Supreme Court of India
Mohan Lal vs Management Of M/S Bharat ... on 21 April, 1981
Equivalent citations: 1981 AIR 1253, 1981 SCR (3) 518
Author: D Desai
Bench: Desai, D.A.

PETITIONER:
MOHAN LAL

Vs.

RESPONDENT:
MANAGEMENT OF M/S BHARAT ELECTRONICS LTD.

DATE OF JUDGMENT21/04/1981

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
GUPTA, A.C.

CITATION:
1981 AIR 1253 1981 SCR (3) 518
1981 SCC (3) 225 1981 SCALE (1)872
CITATOR INFO :
R 1982 SC 854 (5,6)
RF 1983 SC1320 (11)
RF 1984 SC 500 (2)
F 1984 SC 502 (2)
RF 1986 SC 458 (3)
RF 1986 SC1680 (4)

ACT:
Retrenchment-Section 2(oo) of the Industrial Dispute Act-Whether termination of the services of a workman who has put in 240 working days within a period of one year amounts to retrenchment and whether for non-compliance with the provisions of section 25F the termination of service is ab initio void-Sections 25A and 25B, scope of-Effect of termination of service which is ab initio void and inoperative, explained.

HEADNOTE:
The appellant was employed with the respondent as Salesman at its Delhi Sales Depot on a salary of Rs. 520/- per month from 8th December, 1973. His service was abruptly terminated by letter dated 12th October, 1974 with effect from 19th October, 1974. Consequent upon his termination, an industrial dispute was raised and referred to the Labour

Court, Delhi, on 24th April, 1976. The Labour Court, on evaluation of evidence both oral and documentary, held that the termination of the service was in accordance with the standing orders justifying the removal of the employee on unsuccessful probation during the initial or extended period of probation and, therefore, the termination would not constitute retrenchment within the meaning of section 2(oo) read with section 25F of the Industrial Dispute Act. The Labour Court accordingly held that the termination was neither illegal nor improper nor unjustified and the claim of the appellant was negatived. Hence the appeal by special leave.

Allowing the appeal, the Court

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HELD: 1. The termination of service of the appellant was ab initio void and inoperative. His case not being covered by any of the excepted or excluded categories referred to under section 2(oo) and he has rendered continuous service for one year, the termination of his service would constitute retrenchment. The pre-condition for a valid retrenchment has not been satisfied in this case and therefore he will be entitled to all benefits including back wages etc. (534F G, 535-C-D)

2. Where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workmen concerned continues to be in service with all consequential benefits. It is no doubt true that the Supreme Court had held that before granting reinstatement the court must weigh all the facts and exercise discretion properly whether to grant reinstatement or to award compensation.

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Here, no case has been made out for departure from the normally accepted approach of the courts in the field of social justice. (535A C)

Ruby General Insurance Co. Ltd. v. Chopra (P.P.), (1970) 2 Labour Law Journal, 63 and Hindustan Steel Ltd., Rourkela v. A.K. Roy and Others, [1970] 3 S.C.R. 343, referred to.

3:1. Niceties and semantics apart, termination by the employer of the service of a workman for any reason whatsoever in section 2(oo) of the Industrial Dispute Act, would constitute retrenchment except in cases excepted in the section itself. The excepted or excluded cases are where termination is by way of punishment inflicted by way of disciplinary action, voluntary retirement of the workman, 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, and termination of the service of a workman on the ground of continued illhealth. (524 E-F)

3:2. It was not open to the Labour Court to record a

finding that the service of the appellant was terminated during the period of probation on account of his unsatisfactory work which did not improve in spite of repeated warnings when there was not even a whisper of any period of probation in the appointment order or in the rules. The termination of service being, for a reason other than the excepted category, it would indisputably be retrenchment within the meaning of section 2(oo) of the Industrial Dispute Act.(523 G-H, 524A, 525Z)

Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union, [1956] S.C.R. 172; Hariprasad Shivshankar Shukla v, A. D. Divikar, [1957] S.C.R. 121; State of Bombay and Ors. v. The Hospital Mazdoor Sabha and Ors. [1960] 2 S.C.R. 866 at 872; State Bank of India v. N. Sundara Money, [1976] 3 S.C.R. 160; Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa and Ors., [1977] S.C.R. 586; Santosh Gupta v. State Bank of Patiala, [1980] 3 S.C.R. 340 and Delhi Cloth and General Mills Ltd. v. Shambhu Nath Mukerjee, [1978] 1 S.C.R. 591, explained and followed.

