Saudi Arabian Air Lines Vs Ashok Margovind Panchal and Another

Court: Bombay High Court

Date of Decision: Sept. 25, 2002

Acts Referred: Industrial Disputes Act, 1947 â€" Section 2
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 â€" Section 28, 30, 32

Citation: (2003) 2 BomCR 357 : (2003) 96 FLR 211 : (2003) 1 MhLj 745 : (2002) 1 MhLj 745

Hon'ble Judges: R.J. Kochar, J

Bench: Single Bench

Advocate: J.P. Cama, instructed by K.P. Anilkumar, for the Appellant; A.V. Bukhari, for the Respondent

Final Decision: Dismissed

Judgement

R.J. Kochar, J.

1. The petitioner employer is carrying on the business of international air transport. It is a foreign airlines company fully owned by the Royal family

of the Kingdom of Saudi Arabia. The petitioner is aggrieved by the judgment and order dated 21st October 1995 passed by the industrial court in

complaint ULP No. 1296 of 1991 filed by the respondent who was employed as a security guard by the petitioner. The respondent employee

complained of the unfair labour practice under items 6 and 9 of Schedule IV of the M.R.T.U. and PULP Act, 1971 in his complaint u/s 28 read

with Section 30 of the Act. By the impugned order, the Industrial Court allowed the complaint and directed the petitioner to make the respondent

employee permanent from the date on which he completed 240 days of service and also to pay him all the consequential benefits of permanency.

2. According to the respondent, he was appointed vide appointment letter dated 1st October 1989 as a security guard on the terms and conditions

stipulated in the said appointment letter for consolidated wage of Rs. 1400/- per month. One of the conditions was that the respondent would

stand terminated on expiry of the period of two years i.e. on the closing hours of the shift of 30th September 1991. In the complaint filed by the

respondent it was averred by him that the petitioner was engaging in unfair labour practice of appointing a number of employees as security guards

from time to time for a stipulated or fixed period and, thereafter terminating them at the end of such period. The petitioner again used to employ

either the same security guards after giving them artificial break or employ other persons as security guards from the open market. By following this

practice, the petitioner deprived such employees of privileges and benefits of permanency which the petitioner is bound to give after completion of

240 days continuous service. According to the respondent failure to make him as permanent security guard, after completion of 240 days

continuous service, attracted Item 9 of Schedule IV of the Act as the Model Standing Orders which are admittedly applicable to the establishment

of the petitioner. The respondent invoked Item 4(C) of the Model Standing Orders which casts a mandate that every employee who completes

continuous services of 240 days shall be made permanent in employment. The respondent has also given a number of instances to demonstrate the

consistent unfair labour practice engaged in by the petitioner under Item 6 of Schedule IV of the Act. According to the respondent, he was

deprived of the benefits and privileges of permanency including the regular pay scale which was almost double for the regular security guards.

According to the respondent, the work of security guards was of perennial or permanent nature and the posts of the Security guards are provided

in the settlements with the union and that there was no temporary increase in such work for which it could be said that the respondent was

temporarily employed only for a period of two years.

3. The petitioner appeared before the Industrial Court and contested the complaint by filing its written statement denying the charge of unfair labour

practice. According to the petitioner, the appointment order was a self-contained order appointing the respondent for a fixed period of two years

and his services stood discontinued after expiry of the said period of two years. According to the petitioner, there was temporary rise in the work

of security at the airports and, therefore, it became necessary to engage the extra security guards for some period. According to the petitioner, the

appointment of the respondent was squarely covered by Section 2(oo)(bb) of the Industrial Disputes Act, 1947 and, therefore, there was no unfair

labour practice engaged in by the petitioner. It was also pleaded that standing order 4(c) was not applicable in the present case. The petitioner

generally but stoutly denied the charge of unfair labour practice and prayed for dismissal of the complaint.

4. On the basis of the pleadings the Industrial Court framed the point of determination as to whether the respondent proved that the petitioner

engaged in the unfair labour practices under Items 6 and 9 of Schedule IV of the Act. On the basis of the pleadings and evidence on record, the

Industrial Court answered the said point of determination affirmatively in favour of the respondent employee. The petitioner questions the legality

and propriety of the order of the Industrial Court, under Article 226 of the Constitution of India under the present writ petition.

