CASE NO.:
Appeal (civil) 6306-6316 of 2003

PETITIONER:
Manager, R.B.I., Bangalore

RESPONDENT:
S. Mani & Ors.

DATE OF JUDGMENT: 14/03/2005

BENCH:
N. Santosh Hegde, B.P. Singh & S.B. Sinha

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

The Respondents herein were Ticca Mazdoors working under the Appellant herein. Ticca Mazdoors are intermittently appointed by the Reserve Bank of India whenever absence of regular Class IV employees takes place. They are not engaged everyday or continuously. Their engagement depends upon the need of the Appellant. They are never regarded as regular Mazdoors. Two waiting lists are maintained by the Appellant. The first waiting list contains the names of such of them who may be appointed as regular Mazdoors whereas the second list is maintained for those who are to be engaged as Ticca Mazdoors. The name of the respondents figured in the second list. They were appointed in the said category as Ticca Mazdoor between the period 14th March, 1980 and 8th August, 1982 for the purpose of their appointment as regular Mazdoors. The Respondents herein, except Respondent No. 6, were interviewed on different dates between January, 1982 and May, 1982. Allegedly, during interview, they produced transfer certificates but their answers to the questions posed in this behalf were not in conformity therewith, whereupon a verification was made and it was found that the said certificates were forged and fabricated. Three first information reports were lodged by the officers of the Appellant herein for furnishing false certifications by the Respondents. In the criminal case, however, they were acquitted by three different judgements passed on 20th April, 1987, 5th August, 1987 and 24th September, 1987. Between October, 1987 and August, 1988, the Respondents submitted fresh school transfer certificates and requested the Appellant herein to reemploy them. As their request for reemployment was not accepted, an industrial dispute was raised resulting in a reference made by the Central Government for adjudication thereof to the Central Government Industrial Tribunal, Bangalore. The Industrial Tribunal by an award dated 18.12.1997 held that the Respondents having completed 240 days of service; and their terminations having been brought about without complying with the provisions of Section 25F of the Industrial Disputes Act, and, thus, being illegal they were entitled to be reinstated in the Bank's services as per the prevailing rules and conditions of the service with full back wages.

The Appellant herein filed a Special Leave Petition against the said award which was dismissed as withdrawn with liberty to it to approach the High Court. The Appellant filed writ petitions before the Karnataka High Court. By an order dated 30th November, 1998, the writ petitions were dismissed by the learned Single Judge whereagainst writ appeals were filed by the Appellant which were marked as WA No. 3700 of 1999 and 5301 to 5310 of 1999. By reason of the impugned judgment dated 25th June, 2002, the Division Bench allowed the said appeal in part modifying the award of the Tribunal as also the learned Single Judge to the effect that the back wages be paid from 23rd July, 1993 instead of their respective dates of retrenchment. The Division Bench, however, gave liberty to the Appellant

to hold domestic enquiry against the Respondents for the alleged misconduct committed by them. The Division Bench in issuing the aforesaid direction inter alia held that as the Respondents were not regularized in services for the alleged misconduct of producing false certificates, the same would amount to stigma and loss of confidence of the Appellant in them.

Mr. Mahendra Anand, learned senior counsel appearing on behalf of the Appellant would contend that as the Respondents herein did not report for duty between December, 1982 and March, 1987, they must be held to have abandoned their services.

The learned counsel would contend that the learned Tribunal committed a serious error of law insofar as it failed to take into consideration the fact that the Respondents were not able to prove that they had completed 240 days of service during a period of 12 months preceding the order of termination and in that view of the matter the question of compliance of Section 25F of the Industrial Disputes Act did not arise at all. Our attention was also drawn to the fact that during pendency of aforementioned industrial adjudication the management and the Union had arrived at a settlement pursuant whereto or in furtherance whereof all posts had been filled up. In any event, it was urged, only because the Respondents have allegedly completed 240 days of work, the same by itself would not confer any right on them to be regularized in service. Reliance in this connection has been placed on Maharashtra State Cooperative Cotton Growers' Marketing Federation Ltd. and Another Vs. Employees' Union and Another [1994 Supp. (3) SCC 385]

The learned counsel would submit that no adverse inference could have been drawn for non-production of attendance register as sufficient explanation therefor had been furnished. Reliance in this connection has been placed on Municipal Corporation, Faridabad Vs. Siri Niwas [(2004) 8 SCC 195].

