Bajaj Auto Ltd. and Others Vs Shrikant Vinayak Yogi and Others

Court: Bombay High Court

Date of Decision: May 7, 2015

Acts Referred: Constitution of India, 1950 - Article 226, 227
Industrial Disputes Act, 1947 - Section 2, 2(oo), 2(oo)(bb), 2(s), 25(F)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 - Section 28(1), 44

Hon'ble Judges: R.P. Sondurbaldota, J.

Bench: Single Bench

Advocate: K.M. Naik, Senior Counsel, S.P. Salkar, Ananya Parchure and Rushabh Sheth, Advocate i/by Bodhanwala and Co., for the Appellant; Jaydeep Deo, Advocate, for the Respondent

Judgement

R.P. Sondurbaldota, J.
The above three petitions are being disposed off by a common order as they arise out of the same set of facts. The

first two petitions i.e. Writ Petition No. 1108 of 1998 and Writ No. 6608 of 1999 challenge the same order i.e. the order dated 22nd January,

1998 passed by the Industrial Court in Revision Application (ULP) No. 4 of 1998. The third petition challenges the order dtd. 2nd November,

2001, by the Industrial Tribunal in Complaint (ULP) No. 76 of 2000 filed by some of the employees in the first two petitions. The complaint had

been filed during the pendency of the first two petitions. The first petition is filed by the Employer-Company and the other two petitions are filed by

the employees.

2. The order impugned in the first two petition partly allows the Revision Application filed by the employees and allows the complaints filed by

them challenging their terminations with allegations of unfair labour practice under Items (a), (b), (d), (f) and (g) of Schedule-IV of the Maharashtra

Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (""MRTU & PULP Act"" for short). It directs the Company to

reinstate the employees and continue them in service. The prayer of the employees for backwages, however, was rejected. Both the sides,

therefore felt aggrieved by the order and hence have challenged the same. Originally the proceedings involved 65 employees. Over the period of

time, there have been settlements of the individual claims and as of today, the claim of only six employees remains to be considered.

3. The order impugned in the third petition dismisses the complaint filed by the petitioners therein alleging unfair labour practices under Section

28(1) read with Items 5, 6, 7 and 10 of Schedule IV of the MRTU and PULP Act. The parties shall hereinafter referred to as the Company and

the employees.

4. The dispute reflected in the petitions has a long and chequered history. The employees allege that, they were working in the factory of the

Company at Akurdi, Pune where two and three wheeler vehicles were manufactured. They were temporary workers and despite having worked

for about 8 years and completed 180 days service as per the Standing Orders of the Company, they were not made permanent. Therefore, they

had filed complaint of unfair labour practice being Complaint (ULP) No. 334 of 1989. In that complaint, settlement was arrived at between the

parties under which the Company agreed to make the employees permanent on expiry of their probation period and pay them wages and

allowances as applicable to the permanent workmen. Then complaints were withdrawn and the Company took them in service in the seniority as

agreed, only to terminate their services later on different dates without paying legal dues i.e. retrenchment compensation and notice pay. The

reason given for termination was that there was no work for them. The employees therefore filed identical complaints being Complaints (ULP) No.

40/91, 43/91 to 76/91, 91/91, 105/91, 108/91, 109/91, 112/91 to 115/91 alleging that the conduct on the part of the Company amounted to a

colourable exercise of the employer''s right. It was unfair labour practice under Items No. 1(a), (b), (d), (f) and (g) of Schedule-IV of the MRTU

& PULP Act, 1971. The employees, in addition to the declaration of unfair labour practice sought directions for reinstatement with continuity of

service and back-wages.

5. The Company contested the complaints contending that the complaint was not maintainable as the complainants were not ""workman"" within the

meaning of Section 2(s) of the Industrial Disputes Act. On merit, the Company alleged as follows:-

Ã¯Â¿Â½ The Company is engaged in manufacture of two or three wheeler automobiles. When the Company started functioning, it had Monopoly in the

market with hardly any competitor worth the name. Sometime in the year 1982, there was a boom in the demand of two wheeler automobiles. The

Company being practically the only manufacturer of the vehicles, had a long wait list for sale of the vehicles and had to extend its capacity to

manufacture. For that purpose, it had to increase its work force. Consequently, the Company appointed several persons on temporary basis. The

boom, however, ended with change in the policy of the Government, change in the automobiles available in the market and the gulf crisis. Also

several competitors to the Company named in the written statement came up. Consequently, company''s sales went down and it had to cut down

on the production drastically. It had to then terminate the workmen. Clause-4 of the settlement that was arrived at in Complaints (ULP)-334 of

1989 to 390 of 1989 and Complaint of 518 of 1989, recorded agreement by the Company that it would take the employees temporarily in service

initially for a period of 7 months. It was further agreed that, the Company would give them a suitable break. Thereafter depending upon the

seniority amongst all the temporary workmen, months of service, conduct, behavior, fitness, attendance and other requirements of the Company,

they would be made permanent. By Clause-3 of the settlement, the employees had agreed not to raise any demand for reinstatement with

continuity of service and full backwages before any authority or Court under any law for time being in force. After the expiry of 7 months period,

the Company did not re-employ the employees in service. The employees being temporary in service, there was no question of payment of

retrenchment compensation or notice pay as contemplated under Section 25F of the Industrial Disputes Act.

