State Of U.P vs Charan Singh on 26 March, 2015

Equivalent citations: 2015 AIR SCW 2615, 2015 (8) SCC 150, 2015 LAB. I. C. 2347, 2015 (3) ALJ 757, AIR 2015 SC (SUPP) 980, (2015) 4 KCCR 354, (2015) 5 ALL WC 5349, (2015) 4 SCALE 294, (2015) 2 LAB LN 35, (2015) 2 SERVLJ 289, (2015) 145 FACLR 679, (2015) 2 CURLR 150, (2015) 2 SCT 597, (2015) 3 SERVLR 694

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Bench: R.Banumathi, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2381 OF 2007

STATE OF U.P .....APPELLANT

Vs.

CHARAN SINGH .....RESPONDENT

J U D G M E N T

V.GOPALA GOWDA, J.

This appeal has been filed against the impugned judgment and final order dated 18.07.2006, passed by the High Court of Judicature at Allahabad, in Civil Misc. Writ Petition No. 2588 of 1998, whereby the High Court has upheld and modified the Award passed by the Industrial Tribunal dated 24.02.1997 in Adjudication Case No.139 of 1992. The factual matrix and the rival legal contentions urged on behalf of the parties are briefly stated hereunder with a view to find out whether the impugned judgment and order of the High Court warrants interference by this Court in exercise of its appellate jurisdiction. The respondent was appointed as a temporary Tube-well Operator w.e.f. 06.03.1974 by the Assistant Director of Fisheries Department, Meerut (U.P). His services were terminated vide letter dated 22.08.1975 stating thereby that he was a temporary employee and that his services were no longer required by the Department. He was given one month's wages in lieu of the notice. On 01.05.1976, the respondent filed a petition before the Conciliation Officer, Meerut, stating therein that the respondent's employment has been wrongfully terminated by the appellant as he is a permanent employee of the Fisheries Department and the provisions under Section 6-N of the Uttar Pradesh Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), which are mandatory in nature, have not been complied with and as such, the termination of the services of the respondent by the appellant is illegal. The matter was transferred from the Conciliation Officer

to the Labour Commissioner, Kanpur for adjudication. The respondent made several representations before various high offices and courts including this Court wherein, the same was forwarded to the Secretary, U.P. State Legal Aid and Advisory Board on 09.09.1986 to take necessary action in this regard, which instead directed the respondent to contact the Sabhapati, District Judge, District Law Assistance and Consultant, Civil Court premises, Meerut for consultation. Thereafter, the respondent moved an application before the State Government for the reference of the industrial dispute under the provisions of Section 4-K of the Act and the State Government vide notification no.14499-502 MRIR OP 395/91, dated 24.10.1992 referred the dispute to the Industrial Tribunal, Meerut, thereby framing the following questions for its determination:

> Whether the services of the workman has been illegally terminated, and Whether there is any violation of Section 6-N of the Act?
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> The Industrial Tribunal after considering the evidence on record and the rival legal contentions of both the parties has answered the questions referred to it, in favour of the respondent, stating thereby that the termination of the services of the workman was illegal and was liable to be set aside. The Industrial Tribunal directed the appellant to reinstate the respondent on any post equivalent to the post of Tube-well Operator. The Industrial Tribunal passed an Award for the reinstatement of the workman w.e.f. 24.02.1997. However, the workman was not granted any back wages. In Pursuance of the Award passed by the Industrial Tribunal, the appellant offered a letter of appointment to the respondent workman vide its order dated 03.05.1999 to the post of fisherman in the pay-scale of 2610-60-3150- 65-3400/-. However, the respondent workman did not join his duties to the said post even after repeated reminders from the appellant. The appellant thereafter, filed a Misc. Writ Petition before the High Court contending that the respondent workman has been reinstated on the post of "Machhuwa", which they claimed was equivalent to the post of Tube-well Operator. Since the respondent workman did not respond to several letters of the appellant which was calling him back for work, he is not entitled to any wages for the period 24.02.1997 to 31.01.2005 on the principle "no work no pay". The High Court however, rejected the contention of the appellant and held that the State Government had kept the workman out of job for many years and therefore, the State Government is liable to pay the entire amount due to the workman for the above mentioned period.
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> Aggrieved by the said impugned judgment and order, the present appeal is filed by the appellant with a prayer to set aside the same and requested this Court to pass such order as this Court may deem fit and proper in the facts and circumstances of the case by urging various facts and legal contentions.
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> It has been contended by Mr. Gaurav Bhatia, the learned Additional Advocate General (AAG) on behalf of the appellant that the High Court has erroneously disposed of the writ petition in view of the fact that as per the order dated 03.05.1999

