S. S. Shetty vs Bharat Nidhi, Ltd on 17 September, 1957

Equivalent citations: 1958 AIR 12, 1958 SCR 442, AIR 1958 SUPREME COURT 12, 1958 SCJ 187, 1957-58 13 FJR 218, 1957 2 LABLJ 696, 1958 MADLJ(CRI) 92

Author: Natwarlal H. Bhagwati

Bench: Natwarlal H. Bhagwati, S.K. Das, P.B. Gajendragadkar

PETITIONER:
S. S. SHETTY

Vs.

RESPONDENT:
BHARAT NIDHI, LTD.

DATE OF JUDGMENT:
17/09/1957

BENCH:
BHAGWATI, NATWARLAL H.
BENCH:
BHAGWATI, NATWARLAL H.
DAS, S.K.
GAJENDRAGADKAR, P.B.

CITATION:
1958 AIR 12 1958 SCR 442

ACT:
Industrial dispute-Wrongful dismissal--Tribunal directing reinstatement-Failure to implement award-Benefit of reinstatement-Monetary value-Computation-Code of Civil Procedure (Act V of 1908), s. 95-Industrial Disputes (Appellate Tribunal) Act, 1950 (XLVIII Of 1950), S. 20(1), (2).

HEADNOTE:
The appellant was in the service of the respondent but subsequently he was discharged on the plea that he had become surplus
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to the requirement of the respondent. The Industrial Tribunal found that the respondent had been guilty of unfair labour practice and victimisation and held that the order of discharge was illegal and that he should be reinstated, with

arrears of salary and allowances from the date of discharge. The respondent having failed to implement the award, the appellant filed an application under section 2o(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950, for computation of the money value of the benefit of reinstatement. The Industrial Tribunal assessed the value of reinstatement at the sum of Rs. 1,000 by adopting the measure of damages as laid down under section 95 of the Code of Civil Procedure. Under the bye-laws framed by the respondent the services of an employee could be terminated on giving one month's notice.

Held, that the monetary value of the benefit of reinstatement is to be computed not on the basis of a breach of the contract of employment nor on the basis of a tort alleged to have been committed by the employer by reason of the non-implementation of the direction for reinstatement contained in the award. The computation has to be made by the Industrial Tribunal having regard to all the.circumstances of the case, such a?, the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the employee and even of the employer himself ceasing to exist, or of the employee being awarded various benefits including reinstatement under the terms of future awards by Industrial Tribunals in the event of industrial disputes arising between the parties in the future.

The observations of Greer L. J. in Salt v. Power Plant Co., Ltd. (1936) 3 All E.R. 322, 325, relied on.

In the instant case, having regard to the bye-laws, the appellant would have been entitled to only one month's salary in lieu of notice, as and by way of compensation for non-implementation of the direction for reinstatement, but this right could not be availed of by the respondent in view of the finding of the Tribunal that he was guilty of unfair labour practice and victimisation, and a correct estimate of the value of the benefit of reinstatement had to be made bearing in mind all the relevant factors.

JUDGMENT:

CIVIL APPELLATTE JURISDICTION: Civil Appeal No. 329 of 1956. Appeal by special leave from the decision dated April 29, 1954, of the Labour Appellate Tribunal, Lucknow, in Appeal No. III-97 of 1953 arising out of the Award dated January 24, 1953, made by the Central Government Industrial Tribunal, Calcutta, in Appli- cation No. 106 of 1952.

B.R. L. Iyengar and B. C. Misra, for the appellant. Veda Vyasa, K. L. Mehta and I. S. Sawhney, for the respond- ent.