6. The Labour Court decided the complaints by its judgment dated 19th April, 1995 and dismissed the same. Being aggrieved by that order, the

employees approached the Industrial Court with Revision Application (ULP) No. 55 of 1995 under Section 44 of the MRTU & PULP Act. The

Industrial Court by its order dated 5th January, 1996 allowed the Revision Application and remanded the matter to the Labour Court for retrial.

Being aggrieved by the order, the petitioner filed Writ Petition No. 1861 of 1996 in this Court. That petition was disposed off by the order dated

9th April, 1996 and the order of the Revision Court was set aside, so also, the order passed by the Labour Court on 19th April, 1995 on the

complaints. This Court, remanded the complaints back to the Labour Court with a direction to hear the same afresh after giving opportunity to the

parties to lead evidence. Accordingly, the complaints were heard afresh and again decided by the Labour Court by its order dated 12th

December, 1997 leading to a new Revision Application before the Industrial Court being Revision Application No. 4 of 1998.

7. In it''s order dtd. 12th December, 1997, the Labour Court held that the evidence on record established that the appointments of the employees

were purely temporary and none of them had completed 240 days in 12 calendar months preceding their respective dates of termination.

Therefore their case fell within the ambit of exception (bb) to Section 2(oo) of Industrial Disputes Act and their termination did not amount to

retrenchment. The Labour Court dismissed the complaints of the employees.

8. The Industrial Tribunal while deciding Revision Application (ULP) No. 4 of 1998 preferred against the order of the Labour Court held that the

Labour Court had not considered Section 2(oo)(bb) of Industrial Disputes Act in proper perspective especially on the background of the fact that

the employees had been engaged by the Company pursuant to the settlement arrived at between parties and it had agreed that the employees

would be made permanent. It further found that it is nowhere mentioned by the petitioner in it''s written statement or proved by cogent evidence

before the Labour Court that the work for which the employees were engaged was finished and not available. Thus, there was no reason for

terminating the employees from service. Consequently, it held that the findings of the Labour Court are perverse. The Industrial Court next referred

to the order dtd. 5th January, 1996 passed in Revision Applications (ULP) No. 55 of 1995 and the companion revisions, by which the Company

was directed to provide work to all the employees temporarily. According to the Industrial Court since the employees are in service of the

company, they are required to be continued in the employment and hence entitled to get the relief of reinstatement. With these findings, the

Industrial Court allowed the Revision Application and set aside the order of the Labour Court. The further declarations and directions given by the

Industrial Court by the order were as follows:

3. The original complaints filed by the complainants are allowed. It is hereby declared that the respondent-company has committed unfair labour

practice under Items 1(a), (b), (d), (f) & (g) of Schedule IV of the Act by terminating the services of the complainants and the company is directed

to desist from engaging in such unfair labour practice henceforth.

4. The company is further directed to reinstate the complainants and continue them in service.

5. The prayer of the complainants regarding back-wages stands rejected.

9. The Company challenged the order of the Industrial Court by filing the above Writ Petition No. 1100 of 1998. It was admitted on 30th March,

1998 and interim order in terms of prayer clause (b) of the petition granted. Being aggrieved by the interim relief, the employees preferred Letters

Patent Appeal No. 80 of 1998 (LPA). By the order dtd. 23rd April, 1998 passed in the LPA, the Division Bench observed that the Labour Court

had not recorded any finding as regards availability of sufficient work for the employees and framed three issues for decision of the Labour Court.

It remitted the matter to the Labour Court for recording findings on the three issues. The three issues remitted for decision read as follows:

(I) Whether the act of the Respondent-Employer in appointing the concerned workmen as temporary workmen was itself mala fide?

(II) Whether there was sufficient work available when the concerned workmen were employed so that they could have been absorbed as

permanent workmen?

(III) Whether the Respondent-Employer was obliged to make the concerned workmen permanent in view of the applicable law and Standing

Orders?

10. On the limited remand of the matter, the Labour Court by it''s judgment and order dtd. 14th October, 1998 answered all the three issues in the

affirmative. The Labour Court noted the deposition of the witnesses of the employees that the Company was always diligent enough to ensure that

none of the employees completed 240 days of service to claim permanency. It also noted the evidence of the witnesses of the Company that

formerly the Company used to advertise the temporary recruitment by publishing advertisements in daily newspaper. However, since last few

years, it had started maintaining the seniority list of the temporary workers for the purpose of appointments. On appreciation of the seniority list,

appointment orders, termination orders and reappointment orders, the Labour Court held that the appointments had been made by the Company

in the batches of 10 employees for a period of seven months in such a way that before the term of first lot expired, the second lot was injected in

and before expiry of second lot, the third lot was injected in, thereby preventing any lot from completing 240 days of continuous work in any year.

Appointments were made in this fashion from 1981 to 1991. It took note of various departments under the main head of ""Assembly"" i.e. Rickshaw

Assembly, Magnitude Assembly, Scooter Assembly etc. The employees were appointed in the relevant department of the assembly. It rejected the

submission on behalf of the Company that the employees in each team worked in the same department during the second term of their

appointments and concluded that there was work available throughout, but the appointment orders were given only for seven months, so as to

deprive the employees'' right of permanency. It answered all the three issues in the affirmative. After receipt of the order of the Labour Court, the

Division Bench by it''s order dtd. 10th December, 1999 allowed the LPA, set aside the interim reliefs and granted liberty to the parties to agitate

their contentions before the Single Judge in the Writ Petitions. The Company then amended Writ Petition No. 1100 of 1998 to challenge the

findings on the additional issues framed in the LPA.

