* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 8th April, 2024**
Pronounced on: 31st May, 2024

\+ W.P.(C) 4773/2019

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

JAWAHAR PRASAD ..... Respondent

Through: Mr.Anurag Sharma and Mr.R.P. Sharma, Advocates

\+ W.P.(C) 6064/2020

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH. VINOD PRASHAD ..... Respondent

Through: Mr.Anurag Sharma and Mr.R.P. Sharma, Advocates

\+ W.P.(C) 6065/2020 & CM APPL. 8664/2021

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH. ANIL PRASAD ..... Respondent

Through: Mr.__, Advocate (Appearance not given)

\+ W.P.(C) 6066/2020

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH. SHANKAR PASWAN ..... Respondent

Through: Mr.__, Advocate (Appearance not given)

\+ W.P.(C) 6067/2020 & CM APPL. 8919/2021

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH. JITENDRA NATH ..... Respondent

Through: Mr.__, Advocate (Appearance not given)

\+ W.P.(C) 6068/2020 & CM APPL. 8667/2021

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH. RAMAYAN YADAV ..... Respondent

Through: Mr.__, Advocate (Appearance not given)

\+ W.P.(C) 6069/2020

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH CHINTU KUMAR ..... Respondent

Through: Mr.__, Advocate (Appearance not given)

\+ W.P.(C) 6070/2020 & CM APPL. 9292/2021

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

PRATAP SINGH ..... Respondent

Through: Mr.__, Advocate (Appearance not given)

\+ W.P.(C) 6071/2020 & CM APPL. 9295/2021

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH. PRAMOD KUMAR ..... Respondent

Through: Mr.__, Advocate (Appearance not given)

\+ W.P.(C) 6201/2020

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH. RAM CHARAN ..... Respondent

Through: Mr.__, Advocate (Appearance not given)

\+ W.P.(C) 6510/2020 & CM APPL. 8668/2021

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH. KRISHAN KANT JHA ..... Respondent

Through: Mr._, Advocate (Appearance not given)

\+ W.P.(C) 6523/2020 & CM APPL. 8669/2021

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH. OM PRAKASH ..... Respondent

Through: Mr.__, Advocate (Appearance not given)

\+ W.P.(C) 6524/2020

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH. KRISHAN KUMAR ..... Respondent

Through: Mr._, Advocate (Appearance not given)

\+ W.P.(C) 6525/2020

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH. KRISHNA PANDIT ..... Respondent

Through: Mr.__, Advocate (Appearance not given)

\+ W.P.(C) 7962/2020

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH. GAYA PRASAD ..... Respondent

Through: Mr.Sanjoy Ghose, Sr. Advocate with Ms. Urvi Mohan, Advocate

\+ W.P.(C) 7963/2020

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH. LAL CHAND ..... Respondent

Through: Mr.Sanjoy Ghose, Sr. Advocate with Ms. Urvi Mohan, Advocate

\+ W.P.(C) 7964/2020

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit

Dwivedi, Advocates

versus

SH. NARAYAN SINGH ..... Respondent

Through: Mr.Sanjoy Ghose, Sr. Advocate with Ms. Urvi Mohan, Advocate

\+ W.P.(C) 7966/2020

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH. JEET BAHADUR ..... Respondent

Through: Mr.Sanjoy Ghose, Sr. Advocate with Ms. Urvi Mohan, Advocate

\+ W.P.(C) 7967/2020

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH . CHANDER PRAKASH PATHAK ..... Respondent

Through: Mr.Sanjoy Ghose, Sr. Advocate with Ms. Urvi Mohan, Advocate

\+ W.P.(C) 7969/2020

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH. ARJUN PANDIT ..... Respondent

Through: Mr.Sanjoy Ghose, Sr. Advocate with Ms. Urvi Mohan, Advocate

\+ W.P.(C) 7984/2020

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH. MANOJ KUMAR ..... Respondent

Through: Mr.Sanjoy Ghose, Sr. Advocate with Ms. Urvi Mohan, Advocate

\+ W.P.(C) 7985/2020

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

SH. AVDESH SHAH ..... Respondent

Through: Mr.Sanjoy Ghose, Sr. Advocate with Ms. Urvi Mohan, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The present batch of petitions under Articles 226 and 227 of the Constitution of India is arising out of various awards of the learned Labour Court wherein the claim has been decided in favour of the respondents workmen and against the petitioner (hereinafter "petitioner management"). In all the petitions, an award has been passed by the learned Labour Court holding that the petitioner management retrenched the workmen illegally and in violation of the statutory provisions prescribed under the Industrial Disputes Act, 1947 (hereinafter "the Act") and awarded compensation. The table drawn herein below shows the detail of the writ petitions:

S. No.	WP (C) No.	Workman's Name	Labour Court Case No.	Compensation/ Relief	Designation as per 2009 Award
1.	WP(C) 4773/2019	Sh. Jawahar Prasad	LC 944/16 (Old LIR 185/10)	Rs. 2,00,000/- with interest @ 9% pa	Packing Opt.
2.	WP (C) 6064/2020	Sh. Vinod Prashad	ID 3689/16 (Old LIR 453/12)	Rs. 3,60,000/- with interest @ 9% pa	Khuali Paltai Opt.
3.	WP (C) 6065/2020	Sh. Anil Prasad	LC 679/16 (Old LIR 184/10)	Rs. 2,25,000/- with interest @ 9% pa	Press Opt
4.	WP (C) 6066/2020	Sh. Shankar Paswan	LC 920/16 (Old LIR 306/10)	Rs. 2,00,000/- with interest @ 9% pa	Mix Opt.
5.	WP (C) 6067/2020	Sh. Jitendra Nath	LC 1383/16 (Old LIR 190/10)	Rs. 2,00,000/- with interest @ 9% pa	Die Machine Opt

6.	WP (C) 6068/2020	Sh. Ramayan Yadav	LC 1390/16 (Old LIR 195/10)	Rs. 2,00,000/- with interest @ 9% pa	Tar Machine Opt.
7.	WP (C) 6069/2020	Sh. Chintu Kumar	LC 1389/16 (Old LIR 194/10)	Rs. 1,50,000/- with interest @ 9% pa	Khuali Paltai Opt.
8.	WP (C) 6070/2020	Sh. Pratap Singh	ID 4446/16 (Old LIR 436/12)	Rs. 3,30,000/- with interest @ 9% pa	Packing Opt.
9.	WP (C) 6071/2020	Sh. Pramod Kumar	LC 1415/16 (Old LIR 188/10)	Rs. 1,75,000/- with interest @ 9% pa	Chemical Opt.
10.	WP (C) 6201/2020	Sh. Ram Charan	LC 4447/16 (Old LIR 437/12)	Rs. 3,60,000/- with interest @ 9% pa	Raj Mistri
11.	WP (C) 6510/2020	Sh. Krishan Kant Jha	LC 1387/16 (Old LIR 193/10)	Rs. 2,00,000/- with interest @ 9% pa	Painter
12.	WP (C) 6523/2020	Sh. Om Prakash Singh	LC 1391/16 (Old LIR 196/10)	Rs. 1,65,000/- with interest @ 9% pa	Bundel Press Opt.
13.	WP (C) 6524/2020	Sh. Krishan Kumar	LC 1132/16 (Old LIR 186/10)	Rs. 2,00,000/- with interest @ 9% pa	Mix Opt.
14.	WP (C) 6525/2020	Sh. Krishna Pandit	LC 1384/16 (Old LIR 191/10)	Rs. 2,00,000/- with interest @ 9% pa	Hawa Opt.
15.	WP (C) 7962/2020	Sh. Gaya Prasad	LC 678/16 (Old LIR 183/10)	Rs. 3,00,000/- with interest @ 9% pa	Leader Machine Opt
16.	WP (C) 7963/2020	Sh. Lal Chand	LIR 3691/16 (Old LIR 454/12)	Rs. 3,60,000/- with interest @ 9% pa	Checker