1957. September 17. The following Judgment of the Court was delivered by BHAGWATIJ.-This appeal with special leave is directed against the decision of the Labour Appellate Tribunal of India, Lucknow, confirming, on appeal, the award made by the Central Government Industrial Tribunal, Calcutta, in a dispute between the appellant and the respondent. The appellant took up service with the respondent then knownm the Bharat Bank Ltd., with effect from July 1, 1944, as an Inspector at Bombay in the grade of Rs. 170-10-200-20- 400 and was given three increments when the first increment fell due as from October 1, 1945. He was also given promo- tions on October 1, 1946, and on October 1, 1947, and was drawing Rs. 240 per month plus a special allowance for a servant -of Rs. 30 per month at the time when he was dis- charged by the respondent on August 5, 1949, on the plea that he had become surplus to the requirement of the re- spondent. The Government of India, Ministry of Labour had by Notification No. LR. 2 (273), dated February 21, 1950, referred for adjudication to the Central Government Indus- trial Tribunal at Calcutta the disputes pending between the various banks and their employees, and the appellant's case came up for hearing in the course of those proceedings before the Tribunal which held on December 5, 1950, that the order of discharge of the appellant was illegal and that the respondent should take him back in service as well as pay the appellant his arrears of salary and allowances from the date of discharge. This direction was to be carried out within a month of the date of the publication of the award which was actually published in the Gazette of India (Part II, Section 3, page 1143) of December 30, 1950.

On January 30, 1951, the respondent preferred an appeal against the said order to the Labour Appellate Tribunal, Calcutta, sitting at Allahabad, which by its decision dated September 25, 1951, upheld the directions given by the Industrial Tribunal and dismissed the appeal. The respond- ent failed and neglected to implement the decision of the Labour Appellate Tribunal within the prescribed period in spite of the appellant's intimating to the respondent by his letter dated October 10, 1951, at its address at 37, Faiz Bazar, Delhi, that he was at Bombay and that he would like to know where he should report himself for duty. By this letter he also claimed arrears of salary and allowances which had not till then been paid to him, apart from the payments made under the interim orders of the Labour Appel- late Tribunal. The respondent did not send any reply to the said letter with the result that the appellant served on the respondent a notice on November 5, 1951, through his solici- tors intimating that the respondent had failed and neglected to reinstate the appellant inspite of his letter dated October 10, 1951, requesting it to do so. The appellant further intimated to the respondent that by reason of its failure to reinstate him within the prescribed period the respondent had committed a breach of the directions of the Labour Appellate Tribunal and the appellant had therefore become entitled to compensation for the same. The appellant therefore called upon the respondent to pay to him a sum of Rs. 32,388 as the amount of compensation to which he was entitled on account of the pay he would have earned till his 55th year, i.e., upto May 4, 1960, Provident Fund contribu- tion on pay at 6 1/4 % as allowed by the Rules of the Bank and gratuity for about 16 years from July 1, 1944, to May 4, 1960, at month's pay per year of service, adjustment being made at 6% per annum for payment, if made as demanded. This amount was exclusive of other claims against the respondent such as amounts due to him under the order dated February 17, 1951, of the Labour Appellate Tribunal of India, Allaha- bad, arrears of salary etc., withheld by the respondent. A,-, the respondent failed and neglected to send any reply to the said notice or to comply with the requisitions therein contained, the appel- lant made an application to the Government of India on February 22, 1952, for recovery of money under s. 20(1)

of the Industrial Disputes (Appellate Tribunal) Act, 1950 (hereinafter referred to as " the Act ") to which he re- ceived a reply on May 13, 1952, stating that an application for recovery of money under that section could be enter- tained only if it was confined to the arrears of salary and allowances from the date of his discharge upto the date of the application, and advising him to submit a revised appli- cation accordingly. A suggestion was also made in that letter that the appellant might approach the Industrial Tribunal, Calcutta, under s.20(2) of the Act for a computa- tion in terms of money of the benefit of reinstatement, as it was only when a definite sum had been so determined that action for recovery under s. 20(1) of the Act could be taken by the Government.