11. It would be convenient to recapitulate here, the findings of the Courts below that are required to be considered in these petitions. The

employees had alleged unfair labour practice under Items No. 1(a), (b), (d), (f) and (g) of Schedule-IV of MRTU & PULP Act which read as

follows:-

SCHEDULE-IV

General Unfair Labour Practices on the part of employees

1. To discharge or dismiss employees-

(a) by way of victimization;

(b) not in good faith, but in the colourable exercise of the employer''s rights.

(d) for patently false reasons;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of

service of the employee, so as to amount to a shockingly disproportionate punishment.

The above practices were held as not established by the order dated 12th December, 1997 of the Labour Court and further reliefs refused to

them. When the matter was carried further, the Industrial Tribunal, for deciding the revision, framed following three points for determination.

1. Whether there is an apparent error on the face of record committed by the Labour Court while passing the impugned order?

2. Whether the order and judgment passed by the Labour Court suffers from perversity and infirmities?

3. Whether there is any reason to interfere in the order passed by the Labour Court?

It answered the points in the affirmative holding that there is error apparent on the face of the record committed by the Labour Court and the order

of the Labour Court is perverse.

With the above comments on the order under revision, the Industrial Tribunal, without any further discussion of the facts alleged to constitute the

five unfair labour practices, held that the Company was guilty of the same and gave directions for reinstatement and continuation in service of

employees. Thereafter, there was order by the Division Bench of this Court in L.P.A. No. 80 of 1998 for remand to the Labour Court for

answering the following three questions, which according to it had not been dealt with by the Labour Court.

(i) Whether the act of the Respondent-Employer in appointing the concerned workmen as temporary workmen was itself mala fide?

(ii) Whether there was sufficient work available when the concerned workmen were employed so that they could have been absorbed as

permanent workmen?

(iii) Whether the Respondent-Employer was obliged to make the concerned workmen permanent in view of the applicable law and Standing

Orders?

By its order dated 14th October, 1998, the Labour Court answered the three questions in the affirmative.

12. In view of the above findings, the facts in dispute over which submissions have been advanced are, (i) victimization of the employees, (ii)

colourable exercise of it''s rights by the Company (iii) termination for false reasons, (iv) violation of principles of natural justice in holding domestic

enquiry (v) award of shockingly disproportionate punishment, (vi) mala fides of the Company in appointing the respondents as temporary workmen

(vii) availability of sufficient work with the Company, and (viii) grant of permanency to the concerned workmen. These are to be considered within

the confines of petition under Article 226 of the Constitution of India and revisional jurisdiction of the Industrial Tribunal.

13. Since the order impugned in the first two petitions is the revisional order and since one of the contentions of the Company is that, the Revisional

Court has exceeded it''s powers, while deciding the revision application, it is worthwhile to take note of the arguments on behalf of the Company

on the nature and ambit of revisional jurisdiction. Mr. Naik, has cited certain decisions of our High Court for the purpose. The same are:-

(i) Mahila Griha Udyog Lijjat Papad Vs. Kamgar Congress & Ors. reported in [1983 I LLN 643]

(ii) Hindustani Prachar Sabha and Others Vs. Dr. (Miss) Roma Sengupta and Another, .

(iii) Pest Control (I) Pvt. Ltd. Vs. Pest Control (I) Pvt. Ltd. Employees All India Union 7 Ors. reported in 1994 I CLR 230

(iv) Mr. M.K. Bhuvaneshwaran Vs. Premier Tyres Ltd. and Another, .

14. The statement of law on the scope of the revisional jurisdiction under Section 44 of the Industrial Disputes Act from the decisions cited by Mr.

Naik, can be summarized as thus. The jurisdiction of the Industrial Tribunal under Section 44 is limited and can be exercised only in the

circumstances of existence of error apparent on the face of the record or perversity of findings. The revisional authority cannot act like an appellate

authority and take upon itself the task of re-appreciating the entire evidence to find out whether the decision of the Labour Court was correct or

not. Even if on re-appreciation of the evidence, the Tribunal comes to a conclusion which is different from the one arrived at by the Labour court, it

cannot disturb the finding of the Labour Court in exercise of its limited supervisory jurisdiction. In Hindustani Prachar Sabha''s case (supra), this

Court has compared the revisional powers with power of superintendence of this Court under Article 227 of the Constitution of India. The relevant

observations read as follows:-

It is a provision on pari materia with Article 227 of the Constitution of India. The powers of superintendence do not include the power to review

evidence on record. The power of the superintending court in so far as evidence is concerned is limited to setting aside an order where the

evidence could never justify the conclusion, in other words where the order is perverse. I need only refer in this behalf to the decision of the

Supreme Court in Parry and Co. Ltd. Vs. P.C. Pal and Others,

There cannot be any dispute over the above legal position and hence, the order of the revisional Court impugned in the first two petitions is needed

to be appreciated against it''s backdrop.

15. The next argument of Mr. Naik which is required to be noted before touching upon the factual aspect of the matter is about the nature of

allegations of unfair labour practices. He submits that the allegations of unfair labour practice against any employer are serious allegations and

hence must be properly pleaded, strictly construed and established. As regards strict construance of the provisions for unfair labour practice, Mr.