4. Before a workman can complain of retrenchment being not in consonance with section 25F of the Industrial Dispute Act, he has to show that he has been in continuous service for not less than one year under that employer who has retrenched him from service. (529 C)

5:1. The language employed in sub-sections (1) and (2) of section 25B does not admit of any dichotomy, namely, (a) sub-section (1) providing for uninterrupted service and (b) sub-section (2) comprehending a case where the workman is in continuous service. Sub-sections (1) and (2) introduce a deeming fiction as to in what circumstances a workman could be said to be in continuous service for the purposes of Chapter V-A. (530 G H)

5:2. Sub-section (1) provides deeming fiction in that where a workman is in service for a certain period for that period even if service is interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal or a lockout or a cessation of work which is not due to any fault on the
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part of the workman. Sub-section (1) mandates that interruptions therein indicated are to be ignored meaning thereby that on account of such cessation an interrupted service shall be deemed to be uninterrupted and such uninterrupted service shall for the purposes of Chapter V-A be deemed to be continuous service. (530H, 531A, C-D)

5:3. Sub-section (2) incorporates another deeming fiction for an entirely different situation. It is not necessary for the purposes of sub-section (2) (a) that the workman should be in service for a period of one year. If he is in service for a period of one year and that if that service is continuous service within the meaning of sub-section (1) his case would be governed by sub-section (1) and his case need not be covered by sub-section (2). Sub-

section (2) envisages a situation not governed by sub-section (1). And sub-section (2) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of 12 calendar months counting backwards and just proceeding the relevant date being date of retrenchment.

(531D-E. 532A-B)

Both on principle and on precedent section 25B(2) comprehends the situation where workman is not in employment for a period of 12 calendar months but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date that is the date of retrenchment, if he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter V-A. In the instant case, the appellant's case indisputably falls within section 25 B(2) (a) and he shall be deemed to be in continuous service for a period of one year for the purpose of Chapter V-A. (534B-D)

Sur Enamel and Stamping Works (P) Ltd. v. Their Workmen, [1964] 3 S.C.R. 616. explained and distinguished.

Surendra Kumar and Ors. v. Central Government Industrial-cum Labour Court, New Delhi and Another, [1981] 1 S.C.R. 789 followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 364 of 1981.

Appeal by special leave from the Award dated the 31st May, 1980 of the Additional Labour Court, Delhi in Industrial I.D. No. 62 of 1976.

V. M. Tarkunde, Hemant Sharma and P. H. Parekh for the Appellant.

S. Markendaya for the Respondent.

The Judgment of the Court was delivered by DESAI, J. The appellant Mohan Lal was employed with the respondent M/s Bharat Electronics Limited as Salesman at its Delhi Sales Depot on a salary of Rs. 520 per month from 8th December, 1973. His service was abruptly terminated by letter dated 12th October 1974 with effect from 19th October, 1974. Consequent upon this termination, an industrial dispute was raised and the Delhi Administration, by its order dated 24th April, 1976 referred the following dispute to the Labour Court, Delhi for adjudication:

> "Whether the termination of services of Shri Mohan Lal is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this

respect?"

As the respondent management at one stage failed to participate in the proceedings, the reference was heard ex- parte and the Labour Court made an award on 2nd May, 1977 directing reinstatement of the appellant with continuity of service and full back wages at the rate of Rs. 520 per month from the date of termination till reinstatement. Subsequently, respondent moved for setting aside the ex-parte award and seeking permission to participate in the proceedings, which motion was granted. The respondent inter alia contended that the appellant was a salesman appointed on probation for six months and subsequently on the expiry of the initial period, the period of probation was extended upto 8th Sept., 1974 and on the expiry of this extended period of probation, his service was terminated by letter dated 12th October, 1974, as he was not found suitable for the post to which he was appointed.