17.	WP (C) 7964/2020	Sh. Narayan Singh	DID 1405/16 (Old LIR 197/10)	Rs. 1,75,000/- with interest @ 9% pa	Press Opt.
18.	WP (C) 7966/2020	Sh. Jeet Bahadur	LC 677/16 (Old LIR 181/10)	Rs. 1,75,000/- with interest @ 9% pa	Machine Opt.
19.	WP (C) 7967/2020	Sh. Chander Prakash Pathak	LIR 4288/16 (Old LIR 435/12)	Rs. 3,90,000/- with interest @ 9% pa	Electrician
20.	WP (C) 7969/2020	Sh. Arjun Pandit	LC 1133/16 (Old LIR 187/10)	Rs. 2,00,000/- with interest @ 9% pa	Bhari Opt.
21.	WP (C) 7984/2020	Sh. Manoj Kumar	LC 1386/16 (Old LIR 192/10)	Rs. 1,50,000/- with interest @ 9% pa	Machine Opt.
22.	WP (C) 7985/2020	Sh. Avdesh Shah	LC 676/16 (Old LIR 180/10)	Rs. 2,00,000/- with interest @ 9% pa	Die Machine Opt

2. Since, the facts as well as the legal issues involved in the present batch of appeals are similar, therefore, this Court has culled out the facts and submissions out of the writ petition bearing WP(C) no. 4773/2019 titled '***Sawhney Rubber Industries vs. Jawahar Prasad***' for the disposal of the present batch of petitions.

FACTUAL MATRIX

3. The instant petition has been filed seeking quashing of the impugned award dated 29th May, 2017 passed in industrial dispute bearing ID. No. 185/10 by the learned Presiding Officer, Labour Court,

Karkardooma, Delhi (hereinafter "Labour Court/Court below").

4. It is stated that the workman involved in the present case was working with the petitioner management w.e.f. 13th July, 1994 as an *unskilled* labourer.

5. Thereafter, on 17th June, 2000, the workman was transferred to Chandni Chowk, Delhi. The said transfer was challenged before the Industrial Tribunal–I, Karkardooma, Delhi, on the ground that the workman was skilled yet he was allotted unskilled jobs at work. The Tribunal held the transfer to be unjustified and ordered reinstatement with full backwages observing that workman was employed as *unskilled* labourer and not as a *skilled* labourer.

6. In the year 2009, several workmen working with the petitioner management raised an industrial dispute bearing ID no. 57/2000 claiming their designation as skilled/semi-skilled/unskilled worker, and the present workman claimed his designation as a '*Packing Operator'*, whereby the learned Industrial Tribunal passed an order in favour of the workmen union vide award dated 29th September, 2009.

7. The aforesaid award was challenged before this Court in writ petition bearing WP (C) No. 3014/2010 (hereinafter "designation matter"). *Rule* was issued in the said matter on 4th November, 2011, and eventually, this Court stayed the operation of the award on 29th November, 2013. It is pertinent to mention herein that the above said writ petition (hereinafter "designation matter") was dismissed by this Court vide judgment dated 31st May, 2024 and the award dated 29th September, 2009 was upheld.

8. In the meanwhile, on 20th May, 2010, the respondent workman

along with other similarly placed workmen was retrenched by the petitioner management on the ground that there is no work with the management.

9. The respondent workman challenged the said retrenchment on the ground that he has not been paid adequate compensation as per his salary on the basis of designation given to him vide the award dated 29th September, 2009. The learned Labour Court passed the impugned award dated 29th May, 2017 holding the retrenchment to be in violation of Section 25-F of the Act.

10. *Vide* the impugned award, the learned Labour Court rejected the relief of reinstatement and the respondent workman was held entitled to the due compensation as per the minimum rate of wages prescribed for the category of skilled/semi-skilled under which the concerned workman falls. Accordingly, the respondent workman was granted relief amounting to Rs.2,00,000/ plus interest @ 9% per annum.

11. Being aggrieved by the aforesaid impugned award, the petitioner management has approached this Court seeking quashing of the same.

12. It is pertinent to mention here that vide judgment dated 31st May, 2024, the writ petition bearing W.P (C) no. 3410/2010 (designation matter) has been disposed of in favour of the workmen union therein.

PLEADINGS

13. The instant petition was filed by the petitioner on 30th April, 2019 whereby the petitioner pleaded the following grounds against the impugned award:

> "*..A. BECAUSE the Ld. Labour Court failed to appreciate that the stay order of the Hon'ble Delhi High Court dated*

29.11.2013 is operative on the date when the Ld. Labour Court had passed the impugned award, and at least after 29.11.2013, the implementation of the award of the Industrial Tribunal which has been stayed by the Delhi High Court should not have been considered to be implemented.

B. BECAUSE the Ld. Labour Court failed to appreciate that in the Written Statement itself, the Petitioner Management has clarified that till the designation matter is decided, the matter in dispute be kindly put in stay or sine-die, which the Ld. Labour Court failed to do.

C. BECAUSE the Ld. Labour Court failed to appreciate that in case tomorrow, in the designation writ i.e. Writ Petition No. 3014/10, the HonTDle Delhi High Court set aside the Award of the Industrial Tribunal, then the state of the impugned award would also be a nullity as it is also based on the same grounds.

D. BECAUSE the Ld. Labour Court failed to appreciate that in the transfer matter, the Ld. Industrial Tribunal had already held that these workers are "unskilled" workers which order was never stayed by any court as the workers had never challenged the said award.

E. BECAUSE the Ld. Labour Court failed to appreciate that the judgment of the Industrial Tribunal-I in the designation case does NOT provide "skilled" designation as per the scheduled employment as given in the minimum rates of wages notified in Delhi, as in the schedule dated 15.02.1994 for the purpose of employment in plastic, rubber and PVC including cable industry, a "packer" is shown to be an "unskilled" workers.

F. BECAUSE the Ld. Labour Court failed to appreciate that the workman has all along been taking the salary prescribed for unskilled nature of work and had never raised any objection while he was in service of the Management.

G. BECAUSE the Ld. Labour Court failed to appreciate thatthe stay has wrongly entangled in the judgments of the HonTDle Supreme Court in "Chamundi Mopeds Ltd. vs. Church of South India Association", 1992-2-SCR-999 and of Hon^ble High Court of Delhi in "National Agricultural Cooperative Marketing Federation of India Ltd. vs. Commissioner of Income Tax, Delhi-XI" ITA-161/2016 decided on 19.04.2017, as the facts of those matters were totally different than the matter in hand and further the judgments in itself very categorically state that "... it only means that the order which has been stayed would not be operative from the date of the passing of the stay order ..."

H. BECAUSE the Ld. Labour Court failed to appreciate that the Writ Petition being already filed and the Union never going for the implementation of the said impugned Award, in itself shows that there was no urgency on the part of either of the parties in the said Writ Petition for seeking stay, though the Stay Application was very much pending from the very first date.

I. BECAUSE the Ld. Labour Court failed to appreciate that the language of the stay order granted by the Hon'ble Delhi High Court in Writ Petition No. 3014/2010 itself clarifies that even without any documents, the Ld. Industrial Tribunal had come to a conclusion which is not maintainable in the eyes of law.

J. BECAUSE the Ld. Labour Court, even after the stay order being granted by the Hon'ble Delhi High Court, had considered the said award.