passed by the office of the Deputy Director of Fisheries, Meerut, the respondent was given appointment to the post of fisherman (Machhua) in the pay-scale of 2610-60-3150-65-3400/-, which is equivalent to the post of Tube-well Operator. He has further contended that the post held by the respondent as a Tube-well Operator was temporary and was not a sanctioned post as he was assigned the same as per the availability of work in the Department. Even after his appointment for the post of fisherman, as per the above said order, the respondent did not take charge of the aforesaid post stating that it is not equivalent to the post of a Tube-well Operator, in spite of several letters and reminders sent by the appellant to him in pursuance of the Award passed by the Industrial Tribunal.

It has been further contended by the learned AAG for the appellant that the Department of Fisheries does not come under the definition of "Industry" as defined under Section 2(k) of the Act, as has been decided by this Court in the cases of State of U.P. and Ors. v. Arun kumar Singh[1] and Bombay Telephone Canteen Employees Association, Prabhadevi Tel. Exchange v. U.O.I & Anr.[2].

It has been further contended by the learned AAG that the respondent has not contributed in his services to the post of fisherman and therefore, as per the "no work no pay" principle, as held by this Court in a catena of cases, the respondent is not entitled to any monetary benefits under Section 6-H of the Act for the period 24.02.1997 to 31.01.2005 as awarded by the High Court. Thus, the findings of both the courts below are erroneous and suffer from error in law and therefore, the same cannot be allowed to be sustained by this Court.

On the other hand, it has been contended by Mr. G.V.Rao, the learned counsel on behalf of the respondent that the termination of the services of the respondent is bad in law as his services have been illegally terminated on the ground that he is a temporary employee. He has further contended that the services provided by the appellant is fully covered within the ambit of the Act and the termination of the services of the respondent- workman from his services amounts to retrenchment and since he has worked for more than 240 days in one calendar year, he is entitled to the benefits as provided under the provision of Section 6-N of the Act. Since, the appellant has not complied with the provisions of the Act, as such, the termination order of the respondent dated 22.8.1975 is liable to be quashed and he is entitled for reinstatement with back wages, as the post of a fisherman is not equivalent to the post of Tube-well Operator. We have heard both the parties. On the basis of the aforesaid rival legal contentions urged on behalf of the parties and the evidence on record, we have come to the conclusion that the High Court has rightly held that the State is liable to pay the entire amount due to the workman for the period 24.2.1997 to 31.1.2005, as the State has kept the workman out of job for many years arbitrarily and unreasonably despite the Award of reinstatement of the respondent on an equivalent post which was passed by the Industrial Tribunal. Thus, not reporting for the duty of fisherman offered to him by the appellant cannot be said to be unjustified

on the part of the respondent. In support of the above said conclusions arrived at by us, we record our reasons hereunder:-

It has already been rightly held by the Industrial Tribunal that the Department of Fisheries is covered under the definition of "Industry" as defined under Section 2(k) of the Act and also in accordance with the statement of R.W.1 and E.W.1, Shri. R.B.Mathur, on behalf of the appellant before the Industrial Tribunal, because the object of the establishment of the appellant-department is fulfilled by engaging employees and that the department is run on a regular basis. Thus, the matter of termination of the services of the workman of the said department can be legally adjudicated by the Industrial Tribunal as the matter is covered under the provisions of the Act read with the Second Schedule in Entry No.10. Thus, it has been rightly held by the courts below that the dispute raised by the workman in relation to the termination of his services by the appellant is an industrial dispute.