Naik relies upon two decisions, one of the Hon''ble Supreme Court and the other of this Court. They are (i) Bharat Iron Works Vs. Bhagubhai

Balubhai Patel and Others, and (ii) Pest Control (I) Pvt. Ltd. Vs. Pest Control (I) Pvt. Ltd. Employees All India Union, reported in 1994 I CLR

page 230. The first decision concerns allegation of unfair labour practice under Item-1(a) of Schedule-IV, whereas, the second concerns Item-

1(d) of Schedule-IV.

16. In Bharat Iron Works case (supra), while considering the allegation of victimization, the Apex Court observed as follows:-

A word of caution is necessary. Victimization is a serious charge by an employee against an employer, and, therefore, it must be properly and

adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them. The charge must not be vague

or indefinite being as it is an amalgam of facts as well as inferences and attitudes.

The onus of establishing a plea of victimization will be upon the person pleading it. Since a charge of victimization is a serious matter reflecting, to a

degree, upon the subjective attitude of the employer evidenced by acts and conduct, these have to be established by safe and sure evidence. Mere

allegations, vague suggestions and insinuations are not enough. All particulars of the charge brought out, if believed, must be weighed by the

Tribunal and a conclusion should be reached on a totality of the evidence produced.

Again victimization must be directly connected with the activities of the concerned employee inevitably leading to the penal action without the

necessary proof of a valid charge against him. The question to be asked: Is the reason for the punishment attributable to a gross misconduct about

which there is no doubt or to his particular trade union activity which is frowned upon by the employer? To take an example, suppose there is a

tense atmosphere prevailing in a company because of a strike consequent upon raising of certain demands by the union, each party calling the other

highly unreasonable or even provocative, the Tribunal will not readily accept a plea of victimization as answer to a gross misconduct even when an

employee, be he an active office bearer of the union, commits assault, let us say, upon the Manager, and there is reliable legal evidence to that

effect. In such a case the employee, found guilty, cannot be equated with a victim or a scapegoat and the plea of victimization as a defence will fall

flat. This is why once, in the opinion of the Tribunal a gross misconduct is established, as required, on legal evidence either in a fairly conducted

domestic enquiry or before the Tribunal on merits, the plea of victimization will not carry the case of the employee any further. A proved

misconduct is antithesis of victimization as understood in industrial relations. This is not to say that the Tribunal has no jurisdiction to interfere with

an order of dismissal on proof of victimization.

17. In Pest Control case (supra), the unfair labour practice under consideration was of dismissal for patently false reasons. Our High Court

considered the purport of the term ""patently false reasons"" in following words.

It must not be forgotten that for the purpose of clause (d) of item it is not enough to challenge the dismissal or discharge but it is further necessary

to establish that reason for such dismissal or discharge were ""patently false"". The word ""patently"" is significant as otherwise the word ""false"" would

have been enough. The use of the word ""patently"" along with word ""false"" clearly goes to show that the legislature contemplated that in order to

hold that the discharge or dismissal of an employee amounted to unfair labour practice, such discharge or dismissal should be for ""patently false

reasons"". Thus, the importance of the word ""patently"" cannot be undermined nor can this word be ignored. Even if the reason is found to be false,

it may not be enough. The falsehood must be patent then only it will amount to unfair labour practice within the meaning of item 1.

18. Similarly for the purport of unfair labour practice of colourable exercise, Mr. Naik relies upon decision of this Court in The Kolhapur Zilla

Shetkari Vinkari Sahakari Soot Girani Ltd. Vs. Ramchandra Shankar Shinde, reported in 1990 II CLR page 803. The relevant observations are

as follows:

12. In this background, despite the legal submissions made before me, the order of the Industrial Court will have to be upheld though on slightly

different considerations than those which appealed to the Industrial Court. Only one question remains. It has been alleged that this was a complaint

under the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 and the matter would not be covered by

any of the clauses of Item 1 of Schedule IV. It was submitted that the action was bona fide taken by the employer and therefore could not be

regarded as being in the colourable exercise of the employer''s rights. The contention can be dispelled by a few illustration. Suppose the employee

was getting drunk in his own house or beating his own wife to the extent that criminal complaints were filed and the employer acting bona fide and

posing as a champion of morality had taken action against the employee and ultimately dismissed him, then in such case even though the employer

had acted in good faith and bona fide, believing himself to be right, the action would still be in colourable exercise of the employer''s rights. If the

employer acts under a Standing Order and holds that it has been violated and on account of the purported violation, terminates the services of the

employee, it must be regarded as colourable exercise of employer''s rights if the Standing Order had been wrongly applied since there is no

violation of the standing order as properly construed the employer had no right to dismiss or terminate the service of the employee and accordingly

purported exercise of such alleged rights must be held to be colourable. This case was thus covered by Item (b) not on account of want of good

faith but on account of want of power since there had been no breach of the Standing Order.

19. Complaint (ULP) No. 40 of 1991 filed by the employees is a short complaint, substantial part of which is narration of the background of the

complaint. The allegations therein, constituting the unfair labour practices, must be reproduced here for their appreciation.

But in breach of the said settlement, the respondent has terminated their services without any reason from 30.1.1991, 2.2.1991 and 3.2.1991. No

one month''s notice wages, no retrenchment compensation or legal dues were paid or offered to be paid by the company as provided by the

Central Act to the complainants at the time of the termination of their services. By giving false reason that there was no work to give them, the

respondent has terminated their services. The said act on the part of the respondents amounts to an unfair labour practice. The said action on the

part of the respondent is mala fide and a colourable exercise of the employer''s right with ulterior motives.