The Labour Court, on evaluation of evidence both oral and documentary, held that the termination of the service was in accordance with the standing orders justifying the removal of the employee on unsuccessful probation during the initial or extended period of probation; and therefore the termination in this case, according to the Labour Court, would not constitute retrenchment within the meaning of section 2(oo) read with section 25F of the Industrial Dispute Act. Accordingly it was held that the termination was neither illegal nor improper nor unjustified and the claim of the appellant was negatived. Hence, this appeal by special leave.

The only point for determination is whether even in the circumstances, as pleaded by the respondent termination of service of the appellant would amount to retrenchment within the meaning of the expression as defined in section 2(oo) of the Industrial Dispute Act, 1947 (`Act' for short)? If the answer is in affirmative, the consequential question will have to be answered whether in view of the admitted position that the mandatory pre-condition prescribed by section 25F for a valid retrenchment having not been satisfied, the appellant would be entitled to reinstatement with back wages or as contended by Mr. Markandey in the special facts of this case, the Court should not direct reinstatement but award compensation in lieu of reinstatement.

An apparent contradiction which stares in the eye on the stand taken by the respondent is overlooked by the Labour Court which has resulted in the miscarriage of justice. In this context the facts as alleged by the respondent may be taken as true. Says the respondent, that the appellant was appointed by order dated July 21, 1973. The relevant portion of the order of which notice may be taken is paragraph 2. It reads as under:

"This appointment will be temporary in the first instance but is likely to be made permanent." Paragraph 4 refers to the consequences of a temporary appointment, namely, that the service would be terminable without notice and without any compensation in lieu of notice on either side. Paragraph 6 provides that the employment of the appellant shall be governed by rules, regulations and standing orders of the company then in force and which may be amended, altered or extended from time to time and the acceptance of the offer carries with it the necessary agreement to obey all such rules, regulations and standing orders. There is not even a whisper of any period of probation prescribed for the appointment nor any suggestion that there are some rules which govern

appointment of the appellant which would initially be on probation. Thus, the appointment was temporary in the first instance and there was an inner indication that it was likely to be made permanent. Even if this promise of likely to be made permanent is ignored, indubitably the appointment was temporary. The respondent, however, says that note 3 at the foot of the appointment order intimates to the appellant that in the event of his permanent appointment the temporary service put in by him will be counted as part of probationary period of service as required under the rules. This consequence would follow in the event of permanent appointment being offered and this is clear from the language employed in note 3. In this case no permanent appointment having been offered, the consequence set out in note 3 could not have emerged. Assuming, however, that this note incorporates all the necessary rules and regulations in the contract of employment, it was incumbent upon the respondent to show that even when appointment is not shown to be on probation in the order of appointment, in view of the rules governing the contract of employment there shall always be a period of probation for every appointee. Witness Bawdekar who appeared on behalf of the respondent stated in his evidence that the appellant was appointed as a probationary salesman. Even according to him prescribed period of probation was six months. He then stated that by the letter dated July 10, 1974, respondent informed the appellant that his service should have been terminated on the expiry of initial period of probation, i.e. on June 8, 1974. However, as a special case the probation period was extended upto September 8, 1974. No rule was pointed out to us enabling the respondent to extend the initial period of probation. Assuming even then that such was the power of the respondent, on September 9, 1974, the period of probation having not been further extended nor termination of service having been ordered during or at the end of the probationary period on the ground of unsuitability, the consequence in law is that either he would be a temporary employee or a permanent employee as per the rules governing the contract of employment between the appellant and the respondent. Admittedly his service was terminated by letter dated October 12, 1974, with effect from October 19, 1974. It is not the case of the respondent that there was any further extension of the probationary period. Thus, if the initial appointment which was described as temporary is treated on probation, even according to the respondent the period of probation was six months, it expired on June 8, 1974. Even if by the letter dated July 10, 1974, the period of probation was said to have been extended, on its own terms it expired on September 8, 1974. The service of the appellant was terminated with effect from October 19, 1974. What was the nature and character of service of the appellant from September 8, 1974 when the extended period of probation expired and termination of his service on October 19, 1974? He was unquestionably not on probation. He was either temporary or permanent but not a probationer. How is it open then to the Labour Court to record a finding that the service of the appellant was terminated during the period of probation on account of his unsatisfactory work which did not improve in spite of repeated warnings? The Labour Court concluded that notwithstanding the fact that the appellant was not shown to have been placed on probation in the initial appointment letter but in view of the subsequent orders there was a period of probation prescribed for the appellant and that his service was terminated during the extended period of probation. This is gross error apparent on the face of the record which, if not interfered with, would result in miscarriage of justice.

