# Muir Mills Unit Of N.T.C. (U.P) Ltd vs Swayam Prakash Srivastava & Anr on 1 December, 2006

## Equivalent citations: AIR 2007 SUPREME COURT 519, 2007 (1) SCC 491, 2007 AIR SCW 58, 2007 LAB. I. C. 978, 2007 (1) ALL LJ 708, 2007 (3) SERVLJ 88 SC, 2006 (13) SCALE 195, (2007) 1 ALLMR 918 (SC), (2007) 3 SERVLJ 88, (2006) 13 SCALE 195, (2007) 112 FACLR 865, (2007) 1 LAB LN 109, (2007) 1 SCT 475, (2007) 2 SERVLR 270, (2007) 1 ESC 46, (2007) 1 CURLR 1, MANU/SC/5244/2006

## Author: Ar.Lakshmanan

## Bench: Ar. Lakshmanan, Altamas Kabir

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           CASE NO.:
Appeal (civil)  1839 of 2005

PETITIONER:
Muir Mills Unit of N.T.C. (U.P) Ltd.

RESPONDENT:
Swayam Prakash Srivastava & Anr.

DATE OF JUDGMENT: 01/12/2006

BENCH:
Dr. AR. Lakshmanan & Altamas Kabir

JUDGMENT:
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JUDGMENT Dr. AR.Lakshmanan, J.

The appellant in the present matter is Muir Mills a subsidiary of the National Textile Corporation Ltd. of State of Uttar Pradesh. The respondent No.1 was offered appointment as Legal Assistant in the litigation section on a probation period of 1 year (in the pay scale of Rs. 330-560) on 04.06.1982. The appointment letter stated that the said appointment was on a probationary basis. The period of probation was set at one year from the date of joining. On 12.06.1982, the respondent No.1 joined his duties.

On 23.11.1982, a letter was written by the Senior Legal Assistant to the General Manager of the Mill stating that respondent No.1 had completed 6 months of probation but was not able to understand fully the work of his post and stated that "His work is not up to the mark; therefore he is of no use to us". However, it was decided to give the respondent No.1 an opportunity to improve his performance. It is the case of the appellants that the respondent No.1 was orally informed about the

above decision of the appellants.

On the expiry of the probation period of the respondent No.1, a letter dated 04.06.1983 was issued to the respondent No.1 stating that, "Your performance has not been found satisfactory and as such, you have failed to complete the probationary period successfully".

On 06.02.1985, respondent No.1 raised an industrial dispute which was referred for adjudication by respondent No.2 the State of Uttar Pradesh, to the Labour Court in the following terms, "Is termination of the services of the workman Swayam Prakash Srivastava (son of Hori Lal Srivastava), Legal Assistant by the employers vide their order dated 04.06.1983 is right and/or legal? If not, the concerned workman is entitled to which benefit/relief and along with which other details."

On 25.05.1987, the Labour Court delivered an award holding that, the respondent No.1 was a workman and the termination was illegal and that respondent No.1 has to be reinstated within a month of the order with backwages. The Labour court also observed that the Industrial adjudicator had no power to examine the validity of the termination of the services of a probationer before the completion of probation period. Aggrieved by this order of the Labour Court, the appellant preferred a writ petition being WP No.22193 before the High Court of Judicature, Allahabad challenging the award of the Labour Court dated 25.05.1987. By an interim order dated 02.12.1987, the High Court stayed the operation of the award of the Labour Court subject to the deposit of one half of the decreed backwages. The appellant was also directed to continue to make payment of the future salary of respondent No.1 till further orders. The respondent No.1 was given the liberty to withdraw the backwages upon furnishing security. The future salary be withdrawn by respondent No.1 without any security. The appellants complied with the order of the High Court immediately. Muir Mills ceased to be operational in 1991. In the period 1992-1993, the appellants referred to the Board of Industrial and Financial Reconstruction ('BIFR') under the Sick Industrial Companies (Special Provisions) Act ('SICA'). On 05.02.2002 the National Textile Corporation (UP) Ltd, of which the appellants is a constituent entity was declared as a sick industrial company under the SICA and 9 of the 11 mills owned by the said company was directed to be closed.