It was further urged that the burden of proof in that behalf lay upon the Respondents and in support thereof reliance has been placed on M.P. Electricity Board Vs. Hariram [(2004) 8 SCC 246].

The Tribunal, according to Mr. Anand, misdirected itself in passing the impugned award insofar as it considered irrelevant factors and failed to take into consideration the relevant facts. The learned counsel has further placed before us some school transfer certificates produced by some of the Respondents in December, 1982 and March, 1987 with a view to show that the action taken by the Appellant herein was not wholly arbitrary so as to justify a direction for reinstatement of the Respondents in service only on the ground that they stood acquitted in the criminal cases. The judgments of the criminal court having been rendered by giving benefit of doubt to the Respondents herein, the learned counsel would submit, the same itself could not have been a ground for grant of relief. Reliance in this connection has been placed on Union of India and Another Vs. Bihari Lal Sidhana [(1997) 4 SCC 385].

Mr. N.G. Phadke, learned counsel appearing on behalf of the Respondents, on the other hand, supported the award of the Tribunal and consequently the judgments of the learned Single Judge and the Division Bench of the Karnataka High Court contending that

(i) the Respondents' contentions that they continued in service, from March 1980 to August 1982 as disclosed in their pleadings and representations, having not been denied, the same must be held to have been admitted.
(ii) as the Appellant herein could not prove its case that the Respondents had abandoned their services, the Tribunal rightly placed the onus of proof on it;
(iii) as despite an order made in this behalf the Appellant did not produce attendance registers, the impugned award could have been passed upon

drawing an adverse inference. Reliance in this behalf has been placed on H.D. Singh Vs. Reserve Bank of India and Others [(1985) 4 SCC 201].

(iv) in any event, the Appellant never raised a contention that the Respondents had not worked for more than 240 days during preceding 12 months.
(v) the order of the Division Bench being a consent order, no appeal lies thereagainst.
(vi) although by reason of the Respondents' being reinstated in service, they would continue to have the status of Ticca Mazdoors, but having regard to the intervening circumstances, viz., the settlement arrived at by and between the Appellant and the Union, they would be entitled to be regularized in services in terms of the decision of this Court in Chief General Manager, Reserve Bank of India Vs. General Secretary, Reserve Bank Workers Organisation [2001 (2) LLJ 487]; and
(vii) section 25F of the Industrial Disputes Act being mandatory in nature, the provisions thereof are required to be complied with even when the workmen were employed as Badli Workers or Ticca Mazdoors as daily wager. Reliance in this behalf has been placed on The State Bank of India Vs. Shri N. Sundara Money [(1976) 1 SCC 822], H.D. Singh (supra), Management of M/s. Willcox Buckwell India Ltd. Vs. Jagannath and Others [(1974) 4 SCC 850], L. Robert D'Souza Vs. Executive Engineer, Southern Railway and Another [(1982) 1 SCC 645], Samishta Dube Vs. City Board, Etawah and another [1999 Lab. I.C. 1125] and Moolchand Kharati Ram Hospital K. Union Vs. Labour Commissioner and Others [2000 (2) LLJ 1411].

STATUS OF TICCA MAZDOORS:

As noticed hereinbefore, Ticca Mazdoors are not regarded as regular Mazdoors. Two waiting lists are maintained by the appellant. The first waiting list contains the names of such Mazdoors who may be appointed as regular Mazdoors whereas the second list is maintained for those who are to be engaged as Ticca Mazdoors.

