Dattatraya Shankarrao Kharde & Ors. vs Executive Engineer, Chief Gate ... on 12 November, 1992

Equivalent citations: (1994)ILLJ395BOM, 1994(1)MHLJ776

JUDGMENT

H.W. Dhabe, J.

1. These two L. P. As can be disposed of conveniently by this common Judgment.

2. The facts are that the appellants in the instant appeals were working as Helpers in the Irrigation Department of the State Government under the control and management of the respondents. By order dated August 30, 1984 their services were terminated with effect from August 31, 1984. Ny filling applications (Complaint Cases) under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the Act") before the learned Industrial Court, Amraoti, they challenged their orders of termination on the ground that in terminating their services, the respondents have committed an unfair labour practice covered by Items 5 and 9 of Schedule IV of the Act. The appellants further complained in their complaint cases that although they were again re-employed on temporary basis, they were again terminated without following the provisions of law and may further be re-employed with a view to continue them as temporary employees for years together with a view to deprive them of the status and privileges of permanent employees which was an unfair labour practice covered under Item No. 6 of Schedule IV of the Act.

3. The respondents, by their written statements in these complaint case, resisted the claims of the appellants and submitted that they had not committed any unfair labour practice in terminating the services of the appellant, much less any unfair labour practice covered under Item Nos. 5, 6 and 9 of Schedule IV of the Act. Parties led evidence before the learned Judge of the Industrial Court, Amraoti, who tried the instant complaint cases. The learned Judge, by his judgment dated March 20, 1986, dismissed the complaint cases of the appellants. Feeling aggrieved, the appellants preferred writ petitions in this Court, which were also dismissed by a common judgment by the learned single Judge of this Court. They have, therefore, preferred the instant L. P. As. against his common judgment dismissing their complaint cases.

4. Before we proceed to consider the principle question of law raised in these L. P. As., we shall dispose of first the controversy between the parties as to the reliefs which are claimed by the appellants and which can be granted to them in the instant complaint cases. It may be seen that initially, the services of the appellants were terminated by an order dated August 30, 1984 with effect from August 31, 1984. It is not dispute that the appellants were re-employed on temporary basis from September 15, 1984 to October 14, 1984 by an order dated September 15, 1984 on daily

wages establishment of the respondents. It is material to see that the said order or appointment was very specific and the appointment thereunder was for one month and was to expire after October 14, 1984 for which reason, no order of termination of services was given to the appellants as their appointments under the aforesaid order dated September 15, 1984 for one month came to an end by efflux of time after October 14, 1984 i.e. effect from October 15, 1984. The controversy between the parties in this regard whether the appellants have challenged their termination of service with effect from October 15, 1984 by their instant complaint cases before the Industrial Court, Amraoti and secondly, if they have, whether they have proved that the said termination of service w. e. f. October 15, 1984 is illegal and/or void.

5. To appreciate the rival submissions, it is first necessary to se that the appellants filed the complaint cases on or before September 26, 1984 when they were re-employed for a period of one month by an order dated September 15, 1984 upto October 14, 1984 re-employment had not come to an end at the time they preferred the complaint cases. It is thus during the pendency of the instant complaint cases that the services of the appellants stood terminated with effect from October 15, 1984. It is the context of the above basic fact that the averments made by the complainants in their complaint cases and the reliefs claimed by them therein have to be understood.

6. The appellants, after their actual termination of service with effect from October 15, 1984, have not amended their complaint cases and have not specifically challenged their termination with effect from October 15, 1984. Perusal of their complaints would show that there is no averments in their complaints that their termination of service with effect from October 15, 1984 or after one month from the date of their re-employment as per the order dated September 15, 1984 is illegal. What is material to be seen is that the relevant averments on the question of unfair labour practice under Item 6 of Schedule IV of the Act are contained in para 4 of their complaints.

7. However, before we actually refer to the averments made in the said para 4 of the complaints, we may refer to the relief claimed by the appellants in prayer Clause 4 of the complaint upon which heavy reliance is placed on behalf of the appellants to show that their subsequent termination with effect from October 15, 1984 is also impugned in their complaint cases. For its proper appreciation, the prayer clause 4 in the complaints in reproduced below :

> " (4) direct the respondents not to discontinue the complainant from the present post in which he has been re-employed with effect from September 15, 1984 during the pendency of these proceedings and also finally and also grant the complainant the status, privileges and all other benefits applicable to permanent employees with retrospective effect".

