees of the transferor concern can legitimately make, is a claim for compensation against the previous employer, since they are not being absorbed under the new employer.

22. Having stated this, we have also to note the conduct of the appellants. It appears that many of the workmen concerned were engaged for a period of about 10 years. Section 25FF contemplates compensation to be paid to the workmen on account of their retrenchment, resulting from transfer of the undertaking. The retrenchment, however, is required to be effected only if the previous employer is not continuing the workmen concerned in any of his activities or establishments, or when they are not being absorbed under the new employer. Continuation of service under the existing employer, or re-engagement under the new one, should be the preferred approach, when such an occasion arises. Termination of services should normally be the last resort. In the instant case, the first appellant – State Government, does not appear to have made any efforts either to absorb these workmen in other activities of the irrigation department, or to have insisted upon the sugar factory to absorb them. This is because the lift irrigation schemes were going to be continued by the transferee sugar factory, and in any case the Irrigation department has a very large number of activities, wherein these workmen could have been absorbed. When the State Government is in the picture, we do expect a little better attitude than the one which is often displayed by a private sector employer. It is possible that, in a given situation, the State Government may have

its own economic compulsions which justify termination of services. But, there must be either an effort to absorb such surplus workmen, or in any case the difficulties of the Government, if any, necessitating the termination, ought to be explained. We do not find any such efforts or explanation placed on record.

23. It is also material to note that the Labour Court had directed the State Government to consider the absorption of these workmen. The respondents have placed it on record that in pursuance of a subsequent advertisement for employment in the irrigation department, the first respondent-union had written to the authorities concerned to absorb these workmen, but the Government took a bureaucratic attitude to inform the Union that no such decision could be taken, since the matter was pending in the Supreme Court. This attitude was not expected from a Welfare State.

24. In any case, having noted that another petition concerning 10 other workmen from the same lift irrigation schemes was dismissed, and SLP and Curative Petitions, therefrom, were also dismissed, a question arises for this Court to consider that assuming this was a case of transfer of undertaking, should the relief to the affected workmen be restricted only to the compensation under Section 25F as required by S 25 FF.

25. The learned counsel for the respondents has referred to a few cases arising out of revenue proceedings and the rent act, indicating what should be the approach in such a situation. These 163 workmen and the other 10 workmen viz. Pandurang Vishnu Sandage and others were working on the same lift irrigation schemes. Those 10 workmen also got an award of reinstatement with 25% backwages. The writ petition of the appellants challenging that award was dismissed by the Bombay High Court, relying upon the judgment of the Single Judge in the present mater. The SLP and the Curative Petitions therefrom also came to be dismissed, although on the ground of gross delay. The fact, however, remains that as far as those 10 workmen are concerned, the order of relief in their case viz. reinstatement with 25% backwages and continuity in service was left undisturbed. Therefore, a question arises - should the Government having been lethargic in the case of those 10 workmen, where it suffered an order of reinstatement with 25% backwages, be now permitted to insist that when it comes to these 163 workmen, who are similarly situated, they be denied a comparable relief? And in any case, should this Court treat the two sets of workmen differently, in the matter of relief, only because the SLP against some of them got dismissed on account of delay, whereas the SLP concerning the others survived for final arguments?

26. This Court has the authority to pass an appropriate order in exercise of its jurisdiction for doing complete justice in a matter pending before it. This authority under Article 142 of the Constitution will also have to be read as coupled with a duty to do complete justice in a given case. In Food Corporation of India Worker's Union v. Food Corporation of India & Anr. reported in 1996 (9) SCC 439, this Court was faced with a situation where there was a delay in reinstatement of the specified workmen despite this Court's earlier order. This was because of long delay of about 6 years in determining their identity, in the proceeding before the Industrial Tribunal. Therefore, in view of the 'human problem' involved in the matter, the Court laid down a procedure for identification of the workmen with a view to do complete justice, and also directed reinstatement with backwages @ 70% of the 'normal earnings' of the workmen at piece rate, till their reinstatement. In L. Parameswaran v. Chief Personal Officer and ors. reported in 2008 (3) SCC 649, the appellant had worked in an ex-cadre post for a very long time, and was reverted to his parent post, though not immediately when the policy decision to repatriate ex-cadre employees was taken. Working in the ex- cadre post for a long time did not confer any right to continue in that post or for pay protection. Considering, however, the long time spent in the ex-cadre post, this Court specifically invoked Article 142 to grant him protection of pay.