It appears that in the meantime the respondent had trans- ferred its banking business under an agreement with the Punjab National Bank Ltd., and had also changed its name to Bharat Nidhi Ltd. By its letter dated April 3, 1952, the respondent in its new name of the Bharat Nidhi Ltd., ad- dressed a letter to the appellant stating that due to the transfer of its liabilities and equivalent assets to the Punjab National Bank Ltd., and the closure of all its branches in India, the appellant was surplus to its require- ments. It therefore purported to give to the appellant two months' notice of its intention to terminate the said award and his services in terms of s. 19(6) of the Industrial Disputes Act, 1947. The letter further proceeded to state that the appellant had not so far reported himself for duty at -its office at Delhi which was the only office that it had in India since March 10, 1951, and which was its Head Office and registered office before that date. The appel- lant replied by his Advocate's letter dated April 16, 1952, pointing out that in spite of his letter dated October 10, 1951, addressed to the respondent the latter had not in- formed him as to when and where he should report for duty nor had it cared to respond to the same. He intimated that he had already made an application to the Government of India under s. 20(1) of the Act and was awaiting the result thereof. The letter dated April 3, 1952, addressed by the respondent to the appellant was under the circumstances characterized by the appellant as evidently addressed to him with some ulte- rior motive. The respondent by its letter dated May 10, 1952, addressed to the appellant reiterated that in spite of its asking the appellant to do so, he had failed to join its office. It stated that by its letter dated April 3, 1952, it had clearly asked the appellant to join at Delhi but that the appellant had failed to do so and the conduct of the appellant clearly amounted to evasion of its instructions and absence from duty. It also stated that the notice dated April 3, 1952, had effect from the date of receipt thereof by the appellant, viz., April 9, 1952. No further reply was made by the appellant to the aforesaid letter but it appears that on June 28, 1952) the respondent addressed a letter to the Under Secretary, Government of India, New Delhi, in answer to a communication dated June 12, 1952, addressed by the latter to it that the appellant had already been paid arrears of his pay and allowances awarded by the Tribunal, that he was further asked by it to resume duty which he had failed to do, and, in the circumstances be was being consid- ered absent from duty. A copy of the letter dated May 10, 1952, addressed by it to the appellant as also a copy of the letter of the same date addressed to the Chief Labour Com- missioner (Central), New Delhi, were enclosed therewith for information. Nothing further transpired and on October 8, 1952, the appellant filed the petition under s. 20(2) of the Act for computation of the money value of the benefit of reinstatement because of non-implementation of the direc- tions contained in the award by the respondent. He claimed a sum of Rs. 47,738 computed in the mariner indicated in annexure 'D' to that petition.

The respondent filed its written statement on December 4, 1952, wherein the only plea taken was that there was a flagrant violation by the appellant of its instructions to join duty and that thereby the appellant had forfeited his right to claim reinstatement and all benefits flowing therefrom. It further stated that without prejudice and with a view to close his case it had offered him salary upto June 19, 1952, by its letter dated November 15, 1952, under intimation to the Conciliation Officer, Central Gov- ernment, New Delhi, but the appellant had not replied to the same. The respondent further contended that the award in question was in force for -only one year under s. 19(3) of the Industrial Disputes Act, 1947, and that the same was therefore no longer in force and the respondent had already terminated the same. The claim of the appellant was there- fore illegal and preposterous and the respondent prayed that the petition be dismissed with costs.

The petition came up for hearing before the Central Govern- ment Industrial Tribunal at Calcutta and it was observed that there were three aspects of the case, viz., (i) whether the respondent refused to implement the award or the subse- quent decision of the Labour Appellate Tribunal by not taking the appellant in service as directed by the Tribunals (as urged on behalf of the appellant); (ii) whether it was the petitioner who failed to resume his duty in spite of having been asked to do so and thereby forfeited the right conferred upon him in terms of the award (as urged by the respondent); (iii) To what relief or compensation in lieu of reinstatement the petitioner was entitled in the peculiar circumstances in which Bharat Bank ceased functioning soon after the award of December, 1950, and in the light of various other applications of other employees in which only retrenchment relief was awarded. On the first two questions the Industrial Tribunal held in favour of the appellant and then proceeded to consider the third question, viz., as to what relief or compensation in lieu of reinstatement the appellant was entitled to. After discussing the legal position it came to the conclusion that the measure of damages was that laid down under s. 95 of. the Code of Civil Procedure which put it at a figure of Rs. 1,000. It therefore assessed the value of rein. statement asked for at the sum of Rs. 1,000 and awarded that sum under s. 20(2) of the Act. The other prayers of the appellant regarding arrears were not dealt with by the' Industrial Tribunal in so far as they were the subject- matter of the application under s. 20(1) of the Act which the appellant had already made to the Central Government. The appellant being, aggrieved by the award of the Industri- al Tribunal carried an appeal to the Labour Appellate Tribu- nal of India at Lucknow. A preliminary objection was taken by the respondent before the Labour Appellate Tribunal that the appeal was not competent under the provisions of s. 7 of the Act. This objection found favour with the Labour Appel- late Tribunal and holding that no substantial question of law was raised by the award it dismissed the appeal as incompetent. The appellant applied for and obtained special leave to appeal against this decision of the Labour Appel- late Tribunal and that is bow the present appeal is before us.