On 01.11.2002, the High Court dismissed the writ petition No.22193 of 1987 holding that the High Court will not interfere with the order of the Labour court as the same has neither been shown to be perverse, nor suffering from any error of law.

By letter dated 9/11.03.2004, the Ministry of Labour, Government of India approved the formal closure of Muir Mills.

However, on 20.04.2004, the appellant company received a show cause notice from the Deputy Labour Commissioner asking the appellant to explain why a recovery certificate of over ten lakhs be not issued in favour of respondent No.1.

An SLP was filed by the appellant on 16.07.2004 challenging the order of the High Court dated 01.11.2002.

The issues that deserve to be settled by this court according to us are:

> 1. Whether 'legal assistant' falls under the definition of workman under the Industrial Disputes Act?
>
> 2. Whether the High Court failed to appreciate that the award was perverse inasmuch as it directed the reinstatement with backwages of a probationer whose services had been discontinued upon completion of the probationary period on account of unsatisfactory work?
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> 3. Whether the High Court failed to appreciate that respondent No.1 having worked as a probationer for just a year had enjoyed over 15 years of wages without having worked for the same and that in the facts and circumstances even if the termination was held to be illegal, these wages paid should have been held to be treated as compensation in lieu of reinstatement?

The appellant Mill was represented before us by learned counsel Mr.Sanjay Ghose, assisted by Ms. Anitha Shenoy, advocate. Mr. Bharat Sangal, learned counsel appeared for the respondents.

The appellants stated that respondent No.1 was not a workman as understood under the Industrial Disputes Act. The respondent No.1 was being paid a sum of Rs. 866.51 as salary and his work was essentially of supervisory nature. The nature of respondent No.1, Mr. Swayam Prakash Srivastava's work was to supervise the court cases and conduct them in the courts for the appellant Mill.

It was submitted on behalf of the appellants that the High Court failed to appreciate that the award of the Labour Court was perverse as it directed the reinstatement with backwages of a probationer whose services had been discontinued upon completion of the probationary period on account of unsatisfactory work. In this regard the learned counsel referred to this Court's decision in the case of Pavanendra. Narayan. Verma vs. Sanjay Gandhi PGI of Medical Studies & Anr (2002) 1 SCC 520, where it was held that the services of a probationer can be terminated at any time before confirmation, provided that such termination is not stigmatic.

Learned counsel submitted that the High Court failed to appreciate that the award of the Labour Court was also perverse as it had directed grant of backwages without giving any finding on the gainful employment of respondent No.1 and held that the discontinuance of the services of a probationer was illegal without giving any finding to the effect that the disengagement of respondent No.1 was in any manner stigmatic. The decision in the case of MP State Electricity Board vs. Jarina Bee (Smt) (2003) 6 SCC 141 was cited in this regard where it was held that payment of full back wages was not the natural consequence of setting aside an order of reinstatement. In the instant case, though the termination was as far back as in 1983, the Industrial Adjudicator has not given any finding on unemployment. It was submitted that the respondent No.1 had been receiving interim wages for over 15 years without having worked at all and without having established his unemployment. The High Court failed to appreciate that the award itself had only granted reinstatement to respondent No.1 as a probationer giving the petitioner the right to take a decision

on confirmation. The High Court failed to appreciate that respondent No.1 having worked as a probationer for just a year had enjoyed over 15 years of wages without having worked for the same and that in the facts and circumstances even if the termination was held to be illegal, these wages paid should have been held to be treated as compensation in lieu of reinstatement.

The appellants further contended that, assuming but not conceding that the termination of the service of respondent No.1 was illegal, given the fact that all that the Labour Court directed was that the respondent be reinstated as a probationer and given the fact that the Mill itself had been closed down and the appellant declared a Sick Industrial Company in respect of which a revival scheme was sanctioned, the decision of this court in Rolston John vs. Central Government Industrial Tribunal-cum-Labour Court & Ors., 1995 Suppl (4) SCC 549 would be applicable and the logical relief would be to be compensated in lieu of reinstatement, which in the given case could be deemed to set off and satisfied by the payment received by respondent No.1 of wages pursuant to the interim order of the High Court dated 02.12.1987.