The service of Ticca Mazdoors being not permanent in nature can be dispensed with subject to compliance of the statutory or contractual requirements, if any. Their status is not higher than that of a temporary workman or a probationer. (See Civil Appeal No. 4868 of 1999, Karnataka State Road Transport Corporation & Another Vs. S.G. Kotturapp & Anr., disposed of on 3rd March, 2005)

EFFECT OF JUDGMENT OF ACQUITTAL:

The Appellant's contention as regard holding of interview of the Respondents herein in December, 1982 and March, 1987 is not denied or disputed. It is also further not in dispute that their educational qualifications and other details were required to be verified. Institution of three criminal cases stands admitted. Before us a judgment passed in the criminal cases has been produced, from a perusal whereof it would appear that the contention raised by the Respondents herein that they had never produced any transfer certificate at the time of interview was not raised. If the contention of the Appellant as regard production of transfer certificates by the Respondents at the time of their interview finds acceptance, then concededly the said certificates vis-'-vis the certificates produced by the Respondents in the year 1987 are different in several respects, including the name of the father and name of the school, date of birth, etc. It is true that the certificates produced by them in 1987 were found to be genuine but the same by itself would not lead to a conclusion, as suggested by Mr. Phadke, that the Respondents themselves did not produce the said certificates before the interview board or the same were manufactured by the officers of the Reserve Bank of India.

It is trite that a judgment of acquittal passed in favour of the employees by giving benefit of doubt per se would not be binding upon the employer. The employer had no occasion to initiate departmental proceeding against the Respondents. They were not regularly employed. They, according to the Appellant, filed forged and fabricated documents and as such were not found fit to be absorbed in regular service. The effect of a judgment of acquittal vis-'-vis the alleged misconduct on the part of the workmen fell for consideration before this Court in Bihari Lal Sidhana (supra) wherein it was held:

"5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control & Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money."

Recently in Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another [(2004) 8 SCC 200], one of us, Santosh Hegde, J., speaking for a 3-Judge Bench observed:

"25. The next contention addressed on behalf of the respondents is that the Labour Court ought not to have brushed aside the finding of the criminal court which according to the learned Single Judge "honourably" acquitted the accused workmen of the offence before it. We have been taken through the said judgment of the criminal court and we must record that there was such "honourable" acquittal by the criminal court. The acquittal by the criminal court was based on the fact that the prosecution did not produce sufficient material to establish its charge which is clear from the following observations found in the judgment of the criminal court:

"Absolutely in the evidence on record of the prosecution witnesses I have found nothing against the accused persons. The prosecution totally fails to prove the charges under Sections 147, 353, 329 IPC."

26. Learned counsel for the respondents in regard to the above contention relied on a judgment of this Court in the case of Capt. M. Paul Anthony. In our opinion, even that case would not support the respondents herein because in the said case the evidence led in the criminal case as well as in the domestic enquiry was one and the same and the criminal case having acquitted the workmen on the very same evidence, this Court came to the conclusion that the finding to the contrary on the very same evidence by the domestic enquiry would be unjust, unfair and rather oppressive. It is to be noted that in that case the finding by the Tribunal was arrived at in an ex parte departmental proceeding. In the case in hand, we have noticed that before the Labour Court the evidence led by the management was different from that led by the prosecution in the criminal case and the materials before the criminal court and the Labour Court were entirely different. Therefore, it was open to the Labour Court to have come to an independent conclusion dehors the finding of the criminal court\005"

It was observed:

"From the above, it is seen that the approach and the objectives of the criminal proceedings and the disciplinary proceedings are altogether distinct and different. The observations therein indicate that the Labour Court is not bound by the findings of the criminal court."

In Cholan Roadways Limited Vs. G. Thirugnanasambandam [2004 (10) SCALE 578], this Court held:

"19. It is further trite that the standard of proof required in a domestic enquiry vis-'-vis a criminal trial is absolutely different. Whereas in the former 'preponderance of probability' would suffice; in the latter, 'proof beyond all reasonable doubt' is imperative."

The contention that the Respondents had not produced such certificates or the same have been fabricated at the instance of some officers of the Reserve Bank of India, therefore, does not find our acceptance. It is rejected accordingly.