8. It must be seen that the relief claimed in prayer Clause 4 has to be understood in the light of the averments made in para 4 of the complaints. The grievance of the appellants in para 4 is that when the appellants are again re-employed on temporary basis, their services may again be terminated without following the provisions of law. Further, they may again be re-employed on temporary basis for temporary periods and thus in this manner they may be continued temporarily without bestowing upon them the benefits or permanency and without giving them the status of permanent

employees. It is on the basis of the above allegations that it is further averred in the said para 4 of the complaints that the respondents have engaged and are engaging themselves in unfair labour practice of employing the appellant as temporary for years together and continuing them as such with the object of depriving them of the status and privileges of the permanent employees which, although not specifically under Item 6 of Schedule IV of the Act.

9. It is material to see that the reference to the termination of temporary service again and again in para 4 of the complaints is intended to highlight the unfair practice being committed by the respondents under Item No. 6 of Schedule IV of the Act because according to the case of the appellants set out in the said para 4 of the complaints, the intention is to continue them as temporary employees by giving breaks in service so as to deprive them of the benefits and privileges of permanency in service. It is thus clear that there is no substantive to the termination of service of the appellants as such with effect from October 15, 1984 after their temporary re-employment for one month under the order dated September 15, 1984 independently of the unfair labour practice alleged to be committed by the respondents under Item 6 of Schedule IV of the Act.

10. Reading now the prayer clause 4 in the complaints in the con text of the above averments in para 4 thereof what appears is that the relief sought therein is in respect of an unfair lab our practice under Item 6 of Schedule IV of the Act alleged to be committed by the respondents. Perusal of the said prayer clause 4 would show that a direction is claimed by the appellants that after their re-employment with effect from September 15, 1984, their services should not be discontinued, pending decision in the instant proceedings as well as finally, so that they can attain the status of permanent employees and get the privileges and benefits applicable to them. In fact, so far as the injunction claimed in this prayer clause 4 directing the respondents not to discontinue the appellants finally, is concerned the said relief had become infructuous, once the services of the appellants actually stood terminated with effect from October 15, 1984, particularly when there was no such injunction during the pendency of the proceedings. It was, therefor, necessary for the appellants to have amended the complaints and the prayer clause 4 also, to claim the relief that their termination which had become effective from October 15, 1984 should also be set aside as being illegal.

11. It is then necessary to see that parties have understood their cases in the above manner and have led evidence accordingly before the industrial Court and the Industrial Court has also understood their cases in the same manner as is clear from the issues framed by it, which are reproduced in para 4 of its judgment. Issue No. 2 which is relevant for the above purpose is as follows.

> "Whether complainant proves that respondents have been retaining him in job with artificial breaks with a view to deprive him the benefits of permanency and had thus engaged in unfair labour practice under Item 6 of Schedule IV of the M. R. T. U. and P. U. L. P. Act".

12. The above issue framed by the learned Industrial Court clearly refers to the unfair labour practice alleged to be committed by the respondents under Item No. 6 Schedule IV of the Act, and is based upon the averments made in para 4 of the complaint. Perusal of all the issues does not show

that there is any issue framed by the learned Industrial Court regarding the illegal termination of services of the appellants with effect from October 15, 1984. Further, perusal of the judgment of the learned single Judge in the writ petitions in this matter even does not show that specifically the termination of service of the appellants with effect from October 15, 1984 was impugned before him. It is material to see that the learned counsel for the appellants has raised a substantive challenge to the termination of service of the appellants with effect from October 15, 1984 for the first time in these appeals when he was faced with a difficult situation in view of the preliminary objection raised at the out sets by the learned counsel appearing for the respondents that even if the appellants succeed, they would be entitled to get only 15 days wages from August 31, 1984 i.e. the date of their earlier termination of service to September 14, 1984 because they were re-employed on September 15, 1984 and their services were again terminated with effect from October 15, 1984 which termination was not impugned by the appellants in their complaints. It is thus clear that the termination of service of the appellants with effect from October 15, 1984 after their re-employment as per the order dated September 15, 1984 is not specifically impugned by them in their complaints.