Further, it is a well established fact that the respondent-workman has continuously worked for 240 days in a calendar year and the Industrial Tribunal has rightly recorded the finding of fact on the basis of pleadings and evidence on record holding that the work which was being done by the respondent-workman still continues to exist in the establishment of the appellant, which fact has been admitted by the respondent as well as the witnesses of the employer before the Industrial Tribunal. Further, Shri. R.B.Mathur has clearly deposed before the Industrial Tribunal that the work of Tube-well Operator has now been taken over by other workmen, such as "Machhuwa" and that some Tube-well Operators were appointed on other posts as well. Thus, in view of the statements made above by him, it is amply clear that the required conditions under the provisions of Sections 6-N and 6-W of the Act were not complied with by the appellant and the only contention of the appellant-department is that one month's salary was paid to the workman concerned treating him to be a temporary employee. This contention of the learned AAG on behalf of the appellant, however, is not sustainable in law and the same has rendered the order of termination of the services of the respondent-workman illegal and therefore, both the courts below have rightly set aside the same and passed an Award of reinstatement and back wages, respectively. However, not awarding back wages to the respondent by the Industrial Tribunal and awarding of the same by the High Court for the period between 24.2.1997 to 31.1.2005 only, has been done without assigning any cogent reason even though he is gainfully employed and lawfully entitled for the same from the date of termination from his services, i.e. 22.08.1975, which cannot be said to be valid in law. Therefore, the judgment and Award passed by the courts below with regard to his reinstatement on a post equivalent to the post of Tube-well Operator and denial of payment of back wages from the date of his termination, i.e. 22.08.1975 is wholly untenable in law as the same is contrary to the well established principles of law and the same is required to be modified by awarding back wages.

The learned AAG has further contended that the termination of the services of the workman was made in view of the Government order dated 30.07.1975, by which the post of the Tube-well Operator was abolished and the termination letter was served on the respondent-workman as he was a temporary employee. However, these reasons were not stated in his termination letter dated 22.08.1975 by the appellant and instead, it was mentioned that his services were no longer required which tantamount to retrenchment of the respondent as defined under Section 2(s) of the Act. Thus, the contention of the appellant cannot be accepted by us in this regard, in view of the untenable reason stated in the letter of termination of the services of the respondent-workman. Further, the Government order dated 30.07.1975, clearly stated that in place of Tube-well Operator, the post of Nalkoop Mechanic, class IV employee, was being created that would carry out the work of the Tube-well Operator. Hence, the post of the Tube- well Operator was not abolished but only the name of the post was changed, as rightly held by the Industrial Tribunal.

Therefore, in view of the above stated facts and also on a perusal of the reasons given by the Industrial Tribunal in its Award on the contentious point, the contention urged on behalf of the appellant that the termination of the services of the workman was done in accordance with above mentioned Government order cannot be accepted by us as the same is erroneous in law. The fact that the persons junior to him as well as his contemporaries are still working for the appellant-department, shows that the termination of the services of the respondent has been done in an unreasonable and unfair manner.

Now, coming to the question of the entitlement of back wages to the respondent workman, the same is answered in the positive, in view of the fact that the workman had refused to accept the new job as fisherman which was offered to him pursuant to the Award passed by the Industrial Tribunal on the ground that the said post is not equivalent to the post of the Tube- well Operator. Even though the appellant had agreed to comply with the terms of the Award dated 24.02.1997 passed by the Industrial Tribunal and had offered reinstatement to him, it is well within the right of the workman to refuse the new job offered to him and the same cannot be said to be unjustified or erroneous on the part of the respondent-workman. In the present case, there has been an absence of cogent evidence adduced on record by the appellant to justify the termination of the services of the respondent-workman, who has been aggrieved by the non-awarding of back wages from the date of termination till the date of passing the Award by the Industrial Tribunal. There is no justification for the Industrial Tribunal to deny the back wages for the said period without assigning any cogent and valid reasons. Therefore, the denial of back wages to the respondent even though the Industrial Tribunal has recorded its finding on the contentious question no.1 in the affirmative in his favour and in the absence of evidence of gainful employment of the respondent during the relevant period, amounts to arbitrary exercise of power by the Industrial Tribunal for no fault of the respondent and the same is contrary to law as laid down by this Court in a catena of cases. Hence, it is a