If on October 19,1974, the appellant was not on probation and assuming maximum in favour of the respondent that he was a temporary employee, could termination of his service. even according to

the respondent, not as and by way of punishment but a discharge of a temporary servant, constitute retrenchment within the meaning of section 2(oo), is the core question. Section 2(oo) reads as under:

> "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-
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> (a) voluntary retirement of the workman; or
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> (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
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> (c) termination of the service of a workman on the ground of continued ill-health."

Niceties and semantics apart, termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment except in cases excepted in the section itself. The excepted or excluded cases are where termination is by way of punishment inflicted by way of disciplinary action, voluntary retirement of the workman, 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, and termination of the service of a workman on the ground of continued ill- health. It is not the case of the respondent that termination in the instant case was a punishment inflicted by way of disciplinary action. If such a position were adopted, the termination would be ab initio void for violation of principle of natural justice or for not following the procedure prescribed for imposing punishment. It is not even suggested that this was a case of voluntary retirement or retirement on reaching the age of superannuation or absence on account of continued ill- health. The case does not fall under any of the excepted categories. There is thus termination of service for a reason other than the excepted category. It would indisputably be retrenchment within the meaning of the word as defined in the Act. It is not necessary to dilate on the point nor to refer to the earlier decisions of this Court in view of the later two pronouncements of this Court to both of which one of us was a party. A passing reference to the earliest judgment which was the sheet anchor till the later pronouncements may not be out of place. In Hariprasad Shivshankar Shukla v. A.D. Divikar, after referring to Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union, a Constitution Bench of this Court quoted with approval the following passage from the aforementioned case:

> "But retrenchment connotes in its ordinary acceptation that the business itself is being continued but that a portion of the staff or the labour force is discharged as surplusage and the termination of services of all the workmen as a result of the closure of the business cannot therefore be properly described as retrenchment."

This observation was made in the context of the closure of an undertaking and being conscious of this position, the question of the correct interpretation of the definition of the expression

`retrenchment' in section 2(oo) of the Act was left open. Reverting to that question, the view was reaffirmed but let it be remembered that the two appeals which were heard together in Shukla's case were cases of closure, one Barsi Light Railway Company Ltd., and another Shri Dinesh Mills Ltd. Baroda With specific reference to those cases, in State Bank of India v. N. Sundara Money, Krishna Iyer J. speaking for a three judges bench, interpreted the expression `termination..for any reason whatsoever' as under:

> "A break-down of s. 2(oo) unmistakably expands the semantics of retrenchment. `Termination...for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So, the sole question is- has the employee's service been terminated ? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master of the running out of the stipulated term. To pro-
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> tect 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. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of section 25F and section 2(oo). Without speculating on possibilities, we may agree that `retrenchment' is no longer terra incognita but area covered by an expansive definition. It means `to end, conclude, cease'. In the present case the employment ceased, concluded, ended on the expiration of nine days-automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from section 25F(b) is inferable from the proviso to section 25F(1). True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract section 25F and automatic extinguishment of service by effluxion of time cannot be sufficient."