It was further submitted that the huge financial liability of Rs.7 lakhs in wages to a probationer who had worked for only about a year was something which the appellant, being a Sick Industrial Company, would find impossible to bear and if this liability is saddled upon the appellant, it could prejudice the sanctioned scheme for revival of two remaining mills. Almost 6898 employees have been retired under a voluntary retirement scheme. That the High Court erred in dismissing the writ petition of the appellant on the ground that the appellant had not complied with the interim order of the High Court whereas the appellant mill has complied with order dated 2.12.1987 for payment of half of the decreed backwages as early as on 19.1.1988.

Concluding his arguments the learned counsel submitted that, the NTC (UP) Ltd. was managing 11 nationalised textile mills in the State of Uttar Pradesh. On account of huge losses, obsolete technology, excess labour/staff force the company was referred to the Board for Industrial and Financial Reconstruction (BIFR) under the Sick Industrial Companies (Special Provisions) Act in the year 1992-1993. The IFCI has prepared a Revival Scheme on the basis of which the BIFR has approved of a sanctioned scheme. Under the Scheme, 9 of the 11 mills, including the Muir Mills where respondent No.1 had served as a probationer, have been closed down. About 6898 employees have opted for VRS. The High Court failed to appreciate that the petitioner-Company itself had been declared a Sick Industrial Company and the Muir Mills wherein the respondent worked had been closed down and the reinstatement in any event was an impossibility.

That the claim had been raised by the respondent, a probationer who had served for only one year and who has already received wages for over 15 years amounting to Rs.2.5 lakhs despite no entitlement to the same under law and without any proof of unemployment during this period. If a recovery certificate of over Rs. 10 lakhs is allowed to be issued in favour of respondent No.1 then the appellant already staggering under a huge financial liability which the appellant, being a Sick Industrial Company would find impossible to bear and if this liability is saddled upon the appellant, it could seriously prejudice the sanctioned scheme for revival of two remaining mills affecting the future of about 3000 employees who have been labouring day and night in the remaining mills to make the Revival Scheme a success. The respondents submitted that the respondent No.1 was

appointed as Legal Assistant in the appellant's organization where he worked with full devotion, sincerity and to the full satisfaction of the employers but his services were terminated on 04.06.1983 without any reason. It was submitted that, respondent No.1 was on leave on 04.06.1983 and 05.06.1983 (being a Sunday) and on 06.06.1983 when he went for work he was given the termination order. Respondent No.1 was not issued a charge sheet or notice during the period before the termination of his services.

It was contended that respondent No.1 was appointed as legal assistant but he was not doing any work of supervisory nature and that no body was working under him. Further it was contended that respondent No.1 used to do parokari on behalf of the Mills and that this type of work cannot be called as work of supervisory nature and therefore respondent No.1 will qualify to be workman as defined under section 2(z) of the U.P. Industrial Disputes Act (U.P.I.D Act), 1947. It was stated that the termination order comes under the definition or retrenchment and the employers have not followed the legal process. The workman has stated that the termination order comes under the definition of retrenchment under section 2 of the U.P.Industrial Disputes Act. The definition of retrenchment is very elaborate in this section and in this connection a decision of this court was cited, Karnataka State Road Transport Corporation, Bangalore vs. Abdul Qadir which appears on page 89 F.L.R. 1984- 48, where it was observed that, "To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer but the fact of termination howsoever produced. We are inclined to hold that the stage has come when the view indicated in Money's case has been 'absorbed into the consensus' and there is no scope for putting the clock back or for an anticlockwise operation. Once the conclusion is reached that retrenchment as defined in section 2(oo) of the Industrial Disputes Act covers every case of termination of service except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to termination."