fit case for this Court to exercise its power under Order XLI Rule 33 of the Civil Procedure Code, 1908, to award back wages to the respondent, even though the respondent has not filed a separate writ petition questioning that portion of the Award wherein no back wages were awarded to him by the Courts below for the relevant period. The respondent has got a right to place reliance upon the said provision of the Civil Procedure Code, 1908 and show to this Court that the findings recorded by both the Courts below in denying back wages for the relevant period of time in the impugned judgment and Award is bad in law as the same is not only erroneous but also error in law. Therefore, in accordance with the power exercised by this Court under Order XLI Rule 33 of this Civil Procedure Code, 1908 and in the light of the judgment of this Court in Delhi Electric Supply Undertaking v. Basanti Devi and Anr[3]., we hold that the State Government is liable to pay 50% of the back wages to the respondent from the date of his termination order dated 22.08.1975 till the date of the Award passed by the Industrial Tribunal, i.e. 24.02.1997. The relevant paragraphs of the above referred judgment reads thus:

"17. In our approach we can also draw strength from the provisions of Rule 33 of Order 41 of the Code of Civil Procedure which is as under: "33. Power of Court of Appeal.-The appellate court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is a part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the appellate court shall not make any order under Section 35- A, in pursuance of any objection on which the court from whose decree the appeal is preferred has omitted or refused to make such order."

18. This provision was explained by this Court in Mahant Dhangir v. Madan Mohan in the following words:

"The sweep of the power under Rule 33 is wide enough to determine any question not only between the appellant and respondent, but also between respondent and co-respondents. The appellate court could pass any decree or order which ought to have been passed in the circumstances of the case. The appellate court could also pass such other decree or order as the case may require. The words 'as the case may require' used in Rule 33 of Order 41 have been put in wide terms to enable the appellate court to pass any order or decree to meet the ends of justice. What then should be the constraint? We do not find many. We are not giving any liberal interpretation. The rule itself is liberal enough. The only constraint that we could see,

> may be these: That the parties [pic]before the lower court should be there before the appellate court. The question raised must properly arise out of the judgment of the lower court. If these two requirements are there, the appellate court could consider any objection against any part of the judgment or decree of the lower court. It may be urged by any party to the appeal. It is true that the power of the appellate court under Rule 33 is discretionary. But it is a proper exercise of judicial discretion to determine all questions urged in order to render complete justice between the parties. The court should not refuse to exercise that discretion on mere technicalities."

Further, the learned counsel for the respondent, in support of his legal submissions with regard to back wages has rightly placed reliance on the decision of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya[4], wherein this Court has held thus:

> "22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

(emphasis laid down by this Court) He has further placed reliance on the decision of Bhuvnesh Kumar Dwivedi v. Hindalco Industries Ltd.[5], wherein this Court has held thus:

> "36. On the issue of back wages to be awarded in favour of the appellant, it has been held by this Court in Shiv Nandan Mahto v. State of Bihar that if [pic]a workman is kept out of service due to the fault or mistake of the establishment/company he was working in, then the workman is entitled to full back wages for the period he was

illegally kept out of service. The relevant paragraph of the judgment reads as under:

> "8. ... In fact, a perusal of the aforesaid short order passed by the Division Bench would clearly show that the High Court had not even acquainted itself with the fact that the appellant was kept out of service due to a mistake. He was not kept out of service on account of suspension, as wrongly recorded by the High Court. The conclusion is, therefore, obvious that the appellant could not have been denied the benefit of back wages on the ground that he had not worked for the period when he was illegally kept out of service. In our opinion, the appellant was entitled to be paid full back wages for the period he was kept out of service."