K. BECAUSE the Ld. Labour Court failed to appreciate that in any case, if there is some amount which was less to be paid to the worker due to the dispute in the designation matter, the same could be paid to the workman in case the

challenge to the impugned order of the designation case of the Management falls.

L. BECAUSE the Ld. Labour Court failed to appreciate that it is not a case where it is crystal clear picture that the retrenchment compensation has been paid less with any mala-fide intention. It is pertinent to mention here that the Workman concerned was taking the salary of "unskilled" labour only from the date of appointment till the time of retrenchment also.

M. Any other ground with the permission of the Hon'ble Court…"

14. In response to the present petition, a brief note of arguments dated 12th February, 2024 has been filed on behalf of the respondent workman refuting the submissions made in the petition. The relevant paragraphs of the same are as under:

"*..1. That the respondent/workman involved into the present case was working with the petitioner/ management with effect from 13.07.1994 and retrenched/ terminated by the management/ petitioner illegally and unjustifiably even without paying their legal dues on 20.05.2010.*

2. That in para 10 of the Award Dated 29.09.2009 involved in writ petition No.3014 of 2010 categorically state that none of the workmen were confronted during cross-examination about the fact that they were not working as skilled workers or not performing the job stated in the list/reference order. The petitioner/management therefore cannot be allowed under law to raise a new issues here in writ Jurisdiction which it has itself not raised before the Industrial Tribunal/Labour Court.

3. That Ld. Labour Court in its Awards of 2017 has held that the retrenchment of the respondent/work.man was being in

violation of Section 25-F of the Industrial Disputes Act,1947 and thus is illegal and unjustified and the Ld. Labour Court has granted the workman/ respondent a meager amount of relief ranging only of Rs.200,000/(Rupees Two Lakhs only) (Rupee three lakhs only.) plus interest@ 9% PA up till the release of the payments.

4 That in the Award dated 29.05.2017 Ld. P O L C has duly discussed another Award Dated 29.09.2009 where in the Ld. P.O.L.C/Tribunal has held that the workmen were working as a skilled workmen and taking into all the documentary evidence and material on record has passed the awards of2017 and those material documentary evidence cannot be appreciated again in a writ jurisdiction as it is being an extra ordinary jurisdiction particularly when the management has failed to show any illegality or perversity in the Awards of 2017 passed by the Ld. Labour Court.

5 That the respondent/workman had been in service of the petitioner/management from 13.07.1994 up till 20.05.2010 means that the workman has spent 16 years much of his active/ young age in the service and now when he has reached at an advance stage of his life where it is not possible to get job, has been made to suffer for no fault of him only because he was taking up his cause along with other workers for the redressal of their grievances namely, giving them status/designation, wages, leave, bonus maintaining of proper records of service etc. in accordance with Labour laws and having fanned a union and had also taken up the matter before the Labour Authorities as the petitioner/management was indulging into unfair Labour practices.

6. That despite the findings of transfer orders as illegal and unjustified by the Industrial Tribunal the Petitioner/ management took the matter to this Hon'ble High Court and in order to escape of the liability under Section 17-B of

Industrial Dispute Act, 1947 took back workman on duty in 2008.

7. That the workman was kept away from job despite his willingness to perform duties for no good reason and that period should be counted for the purpose of retrenchment compensation and other terminal/ consequential benefits.

8. That the Award dated 29.09.2009 of Ld. P.O.L.C/Tribunal was in operation at the time when the workers were retrenched illegally in May 5, 2010 and at that point of time the interim stay order dated 29.11.2013 was nowhere in existence and the Ld. P O L C passed the Award dated 29.05.2017 after dully discussing this legal issue and thus there is no illegality or perversity while passing the Awards by the Ld. P.O.L.C in any manner whatsoever.

9. Had the Petitioner/management made calculation of the dues of th respondent a skilled workman at the time of retrenchment/termination in May 20, 2010 as per law then it should have to pay him in the following manner:…"

SUBMISSIONS

(on behalf of the petitioner management)

15. Learned counsel appearing on behalf of the petitioner submitted that the impugned award is erroneous as the same has been passed without taking into consideration the entire facts and circumstances of the matter.

16. It is submitted that the compensation in the impugned award has been passed on the basis of the designation awarded to the workman vide award dated 29th September, 2009 passed in ID no. 57/2000. It is further submitted that the learned Labour Court failed to appreciate that the stay order dated 29th September, 2013 passed by this Court in writ petition

bearing WP(C) no. 3014/10 (designation matter) was operative on the date of the passing of the award impugned herein, and in view of the same the impugned award should not have been passed.

17. It is submitted that the learned Labour Court failed to appreciate the written statement of the petitioner management, whereby, the petitioner had pleaded that the matter be decided after the writ petition bearing WP(C) no. 3014/2010 i.e., designation matter is decided.

18. It is further submitted that the learned Labour Court failed to appreciate that in case this Court set asides the impugned award dated 29th September, 2009 passed in ID no. 57/2000 in the designation matter, the impugned award herein would be rendered nullified.

19. It is submitted that the respondent workman was working as a labourer in the *unskilled* category with the petitioner management from the year 1994 itself and while working, he had never raised an issue and never called any Inspector under the Minimum Wages Act, 1948 to inspect whether he was working as a *skilled* worker or an *unskilled* worker.

20. It is submitted that the learned Labour Court failed to appreciate that the workman has all along been taking the salary prescribed for *unskilled* nature of work and never raised any objection while he was in service.

21. It is submitted that the learned Labour Court has erred in applying the judgments of the Hon'ble Supreme Court in ***Chamundi Mopeds Ltd. v. Church of South India Association***[1] and of this Court in ***National Agricultural Cooperative Marketing Federation of India Ltd. vs.***

[1] **1992 2 SCR 999**

Commissioner of Income Tax[2], as the facts of these matters are totally different than the matter at hand. It is further submitted that the above stated judgments themselves maintain that stay upon an order becomes operative from the day the stay order is passed.

22. It is submitted that the language of the stay order dated 29th November, 2013 in writ petition bearing W.P (C) No. 3014/2010 clearly shows that the award dated 29th September, 2009 passed by the learned Tribunal was passed without any documents and that the learned Tribunal had come to the conclusion that the same was not maintainable in the eyes of law.

23. It is submitted that the learned Labour Court erred in passing the impugned award on the basis of the award dated 29th September, 2009 even though the latter had been stayed by this Court in W.P (C) no. 3014/2010 *vide* order dated 29th November, 2013.

24. It is submitted that the learned Labour Court erred in not appreciating that the present batch of petitions is not a case where it is crystal clear that the retrenchment compensation has been paid less with any *mala fide* intention. It is further submitted that the respondent was taking the salary of an *unskilled* labourer from the time of his appointment till his retrenchment without objection.

25. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and relief be granted as prayed for.

(on behalf of the respondent workman)

26. *Per Contra*, learned counsel appearing on behalf of the respondent

[2] **Delhi-XI ITA-161/2016 decided on 19th April, 2017**

workman vehemently opposed the instant petition submitting to the effect that the same being devoid of any merit is liable to be dismissed.

27. It is submitted that the impugned award is good in law and has been passed by the learned Labour Court in consonance with the settled legal principles and due procedure.

28. It is submitted that it is beyond the scope of the writ jurisdiction of this Court to re-appreciate the documentary evidence and the material on record to set aside the impugned award especially when the petitioner has failed to show any illegality or perversity in the same.

29. It is submitted that in paragraph no. 10 of the award dated 29th September, 2009, it has been categorically stated that none of the workmen were cross-examined with respect to the fact that they were not working as skilled workers or not performing the job stated in the list/reference order.