It was also contended that there was no evidence whatsoever to prove that the workman (respondent No.1) was given any warning during the period of his service for his unsatisfactory work and therefore terminating his services without a reasonable notice is wrong under law. The respondents further contended that in the present fact scenario retrenchment is bad under law as conditions under section 6-N is not complied with. Section 6-N of the U.P. Industrial Disputes Act, 1947, states that, "No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of notice:

Provided that .,

b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months "

Therefore, it was submitted that backwages have to be paid to the retrenched workman. The learned counsel cited a string of cases in support of this contention made before us, Surendra Kumar Verma Etc vs. Central Government Industrial Tribunal-cum- Labour Court, New Delhi & Anr., 1981 (1) SCR 789, Hindustan Tin Works Pvt. Ltd. vs. Employees of Hindustan Tin Works Pvt. Ltd., 1979 (1) SCR 563, Mohan Lal vs. Mgmt of M/s. Bharat Electronics Ltd, (1981) 3 SCC 225, Post Graduate Institute of Medical Education and Research, Chandigarh vs. Vinod Krishan Sharma & Anr (2001) 2 SCC 59, J.N.Srivastava vs. Union of India 1998(9) SCC 559 and Jitendra Singh Rathor vs. Shri Baidyanath Ayurved Bahwan Ltd & Anr., 1984 3 SCR 223 where this court has consistently held that in case of illegal termination of service of a workman, the workman is deemed to be continuing in service and is entitled to reinstatement with full backwages.

We heard the parties in detail and have perused through all the written records placed before us. We are of the opinion that the arguments of the appellant merits favourable consideration for the reasons stated infra. With regard to the question, whether respondent No.1 is a 'workman' under the U.P.I.D Act, 1947, we are of the view that respondent No.1 is not a workman under the Industrial Disputes Act. Section 2(z) of the U.P.I.D Act that is similar to section 2 (s) of the Industrail Disputes Act, 1947 states that:

"'Workman' means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

i) xxx

ii) xxx

iii) who is employed mainly in a managerial or administrative capacity; or

iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

In the fact situation of this case, from the perusal of the job profile of respondent No.1 and after examining section 2 (z) of the U.P.I.D Act it can be said that, respondent No.1 did not fall into the category of workman as contended by the respondents as respondent No.1 falls under exception (iv) of section 2 (z) of the U.P.I.D Act, 1947.

The case of Sonepat Cooperative Sugar Mills Ltd. v. Ajit Singh (2005) 3 SCC 232, can be referred to in this context. Here the respondent was appointed to the post of "Legal Assistant" the qualification for which was degree in law with a practicing licence. The nature of his duties was to prepare written statements and notices, recording enquiry proceedings, giving opinions to the management, drafting, filing the pleadings and representing the appellant in all types of cases. He was also conducting departmental enquiries against workmen in the establishment. He was placed in probation and his post was dispensed with, following which he was terminated. He raised an industrial dispute.

The question before the Labour Court was "Whether the applicant was a workman"; Labour Court held he was a workman, which was upheld by High Court, Management preferred an appeal to this Court. Following the decisions of this Court in A Sundarambal v. Govt. of Goa, Daman and Diu (1988) 4 SCC 42, HR Adyanthaya v. Sandoz (India) Ltd. AIR 1994 SC 2608 and rejecting SK Verma v. Mahesh Chandra (supra), this Court held:

> "Thus, a person who performs one or the other jobs mentioned in the aforementioned provisions only would come within the purview of the definition of workman. The job of a clerk ordinarily implies stereotype work without power of control or dignity or initiative or creativeness. The question as to whether the employee has been performing a clerical work or not is required to be determined upon arriving at a finding as regards the dominant nature thereof. With a view to give effect to the expression to do 'any manual, unskilled, skilled, technical, operational, clerical or supervisory work', the job of the employee concerned must fall within one or the other category thereof. It would not be correct to contend that merely because the employee had not been performing any managerial or supervisory duties, ipso facto he would be a workman"
>
> "...The Respondent had not been performing any stereotype job. His job involved creativity. He not only used to render legal opinion on a subject but also used to draft pleadings on behalf of the appellant as also represent it before various courts/authorities. He would also discharge quasi- judicial functions as an enquiry officer in departmental enquiries against workmen. Such a job, in our considered opinion, would not make him a workman."