SECTION 25F OF THE INDUSTIRAL DISPUTES ACT:

The provisions contained in Section 25F of the Industrial Disputes Act are required to be complied with if the workmen concerned had completed 240 days of service in a period of 12 months preceding the order of termination. The Tribunal admittedly based its decision on the following:

(i) The Appellant did not produce the attendance register.
(ii) There was circumstantial evidence to show that the Respondents

herein had made several representations between March, 1987 and April, 1990.
(iii) The witness examined on behalf of the Appellant MW3 conceded that the workmen had worked for 240 days.

The workmen raised a contention of rendering a continuous service between April, 1980 to December, 1982 in their pleadings and representations. Admittedly, the Appellant herein in their rejoinder denied and disputed the said facts stating:

"i) as regards paragraph 1, it is denied that the I Party has worked continuously from April, 1980 to December, 1982. The factual position is that the I party was engaged off and on from August 80 to January 83 depending upon the availability of casual vacancies on various dates and the need for engaging ticcas."

The concerned workmen in their evidence did not specifically state that they had worked for 240 days. They merely contended in their affidavit that they are reiterating their stand in the claim petition.

Pleadings are no substitute for proof. No workman, thus, took an oath to state that they had worked for 240 days. No document in support of the said plea was produced. It is, therefore not correct to contend that the plea raised by the Respondents herein that they have worked continuously for 240 days was deemed to have been admitted by applying the doctrine of non-traverse. It any event the contention of the Respondents having been denied and disputed, it was obligatory on the part of the Respondents to add new evidence. The contents raised in the letters of the Union dated 30th May, 1988 and 11th April, 1990 containing statements to the effect that the workmen had been working continuously for 240 days might not have been replied to, but the same is of no effect as by reason thereof, the allegations made therein cannot be said to have been proved particularly in view of the fact that the contents thereof were not proved by any witness. Only by reason of non-response to such letters, the contents thereof would not stand admitted. The Evidence Act does not say so.

The Appellant, therefore, cannot be said to have admitted that the Respondents had worked for more than 240 days.

NON-PRODUCTION OF THE DOCUMENTS:

It is no doubt true that the industrial tribunal by an order dated 12th May, 1993 inter alia directed the Appellant to produce register of workmen for the period between April, 1980 and December, 1982 in respect of the first party workmen and attendance register. The Tribunal, however, in its award noticed the explanation of the Appellant that the attendance registers being old and hence could not be produced holding:

"Of course, it is true that the 2nd party had given an explanation namely those attendance registers are very old and hence could not be produced. But this explanation cannot be acceptable, because as I pointed out earlier, apart from the attendance registers, there may be other relevant records to show that the 1st parties either worked continuously as alleged by the 1st parties or only during the leave vacancy with break of service."

The learned Tribunal further held:

"Therefore, the materials placed before this Tribunal lead to the only conclusion that the 2nd party is not in a position to prove their case namely the concerned 1st parties 1 to 11 had abandoned themselves without any proper reasons."

An adverse inference, therefore, was drawn for non-production of the attendance register alone, and not for non-production of the wage-slips. Reference to 'other relevant documents' must be held to be vague as the Appellant herein had not been called upon to produce any other document for the said purpose.

It appears that the learned Tribunal considered the matter solely from the angle that the Appellant has failed to prove its plea of abandonment of service by the Respondents.

The question came up for consideration before this Court recently in Siri Niwas (supra) wherein it was held:

"15\005A Court of Law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration in the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds."

Referring to the decision of this Court in Indira Nehru Gandhi Vs. Raj Narain [1975 Supp SCC 1], this Court observed:

"19. Furthermore a party in order to get benefit of the provisions contained in Section 114(f) of the Indian Evidence Act must place some evidence in support of his case. Here the Respondent failed to do so."

In Hariram (supra), this Court observed:

"11. The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously."

As noticed hereinbefore, in this case also the Respondents did not adduce any evidence whatsoever. Thus, in the facts and circumstances of the case, the Tribunal erred in drawing an adverse inference.