30. It is submitted that the respondent workman has been in service of the petitioner for the last 16 years and has now reached an advanced age where it is not possible for him to get another job. It is further submitted that the workman is being punished by the petitioner just because he formed a union for the redressal of his grievances before the labour authorities.

31. It is submitted that despite the Industrial Tribunal holding the transfer orders as illegal and unjustified, the petitioner took the matter to this Court and took back workman on duty only to escape the liability under section 17B of the Act.

32. It is submitted that the workman has been kept away from his job despite his willingness to perform his duties without any good reason. It

is further submitted that the period of his service expanding to almost 16 years should be taken into account for the purpose of computing the retrenchment compensation and other terminal/consequential benefits.

33. It is submitted that the award dated 29th September, 2009 was in operation at the time when the workman was retrenched illegally, i.e., on 5th May, 2010. Subsequently, the interim stay was imposed *vide* order dated 29th November, 2013 in WP(C) no. 3014/10. It is therefore submitted that the learned Labour Court was right in passing the impugned award.

34. Therefore, in the view of the foregoing arguments, it is submitted that the present writ petition may be dismissed.

ANALYSIS AND FINDINGS

35. The matter was heard at length with arguments advanced by the learned counsel for the respective parties. This Court has perused the entire material on record and has also duly considered the factual scenario of the matter, judicial pronouncements relied upon by the parties and pleadings presented by the learned counsel for the parties.

36. It is the case of the petitioner management that the impugned award is bad in law as the learned Labour Court misplaced its reliance upon the award dated 29th September, 2009 passed in ID no. 57/2000 which had subsequently been stayed by this Court *vide* order dated 29th November, 2013 in writ petition bearing W.P (C) no. 3410/2010 and proceeded to award compensation to the respondent as per the *skilled* designation. Moreover, it is clear that the respondent workman belongs to *unskilled* category of workmen as he failed to raise any dispute with respect to his wages or designation throughout the period of his services.

Further, the impugned award has been wrongly passed during the pendency of the designation matter, i.e., WP(C) no. 3014/2010 even when the award impugned in the said matter had been stayed.

37. In rival contentions, it has been submitted on behalf of the respondent workman that there is no illegality in the impugned award and the same has been passed after taking into consideration the entire facts and circumstances of the case. It has been submitted that it is beyond the scope of the writ jurisdiction of this Court to re-appreciate the documentary evidence and the material on record to set aside the impugned award. Moreover, the stay with respect to the designation matter was only imposed in the year 2013, and by the said time the respondent had been retrenched illegally, i.e., without being paid his dues in accordance with his designation. Therefore, as the effect of the stay order will only be imposed prospectively, the impugned award is in accordance with the law.

38. Therefore, the question that falls for adjudication before this Court is whether the impugned award passed by the learned Labour Court requires interference under Article 226 of the Constitution of India or not. In order to adjudicate the instant petition upon its merits, this Court deems it fit to frame the following issues:

Issue No. 1 –
Whether the learned Labour Court was right in holding that the services of the workman were terminated and he was retrenched in violation of Section 25F of the Act?

Issue No. 2 –
Whether the stayed award dated 29th September, 2009 of the Industrial Tribunal could be relied upon by the learned Labour Court to hold the respondent entitled to compensation?

39. At this stage, it is pertinent for this Court to peruse the impugned award dated 29th May, 2017, whereby, the learned Labour Court held the retrenchment to be in violation of Section 25F of the Act and awarded compensation to the workman on the basis of the designation awarded by the earlier award dated 29th September, 2009. The relevant extracts of the same are as under:

> "*.. 4. Following issues were framed on 07.03.2011:-*
> *1. Whether services of workman were retrenched by the management on 20.05.2010 illegally and / unjustifiably, v so, its effect? OPW*
> *2. Whether the workman is entitled for the relief, as prayed?*
>
> *[**********]*
>
> ***Issue No. 1***
> *7. Following are the admitted facts :-*
> *Designation case was filed by all 22 workers, whose cases are before this court, in POIT on 04.04.2000.*
> *I. The designation case was decided in favour of workers by POIT on 29:09.2009 granting them the designations sought by them.*
> *II. Operation of order of POIT granting designation was stayed by the Hon'ble High Court on 29.11.2013.*
> *III. Services of 17 workers namely Sh. Jeet Bahadur, Awdesh Shah, Omprakash Singh, Arjun Pandit, Shankar Paswan, Narain Singh, Anil Prasad, Krishan Kant Jha, Krishan Kumar, Jitender Nath, Pramod Kumar, Ramayan Yadav, Chintu Kumar, Manoj Kumar, Jawahar Prasad, Gaya Prasad and Krishna Pandit were retrenched on 20.05.2010.*
> *IV. Service of workers namely Vinod Prasad, Ram Charan, Lal Chand, Pratap Singh and C.P. Thakur were laid off from 21.09.2011 to 30.11.2011.*
> *V. Above workers did not challenge the laying off*

order.

VI. *Above five workers were retrenched on 01.12.2011.*

VII. *All 22 workers before this court had filed case before POIT against transfer.*

VIII. *Two workers namely Gaya Prasad and Krishna Pandit had settled with management in transfer case and the management paid them a sum of Rs.5,000/- each. Additionally, they were paid Rs.2500/- each as cost of litigation.*

IX. *Transfer case of remaining 20 workers was decided in their favour holding transfer illegal.*

X. *Hon'ble High Court of Delhi stayed the operation of order of POIT vide several orders in the year 2006.*

XI. *Workers namely Gaya Prasad and Krishna Pandit had joined the management in 2005 after settlement in transfer case and in this way, they had not worked from the date of their transfer till rejoining.*

XII. *Remaining 20 workers before this court had rejoined the management pursuant to the order of the High Court dated 12.08.2008 passed in WPC No. 4688/2006.*

XIII. *Above 20 workers had not worked with management from their date of transfer till the date of rejoining.*

8. Ld. ARW argued that management had given wrong reason in retrenchment notice. At that time, the work which the claimant used to work, was available with management and that work is still available. He next argued that junior employees were retained while retrenching claimant's service. After retrenchment, the management has given work on contract basis. Ld. ARM replied that reason mentioned in retrenchment notice was that claimant alongwith other workers had become surplus and that is why, his service was terminated. As per list displayed on the board of factory and sent to the Labour Department, the claimant was amongst junior most employees and hence, his service was retrenched. No work is being taken on contract basis i.e. no work has been outsourced.

It is the claimant who is alleging that he had not become surplus as the management, at the time of retrenchment, was having sufficient work. Onus of proof of that fact is upon claimant but he did not produce any witness or document to that effect. In cross-examination, all workers gave different versions. Some of them deposed that they were not knowing anything about the factory after retrenchment. If they are not knowing the state of affair of the factory, how can they allege that the management had outsourced work. On the other hand, it has been deposed specifically by MW1 that service of the claimant had become surplus. That witness was not cross-examined on that point. In order to prove that some junior employees were retained, the workman should have examined a witness from the management along with list of workers. No such witness was examined: On the 39% other hand, the seniority list prepared by management is on the file. The claimant did not produce any evidence contrary to the seniority list. He did not name any employee who was junior to him at the time of retrenchment. Moreover, the management has produced attendance record. So, arguments of ld. ARW on these three points fail.

9. Next argument of ld. ARW is that seniority list as per rule 76A of Industrial Disputes Act, 1947 was not displayed. On the other hand, ld. ARM argued that seniority list was displayed on the notice board and copy thereof was sent to Labour Department also.