13. Even if challenge to the termination of service of the appellants were to be allowed to be raised in the instant appeals, there are serious difficulties in considering the said challenge. On merits, as regards the question of termination of services from October 15, 1984 being illegal and void, although the learned counsel for the appellants has urged before us that once the termination with effect from August 30, 1984 is ineffective and void being in breach of Section 25-F and 25-G of the Industrial Dispute Act, 1947, their subsequent termination with effect from October 15, 1984 will also be illegal and void because till then they would obviously be completing 240 days of service, the learned counsel appearing for the respondents has rightly contended before us that the respondents had no opportunity to meet such a case or any case on merits because there were no pleadings made by the appellants in their complaints setting out their case on merits to challenge their subsequent termination of service with effect from October 15, 1984. He has also urged before us that there could be several defence raised by the respondents for justifying the subsequent termination, apart from showing that the alleged earlier service could not have in fact been taken into consideration to prove that the appellants had completed 240 days of service or if the same could be taken into consideration, he would have still not completed 240 days services as required by Section 25-F of the Industrial Disputes Act, 1947. At any rate, according to him the question of non-compliance with Section 25-G of the Industrial Disputes Act, 1947 i.e. the question of following the principle of "first come last go" in effecting retrenchment needed enquiry after giving opportunity to the respondents in that regard.

14. The learned counsel for the respondents has brought to our notice respondents are very much prejudiced because even in the L. P. As. also the substantial relief which is claimed in regard to the termination of service of the appellants is only about setting aside the order of termination of service of the appellants dated August 30, 1984 and not the further order of termination of service of the appellants in question dated October 15, 1984 although the general prayer in the complaints is that the complaints should be allowed and the appellants should be reinstated with continuity of service and payment of back wages. In our view, the submissions made on behalf of the respondents are well founded and it is not open to the complainants to challenge for the first time in these L. P. As. their subsequent termination of service with effect from October 15, 1984, except to the limited

extend in the context of Item 6 of schedule IV of the Act.

15. Turning next to the question whether the appellants can successfully impugn their termination in the context of Item No. 6 of Schedule IV of the Act, there is a finding of fact against the appellants rendered by the learned Industrial Court based upon the provisions of Kalekar Settlement/Award which is applicable to the employees working in the Irrigation Department of the State Government. The learned Industrial Court has found that under the Kalekar Settlement/Award, unless there is five years' service the casual or temporary employees are not brought in the converted regular temporary establishment of the State and for bringing them into the permanent establishment ten years' service is necessary. The affidavits of the appellants show that they have entered service some time in 1982 and with breaks in service, they were continued upto August 30, 1984 thereafter again they were employed for about one month with effect from September 15, 1984. Obviously, the appellants do not complete five years' service for being brought into converted regular temporary establishment as per the Kalekar Settlement/Award.

16. It is not shown to us that under any other provisions, whether of law, contract or award, the status of permanency can be conferred upon the appellants earlier than five years. It has therefore to be held that since the matter is thus governed by the Kalekar Settlement/Award which considers five years' period as reasonable period till which the employee can be continued as temporary or casual before bringing him to into converted regular temporary establishment, it cannot be said that there is any unfair labour practice committed by the respondents covered by Item No. 6 of Schedule IV of the Act.

17. Turning then to the main question whether the respondents have committed any unfair labour practice covered under Item Nos. 5 and 9 of the Schedule IV of the Act, it may be seen that Item No. 5 relating to favouritisim, partially to the one set of the employees. Is invoked on the ground that although Section 25-G of the Industrial Disputes Act, 1947 requires the respondents to follow the principle of "last come first go" in retrenching the services of their employees, there were persons junior to the appellants who were retained in service, while the services of the appellants were terminated. It may incidentally be stated that the breach of Section 25-G is complained of by the appellants in addition to the breach of Section 25-F of the Industrial Disputes Act, 1947 in relation to the unfair labour practice under Item No. 9 of Schedule IV of the Act also.