BURDEN OF PROOF:

The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question

from that angle. It held that the burden of proof was upon the Appellant on the premise that they have failed to prove their plea of abandonment of service stating:

"It is admitted case of the parties that all the 1st parties under the references CR No. 1/92 to 11/92 have been appointed by the 2nd party as ticca mazdoors. As per the 1st parties, they had worked continuously from April, 1980 to December, 1982. But the 2nd party had denied the above said claim of continuous service of the 1st parties on the ground that the 1st parties has not been appointed as regular workmen but they were working only as temporary part time workers as ticca mazdoor and their services were required whenever necessary arose that too on the leave vacancies of regular employees. But as strongly contended by the counsel for the 1st party, since the 2nd party had denied the above said claim of continuous period of service, it is for the 2nd party to prove through the records available with them as the relevant records could be available only with the 2nd party."

The Tribunal, therefore, accepted that the Appellant had denied the Respondents' claim as regard their continuous service.

In Range Forest Officer Vs. S.T. Hadimani [(2002) 3 SCC 25], it was stated:

"3\005In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside.

[See also Essen Deinki Vs. Rajiv Kumar, (2002) 8 SCC 400]

In Siri Niwas (supra), this Court held:

"The provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication. The general principles of it are, however applicable. It is also imperative for the Industrial Tribunal to see that the principles of natural justice are complied with. The burden of proof was on the respondent herein to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment. In terms of Section 25-F

of the Industrial Disputes Act, 1947, an order retrenching a workman would not be effective unless the conditions precedent therefor are satisfied. Section 25-F postulates the following conditions to be fulfilled by employer for effecting a valid retrenchment :

(i) one month's notice in writing indicating the reasons for retrenchment or wages in lieu thereof;

(ii) payment of compensation equivalent to fifteen days, average pay for every completed year of continuous service or any part thereof in excess of six months."

It was further observed:

"14\005 As noticed hereinbefore, the burden of proof was on the workman. From the Award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25B of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the Appellant herein including the muster rolls. It is improbable that a person working in a Local Authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. He even did not examine any other witness in support of his case."

Yet again in Hariram (supra), it was opined:

"10\005We cannot but bear in mind the fact that the initial burden of establishing the factum of their continuous work for 240 days in a year rests with the respondent applicants.

Mr. Phadke placed strong reliance on H.D. Singh (supra) to contend that adverse inference was drawn therein for non-production of certain documents. H.D. Singh (supra) was rendered on its own fact. In that case, a Special Leave Petition was entertained by this Court directly from the Award passed by the Industrial Tribunal. Before this Court, both the parties filed affidavits and several documents. The workmen therein categorically disclosed the number of days they had worked in each year. In that case the name of the workman was struck off as he had allegedly concealed his educational qualification; purportedly on the basis of a confidential circular issued by the bank on June 27, 1976 to the effect that the matriculates will not be retained in the list. As the workman therein in reply to the letter of the Bank stated that he was not a matriculate in 1974 and he passed the examination only in 1975, he was not given any work even after July, 1976 without issuing any written notice terminating his services. Holding that the workman had been retrenched from service, as noticed hereinbefore, affidavits of the parties were filed and, thus, some evidence had been adduced. The number of actual days worked by the workman therein was also brought on records by the Respondent. The said decision, thus, having

been rendered in the fact situation obtaining therein does not constitute a binding precedent.

CIRCUMSTANTIAL EVIDENCE:

The Tribunal also relied upon some purported circumstantial evidence to hold that the workmen had completed 240 days of work in the following terms:

"That apart, the circumstantial evidence also would show that the plea of the abandonment had been taken by the 2nd party only for the sake of defence in this case and it is not a real one. In order to explain the same when we perused the admitted documents Exs. M1 to M7 together with the admitted evidence of MW3 at para 5 of his deposition, we would see that from 3.3.87 till 11.4.90 either almost all the 1st parties before this Tribunal had continuously requested the management for their reinstatement alleging that they served in the 2nd party Bank continuously from April, 1980 to December, 1982. They also pleaded the same in their respective claim petitions before us. But the management as per Exs. M8 dated 8.5.1991 had not denied the alleged claim of continuous service of the 1st parties at their earliest opportunity. But, on the other hand, Ex.M8 would show that for absorption of the 1st parties the 2nd party had put some other conditions and demanded the 1st parties workmen for their signature if they agreed for those conditions. If that be the case, it could be seen that, at the earliest point of time, the 2nd party Bank had not denied the said claim of continue service made by 1st parties. Hence, the documents Exs. M1 to M8 would also disqualify the 2nd party from claiming said plea namely since because the 1st parties had worked temporarily that too only on leave vacancy they are not entitled for any benefits under the provisions of the I.D. Act."