5. Shri Cama the learned Counsel for the petitioner has vehemently criticised the judgment of the Industrial Court. According to him, the

appointment of the respondent employee was for a fixed or stipulated period of two years and, therefore, he could not claim permanency in

employment. Shri Cama further tried to make a point that even assuming that the standing order 4(c) in respect of permanency was made

applicable, even then, after completion of 240 days continuous employment, the respondent would be permanent till the expiry of the period of two

years and not more than that. Shri Cama pointed out that he could not be deemed to be permanent till the age of his retirement. Shri Cama also

pointed out that during the pendency of the complaint, the respondent stood terminated after the efflux of the period of 2 years and, therefore, he

could not claim permanency after termination. The learned Counsel further heavily relied upon the provisions of Section 2(oo)(bb) of the I.D. Act

and submitted that it was permissible under the law to appoint a workman for a stipulated period and, therefore, it could not be said that such

appointment was an unfair labour practice.

6. Shri Bukhari, the learned Counsel for the respondent employee with equal vehemence repelled the attack of Shri Cama. Shri Bukhari fully

supported the judgment of the Industrial Court. Shri Bukhari pointed out elaborately from the pleadings and the evidence how the petitioner had

engaged in the unfair labour practice within the meaning of Items 6 and 9 of Schedule IV of the Act. Shri Bukhari tried to point out from the

material on record that the petitioner was following practice of appointing and disappointing the security guards periodically, wholly with an object

to deprive them of the privileges and benefits of permanency. He pointed out from the material on record that the regular security guard gets total

emoluments to the tune of Rs. 4625/- per month for the same work while the security guards appointed on contract basis for a fixed period were

paid Rs. 2325/- per month. They did not get any other benefits of whatsoever nature. Shri Bukhari pointed out that the regular security guards

were getting basic wages and other benefits viz., travelling allowance, H.R.A. meal allowance, laundry allowance etc. Shri Bukhari pointed out that

the security guards on contract basis do not get any of the aforesaid benefits except travelling allowance and meal allowance. Shri Bukhari has also

taken pains to point out that the petitioner had given an advertisement to invite applications for the post of security guards and that it was recruiting

constantly the security guards, though it had falsely pleaded that the work of security guards was of temporary nature. According to Shri Bukhari,

the work of security guards was of permanent or perennial nature and that the petitioner was continuously engaging and employing different set of

security guards with a view to deny the benefits of permanency. Shri Bukhari also vehemently submitted that there was constant hanging sword of

unemployment over the heads of such security guards. Shri Bukhari further pointed out that the respondent was previously doing the same work

for the petitioner through its contractor viz, Cambata Aviation Pvt. Ltd.. He had worked for more than four years and, thereafter, he was engaged

on a contract basis directly with a clear understanding that he would be employed as a permanent security guard. Shri Bukhari further relied upon a

letter dated 5th January 1990 addressed by the petitioner to the Deputy Commissioner of Police requesting for a permanent airport pass for the

respondent, to establish that the respondent was, in fact, employed as a permanent regular security guard. Shri Bukhari also pointed out that there

were other security guards similarly placed out of whom, some were re-employed by the petitioner. Shri Bukhari has relied upon various

judgments in support of his case that the employment of the respondent was not covered by Section 2(oo)(bb) of the I.D. Act. Amongst them, few

relevant have been discussed hereinafter. According to Shri Bukhari, the work continued and, therefore, employment for a so called specific

period cannot be made to frustrate or defeat the provisions of law. Shri Bukhari, therefore, submitted that this court under Article 226 of the

Constitution of India should not interfere with the reasoned judgment of the Industrial Court granting relief to the respondent. Shri Bukhari further

pointed out that by an order dated 12th August 1996, passed by the division bench of this court in LPA No. 153 of 1996, the petitioner had

agreed that instead of reinstating the respondent in service, the petitioner would pay the wages to him payable as on the date of admission of the

petition till the petition is disposed of. The petitioner was, therefore, directed to pay to the respondent wages as payable on the date of admission

of the petition i.e. 3rd April 1996 till the petition would be finally decided. Shri Bukhari made a serious grievance that the petitioner should not be

heard as it is in contempt as it has flouted the said order of the division bench by not making payments at the current rate as if in employment

though directed by the division bench.