18. However, before we consider the question whether there is breach of Section 25-F and 25-G of the Industrial Disputes Act, 1947, for the purpose of decision of the question whether there is any unfair labour practice committed by the respondents which is covered by Items 5 and 9 of Schedule IV of the Act, it is necessary to determine the scope of Item No. 9 of Schedule IV of the Act because the contention on behalf of the respondent is that breach of the aforesaid legal provisions is not covered by any of the expressions used in the said Item No. 9 of the Schedule IV of the Act. The said item No. 9 reads as follows :

> "Failure to implement award, settlement or agreement".

In considering the scope of the aforesaid item No. 9 the crucial expression to be interpreted therein is "agreement" because it is nobody's case that there is any fault on the part of the respondents to implement any Award or Settlement which expressions are defined under the Industrial Disputes Act, 1947 as well as the Bombay Industrial Relations Act, 1946.

19. The expression "agreement" as it is defined in Section 2(c) of the Contract Act, 1872, means every promise and every set of promises, forming the consideration for each other. Section 2(4) of the said Act further shows that an agreement enforceable at law i.e., made by free consent of parties competent to contact, for a lawful consideration and with a lawful object, and not declared to be void, is a contract. The definition of the expression "agreement" given in Law Lexicon Volume 1 by Justice T. P. Mukherjee (4th Edition) is as follows :

> "Agreement" is a word compounded of two words viz., of aggregation and mentium, so that agareamentum est, omentium in re aliqua facts vel facienda, and so by the contraction of two words, and by the short pronunciation of them, they are made one word, viz. agareamentum which is no other than an union, collection, copulation of or more two minds in anything done or to be done. Its definition in Aryan Aiyar's "Judicial Dictionary" (11th Edition) shows that it means oneness in mind, consenting in the same sense which in other words show the identity of mind between the parties to the agreement upon the terms agreed to between them. Thus according to its orthodox concept an agreement is arrived at by act of parties and its binding nature flows from the consent of the parties to the same.
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> 21. The question, therefor, which is raised on behalf of the respondents before us is whether the provisions of an enacted law such as the provisions of Section 25-F and 25-G of the Industrial Dispute Act, 1947, whose legal efficacy or binding nature arises not because of any consent of the parties claiming any right thereunder and/or affected thereby but because of the enforceability of the statute passed by the competent legislature can fall within the meaning of the expression "agreement" used in Item No. 9 Schedule IV of the Act. In support of their rival submissions, the parties have relied upon the decision and guidance is also sought from the report of the Committee on Unfair Labour Practices constituted by the State Government, in the light of whose report and for giving effect to its recommendations, the Act is passed as is clear from its preamble.
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> 22. As regards the Judgments cited by the parties, the learned counsel for the respondents has brought to our notice first the judgment of the Supreme Court in the case of Maharaja Shri Umaid Mills Ltd. v. Union of India & Ors. and its Judgment in the case of Bengal Nagpur Cotton Mills Ltd. v. Board of Revenue, Madhya Pradesh & Ors. , in order to substantiate his submission that the provisions of law cannot be brought within the scope of the expression "agreement". It is difficult to see how the above decision support the submissions of the learned counsel for the respondents because in fact, the converse proposition was considered by the Supreme Court in that case as the question involved therein was whether an agreement entered into be

the ruler of the State with a Company could be said to be low in force at the time the Constitution came into force.

23. The learned counsel for the respondents has, however, then heavily relied upon the Judgment of the learned single Judge of this Court in the case of Maharashtra General Kamgar Union v. Glass Containers Pvt. Ltd. & Anr. (1983 I-LLJ 326), in support of his above proposition. The question in the said case was about the effect of non-compliance with Sec. 25-FFA and Sec. 25-FFF of the Industrial Disputes Act, 1947. What was urged in the said case on behalf of the employees was that since there was non-compliance with the provisions of Sec. 25-FFA, the closure was illegal. The submission thus on their behalf was that the provisions of Section 25-FFA were super-imposed in the contract of service of employees of the respondent undertaking in that case and therefore, when there was non-compliance with the said provisions, there was no failure to implement the agreement as contemplated by Item 9 of Schedule IV of the Act. This said argument was repelled by the learned single Judge of this Court in para 25 of his Judgment in the case.