Seniority list dated 12.05.2010 is on the file as Ex. WW1/M3. That list was sent to Labour Commissioner, Delhi Government on that very date. It is mentioned in that list that copy thereof was displayed on the notice board of management. Form P under Rule 76 dated 19.05.2010 is on the file as Ex. MW1/3. That form was sent to Labour Commissioner of NCT of Delhi mentioning that management was retrenching services of 26 unskilled workers. So, the management has proved that it had not. only displayed but also sent copy of seniority list of Labour Commissioner of

Govt. Of NCT of Delhi.

10. Ld. ARW argued that management had violated Section 9A of I.D. Act, 1947 by transfering the service of the: claimant to some other places from Delhi. It had also violated Section 25-N of the Act. Arguments of Id. ARM are that there was no occasion for the management to violate the provisions of those Sections because those Sections were not applicable to the management.

Bare perusal of Section 9A of the I.D. Act, 1947 shows that it comes into operation when an employer proposes to effect any change in the service conditions of any workman in respect of any matter specified in 5" Schedule. Perusal of 5th schedule shows that the matter of transfer is not contained in it. By transferring claimant to some other place, the management had not violated Section 9A of the I.D. Act, 1947. Provisions of Section 25-N applies to an industrial establishment in which no less than 100 workmen were employed on an average per working day in the preceding

12 months. The management has placed on record attendance register of its employees for preceding 12 months prior to retrenchment. That register proves to the hilt that strength of employee during that period was never 100. So, there is no applicability of Section 25-N of the Act.

11. Next ground is that his service was retrenched due to his union activity. That ground is not more than a bald statement. MW1 was not, at all, cross-examined on this point.

12. Ld. ARW argued that 22 workers were transferred from Jhilmil factory to some other places against which they had raised industrial dispute. Excluding Gaya Prasad and Krishna Pandit, the matter was decided in their favour by POIT on 19.03.2005 holding transfer illegal. Sh. Gaya Prasad and Krishna Pandit had settled with management in

transfer case. These two workers had joined management in 2005 whereas the other workers had joined management pursuant to the order of High Court dated 12.08.2008 passed in WPC No.4688/2006. While calculating retrenchment compensation, the management did not include the period from the date of transfer order till their rejoining, in the length of service. In this way, retrenchment compensation paid by management was inadequate and hence, it had violated Section 25-F of the I.D. Act, 1947. On this point, arguments of ld. ARM are three-fold. The first one is that the order dated 19.03.2005 passed by POIT has been stayed by the Hon'ble High Court. The second is that it was held by the High Court in order dated 08.12.2009 while dealing with 17B applications of the claimants that rights of workers to get back wages from the date of award till the date they resumed their duty with management shall be deiced by itself. The third is that from the date of transfer till the date of rejoining, the claimant had not worked with. management and as per Section 25-F, the management is to give retrenchment compensation for the period for which the workman had actually worked.

It is not in dispute that the order dated 19.03.2005 passed by the Hon'ble POIT declaring transfer of 20 workers illegal, has been stayed by Hon'ble High Court of Delhi by passing various orders in 2006. The service of the claimant was retrenched after elapse of several years of staying of operation of order of POIT. The stay order comes into force from the date of passing of the stay order. When the service of the claimant was retrenched, the stay order was very much in existence. Hence, the management was not justified to include the period from date of transfer till the date of his rejoining in his total period of working with management, while calculating retrenchment compensation. Moreover, perusal of order dated 08.12.2009 passed by the-then ……. passed by the-then Hon'ble Justice Mr. S.N. Aggarwal shows that question of back wages from the date of award till the date they resumed their duty pursuant to the order of High

Court dated 12.05.2008 shall be decided by Hon'ble High Court itself at the time of final decision of writ petitions. So, this ground also fails.

13. Ld. ARW lastly argued that all 22 workers had filed designation case before POIT and that case was decided on 29.09.2009 granting them designations and the category of skilled and semi-skilled workers. While calculating retrenchment compensation, the management took into account the last drawn salary of the claimant and not the wages of skilled and semi-skilled worker as ordered by POIT. It should have taken into account the wages of skilled and semi-skilled workers as the designations had already conferred upon him by POIT on 29.09.2009. Due to that reason, retrenchment compensation is inadequate and hence, retrenchment is illegal. Ld. ARM argued that operation of order dated 29.09.2009 passed by POIT granting designation to the claimant has been stayed by the Hon'ble High Court of Delhi by passing an order dated 29.11.2013. Due to stay order, the management was perfectly correct in calculating retrenchment compensation and notice pay as per their last drawn wages and not as per the award dated 29.09.2009. He next argued that claimant had filed a case against his transfer in which it was held by POIT. that he was doing unskilled job. That award was not challenged by him before any forum and hence, the said award has become final and is operating as res-judicata. He next submitted that vide award dated 29.09.2009, the Hon'ble POIT granted only designation to the claimant. The POIT did not hold that he was entitled to wages of skilled or semi-skilled category.

It is the admitted position of both parties that all 22 workers had filed a designation case before POIT on 04.04.2000 and that case was decided in their favour on 29.09.2009. It is also the admitted position that the operation of order dated 29.09.2009 was stayed by the Hon'ble High Court on 29.11.2013. It is the admitted case of both parties that

service of 17 workers was retrenched on 20.05.2010 and five workers on 01.12.2011. So, this court is to decide the case as per the facts which were in existence on the dates of retrenchment i.e. 20.05.2010 and 01.12.2011: At that date, only the order dated 29.09.2009 passed by POIT was in existence. The stay order dated 29.11.2013 was not in existence. It was held by the Hon'ble Apex Court in Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, (1992) 2 SCR 999 that the meaning of stay order is that the order which has been stayed would not be operative from the date of passing of stay order. Same view was taken by Hon'ble High Court of Delhi in National Agricultural Cooperative Marketing Federation of India Ltd. Vs. Commissioner of Income Tax, Delhi-XI & An., ITA 161/2016 decided on 19.04.2017, in following words:-

19. The court is unable to agree with the above reasoning of the ITAT as it runs contrary to the well settled position explained by the Supreme Court in several decisions ***Shree Chumundi Mopeds Lid. V. Church of Saith India Trust Association (1992) 3 SCC 1****, the effect of an interim order was explained as thus:*

"While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from exercise."

As per above citations, the position becomes clear that the stay order becomes operative from the date of making of stay order. In the case in hand, the stay order was granted on

29.11.2013 whereas retrenchment had taken place on 20.05.2010 and 01.12.2011 respectively. Hence, the management was utterly wrong by not calculating notice pay and retrenchment compensation as per award dated 29.09.2009.

It is correct that in transfer case, the POIT had given observation in para No. 14 that it was proved on the file that the workmen were unskilled labour and were not working as alleged, Sess Due to that finding, the said award was cited before POIT in designation case that the above observation was acting as res-judicata but the POIT did not agree with management and held that the nature of job of claimant was not substantially in issue in that matter as those matters were cases of transfer. In transfer case, POIT was merely to decide whether the transfer of claimant was legal or not. The POIT held transfer illegal. The issue before that court was not whether the claimants were working as skilled or unskilled workers. So, observation of POIT in transfer case is not acting as res-judicata.

Para No.13 of award dated 29.09.2009 passed by the-then POIT Mr. Lal Chand in designation case is to the following effect:-

13. "..Therefore, this goes to show that the workmen have been performing job of skilled and semi-skilled nature..."
Above finding of POIT proves that the ld. Judge had reached to the conclusion that the workers were entitled to designations which they were claiming and that they were working in skilled and semi-skilled category. But the management computed their notice pay and retrenchment compensation not as per the category of semi-skilled or skilled workers. Due to that reason, it had violated the provisions of Section 25F of the I.D Act,1947. Hence, this issue is decided in favour of claimant and against management.