It is difficult to accept the logic behind the said findings.

Only because the Appellant failed to prove their plea of abandonment of service by the Respondents, the same in law cannot be taken to be a circumstance that the Respondents have proved their case.

The circumstances relied upon, in our opinion, are wholly irrelevant for the purpose of considering as to whether the Respondents have completed 240 days of service or not. A party to the lis may or may not succeed in its defence. A party to the lis may be filing representations or raising demands, but filing of such representations or raising of demands cannot be treated as circumstances to prove their case.

ADMISSION BY MW3

We have been taken through the deposition of Shri S. Nagarajan, MW3. He was examined as a witness to prove production of the certificates by the Respondents. He had verified transfer certificates filed subsequently by the Respondents and the same were found to be all genuine. He did not make any admission as regard the continuous working of the Respondents for a period of more than 240 days nor is there even a suggestion to that effect on behalf of the Respondents herein.

The Tribunal’s findings are, thus, based on no evidence and must be held to be irrational.

JUDICIAL REVIEW:

The findings of the learned Tribunal, as noticed hereinbefore, are wholly perverse. He apparently posed unto itself wrong questions. He placed onus of proof wrongly upon the Appellant. His decision is based upon irrelevant factors not germane for the purpose of arriving at a correct finding of fact. It has also failed to take into consideration the relevant factors. A case for judicial review, thus, was made out.

In Cholan Roadways Limited (supra), this Court held:

"34\005 In the instant case the Presiding Officer, Industrial Tribunal as also the learned Single Judge and the Division Bench of the High Court misdirected themselves in law insofar as they failed to pose unto themselves correct questions. It is now well-settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, further more, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of Res ipsa loquitur which was relevant for the purpose of this case and, thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not garmane for determining the issue, namely, the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which in "preponderance of probability" and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out."

The Appellant in para 13.14 of the writ petition contended:

"13.14 For that the Industrial Tribunal erred in holding that all the Ticca Mazdoors are workmen as they have completed 240 days of continuous service during the year 1980-1982, merely because the Petitioner could not produce the attendance registers for the relevant period as the same being old, and destroyed after expiry of its stipulated period of preservation of 5 years were not available with the Petitioner Bank."

Neither the learned Single Judge nor the Division Bench adverted to the said question at all. The learned Single Judge without considering the contentions raised by the Appellant held:

"The Tribunal has extensively dealt with the points of dispute relating to justification of the Bank in terminating the services of the workmen. In paragraphs 16 to 49 the Tribunal has elaborately discussed facts, evidence and the material placed on record with reference to the case laws relating to 'retrenchment'. In this view of the matter, it is wholly unnecessary to refer Mr. Padke, learned counsel for respondents 1 to 11. The Tribunal has recorded a finding that the action of the Bank amounts to retrenchment as defined under Section 2(oo) of the Act and there is violation of

mandatory requirement Section 25-F of the Act. Therefore, this Court should not interfere with the findings of fact recorded by the Tribunal."

The Division Bench unfortunately in its judgment did not take into consideration the relevant questions. It proceeded on a pre-supposition that the Bank intended to reinstate the workmen. The Division Bench without any detailed discussion observed:

"The submission of Mr. Kasturi, learned senior counsel for the Bank has some force in so far as both the order of the Tribunal and the learned Single Judge proceeded on the footings that the termination was contrary to Section 25F of the Industrial Dispute Act."

Laying emphasis on the alleged right of the Respondents to be regularized in their services and denial thereof by the Appellant herein, the Division Bench held that discontinuance of the workmen on the ground that they filed forged certificates cast a stigma and, on that ground, it upheld the award of the learned Industrial Tribunal as also the judgment of the learned Single Judge.