24. However, what is material to be seen from the said para 25 of the Judgment of the learned single Judge in the case cited supra, is that the he has not taken a view that in no case non-compliance with the statutory provisions can be brought within the meaning of the expression "agreement" used in Item No. 9 of Schedule IV of the Act. On the other hand an illustration given by him in the said para regarding the application of the Model Standing Orders framed under the Industrial Employment Standing Orders Act, 1946, and made applicable by it, till the time they are substituted by the Certified Standing Orders framed by the employer under the aforesaid Act would show that according to him such Model Standing Order, although statutory in nature, would fall within the connotation of the expression "agreement" used in Item No. 9 of Schedule IV of the Act. It cannot, therefore be predicted as to what view he would have taken if the grievance was about non-compliance with Sections 25-F and 25-G of the Industrial Disputes Act, 1947.

25. The view taken by the learned single Judge in the case cited (supra) is, however, not a good law in view of the Judgment of the Supreme Court in the case of S. G. Chemicals and Dyes Trading Employees Union v. S. G. Chemicals and Dyes Trading Ltd. & Anr., 1986 I. C. L. R. 360 in which also the unfair labour practice complained of was under Item No. 9 of Schedule IV of the Act. The question which arose in the said case was about the non-compliance with the provisions of Section 25-O of the Industrial Disputes Act, 1947, which as held by the Supreme Court were applicable in the fact of the said case because the strength of the employees of the undertaking of the respondent in that case was more than hundred. The judgment of the learned single Judge of this Court cited supra, was pressed into service in support of the submission that breach of the provisions of law would not amount to failure to implement the "settlement"between the parties in that case arrived at on February 1, 1979. The aforesaid relevant para 25 in the above Judgment of the learned single

Judge is quoted by the Supreme Court in para 23 of its judgment in the above case and with reference to the same, the Supreme Court has held that it is not possible for it to accept as correct the view taken in the said case. it is then stated in para 23 by the Supreme Court 1986 I-CLR 360 at page 378 that it is an implied condition of every agreement, including a settlement, that the parties thereto will act in conformity with the law. It is further observed by the Supreme Court in the said para 23 that "such a provision is not required to be expressly stated in any contract. (Italicours). The above observations of the Supreme Court in the Judgment cited supra represents the ratio of the said Judgment and leave no manner of doubt that legal terms required by a statue to be complied with are implied conditions of any agreement or settlement.

26. The learned Counsel for the respondents has, however sought to distinguish the Judgment of the Supreme court cited supra on the ground that what was held in the Judgment of the Supreme Court was that failure to implement the settlement regarding the payment of wages to the employees in the said case was an Unfair Labour Practice within the meaning of Item No. 9 of Schedule IV of the Act and not the breach of the provisions of Section 25-O of the Industrial Disputes Act, 1947. In our view, such a dichotomy is not available to the respondents to support their submissions. If it was a case of merely a failure to implement the settlement about the payment of wages simplicitor. It was not necessary for the Supreme Court then to hold in para 23 of the Judgment in the said case that it is an implied condition of every agreement and settlement that the parties thereto will act in conformity with the provisions of law. In fact, the contention which is raised and negatived in para 23 of the Judgment is that failure to comply with Section 25(O) of the Industrial Disputes Act, 1947 would not amount to a failure to implement the settlement dated February 1, 1979.

27. It is pertinent to see that the facts in the above case before the Supreme Court would show that the entitlement of the workmen concerned therein to get wages arose because the closure was held illegal in that case for non-compliance with Section 25-O of the Industrial Disputes Act, 1947. In fact the settlement referred to therein is a general settlement about fixation of wages which would in the absence of settlement of award would be under the contract of employment arrived at on making an appointment of workmen by the employer or his/its agent. Really speaking, as is clear from para 23 of the Judgment itself, the liability to pay wages because of illegal closure arose in the said case under the statutory provisions of Sub-section 6 of Section 25-O of the Industrial Disputes Act, 1947 in which it is provided that if no application for permission under Section 25(O)(1) is made for closure within the specified time, or if the permission for closure is refused, the closure of the under-taking is deemed to be illegal from the date of the closing and the workmen concerned are entitled to all the benefits under any law for the time being in force as if the undertaking is not closed.