7. Before I concentrate on the legal submissions made by both the learned Counsel, it would be very relevant for me to set out the finding of fact

recorded by the Industrial Court in para 18 which is reproduced hereinbelow for ready reference :--

The fact in respect of nature of the post is not much disputed by the respondents. The complainant has specifically stated in his complaint and has

also stated in his evidence that the post on which he was working is a permanent post and the nature of duties which was performed by him on that

post is of perennial nature. I have gone through the duties narrated by the complainant. It is evident that the complainant was appointed as security

guard and his duties were to check luggage of the passengers and to protect the property and persons of the respondents. At the same time, it is

evident that the respondents have recruited new employees on the post on which the complainant was working. Under such circumstances, the

respondents cannot deny that the post which was held by the complainant is not a temporary post but it is a permanent post, hence I come to the

conclusion that the post held by the complainant is a permanent post. The respondents cannot appoint temporary or casual employees on the post

which is of permanent nature and if temporary or casual employees are appointed on such posts and if they complete 240 days service on such

posts, they are entitled for permanency. Under such circumstances, I am of the opinion that the complainant has proved that fact that he has

rendered and completed 240 days uninterrupted service and he is entitled for permanency.

The Industrial Court has found on the basis of the evidence and material on record that the post held by the respondent was a permanent post and

that he could not be appointed as temporary or casual on the post which was of permanent nature. The Industrial Court has also found as a matter

of fact and was no dispute that the respondent completed two years of employment continuously and not merely 240 days which is required under

Clause 4(c) of the model standing orders. From the evidence and also from the other material which is pointed out by Shri Bukhari it is proved that

the petitioner had invited applications from the open market for recruitment of the security guards to show that the work for the security guards

was always available and, therefore, Section 2(oo)(bb) could not be said to have been attracted. Shri Bukhari is right in his submissions that the

respondent was not employed actually and factually for the limited work and that after the end of which the services could be said to have come to

an end after efflux of time or after work ended. Shri Bukhari is further right in his submissions that there was no end of the work of the security

guards and, therefore, appointment letter issued by the petitioner to appoint him only for a period of two years was a camouflage or pretext to

deprive the respondent of the benefits of permanency and permanent employment and to try to get the protection of Section 2(oo) (bb) of the Act.

Shri Bukhari has established from the evidence and material on record that the petitioner had appointed and terminated six other security guards

and that they were again re-employed on and from 14-9-1992. The petitioner had also made 14 security guards as permanent before the Industrial

Court. It is also established that other 20 security guards were appointed as permanent after the respondent was to be discontinued. All these facts

are borne out from the record (pages 33, 34, 119, 120, 123, and 124 of the paper book.)

8. So long as property and lives both are to be protected, the work of security cannot be said to be of temporary nature. So long as the property

and the lives are under the constant threat of insecurity, the work of security guards has to be considered as of perennial nature. In the present

case, it is further clear from the material on record that the petitioner has been continuing the process of recruiting fresh security guards by

discontinuing the existing security guards under the pretext that their appointment was of temporary nature or was for a fixed period. The

respondent himself has placed on record the material that he was continuing in employment to do the work of security for the petitioner for more

than four years under the so called contractor and thereafter, he was directly engaged by the petitioner for a period of two years ostensibly. There

is no dispute that the petitioner had requested the Deputy Commissioner of Police to issue permanent airport pass for the respondent. This conduct

clearly shows that the respondent was to be considered as a permanent employee. According to me, therefore, the present case cannot be said to

have been covered u/s 2(oo)(bb) of the I. D. Act. I further fail to understand how the said section can be attracted as when the complaint was filed

by the respondent he was already in employment and there was no question of termination after efflux of the period of two years. No doubt during

the pendency of the complaint, the period of two years had expired. However, before the division bench of this court, the petitioner had agreed to

treat the respondent as if he was reinstated in service and he was therefore directed to be paid wages as if in employment. I need not, therefore,

labour on the point of Section 2(oo)(bb) of the Act. My learned brother Srikrishna, J as he then was, has very precisely explained the precedents

on the question of Section 2(oo)(bb) of the I.D. Act, in para 5 of the judgment in the case of Alexander Yesudas Maikel reported in 1995 (1)

CLR 942 as under :--

.....In any event, one cannot lose sight of the fact that Clause (bb) has itself been restrictively interpreted and the judicial consensus appears to be

that, if the post continues and the work continues, Clause (bb) cannot be said to operate as a charter for unscrupulous employers to jettison their

workmen....