The Division Bench, however, relying on or on the basis of, the decision of this Court in Chief General Manager, Reserve Bank of India (supra) directed that the backwages shall be paid only from 23.7.1993.

EFFECT OF THE ORDER OF REINSTATEMENT:

The terms and conditions of settlement by and between the Reserve Bank of India and the Reserve Bank Workers Federation although not produced before us, the same appear in a judgment of this Court in M.G. Datania & Ors. Vs. Reserve Bank of India & Anr. [Civil Appeal No. 7407 of 1994, disposed of on 28th November, 1995]; the relevant portion whereof is as under:

"Terms of Settlement:

(i) The existing arrangement or practice of engaging persons on daily wages purely on temporary and ad hoc basis in Class IV in various cadres shall be discontinued forthwith.

(ii) The leave reserve in the case of mazdoors employed in Cash Department shall be increased from the existing level of 15% to 25%.

(iii) The leave reserve in other categories in Class IV shall be increased from the existing level of 15% to 20%.

(iv) The additional posts that may be created or may arise as a consequence of paragraphs (ii) and (iii) above, together with existing vacancies, if any, shall be utilized for giving (a) full time employment to part-time employees to the extent possible and (b) regular full-time or part-time employment, as the case may be, to the ticcas who have rendered continuous service of three years or more as on 19th November, 1992. However, if the number of available vacancies at a particular centre is less than the number of such ticcas at that centre to be given regular full-time/ part \026 time appointments, the ticcas in excess of the available vacancies at that centre shall have to move at their own cost to another centre where vacancies are available after absorbing eligible ticcas at that

centre on a returnable basis as and when vacancies arise in the parent centre. Such repatriation being in the nature of request transfer shall be at their own cost and also subject to usual terms and conditions prescribed in respect of request transfers. Such of the ticcas who are not willing to the above arrangements shall have no claim to be absorbed in the Bank.

(v) The Federation shall not under any circumstances insist on engagement of ticcas on daily wage basis for carrying out Bank's work smoothly and without any hindrance or disturbance in any Section/ Department including Cash Department of the Bank irrespective of number of employees absent for any reason whatsoever. In other words, not withstanding any absenteeism in Class IV cadre (any group), the work of the Bank shall be carried on by and with the assistance of the employees present on any given day. If, however, there is an increase in the Bank's normal work on a long term basis it would review the overall strength in Class IV cadre at the centre concerned in the normal course."

One of the terms, therefore, postulates that regular full time or part time Ticcas whether in regular full time or part time employment who have rendered continuous service of three years or more as on 19th November, 1992 were entitled to be considered for absorption in the additional posts that were required to be created by reason of such settlement. Such settlement had been arrived having regard to the fact that the same Ticca Mazdoors had been working for a long time.

Absorption of the Ticca Mazdoors in the services of the Appellant was not automatic. The concerned workmen were required to fulfill the conditions laid down therefor.

Would by reason of the order of reinstatement, the status of the Respondents change is, the question.

In law, 240 days of continuous service by itself does not give rise to claim of permanence. Section 25F provides for grant of compensation if a workman is sought to be retrenched in violation of the conditions referred to therein. [See Maharashtra State Cooperative Cotton Growers' Marketing Federation Ltd.(supra). See also Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others, etc., AIR 1994 SC 1638]

In A. Umarani (supra), this Court held:

"Regularisation, in our considered opinion, is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body or authority governed by a Statutory Act or the Rules framed thereunder. It is also now well-settled that an appointment made in violation of the mandatory provisions of the Statute and in particular ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation. (See State of H.P. Vs. Suresh Kumar Verma and Another, (1996) 7 SCC 562)."

Yet again, in Executive Engineer, ZP Engg. Divn. And Another Vs.

Digambara Rao and Others [(2004) 8 SCC 262] this Court held:

"It may not be out of place to mention that completion of 240 days of continuous service in a year may not by itself be a ground for directing an order of regularization. It is also not the case of the Respondents that they were appointed in accordance with the extant rules. No direction for regularization of their services was, therefore, could be issued."