28. Had the question in the aforesaid case before the Supreme Court been merely about the failure to implement the settlement about payment of wages, the enquiry about the illegality of otherwise of the closure would not have arisen or at any rate would not have been within the jurisdiction of the industrial court in determining the question whether there is failure to implement the settlement or not, which was merely in respect to payment of wages. It is therefore, clear that the provisions relating to the closure under Section 25-O of the Industrial Disputes Act, 1947, including the provision about the liability to pay wages for illegal closure as provided specifically under Section 25(O)(B) of the said Act were read as implied terms in the settlement or at any rate for determining the breach of the settlement relating to the payment of wages for the period of closure, the enquiry into the question of legality or otherwise of closure regulated by Section 25-O of the said Act was held to be within the jurisdiction of the Industrial Court, because the right to receive wages for the period of closure would actually arise under Section 25-O(b) although the actual rates of wages were determined by the settlement.

29. It is then material to notice after the above judgment of the Supreme Court, a learned single Judge of this Court (Bharucha, J.) in the case of Pratibha Sambaji Kubal v. Ravindra Hindustan Platinum (Pvt.) Ltd. & Ors. (1987 I-LLN Page 224) has held that the non-compliance with the provisions of sections 25-F and 25-G and 25-H of the Industrial Dispute Act 1947 would amount to failure to implement the agreement within the meaning of Item No. 9 of Schedule IV of the Act which matter according to him, is put beyond doubt by the judgment of the Supreme Court cited supra (see para 13 of his judgment). The said judgment is thus a direct decision upon the question which is involved in the instant appeals, viz., whether the obligations created under a statue are implied terms of an agreement or not.

30. Another judgment which needs to be usefully referred to in this regard is the judgment of the Division Bench of this Court in the case of Premier Automobile Ltd. Bombay v. Engineering Mazdoor Sabha, Bombay (Misc. Petition No. 1 of 1975 with Special Civil Application No. 9 of 1976 decided on January 16, 1976) reported in (1976) Industrial Court Reporter, 206. The question in the said case was whether the standing orders framed under the Industrial Employment Standing Orders Act, 1946 which had statutory force, could be brought within the meaning of the expression "agreement" used in Item No. 9 Schedule IV of the Act. This Court has after has after detailed consideration held that the provisions of law can form the implied terms of a contract of service within the meaning of the expression "agreement" used in item No. 9 of Schedule IV of the Act."It has also held that some of the provisions of law are implied even in ordinary contracts or agreements entered into parties (see pages 213-214 of the report).

31. The Supreme Court has observed in the above judgment after referring to Subton and Shannon on Contracts (Sixth Edition, page 12), that the collective bargaining provides process by which the agreements are arrived at between a Trade Union

representing its member employees and the employer did not involve the consent of each individual employee separately. It has then examined the context in which the word" agreement" occurs along with the word "award" and has held, after applying the principle of noscitur a socus. viz., that the word must take its color from the words which precede or follow it, that an element of some compulsion is present in the Scheme of Item No. 9 of Schedule IV of the Act. Ultimately after looking to the object of the Act which is reflected in its preamble it has held that the word "agreement" should be liberally construed. It has, thus ultimately held that the standing orders framed under the Industrial Employment Standing Orders Act. 1946 which are not entirely the result of the free consent of the parties, constitute the implied terms of the agreement between the parties within the meaning of the said expression used in Item No. 9 of schedule IV of the Act.

32. We may at this stage also refer to the Judgment of the Division Bench of this Court in the case of Petroleum Employees Union v. Industrial Court, Maharashtra, Bombay & Anr. (1981 Mah. L. J. 316) relied upon by the learned Counsel for the respondents in support of his submission that a statutory provision cannot become an implied term of an agreement. It may be seen that in the said case there was an agreement between the Union and the employer about payment of bonus to the employees whose income was more than 1600/- per month. However, after addition of Section 31-A and substitution of Section 34 in the Payment of Bonus Act, 1965 (for short "the Bonus Act") by the Amending Act, 23 of the 1976, the employer in the said case decided to withdraw the benefit of making ex-gratia payment by way of bonus to the above employees and to recover the same in instalments from them on the ground that the above provisions would justify such withdrawal. It is the above action of employer of withdrawing the benefit of payment of bonus to the above employees and of recovering from them in instalments the ex-gratia amount by way of Bonus paid to them which is challenged in the said case by filing a complaint under the Act on the ground that it amounts to failure of the employer to implement the Agreement, which is unfair labour practice covered under Item No. 9 of Schedule IV do the Act. This Court has held in the said case that Section 34 of the Bonus Act has no application whatsoever to the payment of the bonus made by the employer under the Agreement in question in the said case and that the amendment made in the Bonus Act did not prohibit or make such payment illegal. It has then held that the addition of financial burden cannot permit the employer to avoid obligation or the Agreement giving rise to the same. It has thus held that the deductions made by the employer from the salary of such employees of the bonus already paid earlier in compliance with the Agreement amounts to failure to implement the Agreement and is, therefore, an unfair labour practice cover under Item No. 9 Schedule IV of the Act. It is difficult to see how the above Judgment supports the case of the respondents.