The learned Judge has again considered a number of judgments on the same point in the case of Deputy Director of Health Services, Nashik v.

Latabai Rajdhar Paturkar, reported in 1996 1 CLR 328 and has observed as under in the following two paragraphs.

Para 8 : .....It will at once be seen that, just as there are no words of limitation in the main body of the definition, equally, there are no words of

limitation in the exception Clause (bb). As long as either of the two contingencies contemplated by the clause is fulfilled, the situation would not

amount to ""retrenchment"" within the main body of the definition in Section 2(oo). However, by a series of judgments of our High Court and of

other High Courts import of the words used and the amplitude of this have been whittled down and the judicial consensus on the construction of

this clause appears to be that the sweep of Clause (bb) of Section 2(oo) cannot be extended to such cases where the job continues and the

employee"s work is also satisfactory, and yet periodical renewals are made to avoid regular status to the employee, where the circumstances

indicate that the letter of appointment is a camouflage to circumvent the provisions of the Industrial Disputes Act or the benefit of permanency on

workers who have worked continuously for a period of more than 240 days.

Para 11 :--A conspectus of the authorities cited by Mr. Kochar no doubt indicates that considerable judicial ingenuity has been bestowed on

ensuring that the potential for mischief in the newly added Clause (bb) is contained within manageable limits and to ensure that the newly added

exception to the definition of ""retrenchment"" is not used as ""magna carta"" by dishonest and unscrupulous employers to circumvent the provisions of

the Industrial Disputes Act and jettison workmen at will. Perhaps the haunting fear of resurrection of the ghost of "hire and fire"" doctrine, long laid

to rest, was too strong to permit judicial passivism.

9. Applying the aforesaid tests aptly prescribed by the learned Judge, to the present case, the conclusion is inescapable that the work continued

and the post of security guard was of permanent nature and, therefore, there was no application of Section 2(oo)(bb) of the I.D. Act. Even the

learned Single Judge of the Madras High Court in the case of K. Rajendran v. Director (Personnel), Project and Equipment Corporation of India,

reported in 1992 H.C. M 462 has observed as under :--

Held : Of course, the intention of the Parliament in enacting Sub-clause (bb) to Clause (oo) of Section 2 of the Act was to exclude certain

categories of workers from the definition of ""retrenchment"". But, there is nothing in Sub-clause (bb) which enables an unscrupulous employer to

terminate the service of the workers on the ground of non-renewal of their contract even when the work for which they were employed subsists.

The exception as contained in Sub-clause (bb) will have to be strictly construed and Clause (bb) should be made applicable only to such cases

where the work ceases with the employment or the post itself ceases to exist. Clause (bb) cannot be made applicable to a case when the employer

resorts to contractual employment as a device to simply take it out of Clause (oo) of Section 2 of the Act notwithstanding the fact that the work for

which the workmen are employed continues or the nature of duties which the workmen was performing are still in existence.

There is thus judicial unanimity on this point.

10. Having released the present case from the clutches of Section 2(oo)(bb) of the I.D. Act, we have to now ex ray the appointment letter issued

by the petitioner to the respondent security guard to determine whether the said appointment was bona fide given to the security guard only for a

fixed period of two years. We have to lift the veil and assess the inside material which is placed on record. The fact that the respondent himself was

engaged by the petitioner through another contractor for more than 4 years is the first factor to be borne in mind. Secondly, the petitioner had

requested the police authorities to issue permanent airport pass to the respondent. If the intention of the petitioner was to continue the respondent

only for a period of two years in that case, the petitioner would have requested for a temporary security pass and not for a permanent pass.

Thirdly, the petitioner has issued advertisements to invite applications to fill up the posts of security guards and to appoint additional security

guards. Fourthly, the petitioner has reappointed some of the discontinued security guards as fresh employees. As stated by me earlier, the

petitioner appears to have appointed in all 40 security guards after the efflux of the period of two years for which the respondent was appointed.

The settlement also indicates that the petitioner has permanent posts of security guards in its establishment. From the aforesaid established facts, it

is crystal clear that the work of security guards continue and there was no end to the same and there was no efflux of time for this kind of work.