It is patent from the above statements from the complaint that unfair labour practices under Items-1(a), (f) and (g) of Schedule IV are not at all

attracted. Therefore, the only two unfair labour practices that need consideration in this order are those under Items 1(b) and (d) i.e. colourable

exercise of the employer''s right and dismissal for false reasons.

20. There is no dispute that employment of all the respondents was temporary and they had been terminated from service in the year 1989. The

complaint filed by them to challenge the termination had resulted into settlement. The agreement under the settlement was to take the employees

back in service temporarily for a period of 7 months and then give them suitable breaks. Thereafter depending upon their seniority, conduct, fitness

and other requirements of the Company, they were to be made permanent. The Company did not re-employ them after 7 months for the reason of

lack of work. This reason the respondents allege to be false. In the circumstances, whether it is for the allegation of colourable exercise of right or

of patently false reason, the fact to be considered is lack of work.

21. It is the specific case of the Company in it''s written statement to the complaint that, when it started functioning there were one or two

competitors worth the name. Sometime in the year 1982 there was a boom in the demand for two-wheeler automobiles. At that time the Company

being practically the only company which manufactured quality vehicles, it''s waiting list steadily went on increasing as the demand for these vehicles

went on increasing. During this period the Company continued to expand its capacity and also went on increasing its work force. The workmen

who were made permanent during these years were also increasing. However, this monopoly of the Company in the market did not last long.

Seeing that the business was lucrative a large number of competitors jumped into the fray. Around the same time, the policy of the Government

also changed. The Government freely issued licences to various manufacturers. The Government also freely allowed foreign collaborations to the

new manufacturers. Then, several competitors started producing two-wheelers. The competitors introduced into the market sophisticated machines

with imported technology. In fact the first vehicles were imported and simply assembled in India. This step completely churned the market of two-

wheelers. Sophisticated vehicles were available to the consumers. Moreover there was a variety available. Due to this, the consumers started

buying these vehicles and the waiting list for the company''s vehicles started dwindling. Then there was gulf war leading to oil crisis in the country.

Huge stocks of the Company accumulated and it had to cut down on the production drastically. Consequently, even the permanent workmen were

rendered idle. Then there were settlement with the permanent workers whereunder the permanent workers agreed to give more than 100%

production. In such situation, the respondents employees who were temporary were not continued after the agreed period of 7 months.

22. The Company had examined it''s Senior Manager (Personnel) in support of it''s case, who deposed about the market condition and the

settlements as the reason for not continuing the respondents-employees. There is no cross-examination of the witness on the market condition at

the relevant time. As regards the settlements, a suggestion was given to the witness that even after the settlements, temporary employees were

engaged. The witness, in a forthright manner, had agreed with the suggestion. Thus, there is nothing whatsoever on record to indicate that the

reason of lack of work is a false reason, much less false patently.

23. Strangely despite the above evidence, the Industrial Tribunal at para 20 of the impugned order holds ""that the Company has not given any

reason for terminating the services of the respondents."" It also holds that there was no cogent evidence before the Labour Court that the work for

which the respondents were engaged was finished and not available. But, that was never the case of the Company. According to it, the temporary

employment of the respondent-employees was to meet the production orders.

24. Mr. Naik submits that, the subsequent events in fact prove the reason of the Company. He submits that during this period 2000 to 2007, the

Company introduced seven schemes for voluntary retirement and a total number of 5768 permanent workers had opted for them.

25. In the above circumstances, the act on the part of the Company in not re-employing the employers after 7 months can neither be said to be a

colourable exercise of their rights under the settlement nor termination for patently false reasons.

26. In its second order, after limited remand the Industrial Tribunal has found that the act of the Company in appointing the employees as

temporary workmen itself was mala-fide. On the basis of the appointment orders, termination orders, re-appointment orders and the seniority list,

it has held that:

6. It appears from the said seniority list that the appointments were made by the respondent company in such a fashion, so as to say, the lot of 10

employees was issued with appointment orders from January to July and another lot of 10 intersected said appointment in March. Third lot

somewhere in the month of May and so on and so forth. Thus before the term of first lot expired another lot was injected in and before the expiry

of the term of the second lot the third lot was introduced again. It further appears that said appointments were made from 1981 till filing of the

complaint in 1991.

7. From the above mode of appointments it therefore, appears that every complainant was appointed in the same department over and again

during the period from 1981 to 1991.....

As pointed out by Mr. Naik, this finding of fact is without any foundation since the facts are not pleaded in the complaint. Consequently, there are

no pleadings in rebuttal. Further, consequence is that, there is no oral evidence on this aspect of the employees and no cross-examination of the

witness of the Company on this aspect. Thus, there was no opportunity to the Company to explain the appointments. The inference is seen to be

drawn by interpreting the documents mentioned above. The Industrial Tribunal has held that from 1981 to 1991, the employees were appointed in

the same department over and again. It rejected the argument on behalf of the Company that, there are several departments under a main head eg.