It would be advantageous to refer to the facts of that case to appreciate the interpretation placed by this Court on the relevant section. State Bank of India appointed the respondent by an order of appointment which incorporated the two relevant terms relied upon by the Bank at the hearing of the case. They were: (i) the appointment is purely a temporary one for a period of 9 days but may be terminated earlier, without assigning any reason therefor at the Bank's discretion; (ii) the employment, unless terminated earlier, will automatically cease at the expiry of the period i.e. 18.11.1972. It is in the context of these facts that the Court held that where the termination was to be automatically effective by a certain date as set out in the order of appointment it would nonetheless be a retrenchment within the meaning section 2(oo) and in the absence of strict compliance with the requirements of section 25F, termination was held to be invalid.

Continuing this line of approach, in Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, Orissa and Ors., a bench of three judges examined the specific contention that the decision in Sundara Money's case runs counter to the construction placed on that section by a Constitution Bench and, therefore, the decision is per incuriam. This Court analysed in detail Shukla's case and

Sundara Money's case and ultimately held that the Court did not find anything in Shukla's case which is inconsistent with what has been held in Sundara Money's case. In reaching this conclusion it was observed that in Shukla's case the question arose in the context of closure of the whole of the undertaking while in Hindustan Steel's case and Sundara Money's case the question was not examined in the context of closure of whole undertaking but individual termination of service of some employees and it was held to constitute retrenchment within the meaning of the expression. This question again cropped up in Santosh Gupta v. State Bank of Patiala. Rejecting the contention for reconsideration of Sundara Money's case on the ground that it conflicted with a Constitution Bench decision in Shukla's case and adopting the ratio in Hindustan Steel's case that there was nothing in the two aforementioned decisions which is inconsistent with each other and taking note of the decision in Delhi Cloth and General Mills Ltd. v. Shambu Nath Mukerjee wherein this Court had held that striking off the name of a workman from the rolls by the management was termination of service which was retrenchment within the meaning of section 2(oo), the Court held that discharge of the workman on the ground that she had not passed the test which would enable her to obtain confirmation was retrenchment within the meaning of section 2(oo) and, therefore, the requirements of section 25F had to be complied with. It was pointed out that since the decision in Shukla's case, the Parliament stepped in and introduced section 25FF and section 25FFF by providing that compensation shall be payable to workman in case of transfer or closure of the undertaking, as if the workmen had been retrenched. The effect of the amendment was noticed as that every case of termination of service by act of employer even if such termination was as a consequence of transfer or closure of the undertaking was to be treated as `retrenchment' for the purposes of notice, compensation, etc. The Court concluded as under:

> "Whatever doubts might have existed before Parliament enacted sections 25FF and 25FFF about the width of section 25F there cannot be any doubt that the expression `termination of service for any reason whatsoever' now covers every kind of termination of service except those not expressly provided for by other provisions of the Act such as sections 25FF and 25FFF."

Reverting to the facts of this case, termination of service of the appellant does not fall within any of the excepted, or to be precise, excluded categories. Undoubtedly therefore the termination would constitute retrenchment and by a catena of decisions it is well settled that where pre- requisite for valid retrenchment as laid down in section 25F has not been complied with, retrenchment bringing about termination of service is ab initio void. In State of Bombay and Ors. v. The Hospital Mazdoor Sabha and Ors., this Court held that failure to comply with the requirement of section 25F which prescribes a condition precedent for a valid retrenchment renders the order of retrenchment invalid and inoperative. In other words, it does not bring about a cessation of service of the workman and the workman continues to be in service. This was not even seriously controverted before us.

It was, however, urged that section 25F is not attracted in this case for an entirely different reason. Mr. Markendaya contended that before section 25F is invoked, the condition of eligibility for a workman to complain of invalid retrenchment must be satisfied. According to him unless the workman has put in continuous service for not less than one year his case would not be governed by section 25F. That is substantially correct because the relevant provision of section 25F provides as

under:

> "25F. "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:-
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> (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 the notice;

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

> (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
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> (c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate government by notification in the Official Gazette)."