The two questions of fact, viz., (i) whether the respondent refused to implement the award by not taking .the appellant back in service and (ii) whether it was the appellant who had failed to resume his duty in spite of having been asked to do so and thereby forfeited the right conferred upon him in terms of the award are concluded by the findings arrived at by the Industrial Tribunal after due consideration of the correspondence which passed between the parties. We also have perused the said correspondence and we see no reason to disturb those findings. If therefore the appellant was ready and willing to be reinstated in the service of the respondent and was not guilty of any default

in the matter of reporting himself for duty, the only question that re- mains to be considered by us here is what is the amount at which this benefit of reinstatement which was awarded to the appellant should be computed within the meaning of s. 20(2) of the Act. That was the only scope of the enquiry before the Industrial Tribunal and we have to determine what is the correct method of such computation.

Section 20(2) of the Act reads as follows:--

> Section 20.- Recovery of money due from an employer under an award or decision.
>
> (1).....
>
> (2)Where any workman is entitled to receive from the empoly-

er any benefit under an award or decision of an industrial tribunal which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to the rules made under this Act, be determined by that industrial tribunal, and the amount so determined may be recovered as provided for in subsection (1). It may be noted that sub-section (1) above referred to provides that:-

> any money due from an employer under any award or decision of an industrial tribunal may be recovered as arrears of land revenue or as a public demand by the appropriate Gov- ernment on an application made to it by the person entitled to the money under that award or decision.

The petition of the appellant proceeded on the basis that the benefit of reinstatement which he was entitled to re- ceive under the terms of the award was capable of being computed in terms of money and that position was not disput- ed by the respondent. Even though there was no plea by the respondent in its written statement that there were any circumstances which made it impossible for the respondent to reinstate the appellant in its service except the failure of the appellant to resume his duty in spite of his having been asked to do so, the respondent. was allowed to lead evidence in regard to the transfer of its liabilities and equivalent assets to the Punjab National Bank Ltd., and the closure of its banking business in all of its branches in India in order to show that the respondent was not in default and the value of the benefit of reinstatement in terms of money had thus dwindled into insignificance. Reliance was placed on the further circumstance that the Punjab National Bank Ltd., was not under any obligation to take into its employ the employees of the respondent, that as a matter of fact only 10% of the employees of the respondent bad been absorbed by the Punjab National Bank Ltd., and in regard to the rest who were not so absorbed the only sums awarded to them by the Industrial Tribunals were salary for the notice month. and retrenchment compensation. We are of opinion that these circumstances cannot be availed of by the respondent. It is no doubt true that the respond- ent transferred its liabilities and equivalent assets to the Punjab National Bank Ltd.,

some time in March 1951. The correspondence which was carried on between the appellant and the respondent however shows that in spite of such transfer to the Punjab National Bank Ltd., and the change of the name of the respondent from the Bharat Bank Ltd., to Bharat Nidhi Ltd., the respondent never contended that Bharat Nidhi Ltd. was not in a position to reinstate the appellant in its service. The correspondence proceeded all along on the footing that Bharat Nidhi Ltd., was in a posi- tion to reinstate the appellant in its service and as a matter of fact took up the plea that it had invited the appellant to join it at Delhi but that the appellant bad failed and neglected to do so. Not only in its letter dated May 10, 1952, did the Bharat Nidhi Ltd., state that the appellant's failure to join it at Delhi amounted to absence from duty but as late as June 28, 1952, in its letter ad- dressed to the Under Secretary to the Government of India, New Delhi, it reiterated that the appellant was asked to resume duty which he had failed to do and that in the cir- cumstances he was being considered as absent from duty. It is clear therefore that the Bharat Nidhi Ltd., was all the time insisting that the appellant should join its service at Delhi and never took up the plea that the transfer of its liabilities and equivalent assets to the Punjab National Bank Ltd., and also the possibility of the Punjab National Bank Ltd., not absorbing the appellant in its employ were circumstances available to it by way of defence. The appel- lant having become surplus to its requirement was of course a plea taken by it in the course of the correspondence and by its letter dated April 3, 1952, the Bharat Nidhi Ltd., gave the appellant two months' notice of its intention to terminate the award and service of the appellant. In this behalf it also relied on the provisions of s. 19 (6) of the Industrial Disputes Act, 1947, but when it came to file its written statement it did not put forward that plea as an answer to the claim of the appellant under s. 20(2) of the Act. We fail to understand therefore how these circum- stances could ever have been taken into consideration by the Industrial Tribunal while arriving at the computation in terms of money of the benefit of reinstatement awarded to the appellant under the terms of the award. Such computa- tion has therefore got to be made regardless of those cir- cumstances which were put forward by the respondent as a last resort.