In A Sundarambal v. Govt. of Goa, Daman and Diu (supra), question arose as to whether a teacher employed in a school is a 'workman' under s.2(s), here this Court was of the opinion that:

> "The teachers employed by educational institutions, whether the said institutions are imparting primary, secondary, graduate or postgraduate education cannot be called as 'workmen' within the meaning of s.2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. The clerical work, if any they may do, is only incidental to their principal work or teaching. It is not possible to accept

> the suggestion that having regard to the object of the Act, all employees in an industry except those falling under the exceptions (i)-(iv) in s.2(s) of the Act should be treated as workmen as it will render the words, "to do any skilled or unskilled, manual, supervisory, technical or clerical work"

meaningless. Therefore, the appellant teacher of the school conducted by ... was not a workman, though the school was an industry, in view of the definition of 'workmen' as it now stands."

It can be observed that even before the Labour Court as a preliminary objection, it was contended by the appellant that, the respondent No.1 was not under the category of workman as defined in section 2 of the U.P. Industrial Disputes Act, 1947. Hence the reference order is not covered under the U.P. Industrial Disputes Act, 1947; and the reference order is totally vague, bad in law and is liable to be rejected. It was also stated before the Labour Court that the total emoluments for the month of April, 1983 drawn by Sri Srivastava were totally in his supervisory capacity and he was designated as Legal Assistant in the Litigation Department of the Mill and therefore the reference before the Labour Court is not maintainable.

Before the Labour Court the respondent was examined as W.W-I. In his deposition in-chief, he stated on oath that, on 04.06.1982 he was appointed as the legal assistant in the Mill. In the cross-examination he stated that he was appointed in the post of Legal Assistant in the Mill and a total of Rs 850/- per mensem was being paid as salary. One Mr. Naresh Pathak was examined as E.W.-I, he deposed on oath that he was working as Senior Legal Assistant since 1971 and that the respondent had worked in his department in the post of Legal Assistant in June 1982 in a supervisory capacity and the work of the respondent No.1 was to supervise the court cases and whenever necessary to prepare draft reply to matters that are pending in the court. He also deposed that the work of the respondent was not satisfactory and in this regard a note was issued to the General Manager. In cross-examination the witness deposed that he has no document to prove that the nature of work of the respondent was supervisory. However this was not given any kind of serious consideration by the High Court while deciding on the claim made by the respondents.

Furthermore if we draw a distinction between occupation and profession we can see that an occupation is a principal activity (job, work or calling) that earns money (regular wage or salary) for a person and a profession is an occupation that requires extensive training and the study and mastery of specialized knowledge, and usually has a professional association, ethical code and process of certification or licensing. Classically, there were only three professions:

> ministry, medicine, and law. These three professions each hold to a specific code of ethics, and members are almost universally required to swear some form of oath to uphold those ethics, therefore "professing" to a higher standard of accountability. Each of these professions also provides and requires extensive training in the meaning, value, and importance of its particular oath in the practice of that profession.

A member of a profession is termed a professional. However, professional is also used for the acceptance of payment for an activity. Also a profession can also refer to any activity from which one earns one's living, so in that sense sport is a profession.

Therefore, it is clear that respondent No.1 herein is a professional and never can a professional be termed as a workman under any law.