Issue No. 2

14. The claimant had joined the management on 13.07.1994 and he was transferred to some other place on 17.06.2000. Against transfer, he had raised an industrial dispute which was decided in his favour. He rejoined the management and his service was retrenched w.e.f. 20.05.10. He had not worked with the management from the date of transfer till rejoining. Chronology of those events shows that relations between the parties have soured to an irreparable extent. If reinstatement is granted, it would not work in the interest of any of the party. Moreover, it has been deposed by MWI that now the management is on the brink of closure as only 15 workmen are working with it. The claimant did not lead evidence contrary to the testimony of MW1. So, relief of reinstatement is totally ruled out. The length of service of claimant is 08 years. He was entitled to the wages of skilled / semi skilled category, but the management did not pay him under those categories. Taking into account all these facts, a lump-sum compensation of Rs.2,00,000/- (Rupees Two Lakhs" Only) is granted to the claimant. The management is directed to pay Rs.2,00,000/- (Rupees Two Lakhs Only) to him within one month from the date of publication of the award, failing which it shalt be liable to pay interest on it @ 9% per annum from today, til its realization. Parties to bear their own costs. Award is passed accordingly.*

15. The requisite number of copies to be sent to the Govt. of NCT of Delhi for publication of the award. File be consigned to record room…"

40. Upon perusal of the above extracts of the impugned award, it is made out that the issue before the learned Labour Court for adjudication was two-fold, *firstly*, whether the retrenchment of the workman was illegal and unjustified and, *secondly*, what relief was the respondent

workman entitled to.

41. *Qua* issue no. 1, it was contended by the respondent workman that he had not become a surplus to the petitioner management, and despite having sufficient work, his services were retrenched. It was submitted that several junior employees were retained by the management which shows that there was availability of work. Moreover, the respondent argued that the retrenchment was violative of Sections 9A, 25-N and 25-F of the Act. Further, it was contended by the respondent workman that the retrenchment compensation paid to him was insufficient as the management calculated the retrenchment compensation on the basis of the last drawn salary of the workman which was not the wage they were entitled to, as per the skilled/semi-skilled designation conferred by the Industrial Tribunal upon them *vide* order dated 29th September, 2009.

42. In rival submissions, the petitioner management submitted that the retrenchment of the workman was done after duly following all the statutory provisions and the procedure prescribed under the Act. The respondent further adduced the seniority list and the attendance register of all the workmen employed with the management. The petitioner further contended that *vide* order dated 29th November, 2013, this Court had imposed a stay on the above order of the Industrial Tribunal, and therefore, in light of the stay order, the award of Industrial Tribunal cannot be relied upon for the purposes of granting compensation.

43. With regard to the above contentions by the parties, the learned Labour Court observed that the workman failed to prove that he had not become surplus at the time of retrenchment and that he was having sufficient work. He also failed to prove that some junior employees were

retained by the management as no witness was examined to that effect. Further, no evidence was adduced by the workman contrary to the seniority list dated 12th May, 2010 prepared by the management, which was on record. The management has proven that the said seniority list was not only displayed on the notice board of the management as per rule 76A of the Industrial Disputes (Central) Rules, 1957, but they also sent a copy to the concerned Labour Commissioner.

44. The learned Labour Court further observed that Sections 9A and 25-N of the Act had no application in the instant case. Section 9A is attracted when an employer proposes any change in the service conditions of any workman concerning subjects listed in the fifth schedule and transfer of workman to another place does not fall under the same. The provisions of Section 25-N are applied to an industrial establishment where at least 100 workmen were employed on average per working day in the preceding 12 months. The attendance register for the preceding 12 months prior to retrenchment has been adduced by the management prove the contrary. Therefore, Section 25-N of the Act is not applicable.

45. The learned Labour Court observed that on the dates when the services of multiple workmen were retrenched, i.e., 20th May, 2010 and 1st December, 2011, only the order dated 29th September, 2009 of the Industrial Tribunal was in existence and relying on the law in this regard, a stay order cannot be said to have a retrospective operation, and would be operative only from the day it was passed.

46. Therefore, in light of the above discussions, the learned Labour Court held that the management has erred in not calculating notice pay and compensation as per the 2009 award and thus, violated section 25-F

of the Act. Accordingly, issue no. 1 was decided in favour of the respondent and against the petitioner.

47. *Qua* issue no.2, the learned Labour Court observed that since reinstatement is not an option as the management is on the verge of closing down, the workman is entitled to wages of the skilled/semi-skilled category which was not paid by the management.

48. The learned Labour Court thus decided the reference in favor of the respondent workman and against the petitioner entity by holding the respondent workman entitled to a lump-sum compensation of Rs.200,000/- to be paid to him by the petitioner management within one month of the publication of the award failing which, management shall be liable to pay @ 9% interest per annum till realization. Accordingly, issue no. 2 was also held in favour of the respondent and against the petitioner.

49. Now, after the perusal and analysis of the impugned award, this Court will now advert to analyze the issues framed for adjudication of the instant petition.

Issue No. 1. – Whether the learned Labour Court was right in holding that the services of the workman were terminated, and he was retrenched in violation of Section 25F of the Act?

50. At this juncture, it is pertinent to refer to the statutory mandate with regard to retrenchment. Section 25-F of the Act lays down the condition precedent to the retrenchment of a workman.

51. Sub-section (a) of the said provision requires the employer to give one month's notice in writing indicating the reasons for retrenchment or pay wages in lieu of such notice. By virtue of sub-section (b) of the said Section, the employer is under an obligation to pay compensation

equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months has to be paid to the workman at the time of retrenchment. Further, as per sub-section (c), the employer is required to give notice to the appropriate government to have a valid claim for compensation under this Section and the workman is required to have been in continuous service for at least one year with the employer.

52. In ***L. Robert D'Souza v. Executive Engineer, S. Rly.***[3], Hon'ble Supreme Court reiterated the requirement of continuous service and observed as follows:

> "..***27.*** *There is no dispute that the appellant would be a workman within the meaning of the expression in Section 2 (s) of the Act. Further, it is incontrovertible that he has rendered continuous service for a period over 20 years. Therefore, the first condition of Section 25-F that appellant is a workman who has rendered service for not less than one year under the Railway Administration, an employer carrying on an industry, and that his service is terminated which for the reasons hereinbefore given would constitute retrenchment. It is immaterial that he is a daily-rated worker. He is either doing manual or technical work and his salary was less than Rs 500 and the termination of his service does not fall in any of the excepted categories.* ***Therefore, assuming that he was a daily-rated worker, once he has rendered continuous uninterrupted service for a period of one year or more, within the meaning of Section 25-F of the Act and his service is terminated for any reason whatsoever and the case does not fall in any of the excepted categories, notwithstanding the fact that Rule 2505 would be attracted, it would have to be read subject to the provisions of the Act. Accordingly the termination of service in this case would constitute retrenchment and for***

[3] **(1982) 1 SCC 645**

not complying with pro-conditions to valid retrenchment, the order of termination would be illegal and invalid…"

53. In the instant matter, the respondent workman had joined the petitioner management on 13th July, 1994 allegedly as an *unskilled* labour and was retrenched on 20th May, 2010.

54. It has not been disputed that the respondent workman was not in continuous service with the employer, hence he was entitled to claim retrenchment compensation.

55. At the time of retrenchment on 19th May 2010, the petitioner-management had paid legal dues including retrenchment compensation and one-month notice pay. The appropriate authorities had also been informed by the petitioner management.

56. However, the retrenchment compensation was wrongly calculated on the basis of the wage as *unskilled* labourer and pertinently, *vide* order dated 29th September, 2009, the Industrial Tribunal held the respondent workman to be a skilled/semi-skilled worker. Therefore, the computation of compensation at the time of retrenchment was to be done as per the wages of skilled/semi-skilled category and not as an unskilled labour.