The appointment of the respondent for a fixed period of two years was only a pretext to deprive him of the benefits of permanency. The

respondent has not pleaded merely in air but has proved his case of unfair labour practice under Item 6 of Schedule IV of the Act. He has placed

material on record to substantiate his allegations. The findings of the industrial court, therefore, cannot be faulted with as the same are based on

hard and concrete facts based on material produced by the respondent workman before it. Besides, the clever submissions made by Shri Cama,

though attractive at the first blush, cannot stand second look for scrutiny. The aforesaid material is more than enough to substantiate the point that

the petitioner has been following the practice of appointing or engaging persons in the garb of or under the guise of fixed period appointment. This

practice appears to be of perennial nature followed by the petitioner in its establishment. Under the standing order 4(c), the legislative mandate is

being flouted by the petitioner with impunity. It has appointed the respondent as security guard for a period of two years. This appointment being

out of the clutches of Section 2(oo)(bb) it squarely falls within the foreground of the aforesaid standing order 4(c), which mandates that after

continuous employment of 240 days, the incumbent employee will have to be treated as permanent in employment. Once the aforesaid standing

order comes into operation, it cannot be argued that the fixed period appointment orders would also come into operation and that such an

appointee would be deemed to be permanent only for the remaining part of the fixed period. Once we throw out the application of Section 2(oo)

(bb) of the I.D. Act, the only factor which remains in the field is the standing order 4(c) and once under the said standing order an employee

becomes permanent, he will have to be considered as a permanent employee as understood in the ordinary parlance and as defined under the

standing orders and gets full protection thereunder in accordance with law. The respondent security guard having completed employment of 240

continuous days, is deemed to be a permanent security guard by operation of the standing order 4(c). If during the period of the so called fixed

appointment of two years, if he had become permanent by operation of law, after completion of 240 days continuous employment, he will have to

be treated as regular permanent security guard of the petitioner, entitled to be continued in permanent employment in accordance with law. Even if,

the petitioner had even treated him to be discontinued after the efflux of fixed period of two years, he will have to be restored to his position as if

he continued to be in employment even after the efflux of period of two years. The very fact that the petitioner had agreed to treat him as in

employment before the division bench of this court in appeal, it is crystal clear that the petitioner had restored him in employment even after the

expiry of period of two years.

11. The case of the petitioner that after efflux of two years, during the pendency of the complaint seeking permanency in employment, must

collapse and fall on the ground firstly, the petitioner itself treated the respondent as in employment till the decision of this petition by agreement to

make him payment of wages every month. Even otherwise when a complainant employee seeks the benefit under item 6 of Schedule IV of the Act,

his complaint can be very easily frustrated, defeated or stultified by just throwing him out on the spacious ground that he was employed only as a

badli or temporary and that his services was not required. Once such a complainant employees ceases to be in employment there would be no

question of granting him the privileges or benefits of permanency, would be a stock plea of the employers who would very conveniently get rid of

the complaint by first getting rid of such an employee. The law cannot be allowed to be defeated in this manner by unscrupulous employers. The

law aims at prevention of the unfair labour practice and not to perpetuate it. If such arguments were to succeed, no complaint under item 6 would

ever succeed as no sooner the casual, badli or temporary employees who have continued for years together approach the court to seek

permanency and the benefits of permanency what they would first get would be a sack order and they would never even dream to become

permanent in employment anywhere. In such a complaint it is the duty of the Industrial Court to protect the employment by ordering continuation of

status quo"" during the pendency of the complaint, if of course, a reasonably good prima facie case is established by such employee that he was

employed and continued as badli, temporary or casual for years together. The Industrial Court has to prevent the employer from engaging in

another unfair labour practice of termination of such an employee. He cannot be driven to file a complaint under item 1 of the Schedule 4 of the

Act before the labour court. The Industrial Court will be well within its jurisdiction u/s 30 and Section 32 to direct the employer to maintain the

status quo in respect of the employment, in order to accomplish the aim and object of the legislation of prevention of an unfair labour practice

complained of and likely to be engaged in by the employer. Unless the badlis, temporaries or casuals who have continued for years together prima

facie, are ordered to be continued so, during the pendency of their complaint under item 6, not only the whole complaint but even the item 6 itself

would get frustrated, stultified and aborted. Item 6 would be reduced to redundancy and otiose if no status quo is directed at the interim stage or if

the complainant employee is not restored to his position which existed prior to his complaint for the effective order to prevent such unfair labour

practice of directing the employer to make him permanent if he finally succeeds to establish the said unfair labour practice. The twin result of