Furthermore, a direction for reinstatement for non-compliance of the provisions of Section 25F of the Industrial Disputes Act would restore to the workmen the same status which he held when terminated. The Respondents would, thus, continue to be Ticca Mazdoors, meaning thereby their names would continue in the second list. They had worked only from April, 1980 to December, 1982. They did not have any right to get work. The direction of continuity of service per se would not bring them within the purview of terms of settlement. Even in the case of a statutory corporation in S.G. Kotturappa (supra), this Court observed:

"It is not a case where the Respondent has completed 240 days of service during the period of 12 months preceding such termination as contemplated under Section 25-F read with Section 25-B of the Industrial Disputes Act, 1947. The Badli workers, thus, did not acquire any legal right to continue in service. They were not even entitled to the protection under the Industrial Disputes Act nor the mandatory requirements of Section 25-F of the Industrial Disputes were required to be complied with before terminating his services, unless they complete 240 days service within a period of twelve months preceding the date of termination."

It was further held:

"The terms and conditions of employment of a Badli worker may have a statutory flavour but the same would not mean that it is not otherwise contractual. So long as a worker remains a Badli worker, he does not enjoy a status. His services are not protected by reason of any provisions of the statute. He does not hold a civil post. A dispute as regard purported wrongful termination of services can be raised only if such termination takes place in violation of the mandatory provisions of the statute governing the services. Services of a temporary employee or a badli worker can be terminated upon compliance of the contractual or statutory requirements."

Mr. Phadke, as noticed hereinbefore, has referred to a large number of decisions for demonstrating that this Court had directed reinstatement even if the workmen concerned were daily wagers or were employed intermittently. No proposition of law was laid down in the aforementioned judgments. The said judgments of this Court, moreover, do not lay down any principle having universal application so that the Tribunals, or for that matter the High Court, or this Court, may feel compelled to direct reinstatement with continuity of service and backwages. The Tribunal has some discretion in this matter. Grant of relief must depend on the fact situation obtaining in a particular case. The industrial adjudicator cannot be

held to be bound to grant some relief only because it will be lawful to do so.

In Haryana State Coop. Land Dev. Bank Vs. Neelam [JT 2005 (2) SC 600], this Court observed:

"It is trite that the courts and tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct a workman would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of Acceptance Sub silentio."

OTHER CONTENTIONS:

We have noticed hereinbefore that the Appellant herein raised a specific plea denying or disputing the claim of the Respondents that they had completed 240 days of work. Such a plea having been raised both before the Industrial Tribunal as also before the High Court, we cannot accept that the Appellant had abandoned such a plea. Even in this Special Leave Petition, it is contended:

"(3)For that the High Court ought to have held that the disengagement of the Ticca Mazdoors (Respondents), who were daily wage casual workers, did not involve any retrenchment and as such there was no question of reinstatement of Respondents will full backwages from 23.7.1993."

The contention of Mr. Phadke that they have abandoned the said plea cannot be accepted. Similarly, the contention of Mr. Phadke raised before us that the order passed by the Division Bench was a consent order is unacceptable. The Division Bench does not say so. Such a contention has been raised only on the basis of a statement made by the Respondents in the Counter-affidavit wherein the reference had been made to one order of the Division Bench asking the parties to make endeavour for settlement. The Respondents contend that the order of the Division Bench is virtually a consent order. No settlement admittedly had been arrived at. A party to the lis, in absence of a statutory interdict, cannot be deprived of his right of appeal. The High Court has passed the judgment upon consideration of the rival contentions raised at the Bar. It arrived at specific findings on the issues framed by it. It has, for the reasons stated in the impugned judgment, affirmed the findings of the Industrial Tribunal as also the learned Single Judge. The impugned order of the Division Bench, in our opinion, by no stretch of imagination, can be said to have been passed with consent of the parties. However, we agree with the opinion of the Tribunal that the plea of abandonment of service by the Respondents in the facts and circumstances of the case was wholly misconceived.

CONCLUSION:

For the reasons, aforementioned, the impugned judgments cannot be sustained which are accordingly set aside. The appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.