Department of Assembly. This department has within it, several assemblies like Rickshaw Assembly, Magneto Assembly, Scooter Assembly etc.

and the employees were appointed in the relevant department of assembly. The reason given for rejecting the argument is that, the letters of

appointment of the employees are silent about the specific assembly. But given an opportunity, the Company could have brought evidence

establishing the specific department, where the employees had actually worked. He also points out that the specific case put up by the Company of

the change in the market conditions for the vehicles manufactured by the Company on account of change in the government policy and the gulf war

has not been considered by the Industrial Tribunal. Perusal of the order after remand, substantiates the argument of Mr. Naik. For these reasons,

the finding of the Industrial Tribunal must be held to be perverse. It must also be held that, there were no mala fides of the Company in appointing

the respondents as temporary workmen. For the same reason, the finding of the Industrial Court after remand that, there was sufficient work

available with the Company for employing the respondents/employees cannot be sustained.

27. Submissions have been advanced on the status of the employees because the Labour Court has held that they were appointed from time to

time on contractual basis for specific period and on expiry of the said period, their services came to be terminated. None of the employees had

completed service of 240 days in 12 calendar months preceding their respective dates of termination. As a result, the case of the employees fell

within the ambit of Section 2(oo)(bb) of the I.D. Act. Therefore, it cannot be said that the Company has committed unfair labour practice while

terminating the services of the employees. In the impugned order, the Industrial Tribunal disapproved the view of the learned Court, the reasons for

which read as under:-

16. After perusal of the said observations of the Labour court, it is seen that it was held by the Labour Court that the case of the complainants

falls within the ambit of Section 2(oo)(bb) of the I.D. Act. It is pertinent to note that while the complaints were remanded back to the Labour

Court this issue was clearly decided by this Court and it was held that the Labour Court has failed to consider the provisions of Section 2(oo)(bb)

of the I.D. Act in a proper way. It was further held that the case of the complainants does not fall under the provisions of Section 2(oo)(bb) of the

I.D. Act. It is seen that the labour court has not considered this fact. Therefore, admittedly, it is an apparent error on the face of the record.

17. After going through the judgment of the Labour court and after perusal of the observations made by the Labour court, it is clear that the

Labour court has given much importance to the fact that the complainants have not completed 240 days service in preceding 12 months. But in

view of the authorities relied upon by the complainants, the Labour Court ought to have considered the ration of the said judgments in proper

perspective and would have considered that any termination prior to completing 240 days would be a retrenchment, if the work is available. For

this purpose, heavy reliance was placed by the learned Counsel Shri Pund appearing for the applicants on the judgment of Kerala High Court in

the case between Jayabharat Printers and Publishers Pvt. Ltd. Vs. Labour Court and Others, in which the heard note reads as under:-

Industrial Disputes Act, 1947 - Section 2(oo)(bb) , Retrenchment-Termination of service - As a result of non-renewal of contract of employment,

on its expiry - will not amount to retrenchment - nature of employment have to be determined with reference to nature of duties performance by

workman - Not on the basis of letter of appointment.

Industrial Disputes Act, 1947 - Sec. 2(oo)(bb) Scope of - Section 2(oo)(bb) - cannot be extended to cases - where job continues and

employee"s work is also satisfactory - any periodical renewals made to avoid regular status to employees.

After going through the head note, the matter becomes very much clear. Therefore, there is no need to go into the ratio mentioned in the present

judgment.

28. Mr. Naik, rightly submits that finding of the Industrial Tribunal, that the question of applicability of Section 2(oo)(bb) of the I.D. Act, could not

have been considered by the Labour Court because it had already been decided by the Industrial Tribunal, while remanding the complaint for fresh

hearing is erroneous in view of the order of this Court dated 9th April, 1996 in Writ Petition No. 1861 of 1996. This Court had set aside the

orders of the Industrial Tribunal. The second reason given by the Industrial Tribunal is that, the Labour Court had given too much importance to

the fact of non-completion of 240 days in service in the preceding twelve months is also not correct. In fact, the order of the Labour Court shows

that, that was only one of the considerations taken into account. The appointment of the respondents was temporary and was for a certain period.

The termination of their service was by separate orders by the end of the tenure. In fact, their services stood terminated in strict adherence to the

letter of appointments. Therefore this finding of the Industrial Tribunal cannot be sustained.

29. The next question is, whether termination of the employees by the Company would amount to retrenchment within the definition of Section

2(oo) of the I.D. Act or whether the same would be covered by the exception under Section 2(oo)(bb) of the Act. The provision is reproduced

below:-

2(oo). ""retrenchment"" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as

punishment inflicted by way of disciplinary action but does not include-

(a) .....

(b) .....

[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the

workman concerned on its expiry or of such contract being terminated under stipulation in that behalf contained therein; or]

(c) .....

30. Both the sides have cited decisions of the Apex Court and this Court on applicability of the provision. Mr. Naik refers to the decision of the

Apex Court in Municipal Council, Samrala vs. Raj Kumar reported in 2006 (3) SCC page 81, in which the Apex Court noted the nature and

scope of Section 2(oo)(bb) of the I.D. Act stating that

Clause (oo)(bb) of Section 2 contains an exception. It is in two parts. The first part contemplates termination of service of the workman as a result

of the non-renewal of the contract of employment or on its expiry; whereas the second part postulates termination of such contract of employment

in terms of stipulation contained in that behalf. The learned Presiding Officer of the Labour Court as also the High Court arrived at their respective

findings upon taking into consideration the first part of Section 2(oo)(bb) and not the second part thereof. The circumstances in which the

respondent came to be appointed have been noticed by us hereinbefore.