33. It is clear from the above Judgments that the word "Agreement" in Item No. 9 of Schedule IV of the Act is not viewed strictly in the sense in which it is understood in the Law of Contract, although under the said law also, as held by the Supreme Court

in it Judgment in S. G. Chemicals and Dyes Trading Employees Union v. S. G. Chemicals Dyes Trading Ltd. & Anr. (cited supra) and as shall also presently show some of the provisions of law creating rights, obligations and duties can be held "implied terms" of the contract. It is then necessary to see that the conditions of service of the Industrial Employees or Labour are normally regulated by the collective bargaining Agreements entered into between the Trade Unions representing the employees and the employees of such employees, the Awards of the Tribunals passed under the Industrial Acts i.e. the Industrial Disputes Act. 1847 (for short "the I. D. Act. ") or the Bombay Industrial Relations Act, 1946 (for short the BIR Act), as far as our State is concerned or the settlements arrived at between the employer and representative of employees in accordance with the procedure laid down under the aforesaid Acts.

34. It is pertinent to see that strict concept of an "Agreement" hereinbefore referred to by us viz., that there should be identity of mind between the employee and the employer with regard to the conditions of service applicable to the employee, is absent in such collective bargaining agreements arrived at between the Trade Union representing its members, or if it is a representative Union having authority under the above Acts to represent all the employees. In awards there is an element of compulsion since it is by adjudication which is binding under the Acts (ibid) upon the employer and the employees. As regards settlements also there is an element of compulsion and involvement of legal procedure although actually the settlements are arrived between the parties themselves with or without the intervention of the Conciliation Officer (See the definition of the expression "settlement" under Section 2 of the Industrial Disputes Act, 1947 and the rules framed thereunder).

35. It is not the purpose of the Act to exclude such collective bargaining Agreements, but on the other hand, such collective bargaining Agreements, are in fact, intended to be covered under Entry No. 9 of Schedule IV of the Act to achieve the purpose of the Act viz., to prevent the employers from ignoring such Agreements and failing to implement the same. It is material to see in this regard that under the B. I. R. Act to the employees under which the Act is applicable, a particular statutory procedure is envisaged for arriving at an Agreement binding upon the employer and the employees. The said procedure is contained in Section 42 which requires the giving of a notice of change by either of the parties in respect of the industrial matters referred to therein pursuant to which the negotiations are held between them and if such negotiations result in an "Agreement" between them, such an Agreement is the said Act. It is only then that such a registered Agreement is binding upon the parties. There is also a procedure laid down under Section 116 of the said Act, which provides for termination of such registered Agreement. It is, therefore, clear that the word Agreement in Item No. 9 of Schedule IV of the Act cannot be considered merely in the ordinary sense in which it is understood under the ordinary law of contract, because as shown above under the B. I. R. Act, such agreements are arrived at and are made binding according to the procedure laid down in the said Act.

35-A. It may then be seen that the Awards and Settlements after they cease to be operative i.e., after they are terminated under Section 19 of the I. D. Act or as the case may be, under Section 116 of the B. I. R. Act, the rights and obligations created thereunder do not cease but they continue to be binding upon the parties as terms of contact between them until they are replaced by new Awards, Settlements or contracts. This view is settled by a series of decisions of this Court as well as the decisions of the Supreme Court. It is held by this Court in the case of Yamuna Mills Co. Ltd. v. Mazdoor Mahajan Mandal, (1957, I-LLJ 620) that the rights and obligations created under an Award, which is terminated as per the procedure under Section 116 of the B. I. R. Act are not extinguished by reason of termination of such Award, but they continue to be binding upon the parties till they are altered by fresh adjudication or fresh contract. The same view is taken by this Court in Mangaldas Narandas v. Payment of Wages Authority, (1957 II-LLJ 256), as regards the effect of Sections 19(2) and 19(6) of the I. D. Act about termination of Award.