The Industrial Tribunal computed the money value of this benefit on the analogy of s. 95 of the Code of Civil Proce- dure. It treated the non-implementation of the direction in the -award made by an Industrial Tribunal on a par with the obtaining of arrest, attachment or injunction on insuffi- cient grounds and awarded to the appellant the sum of Rs. 1,000 which it deemed to be a reasonable compensation for the injury caused to him. Even if the direction given by the Industrial Tribunal in its award be treated as a statu- tory obligation imposed on the respondent, this certainly could not be a measure of compensation or damaoes and it was fairly conceded by the learned counsel for the respondent that he was not in a position to support that part of the judgment.

Mr. lyengar who appeared for the appellant before us urged that the computation of the money value of the benefit of reinstatement awarded to the appellant should be

made on one or the other of the three bases which he suggested for the purpose, viz., (i) the order of reinstatement should be construed as entitling the appellant to the full tenure of service in accordance with the terms of the original con- tract and the appellant should be awarded compensation commensurate with the salary and the benefits which he would have earned during his service with the respondent for the full term of 55 years which was the age of superanntiation;

(ii) the non-implementation of the direction as to reinstatement should be treated as a breach of contract on the part of the respondent and the appellant should be awarded damages for breach of the contract which would be calculated again on the same, basis; (iii) the non-implemen-

tation should be treated as a breach of a statutory duty and the appellant should be awarded damages for non-implementa- tion as on a tort committed by the respondent. The appel- lant would in that event be entitled not only to general damages but also special damages by reason of oppressive conduct on the part of the respondent.

The position- as it obtains in the ordinary law of master and servant is quite clear. The master who wrongfully dismisses his servant is bound to pay him such damages as will compensate him for the wrong that he has sustained. "

They are to be assessed by reference to the amount earned in the service wrongfully terminated and the time likely to elapse before the servant obtains another post for which he is fitted. If the contract expressly provides that it is terminable upon, e.g., a month's notice, the damages will ordinarily be a month's wages..... No compensa- tion can be claimed in respect of the injury done to the servant's feelings by the circumstances of his dismissal, nor in respect of extra difficulty of finding work resulting from those circumstances. A servant who has been wrongfully dismissed must use diligence to seek another employment, and the fact that he has been offered a suitable post may be taken into account in assessing the damages." (Chitty on Contracts, 21st Ed., Vol. (2), p. 559 para. 1040). If the contract of employment is for a specific term, the servant would in that event be entitled to damages the amount of which would be measured prima facie and subject to the rule of maitigation in the salary of which the master had deprived him. (Vide Collier v. Sunday Referee Publishing Co., Ltd. (1)). The servant would then be entitled to the whole of the salary, benefits, etc., which he would have earned had be continued in the employ of the master for the full (1) [1940] 4 All E.R.

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term of the contract, subject of course to mitigation of damages by way of seeking alternative employment. Such damages would be recoverable by the servant .for his wrongful dismissal by the master only on the basis of the master having committed a breach of the contract of employ- ment. If, however, the contract is treated as subsisting and a claim is made by the servant for a declaration

that he continues in the employ of the master and should be awarded his salary, benefits, etc., on the basis of the continuation of the contract, the servant would be entitled to a declara- tion that he continues in the employ of the master and would only be entitled to the payment of salary, benefits, etc., which accrued due to him up to the date of the institution of the suit.