Ã¯Â¿Â½ Further in the judgment it is noted that apart from the appointment being for a project or scheme of temporary duration, the provision can also

be attracted to the instances where the employees are categorically informed that as per the terms of the contract the same was a short lived one

and would be liable for termination as and when the employer thought it fit or proper or necessary to do so.

31. In another decision cited by Mr. Naik concerning the same Municipal Council i.e. in Municipal Council, Samrala Vs. Sukhwinder Kaur, , the

Apex Court has further elaborated upon the provision in the following terms:-

Although, there was no fixed period of contract of employment between the employer and the workman concerned and thus, no question of its

renewal on its expiry, but there existed a stipulation in the contract that the Executive Officer has the power to dismiss her without issuing any

notice. The question which now arises for consideration, is whether section 2(oo)(bb) of the Act is attracted to the facts and circumstances of this

case.

32. The next decision cited by Mr. Naik is in S.H. Kalekar & Co. Ltd. vs. Khashaba K. Jadhav reported in 1997 II CLR page 649, wherein our

High Court has held that cessation of an employment of a workman on expiry of contractual period is not retrenchment under Section 2(oo) of the

I.D. Act entitling the employee to challenge the retrenchment on the basis of contravention of Section 25(F) of the I.D. Act.

33. Mr. Deo, on the other hand, relied upon the decision of the Apex Court in S.M. Nilajkar and Others Vs. Telecom, District Manager,

Karnataka, for the conditions to be satisfied for the termination to be covered by sub-clause (bb). At paras-13 and 14 of the decision, the Apex

Court holds:

13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of Sub-clause

(bb) subject to the following conditions being satisfied:-

(i) that the workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simplicitor, which provided inter alia that the employment shall come to an end on

the expiry of the scheme or project;

(iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract;

and

(iv) the workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.

14. The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a

scheme or project which was to last only for a particular length of time or up to the occurrence of some event, and therefore, the workman ought

to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would

result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the

terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman

may not therefore complaint that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a

scheme or project employee from the definition of retrenchment it is for the employer to prove the above said ingredients so as to attract the

applicability of Sub-clause (bb) above said. In the case at hand, the respondent-employer has failed in alleging and proving the ingredients of Sub-

clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project.

For want of proof attracting applicability of Sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to

retrenchment.

Ã¯Â¿Â½ Relying upon the same decision, Mr. Deo submits that the burden to prove the above ingredients is upon the Company.

34. When the facts of the present case are seen in the light of the above decisions, there can be no doubt that they fit into the exception in sub-

clause (bb) to take the termination out of the definition of retrenchment. To repeat the facts, the respondents-employees were engaged as

temporary worker for several years. They were engaged for a fixed period of 7 months. Their services were terminated on the expiry of the fixed

period and they were not re-employed. The reason for termination and no re-employment was non-availability of work, which is established by

evidence. Under the settlement dated 3rd September, 1990 arrived at in the complaints filed by the employees, they agreed for temporary

employment for a period of seven months with suitable breaks thereafter. The Company had agreed to absorb them into permanency depending

upon seniority amongst them, conduct, behavior, fitness, attendance and the requirement of the Company. Since the requirement of the Company

was not there due to unavailability of work, they were not re-employed. Mr. Deo, relying upon the subsequent settlements of the years 1998,

2003, 2008 and 2014 sought to submit that non-availability of the work claimed by the Company is a myth. Undoubtedly, there are settlements

arrived at with the permanent workers. It has not been the case of the Company that, there is no work whatsoever available to it. It''s claim is that,

the spurt in the business at the relevant time, which was the reason for employing temporary workers, having died down, there is no availability of

work for the respondents. In any case, the following recital in the settlement of the year 2008 speaks for itself.

The Company decided to discontinue the manufacturing/production activities at Bajaj Auto Limited Akurdi division due to the impact of

Government policies on capacity rationalization, regional distortions created by inconsistent tax benefits and the continuing evil of octroi in the State

of Maharashtra in stark contrast to most of the rest of the country and accordingly discontinued the manufacturing/production activities with effect

from 1st September, 2007. The Company decided that there is no need of wage settlement as there is no production activity. However, the Union

requested the Company to sign the wage settlement. The management, as a part of broad approach and understanding, consented to enter into

negotiations for the wage settlement and accordingly the Company served upon the Union its Charter of Expectations dated 27th January, 2008 to

29th January, 2008.

35. Mr. Naik, then refers to the direction contained in the impugned order to continue the respondents in service after their reinstatement and the

finding of the Industrial Tribunal after remand that the Company was obliged to make the employees permanent in view of the law applicable and

the Standing Orders. He submits that, any claim of the employees for permanency or regularization in service based on the length of their

temporary service is different from their claim of reinstatement in service. In this connection, he relies upon the decision of the Apex Court in

Gangadhar Pillai Vs. Siemens Ltd., . The Apex Court, on this aspect, observes as under:-

15. It is not the law that on completion of 240 days of continuous service in a year, the concerned employee becomes entitled to for regularization

of his services and/or permanent status. The concept of 240 days in a year was introduced in the industrial law for a definite purpose. Under the

Industrial Disputes Act, the concept of 240 days was introduced so as to fasten a statutory liabilities upon the employer to pay compensation to be

computed in the manner specified in Section 25-F of the Industrial Disputes Act, 1947 before he is retrenched from services and not for any other

purpose. In the event a violation of the said provision takes place, termination of services of the employee may be found to be illegal, but only on

that account, his services cannot be directed to be regularized. Direction to reinstate the workman would mean that he gets back the same status.