The perusal of the appointment order becomes useful here for addressing the issue whether the High Court failed to appreciate that the award of the Labour Court was perverse as it directed the reinstatement with backwages of a probationer whose services had been discontinued upon completion of the probationary period on account of unsatisfactory work "MUIR MILLS UNIT OF NATIONAL TEXTILE CORPORATION (U.P) Ltd. SUBSIDIARY OF NATIONAL TEXTILE CORPN. Ltd. NEW DELHI (A GOVERNMENT OF INDIA UNDERTAKING) Post Box No.33, Civil Lines, Kanpur-208 001 Dated: 4th June, 1982 Ref No. Sri. Swayam Prakash Srivastava, S/o Sri. Hori Lal Srivastava, 21/8, Safed Colony, Juhi Kanpur Dear Sir, With reference to your application dated 24.05.1982 and subsequent interview you had with us on 27.05.1982, we have pleasure in offering you the post of Legal Assistant in the pay scale of Rs.330-10-380-EB-12-

500-EB- 15-560/- with a starting basic pay of Rs.330/- (Rupees Three hundred Thirty only) per month with effect from the date of your joining the Mills, on the following terms and conditions:-

1 .

2 .

3. You will be on probation for a period of one year from the date of your joining the Mills. The probation period of one year can be extended or curtailed at the discretion of the appointing authority. In the event of your failure to complete the said probationary period satisfactorily, you may render yourself liable to be discharged from the service of the Mill without assigning any reasons and without any notice. During the period of probation, you can resign from the service of the Mill without giving any notice. Unless a letter is issued to you to the effect that you have completed your probation satisfactorily, the probation period shall be deemed to have been extended. No increment shall be granted to you unless you have completed the said probationary period satisfactorily and a letter to this effect has been issued to you.

4. After you having completed the probation satisfactorily, your services can be terminated by the appointing authority on giving you one month's notice or pay in lieu thereof. If you wish to resign from the service of the Mill, you will have to give one month's notice or pay in lieu thereof to the Mill.

5 .

6. Your employment will be governed by all the rules and regulations, terms and conditions of service, administrative orders and/or standing orders presently in force or as may be framed, amended, altered or extended from time to time and as applicable to the employees of the Mills.

7 .

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11 .

12. On attaining the age of 58 years, you shall have no claim to be continued in the service of the Mill thereafter and your services shall come to an end automatically.

13 .

14 .

Yours faithfully (for) Muir Mills Unit of NTC (UP) Ltd.

(A.L. MATHUR) General Manager"

> Also if we peruse through the termination order it is clear that the respondent No.1 was appointed in the capacity of legal Assistant and his services were terminated after the completion of the probationary period.
>
> 4th June, 1983 Shri Swayam Prakash Srivastava, Legal Assistant, Muir Mills Kanpur Reference para 3 of appointment letter No. PA/16/82 dated 4th June, 1982.
>
> Your performance has not been found satisfactory and as such, you have failed to complete the probationary period successfully. Your services are, therefore, being terminated with immediate effect.
>
> Please contact Accounts Dept. on any working day and get your dues cleared on production of a 'No Demand Certificate' from all the concerned.
>
> For Muir Mills Unit of NTC (U.P) Ltd.
>
> It is clear from the clause in the appointment letter and the termination letter that, the Mill had reserved all rights to discharge from the service of the Mill the respondent No.1 without assigning any reasons and without any notice.

> Also in the case of Registrar, High Court of Gujarat & Anr vs. C.G.Sharma (2005) 1 SCC 132, it was observed that an employee who is on probation can be terminated from services due to unsatisfactory work.
>
> This Court's decision in the case of P.N. Verma vs. Sanjay Gandhi PGI of Medical Studies (supra), can be referred to in this context, where it was held by this court that, the services of a probationer can be terminated at any time before confirmation, provided that such termination is not stigmatic. This Court in State of Madhya Pradesh vs. VK Chourasiya 1999 SCC (L&S) 1155 also has held that in the event of a non-stigmatic termination of the services of a probationer, principles of audi alteram partem are not applicable.
>
> We are also of the view that the award of the Labour Court is perverse as it had directed grant of backwages without giving any finding on the gainful employment of respondent No.1 and held that the discontinuance of the services of a probationer was illegal without giving any finding to the effect that the disengagement of respondent No.1 was in any manner stigmatic. The decision in the case of MP State Electricity Board vs. Jarina Bee (Smt) (supra), this court held that payment of full back wages was not the natural consequence of setting aside an order of reinstatement. In the instant case, though the termination was as far back as in 1983, the Industrial Adjudicator has not given any finding on unemployment. This Court in a recent case of State of Punjab vs. Bhagwan Singh (2002) 9 SCC 636 has held that even if the termination order of the probationer refers to the performance being 'not satisfactory', such an order cannot be said to be stigmatic and the termination would be valid.