57. Hence, this Court is of the opinion that the learned Labour Court was right in observing that for the want of compensation as due to him, the respondent workman was retrenched in violation of section 25F of the Act.

58. Accordingly, the issue no. 1 is decided in favour of the respondent workman and against the petitioner management. Now, adverting to the issue no.2.

Issue No. 2: Whether the stayed award of the Industrial Tribunal

could be relied upon by the learned Labour Court to hold the respondent entitled to compensation?

59. Before adverting to the facts of the instant petition with regard to the above stated issue, it is imperative to state the settled position of law regarding the validity of an award/order giving relief on the basis of an earlier adjudication which has been stayed in the meanwhile, and what is the effect of stay upon such adjudication.

60. The above said question was before a three-judge Bench of the Hon'ble Supreme Court in the case titled ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn.***[4] wherein it was observed that a stay of an order would be operative from the date on which such stay order is passed and the latter would not wipe out the former from its existence. The relevant extract from the said judgment has been reproduced below and emphasis is supplied:

> "*...**10**. [...]The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991.* ***While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence****. This means that if an order passed by the Appellate Authority is*

[4] **(1992) 3 SCC 1**

quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending..."

61. The reasoning applied in the above paragraph from the judgment of ***Shree Chamundi Mopeds Ltd (Supra)*** was also followed by the Hon'ble Supreme Court in ***State of U.P. v. Hirendra Pal Singh***[5] where the Hon'ble Supreme Court elaborated upon the distinction between quashing of an order and staying the operation of the order. The relevant paragraphs of the said judgment are as under:

"*..21. The High Court vide the impugned interim orders stayed the operation of the amended provisions of the LR Manual and directed the State authorities to consider the applications for renewal, etc. under the unamended provisions i.e. which stood repealed by the amendment dated 13-8-2008. The question does arise as to whether such a course is permissible to the High Court for the reason that it has been canvassed by Shri Patwalia that the clauses of the LR Manual which stood repealed do not survive any more and no direction could have been given by the High Court to act upon the non-existing provisions.*

22*. It is a settled legal proposition that whenever an Act is repealed, it must be considered as if it had never existed. The object of repeal is to obliterate the Act from the statutory books, except for certain purposes as provided under Section*

[5] **(2011) 5 SCC 305**

6 of the General Clauses Act, 1897. Repeal is not a matter of mere form but is of substance. Therefore, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly i.e. pro tanto repeal.

***23**. In **Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn. (1992) 3 SCC 1** this Court explained the distinction between quashing of an order and staying the operation of the order observing as under : (SCC pp. 9-10, para 10)*

> *"10. ... While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the appellate authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the appellate authority would be restored and it can be said to be pending before the appellate authority after the quashing of the order of the appellate authority. The same cannot be said with regard to an order staying the operation of the order of the appellate authority because in spite of the said order, the order of the appellate authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending."*

*24. Thus, **there is a clear distinction between repeal and suspension of the law and the material difference between both is that repeal removes the law entirely; when suspended, it still exists and has operation in other respects***

***except wherein it has been suspended. Thus, a repeal puts an end to the law. A suspension holds it in abeyance**."*

62. The position of law in respect of the effect of a stay order granted during the pendency of a writ petition has been also discussed in detail in a recent judgment delivered by the Hon'ble Supreme Court in the case titled ***State of U.P. v. Prem Chopra***[6] wherein the Hon'ble Court summarized the ratios of multiple decisions delivered by it in the past dealing with the same issue.

> "*...**19.** Following the decision of **Shree Chamundi Mopeds Ltd**, this Court in **Kanoria Chemicals and Industries Ltd. v. U.P. State Electricity Board**, **(1997) 5 SCC 772** has held that **an order of stay which is granted during the pendency of a writ petition/suit or other proceeding comes to an end with the dismissal of the substantive proceedings and it is the duty of the court in such cases to put the parties in the same position that they would have been in but for the interim order of the court**. In that case, this Court rejected the contention that when the operation of the notification itself was stayed, no surcharge could be demanded upon the amount withheld. It was held thus:*
>
> > *"11. ....Holding otherwise would mean that even though the Electricity Board, who was the respondent in the writ petitions succeeded therein, yet deprived of the late payment surcharge which was due to it under the tariff rules/regulations. It would be a case where the Board suffers prejudice on account of the orders of the court and for no fault of its. It succeeds in the writ petition and yet loses. The consumer files the writ petition, obtains stay of operation of the notification revising the rates and fails in his attack upon the validity of the notification and yet he is relieved of the obligation to pay the late payment surcharge for the*

[6] **2022 SCC OnLine SC 1770**

period of stay, which he is liable to pay according to the statutory terms and conditions of supply — which terms and conditions indeed form part of the contract of supply entered into by him with the Board. We do not think that any such unfair and inequitable proposition can be sustained in law.

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It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the court in such a case to put the parties in the same position they would have been but for the interim orders of the court. Any other view would result in the act or order of the court prejudicing a party (Board in this case) for no fault of its and would also mean rewarding a writ petitioner in spite of his failure. *We do not think that any such unjust consequence can be countenanced by the courts. As a matter of fact, the contention of the consumers herein, extended logically should mean that even the enhanced rates are also not payable for the period covered by the order of stay because the operation of the very notification revising/enhancing the tariff rates was stayed. Mercifully, no such argument was urged by the appellants. It is un-understandable how the enhanced rates can be said to be payable but not the late payment surcharge thereon, when both the enhancement and the late payment surcharge are provided by the same notification — the operation of which was stayed."*

20. *In* ***Rajasthan Housing Board v. Krishna Kumari, (2005) 13 SCC 151*** *this Court observed that Order 39 of the Civil Procedure Code, 1908 provides for* ***grant of temporary injunction at the risk and responsibility of the person who obtains it and, if ultimately case is decided against such person, he would be liable to pay interest on the arrears of any amount due which had been stayed by***

the injunction order. *The legal maxim actus curiae neminem gravabit, which means that an act of the Court shall prejudice no man, becomes applicable in such a case.*

21. *In* ***South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648*** *the writ petitioner therein had argued that interest accrued due to non-payment of enhanced amount of royalty was protected by a judicial order of an interim nature and, therefore, merely because the writ was finally dismissed, the writ petitioner should not be held liable for payment of interest so long as money was withheld under the protective umbrella of the injunction order. This submission was rejected by this Court by holding as under:*

> *"The principle of restitution has been statutorily recognized in Section 144 of the Civil Procedure Code, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision.* ***The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. Unless otherwise ordered by the court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution far from meeting the ends of justice, would rather defeat the***

same.Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed. There is nothing wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed*."*

22. *In* ***Nava Bharat Ferro Alloys Limited v. Transmission Corporation of Andhra Pradesh Limited,*** *(2011) 1 SCC 216 the appellant therein had challenged the revised tariff rates imposed by the respondent therein and obtained an interim order of stay against collection of the disputed amounts. The High Court subsequently upheld upward revision of tariff. Thereafter, the respondent therein raised a demand for additional charges/interest on outstanding amounts from the date of tariff revision and the High Court upheld such demand holding that there was no subsisting relief once the demand was upheld.* ***This Court further held that the principle of restitution entitles the successful party to be restored back to the position it would hold had there been no order/judgment adverse to it.*** *The appellant therein had obtained only an ad-interim order of stay against enforcement of tariffs.* ***A party who fails in the main proceedings cannot take benefit from the interim order issued during the pendency of such proceedings.*** *Therefore, it was held in that case that the amount became recoverable from the appellant therein no sooner the judgment of the High Court was reversed and the revision of tariffs was upheld.*