Before a workman can complain of retrenchment being not in consonance with section 25F, he has to show that he has been in continuous service for not less than one year under that employer who has retrenched him from service. Section 25B is the dictionary clause for the expression `continuous'. It reads as under;

> "25B (1) a workman shall be paid to be in continuous service for a period if he is, for that period in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman;
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> (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
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> (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
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> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
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> (ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii)he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

Mr. Markendaya contended that clauses (I) and (2) of section 25B provide for two different contingencies and that none of the clauses is satisfied by the appellant. He contended that sub-section (I) provides for uninterrupted service and sub-section (2) comprehends a case where the workman is not in continuous service. The language employed in sub-sections (1) and (2) does not admit of this dichotomy. Sub-sections (1) and (2) introduce a deeming fiction as to in what circumstances a workman could be said to be in continuous service for the purposes of Chapter VA. Sub-section (1) provides a deeming fiction in that where a workman is in service for a certain period he shall be deemed to be in continuous service for that period even if service is interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal or a lockout or a cessation of work which is not due to any fault on the part of the workman. Situations such as sickness, authorised leave, an accident, a strike not illegal, a lockout or a cessation of work would ipso facto interrupt a service. These interruptions have to be ignored to treat the workman in uninterrupted service and such service interrupted on account of the aforementioned causes which would be deemed to be uninterrupted would be continuous service for the period for which the workman has been in service. In industrial employment or for that matter in any service, sickness, authorised leave, an accident, a strike which is not illegal, a lockout and a cessation of work not due to any fault on the part of the workman, are known hazards and there are bound to be interruptions on that account. Sub- section (I) mandates that interruptions therein indicated are to be ignored meaning thereby that on account of such cessation an interrupted service shall be deemed to be uninterrupted and such uninterrupted service shall for the purposes of Chapter VA be deemed to be continuous service. That is only one part of the fiction.

Sub-section (2) incorporates another deeming fiction for an entirely different situation. It comprehends a situation where a workman is not in continuous service within the meaning of sub-section (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of one year or six months, as the case may be, if the workman during the period of 12 calendar months just preceding the date with reference to which calculation is to be made, has actually worked under that employer for not less than 240 days. Sub-section (2) specifically comprehends a situation where a workman is not in continuous service as per the deeming fiction indicating in sub-section (1) for a period of one year or six months. In such a case he is deemed to be in continuous service for a period of one year if he satisfies the conditions in clause (a) of sub-section (2). The conditions are that commencing the date with reference to which calculation is to be made, in case of retrenchment the date of retrenchment, if in a period of 12 calendar months just preceding such date the workman has rendered service for a period of 240 days, he shall be deemed to be in continuous service for a period of one year for the purposes of Chapter VA. It is not necessary for the purposes of sub-section (2)

(a) that the workman should be in service for a period of one year. If he is in service for a period of one year and that if that service is continuous service within the meaning of sub-section (1) his case would be governed by sub-section (1) and his case need not be covered by sub-section (2). Sub-section (2) envisages a situation not governed by sub-section (1). And sub-section (2) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of 12 calendar months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in sub-section 2(a) it is necessary to determine first the relevant date, i.e., the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favour of the workman pursuant to the deeming fiction enacted in sub-section 2(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in section 25F. On a pure grammatical construction the contention that even for invoking sub-section (2) of section 25B the workman must be shown to be in continuous service for a period of one year would render sub-section (2) otiose and socially beneficial legislation would receive a set back by this impermissible assumption. The contention must first be negatived on a pure grammatical construction of sub-section (2). And in any event, even if there be any such thing in favour of the construction, it must be negatived on the ground that it would render sub-section (2) otiose. The language of sub- section (2) is so clear and unambiguous that no precedent is necessary to justify the interpretation we have placed on it. But as Mr. Markandaya referred to some authorities, we will briefly notice them.