27. In the facts and circumstances of the present case also, accepting that the termination did result on account of transfer of the undertaking, the relief to be given to the workmen will have to be moulded to be somewhat similar to that given to the other group of 10 workmen. It will not be just and proper to restrict it to the rigours of the limited relief under Section 25FF read with 25F of the I.D. Act. Prior to the termination of their services on 30.6.1985, many of the workmen concerned had put in a service of about 10 years. Inasmuch as so many years have gone since then, most of them must have reached the age of superannuation. In the circumstances, there cannot be any order of reinstatement. However, they will be entitled to continuity of service, and although they have been receiving last drawn wages under S 17 B of the I.D Act, 1947, they will be entitled to 25% backwages and retirement benefits on par with the other 10 workmen. Award of 25% backwages in their case will be adequate compensation.

28. Civil Appeal No.2566 of 2006 has been filed by the above referred Trade Union, the respondent in Civil Appeal No.2565 of 2006, against the same two judgments of the Single Judge and the Division Bench of Bombay High Court. The Union is aggrieved by the award of only 25% backwages to the workmen, and seeks an order of 100% backwages, contending that if the retrenchment is held to be bad in law, the backwages could not be restricted to anything less than 100%

backwages. Mr. Navare has appeared in support of this appeal, and Ms. Diwan has appeared to oppose the same. As can be seen from the narration of facts above, the Union is claiming reliefs for the present group of workmen on the basis of parity with the other group of 10 workmen viz. Pandurang Vishnu Sandage and others, and that submission has been accepted by us. Those workmen have been awarded only 25% backwages. That being so, the present group of workmen cannot be awarded backwages more than what have been awarded to the other 10 workmen. The claim for award of higher backwages cannot, therefore, be entertained.

29. In the circumstances, we dispose of the two appeals against the impugned judgment and order of the learned Single Judge of the Bombay High Court, dated 14.9.2004, in Writ Petition No.2699 of 1993, which is left undisturbed by the Division Bench, by passing the following order:-

> (i) The 163 workmen concerned in the present matter, will be placed into three categories, i.e., (a) those who have already reached the age of superannuation; (b) those who are yet to reach the age of superannuation; and (c) those who have expired. They will be entitled to the reliefs in the following manner.
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> (ii) The benefits to the workmen in category (a) will be till the date of their superannuation, for category (b) till the date of this judgment, and for those in category (c) till the date of expiry of the workman concerned.
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> (iii) The workmen of all the three categories will be entitled to continuity of service until the date of superannuation, or until the date of this judgment, or until the date on which the workman concerned has expired, as the case maybe.
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> (iv) All the workmen will be entitled to 25% backwages over and above the last drawn wages that they have received under Section 17B of I.D. Act. The backwages shall be calculated until the date as mentioned in clause (iii) above.
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> (v) All the workmen will be entitled to the same retirement benefits, if any (depending on their eligibility), as given to the other group of 10 workmen viz. Pandurang Vishnu Sandage and others.

(vi) All the aforesaid payments shall be made directly to the workmen concerned or their heirs, as the case maybe, within three months from the date of this judgment.

(vii) There shall not be any order of reinstatement.

(viii) The appellants will, thereafter, file a compliance report in the Labour Court at Sangli, with a copy thereof to the Registry of this Court.

(ix) Order accordingly.

(x) Registry to send a copy of this judgment to the Labour Court, Sangli.

30. Both the appeals and all the I.As. moved therein stand disposed off as above, with no order as to costs.