23. *In* ***State of Rajasthan v. J.K. Synthetics Limited, (2011) 12 SCC 518*** *the interest for the period of which recovery of royalty was to be paid under Section 9(2) of the Mines and Minerals (Development and Regulation) Act, 1957 remained stayed under the interim orders of the court. However,*

eventually the writ petition was dismissed. This Court held that whenever there is an interim order of stay in regard to any revision in rate or tariff, unless the order granting interim stay or the final order dismissing the writ petition specifies otherwise, on the dismissal of the writ petition or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by virtue of the interim order. It was held thus:

> *"23. It is therefore evident that* ***whenever there is an interim order of stay in regard to any revision in rate or tariff, unless the order granting interim stay or the final order dismissing the writ petition specifies otherwise, on the dismissal of the writ petition or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by virtue of the interim order****. Where the statute or contract specifies the rate of interest, usually interest will have to be paid at such rate. Even where there is no statutory or contractual provision for payment of interest, the court will have to direct the payment of interest at a reasonable rate, by way of restitution, while vacating the order of interim stay, or dismissing the writ petition, unless there are special reasons for not doing so.* ***Any other interpretation would encourage unscrupulous debtors to file writ petitions challenging the revision in tariffs/rates and make attempts to obtain interim orders of stay. If the obligation to make restitution by paying appropriate interest on the withheld amount is not strictly enforced, the loser will end up with a financial benefit by resorting to unjust litigation and the winner will end up as the loser financially for no fault of his.*** *Be that as it may."*

From the above discussion, it is clear that ***imposition of a stay on the operation of an order means that the order which has been stayed would not be operative from the date of passing of the stay order. However, it does not mean that***

the stayed order is wiped out from the existence, unless it is quashed. Once the proceedings, wherein a stay was granted, are dismissed, any interim order granted earlier merges with the final order. In other words, the interim order comes to an end with the dismissal of the proceedings. In such a situation, it is the duty of the Court to put the parties in the same position they would have been but for the interim order of the court, unless the order granting interim stay or final order dismissing the proceedings specifies otherwise. On the dismissal of the proceedings or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by virtue of the interim order**.....**"

63. Upon a careful perusal of the aforementioned judicial dicta, it is crystal clear that if an order has been stayed during the pendency of a writ petition which is later dismissed or disposed in such terms as to render the order good in law, the position of the parties involved should be modified in a manner so as to restore them to such a position as if the order was not stayed at all.

64. Now, adverting to the facts of the instant petition.

65. The respondent workman was designated as *skilled/semi-skilled* workman by the Industrial Tribunal *vide* award dated 29th September, 2009. Thereafter, the petitioner management filed a writ petition WP(C) no. 3014/0210 challenging the same before this Court. Meanwhile on 20th May, 2010, the services of the respondent workman were retrenched along with several other workmen. Consequently, *vide* order dated 29th November, 2013, this Court stayed the implementation of the award dated 29th September, 2009.

66. It is pertinent to mention here that this Court has adjudicated the

designation matter i.e., the writ petition bearing WP(C) no. 3014/2010 in favour of the respondent workmen therein and has thereby dismissed the said writ petition, ultimately upholding the award of the Industrial Tribunal wherein the workmen were awarded the designation of *skilled/semi-skilled*.

67. In this backdrop, this Court is of the view that the jurisprudence pertaining to the effect of a stayed order after the dismissal of substantive proceedings clearly shows that the order imposing stay has to end with such dismissal. Further, as has been held by the Hon'ble Supreme Court in the decisions cited above, it is the duty of this Court to restore the parties to the position in which they would have been in but for the imposition of stay.

68. This Court is further of the view that in view of the judicial dicta above, especially considering the ratio in ***Shree Chamundi Mopeds Ltd*** (***Supra.***), the order imposing stay would only have a prospective effect from the date of its passing.

69. At this juncture, it is pertinent to mention here that during the course of arguments, the petitioner had contended that its management is on the verge of closing due to financial difficulty and therefore, the compensation as awarded by the learned Labour Court could not paid.

70. As pert Section 25-FFF of the Act, the workmen are entitled to the compensation in case of closing down of an undertaking due to various reasons including closing down due to financial difficulty. In such event, the workmen are duly entitled to the notice and compensation. The law in regard to the above has already been settled by the Hon'ble Supreme Court in one of its earlier judgments namely ***Punjab Land Development***

and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court[7] as well as by various High Courts in a catena of judgments, as per which the workmen must be paid compensation on account of closure of the management due to genuine reasons. Hence, it is held that the said argument of the petitioner does not hold any water and the same is rejected.

71. Therefore, as the retrenchment of the respondent workman took place before the imposition of stay and the petitioner management did not duly compensate him as per his designation decided by the Industrial Tribunal in the year 2009, the learned Labour Court was right in passing the impugned award holding the respondent workman entitled to compensation.

72. Accordingly, issue no. 2 is decided in favour of the respondent workman and against the petitioner management.

CONCLUSION

73. Taking into account the limited scope of this Court's power under Article 226 of the Constitution of India, this Court is of the considered view that there is no error apparent on the face of the impugned award. There is nothing on record to show that the learned Labour Court has exceeded or usurped its jurisdiction, or acted illegally or in contravention to any law.

74. It is observed by this Court that the learned Labour Court has provided a detailed discussion in the impugned award which is based on the testimony and evidence presented before it. The findings in the impugned award show that the petitioner management retrenched the

[7] **(1990) 3 SCC 682**

workmen illegally by not providing them the compensation as per the designation awarded to the workman vide the award of the Industrial Tribunal passed on 29th September, 2009.

75. This Court has given a detailed scrutiny to the findings of the learned Labour Court and it is held that the contention of the petitioner management that the learned Labour Court could not have awarded the compensation as per the designation awarded since the said award had been stayed, is rejected. Since the workmen were retrenched in the year 2010 during which the award dated 29th September, 2009 vide which the workmen were awarded the designation was still in operation, the learned Labour Court rightly considered the designation of the workmen in all the connected petitions. Thus, it is held that the learned Labour Court rightly awarded the compensation in terms of the designation of the workmen.

76. It is held that the petitioner management has failed to make out a case to show that the learned Court below has acted in an arbitrary manner or in contravention to the law. The petitioner had sufficient opportunity to lead evidence and the same is apparent from the impugned award. Taking note of the same, the learned Labour Court has rightly passed the impugned award.

77. In light of the foregoing discussions as well as the judgment dated 31st May, 2024 passed in writ petition bearing W.P (C) no. 3014/20210, the impugned award dated 29th May, 2017 passed in industrial dispute bearing ID. No. 185/10 by the learned Presiding Officer, Labour Court, Karkardooma, Delhi is upheld.

78. With regard to the instant batch, it is noted that the learned Labour Court in the respective writ petitions has given similar findings based

upon similar observations wherein it was found that the petitioner management had retrenched the workmen illegally since they were not compensated as per the designation awarded to them.

79. Considering the above observations, it is held that in the instant batch of petitions, the petitioner management has failed to put forth any propositions to make out a case in their favour.

80. In view of the foregoing paragraphs, this Court does not find any merit in the instant batch of petitions and is of the view that there is no illegality in the findings as recorded by the learned Labour Court. Therefore, the impugned award in each of the connected petitions is upheld by this Court.

81. Accordingly, the instant batch of petitions stands dismissed. Pending applications, if any, also stand dismissed. The petitioner management is directed to pay the compensation as awarded by the learned Labour Court to the respective workmen within a period of three months.

82. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MAY 31, 2024
dy/ryp/av