37. Further, in Haryana Roadways v. Rudhan Singh, the three-Judge Bench of this Court considered the question whether back wages should be awarded to the workman in each and every case of illegal retrenchment. The relevant paragraph reads as under:

> "8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily- wage employment though it may be for 240 days in a calendar year.""

Thus, in view of the cases referred to supra, there was absolutely no justification on the part of the Industrial Tribunal to deny back wages to the respondent even when it is found that the order of termination is void ab initio in law for non-compliance of the mandatory provisions under Section 6-N of the Act. Keeping in view the fact that the period of termination was in the year 1975 and the matter has been unnecessarily litigated by the employer by contesting the matter before the Industrial Tribunal as well as the High Court and this Court for more than 40 years, and further, even after the Award/order of reinstatement was passed by the Industrial Tribunal directing the employer to give him the post equivalent to the post of Tube-well Operator, the same has been

denied to him by offering the said post which is not equivalent to the post of Tube-well Operator and thereby, attributing the fault on the respondent for non reporting to the post offered to him, which is once again unjustified on the part of the employer.

Thus, the principle "no work no pay" as observed by this Court in the catena of cases does not have any significance to the fact situation of the present case as the termination of the services of the workman from the post of Tube-well Operator is erroneous in law in the first place, as held by us in view of the above stated reasons.

The respondent and his family members have been suffering for more than four decades as the source of their livelihood has been arbitrarily deprived by the appellant. Thereby, the Right to Liberty and Livelihood guaranteed under Articles 19 and 21 of the Constitution of India have been denied to the respondent by the appellant as held in the case of Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors[6]., wherein this Court has held thus:

> "32. As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which [pic]we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: only a handful can afford the luxury

> of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas, J. in Baksey that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in Munn v. Illinois means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in Kharak Singh v. State of U.P."

(emphasis laid down by this Court) Therefore, with respect to the judicial decisions of this Court referred to supra, we hold that the appellant is liable to pay 50% back wages in favour of the respondent from the date of the termination order dated 22.08.1975 till the date of the Award passed by the Industrial Tribunal, i.e. 24.02.1997.

In so far as the awarding of full back wages to the respondent by the High Court in its judgment and order dated 18.07.2006 for the period 24.02.1997 to 31.01.2005 is concerned, we retain the same. The appellant is further directed to pay full back wages to the respondent after computing the same on the basis of the revised pay-scale and pay him all other monetary benefits as well. The aforesaid direction shall be complied with by the appellant within four weeks from the date of receipt of the copy of this order.

Accordingly, the appeal is dismissed with modification regarding back wages as mentioned in the preceding paragraphs. The order dated 11.12.2006 granting stay shall stand vacated. No costs.

.....J. [V. GOPALA GOWDA]
.....J. [R.BANUMATHI] New Delhi, March 26, 2015 ITEM NO.1A-For Judgment COURT NO.9 SECTION XV S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS Civil Appeal No(s). 2381/2007 STATE OF U.P Appellant(s) VERSUS CHARAN SINGH Respondent(s) Date : 26/03/2015 This appeal was called on for pronouncement of JUDGMENT today.

For Appellant(s) Mr. Gaurav Bhatia, AAG Mr. Gaurav Srivastava, Adv.

Mr. Utkarsh Jaiswal, Adv.

Ms. Pragati Neekhra,Adv.

For Respondent(s) Mr. Devendra Singh,Adv.

Hon'ble Mr. Justice V.Gopala Gowda pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mrs. Justice R. Banumathi.

The appeal is dismissed in terms of the signed Reportable Judgment.

(VINOD KR.JHA) (MALA KUMARI SHARMA)

COURT MASTER COURT MASTER

(Signed Reportable Judgment is placed on the file)

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[2] (1995) Supp (4) SCC 241

[4] (1997) 6 SCC 723

[6] (1999) 8 SCC 229

[8] (2013) 10 SCC 324

[10] (2014) 11 SCC 85

[12](1985)3 SCC 545