restoration in employment coupled with permanency benefits must flow from the success of the complaint. The observations of the Supreme Court

in similar circumstances made in the case of The Bhavnagar Municipality Vs. Alibhai Karimbhai and Others, are very very apt to be applied in

support of my above findings. In para 14 the Supreme Court has said :--

The character of the temporary employment of the respondents being a direct issue before the Tribunal is that condition of employment, however

insecure, must subsist during the pendency of the dispute before the Tribunal and cannot be altered to their prejudice by putting an end to that

temporary condition. This could have been done only with the express permission of the tribunal. It goes without saying that the respondents were

directly concerned in the pending industrial dispute. No one can also deny that snapping of the temporary employment of the respondents is not to

their prejudice. All the five features adverted to above are present in the instant case. To permit rupture in employment, in this case, without the

prior sanction of the Tribunal will be to set at naught the avowed object of Section 33 which is principally directed to preserve the status quo under

specified circumstances in the interest of industrial peace during the adjudication. We are, therefore, clearly of opinion that the appellant has

contravened the provisions of Section 33(1)(a) of the Act and the complaint u/s 33A, at the instance of the respondents, is maintainable. The

submission of Mr. Parekh to the contrary cannot be accepted.

In the present case the respondent similarly sought permanency in employment under items 6 and 9 of Schedule IV of the Act. He appears to have

been ceased to be in employment after 30th September 1991, efflux of two years temporary appointment. The operative part of the impugned

order of the Industrial Court reads as under :--

i. Complaint is partly allowed :

ii. The respondents are hereby directed to make the complainant permanent from the date on which he completed 240 days of service;

iii. The respondents are further directed to pay all consequential benefits of permanency to the complainant;

iv. Rest of the reliefs are rejected.

v. No order as to costs.

At the time of the admission of the petition my learned brother Srikrishna, J. was pleased to pass the following order :--

Heard Mr. Cama for petitioner. Mr. Bukhari for respondent No. 1. Rule. No interim relief. Order of the Industrial Court to be implemented within

six weeks from today.

The petitioner carried the matter before the appeal court of the then Chief Justice M. B. Shah with Justice P. S. Patankar, who were pleased to

pass the following order disposing of the L. P. A.

Heard learned Counsel for the parties. It is agreed by the appellant that instead of reinstating respondent No. 1 in service, the appellant would pay

the salary to the respondent No. 1 payable as on the date of the admission of the petition till the petition is disposed of. The learned Counsel

appearing for the respondent No. 1 states that he has no objection to the aforesaid order being passed.

In view of this, the appellant is directed to pay to the respondent No. 1 salary as payable on the date of admission of the petition i.e. 3-4-1996 till

the petition is decided.

Further, respondent No. 1 is directed to start working immediately with appellant if so ordered by the appellant. L. P. A. stands disposed of

accordingly.

I have taken pains to reproduce all the three orders so that the correct status of the respondent security guard can be determined as on the date.

From these orders it is crystal clear that the respondent was required to be restored to the position ante complaint. And, admittedly he is in de jure

employment of the petitioner. As a result of the outcome of the petition, he shall have to be physically restored with all the benefits under the law

including the wage differential and all other privileges which he would have earned if he were to be continued in employment de facto also.

12. The Industrial Court has rightly decided the complaint and has done justice in accordance with law. It is, therefore, not possible for me to

interfere with the aforesaid judgment and order of the Industrial Court under the extra ordinary jurisdiction of Article 226 of the Constitution of

India as observed by the Supreme Court in the case of Roshan Deen v. Preeti Lal, reported in AIR 2001 SCW 4577 as under :--

The power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it. The very

purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The

look out of the High Court is, therefore, not merely to pick out but to see whether injustice has resulted on account of any erroneous interpretation

of law. If justice became the by product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting

the error of law.

13. In the aforesaid circumstances, the petition deserves to be dismissed and the same is dismissed. Rule is discharged with no orders as to costs.

It is clarified that the petitioner shall treat the respondent in continuous employment and would compute his regular pay and shall pay him as agreed

before the division bench as recorded in the order dated 12th August 1996. The petitioner shall compute the difference and pay the same to him

within four weeks from today. The petitioner shall allow the respondent to join his duties physically within four weeks from today. The petitioner

shall pay Rs. 15,000/- as cost to the respondent.