In Sur Enamel and Stamping Works (P) Ltd. v. Their Workmen, referring to section 25B as it then stood read with section 2(eee) which defined continuous service, this Court held as under:

> "The position therefore is that during a period of employment for less than 11 calendar months these two persons worked for more than 240 days. In our opinion that would not satisfy the requirement of section 25B. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than 12 calendar months and, next that during those 12 calendar months had worked for not less than 240 days. Where, as in the present case, the workmen have not at all been employed for a period of 12 calendar months it becomes unnecessary to examine whether the actual days of work numbered 240 days or more. For, in any case, the requirements of section 25B would not be satisfied by the mere fact of the number of working days being not less than 240 days."

If section 25B had not been amended, the interpretation which it received in the aforementioned case would be binding on us. However, section 25B and section 2(eee) have been the subject-matter of amendment by the Industrial Disputes (Amendment) Act, 1964. Section 2(eee) was deleted and section 25B was amended. Prior to its amendment by the 1964 amendment Act, section 25B read as under:

> "For the purposes of ss. 25C and 25F a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days, shall be deemed to have completed one year of continuous service in the industry."

We have already extracted section 25B since its amendment and the change in language is the legislative exposition of which note must be taken. In fact, we need not further dilate upon this aspect because in Surendra Kumar Verma and Ors. v. Central Government Industrial-cum-Labour Court, New Delhi and Anr., Chinnappa Reddy. J., after noticing the amendment and referring to the decision in Sur Enamel and Stamping Works (P) Ltd case, held as under:

> "These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months, it is not necessary that he should have been in the service of the employer for one whole year."

In a concurring judgment Pathak J. agreed with this interpretation of section 25B(2). Therefore, both on principle and on precedent it must be held that section 25B(2) comprehends a situation where a workman is not in employment for a period of 12 calendar months, but has rendered service for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25B and Chapter VA.

Reverting to the facts of this case, admittedly the appellant was employed and was on duty from December 8, 1973 to October 19, 1974 when his service was terminated. The relevant date will be the date of termination of service, i.e. October 19, 1974 Commencing from that date and counting backwards, admittedly he had rendered service for a period of 240 days within a period of 12 months and, indisputably, therefore, his case falls within section 25B(2) (a) and he shall be deemed to be in continuous service for a period of one year for the purpose of Chapter VA.

Appellant has thus satisfied both the eligibility qualifications prescribed in section 25F for claiming retrenchment compensation. He has satisfactorily established that his case is not covered by any of the excepted or excluded categories and he has rendered continuous service for one year. Therefore, termination of his service would constitute retrenchment. As pre-condition for a valid retrenchment has not been satisfied the termination of service is ab initio void, invalid and inoperative. He must, therefore, be deemed to be in continuous service.

The last submission was that looking to the record of the appellant this Court should not grant reinstatement but award compensation. If the termination of service is ab initio void and inoperative, there is no question of granting reinstatement because there is no cessation of service and a mere declaration follows that he continues to be in service with all consequential benefits. Undoubtedly, in some decisions of this Court such as Ruby General Insurance Co. Ltd v. Chopra (P.P.), and Hindustan Steel Ltd. Rourkela v. A. K. Roy and Others it was held that the Court before granting reinstatement must weigh all the facts and exercise discretion properly whether to grant reinstatement or to award compensation. But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the Courts in the field of social justice and we do not propose to depart in the case.

Accordingly, this appeal is allowed and the Award of the Labour Court dated May 31, 1980, is set aside. We hold that the termination of service of the appellant was ab initio void and inoperative and a declaration is made that he continues to be in service with all consequential benefits, namely, back wages in full and other benefits, if any. However, as the Award is to be made by the Labour Court, we remit the case to the Labour Court to make an appropriate Award in the light of the findings of this Court. The respondent shall pay the costs of the appellant in this Court quantified at Rs. 2000 within four weeks from the date of this judgment and the costs in the Labour Court have to be quantified by the Labour Court.

S.R. Appeal allowed.