The other decision cited by Mr. Naik on this aspect is of the Apex Court in Hindustan Petroleum Corpn. Ltd. Vs. Ashok Ranghba Ambre, . In the

circumstance of issuance of direction similar to the case on hand, the disapproval expressed by the Apex Court was in following terms:-

11. To us, however, the learned counsel for the appellant-Corporation is right in submitting that setting aside an action of termination of services

being violative of Section 25F of the Act does not necessarily follow that the workman must be held entitled to the benefits claimed by him in the

writ petition, namely, status of permanency and claim of regular pay scales and other benefits based on permanency. In our judgment, two things

are distinct, different and operate in different areas. In Reference proceedings, the question before the Industrial Tribunal as also before the High

Court was whether termination of services of the workman was in consonance with law. Once it was held that there was breach of Section 25F of

the Act, it necessarily followed that the order of termination was in violation of law and direction was required to be issued in the form of

reinstatement of the workman. The said order was, therefore, confirmed by the High Court. But in our considered opinion, in the proceedings

before the High Court under Article 226 of the Constitution as to permanency and other benefits on that basis, the writ petitioner could not

contend that since the action of termination of his services was held to be illegal and he was ordered to be reinstated by Industrial Tribunal and the

said Award was confirmed by the High Court, ipso facto, he ought to be treated as permanent employee of the Corporation and must be held

entitled to the benefits claimed in the writ petition. To that extent, therefore, the order passed by the High Court is not in consonance with law.

There is substance in the submission of Mr. Naik. There is one more reason why, such direction could not have been given by the Industrial

Tribunal. By the settlement dated 3rd September, 1990 the respondents had specifically withdrawn their complaints and demands for reinstatement

with continuity of service and backwages. The relevant clauses of the settlement read as follows:-

2. It is agreed by and between the parties that the workmen shall withdraw the complaints listed in Annexure-A and demands for reinstatement

with continuity of services and backwages.

3. The workmen agree not to raise any demand for reinstatement with continuity of services and full backwages before any authority or Court

under any law for the time being in force.

It is obvious from the settlement that, on the background of the withdrawal of the complaints and the demands the agreement at Clause-4 was

arrived at between the parties to temporarily take in service all the respondents/employees for a period of 7 months with suitable break thereafter.

Company was to then, depending upon the conditions set in Clause-4, employ the respondents/employees on probation and make them

permanent. Under Clause-5, the demand for reinstatement with continuity of service could be raised by the respondents/employees only in case of

failure on the part of the Company to comply with Clause-4 of the settlement.

36. For all the above reasons, the order of the Industrial Tribunal impugned in the first two petitions cannot be sustained and the same needs to be

set aside. It must be mentioned here that, during the course of arguments in the petitions, the Company had offered to pay compensation to the six

employees who have continued with the proceedings on the same terms as those offered to others and recorded by the Apex Court in its decision

in Bajaj Auto Limited Vs. Rajendra Kumar Jagannath Kathar and Others, . The respondents, however, have refused to accept the same.

37. In view of setting aside of the impugned order, the limited challenge thereto by the respondents in their petition, would not survive. The

respondents are aggrieved by denial by the Industrial Tribunal of backwages to them. This grievance of the respondents, even otherwise will not

stand on it''s own merits. There are no pleadings whatsoever in the complaint on the unemployment of the respondents. As regards the evidence on

unemployment, the deposition of the witness of the respondents indicates that the respondents were working. The witness in his examination-in-

chief itself stated:-

2. After termination of services, I made alternate attempt to secure the job with Garware Wall Rope, Bajaj Tempo, Thermax R, Cold Appliances,

Telco Similarly, the other complainant who are also tried to secure the job. All of us maintained by doing the daily wages.

Later in his cross-examination, he admitted that whenever he was out of employment of the petitioner, he used to work at Yadav Engineering

Works at Kolhapur. In the circumstances, the claim for backwages was rightly rejected by the Industrial Tribunal.

38. This brings us to the third petition. In view of the decision in the first two petitions, this actually needs to be dismissed without any deliberation.

This petition arises out of the complaint filed by the respondents alleging unfair labour practices under Items-5, 6, 9 and 10 of Schedule-IV of the

MRTU & PULP Act. The Industrial Tribunal, on appreciation of the evidence led by the respondents held that, there is no material to attract

Items-5, 9 and 10 of Schedule-IV. As regards Item-6, the Industrial Tribunal noted that, the services of the respondents had been terminated. The

complaint had been filed during pendency of the petition by the Company to challenge the reinstatement. Further, their continuation in the

employment was pursuant to the interim order dated 9th April, 1996 passed by this Court during pendency of the earlier complaint. The order had

made it clear that, provision of the work by the Company and acceptance thereof by the workmen shall be without prejudice to the respective

rights and contentions in the pending complaint, irrespective of the workmen completing 240 days of work in a year. The complaint herein was

filed 4 years after the order.

39. For the reasons stated above, Writ Petition No. 1100 of 1998 is allowed. The order impugned in the petition is set aside. Writ Petition No.

6608 of 1999 and Writ Petition No. 268 of 2006 are dismissed.

40. At the request of Mr. Jaydeep Deo, the order is stayed for a period of 12 weeks from today.