Further the Labour Court issued notices to both parties and after adducing evidence and hearing both the parties, it has recorded a finding that the termination of services of the concerned workman, during his service, was neither based on unsatisfactory work nor the same could have been proved before the labour court and therefore, the labour court arrived at the conclusion and recorded a finding that the services of the workman have been terminated by way of victimization and unfair labour practice. Aggrieved by the aforesaid award, the employer-petitioner has come before this court by means of the present writ petition. An application has been filed by the workman concerned that the employer has not complied with the aforesaid interim order.

However, we are of the view that, the emoluments for the month of April, 1983 drawn by respondent No.1 was Rs.866.51 and the nature of duties of respondent No.1 were totally supervisory capacity and he was designated as Legal Assistant in the Mill's litigation department. So the respondent is not entitled to raise an Industrial Dispute and also that his services are governed by all the rules and regulations, terms and conditions of service, administrative orders and/or standing orders presently in force or as may be framed, amended, altered or extended from time to time and as applicable to the employees of the Mills as is clear from the appointment order of 04.06.1982. Also it is clear from the facts that the appellants have complied with the interim order of the High Court.

We also observe that the respondent No.1 had been receiving interim wages for over 15 years without having worked at all and without having established his unemployment. The High Court failed to appreciate that the award itself had only granted reinstatement to respondent No.1 as a probationer giving the petitioner the right to take a decision on confirmation. Further the Mill itself has been shut down now and given the lapse of 22 years, it was impracticable to reinstate respondent No.1 as a probationer.

It is also pertinent to mention Section 2(oo) of the Industrial Disputes Act. Section 2 (oo) of the I.D.Act, 1947 states that, "2. (oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

(a) Voluntary retirement of the workman; or

(b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or (bb) (c ) "

However, this provision is not applicable to the U.P. Industrial Disputes Act, 1947.

With regard to the contention of the respondents that in the present fact scenario retrenchment is bad under law as conditions under section 6-N, which talks about a reasonable notice to be served on an employee before his/her retrenchment, is not complied with; we are of the view that an even under Section 6-N, proviso states that 'no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service." In the present case on the perusal of the appointment letter it is clear that no such notice needs to be issued to respondent No.1.

The respondents had referred to many cases with regard to backwages to be paid to the retrenched workman. The learned counsel cited a string of decisions of this court in support of this contention. We are however not addressing this plea of the respondents, as we have already observed that respondent No.1 is not a workman under the Industrial Disputes Act, 1947 and the U.P.I.D Act, 1947 and also that the retrenchment was not illegal and therefore the question of backwages do not arise.

In the result, we allow the appeal preferred by the appellants and set aside the award of the Labour Court and the orders of the High Court. We also observe that no recovery certificate needs to be issued in favour of respondent No.1, in lieu of the show cause notice issued by the Deputy Labour Commissioner. However we state that the salary that has been already paid to respondent No.1 under the orders of the court will not be recovered from the respondent. The High Court while passing the interim order dated 02.12.1997 in writ petition No. 193 of 1997 while granting stay of the award of the Labour Court directed the Management to deposit half of the

amount decreed and also continue to deposit the amount of salary of respondent in future until further orders and that the past award if deposited could be withdrawn by the workman after furnishing security. However, no security need be given to the withdrawal of the amount which is to be deposited as future salary.

In view of our finding that the respondent is not a workman, he will not be entitled to payment of half of the decreed amount which was ordered to be deposited. If the amount has not been withdrawn so far, the Management is at liberty to withdraw the same from the court deposit. However we are not ordering costs.