The benefit of reinstatement which is awarded to a workman under the terms of the award does not become a term or condition of the contract between him and the employer. There are no doubt other reliefs by way of changes in the terms and conditions of employment which when awarded by the appropriate tribunal might be treated as implied terms of the contract between the employer and the workers to whom the award applies and would enure for the benefit of the worker until varied by appropriate legal proceedings. There is no statutory provision in that behalf contained in the Industrial "Disputes Act, 1947. But it is interesting to note that in the Industrial Disputes Order, 1951, obtaining in England there is enacted s. 10 which runs as follows:

> Section 10: Award to be implied term of contract: Where an award on a dispute or issue has been made by the Tribunal then as from the date of the award or from such other date, not being earlier than the date on which the dispute or issue to which the award relates first arose, as the Tribu- nal may direct, it shall be an implied term of the contract between the employer and workers to whom the award applies that the terms and conditions of employment to be observed under the contract shall be in accordance with the award until varied by agreement between the parties or by a subse- quent award of the Tribunal or until different terms and conditions of employment in respect of the workers concerned are settled through the machinery of negotiation or arbitration for the settlement of terms and conditions of employment in, the trade or industry or section of trade or industry or undertaking in which those workers are employed.
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> Whatever be the position in regard to the terms and condi- tions of employment thus varied in accordance with the terms of the award, the benefit of reinstatement awarded to a workman certainly cannot be treated as part of the contract between him and the employer. The effect of an order of reinstatement is merely to set at nought the order of wrong- ful dismissal of the workman by the employer and to rein- state him in the service of the employer as if the Contract of employment originally entered into had been contiuning. The terms and conditions of the contract which obtained when the workman was in the employ of the employer prior to his wrongful dismissal which has been set aside continue to govern the relations between the parties and the workman continues in the employ of the employer under those terms and conditions. There is no variation of those terms and conditions of the contract. The only thing which happens is that the workman is reinstated in his old service as before. The monetary value of the benefits of such reinstatement is therefore to be computed not on the basis of a breach of the contract of employment nor on them basis of a tort alleged to have been committed by the employer by reason of the non-implementation of the direction for reinstatement contained in the award. The analogy of a suit for a declaration that the workman is continuing in the employ of

the employer and that he should be paid the safary and benefits, etc., which would have been earned by him up to the date of the institu- tion of the suit also does not strictly apply for the simple reason that the workman here is not asking for a declaration that-he is still continuing in service on the ground that there was a termination of his service after the award, which termination is void. What he is asking for is a computation in terms of money of the benefit of reinstatement which was granted to him by the Industrial Tribunal and which the employer did not implement.

The purpose of the enactment of s. 20(2) of the Act is not to award to the workman compensation or damages for a breach of contract or a breach of a statutory obligation on the part of the employer. Any money which is due from an em- ployer under the award can by virtue of the provisions of s. 20(1) of the Act be recovered by the appropriate Government on an application made to it by the workman. Where however any benefit which is not expressed in terms of money is awarded to the workman under the terms of the award it will be necessary to compute in terms of money the value of that benefit before the workman can ask the appropriate Govern- ment to help him in such recovery. Section 20 sub-s. (2) provides for the computation in terms of money of the value of such benefit and the amount at which such benefit should be computed is to be determined by the Industrial Tribunal to which reference would be made by the appropriate Govern- ment for the purpose. Such computation has relation only to the date from which the reinstatement of the workman has been ordered under the terms of the award and would have to be made by the Industrial Tribunal having regard to all the circumstances of the case. The Industrial Tribunal would have to take into account the terms and conditions of em- ployment, the tenure of service, the possibility of termina- tion of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer him- self ceasing to exist or of the workman being awarded var- ious benefits including reinstatement under the terms of future awards by Industrial Tribunals in the event of indus- trial disputes arising between the parties in the future. Even in the case of ordinary contracts 'between master and servant such considerations have been imported by the courts. The observations of Greer, L.J., in Salt v. Power Plant Co., Ltd. (1) are apposite in this context:

" This is the case of a man who had, according to my view, got an engagement which was to last for life, or at any rate for the joint lives of himself and the company, but I think for his life, because, I think there are authorities to the effect that if a company winds up, that is a dismissal of the servants, and they can then prove for damages and get their dividend, whatever it may happen to be. Fortunately, the company has not been wound up, but in estimating the damages, of course, the tribunal estimating them will have to take into consideration the fact that at any time after June 26, 1935, it might have appeared to the directors that they had good reasons for terminating the plaintiff's serv- ices, reasons connected with his conduct. The present value of

> what his salary would be for the rest of his life must also be considered, and there must also be taken into ac- count the fact that he is a man who might at any time termi- nate his service by his life coming to an end, and other matters with which I need not deal."

These and similar considerations would equally be germane in the matter of the computation in terms of money of the value of the benefit of reinstatement which was awarded to the appellant in the case before us.

Turning therefore to the terms and conditions of employment we find that the respondent had enacted bye-laws for the employees of Bharat Bank Ltd., which were applicable to the appellant. Bye-law 9 provides that an employee may resign from the service of the respondent by giving one month's notice. Bye-law 11 provides that the respondent shall have the option to terminate an employee's service on giving him the same notice as he is required to give to the respondent under rule No. 9 (which can be served even when the employee may be on leave), or by paying him salary for the notice period in lieu of notice, in the absence of an agreement to the contrary, provided that no notice shall be necessary when he is (1) [1936] 3 All E.R. 322, 325.

dismissed on account of misconduct, dishonesty, gross negli- gence, insubordination or disregard of any of the standing instructions. Bye-law 13 lays down that every employee is required to retire on attaining the age of 55 years. He may be retained in service after that age only with the express sanction of the authorities but such extension of service will not exceed more than 2 years at a time.

If regard be had to these terms and conditions, it was possible for the respondent to terminate the service of the appellant by paying him one month's salary in lieu of no- tice. If there was nothing more the appellant would have been entitled only to that amount as and by way of compensa- tion for nonimplementation of the direction for reinstate- ment. There was however a finding recorded by the Industri- al Tribunal which made the award dated December 5, 1950, that the respondent had been guilty of unfair labour prac- tice and victimization and the ordinary right, which the respondent would have been in a position to exercise, of terminating the service of the appellant on giving him one month's salary in lieu of notice could not be availed of by the respondent. On an industrial dispute raised by the appellant on the respondent's terminating his service at any time in the future, it would be open to the Industrial Tribunal to go into the question whether the termination of the appellant's service by the respondent was justified and if the Industrial Tribunal came to an adverse conclusion, it would be open to it to reinstate the appellant in the serv- ice of the respondent with all back salary, allowances, etc. Even if the respondent wanted to retrench the appellant, the same considerations would arise with a possible result against the respondent. On the other hand, there was also a possibility of the respondent being in the right and being entitled to lawfully terminate the service of the appellant in which event of course the appellant would be without any redress whatever. In computing the money value of the benefit of reinstatement the Industrial Tribunal would also have to take into account the present value of what his salary, benefits, etc' would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any Tribunal or Court would do under the circumstances would be to make as correct an estimate as is possible bearing of course in mind all the relevant factors pro and con. We have ourselves devoted very anxious thought to this aspect of the matter and we have come to the conclusion that having regard to all the circumstances of the case it would be reasonable to compute the benefit of reinstatement which was awarded to the appel- lant at an amount of Rs. 12,500 (Rupees twelve thousand and five hundred only).

We accordingly allow the appeal and set aside the decision of the Labour Appellate Tribunal of India, Lucknow as well as the award made by the Central Government Industrial Tribunal, Calcutta and award that the appellant shall recov- er from the respondent the said sum of Rs. 12,500 (Rupees twelve thousand and five hundred only) being the computation of the money value of the benefit of reinstatement awarded to him under the terms of the award of the Central Govern- ment Industrial Tribunal at Calcutta dated December 5, 1950. The respondent will pay the appellant's costs of this appeal as well as the proceedings before the Industrial Tribunal and the Labour Appellate Tribunal.

Appeal allowed.