36. Turning to the judgments of the Supreme Court in this regard, it may be seen that in the case of South Indian Bank Ltd. v. A. R. Chacko, (1964 I-LLJ 19), it is held in page 22 that even if an Award has ceased to be operative and has thus ceased to be binding upon the parties under the provisions of Section 19(6) of the I. D. Act, it continues to have its effect as a contract between the parties that has been made by Industrial adjudication in place of the old contract till this new contract is displaced by a fresh contract. Similar observations are also made by the Supreme Court in the judgment in the case of Md. Quasim Barry v. Mohammed Samuddin & Anr. . It is observed in para 5 of the said Judgment that according to the true legal position, when the industrial disputes are decided by industrial adjudication and awards are made, the said awards supplant the contractual terms in respect of matters covered by them and are substituted for them. It is further observed in the above Para 5 of the said judgment regarding the factual matrix of the said case that when the wage structure is prescribed by the Award, in law the old contractual wage structure becomes inoperative and its place is taken by the new wage structure prescribed by the Award. It is then observed by the Supreme Court in the said case that the wage structure prescribed by the Award is deemed to be a contract between the parties, because that in substance is the effect of the industrial adjudication. The Supreme Court has thereafter in the case of Life Insurance Corporation of India v. D. J. Bahadur, (1981 I-LLJ 1) after referring to the various decisions of this Court and its own Judgments cited supra, has also expressed similar view (See para 42 of the said Judgment).

37. It is thus clear that even the awards passed by the Adjudicator and the settlements are treated as contracts between the parties particularly after their legal efficacy as Awards and Settlements comes to an end under Section 19 of the I. D. Act of Section 116 of the B. I. R. Act, as the case may be. It cannot be surely the object of the Act that on awards and settlements ceasing to be operative, failure on the part of the employer to implement the rights and obligations thereunder would not be

treated as an unfair labour practice under the Act. Therefore, it is clear that in order to effectuate or further the object of the Act, the word "Agreement" in Item No. 9 of Schedule IV of the Act will have to be construed in a wider sense so as to include within its meaning the awards and settlements after they cease to be operative and are treated as contracts between the parties in the Judgments cited supra.

38. Turning next to the question, whether the provisions of law governing some of the conditions of service of the employees can be treated as implied terms of an "Agreement" within the meaning of the said expression under Item 9 of Schedule IV of the Act, it is necessary to see that the conditions of service are essentially contractual in nature and are normally determined or governed by the contract between the parties. However, when the conditions of service under the contract of employment with the employer were wholly unsatisfactory, industrial disputes were raised by the employees for better benefits and better conditions of service and through industrial adjudication certain benefits were received by them and their conditions of service to a certain extent improved. Such industrial disputes were raised particularly in respect of industrial matters such as Wages and Dearness Allowance. Payment of Bonus, Payment of Gratuity, dismissal or termination of employment, lay off and retrenchment etc. in regard to which certain norms were laid down in industrial adjudication. However, it was found by the Government that the norms laid down by the industrial adjudication were either not satisfactory or uniform and therefore, it was thought necessary to regulate some of the conditions of service by enactment of law. It is with this view in mind that Minimum Wages Act, 1948, Industrial Disputes (Amendment) Act, 1953 (Act No. 43 of 1953), Payment of Bonus Act, 1965 and the Payment of Gratuity Act, 1972 etc., were enacted by the Parliament.

39. Turning at this stage, particularly to the legislative history of the Industrial Disputes (Amendment) Act, 1953, which inserted in the I. D. Act the provisions relating to payment of lay off and retrenchment compensation to the workmen who were either laid off or retrenched by their employers, it may be seen that prior to the said Amending Act, the I. D. Act was mainly concerned with providing machinery for investigation and settlement of Industrial Disputes. However when, although some of the progressive employers had voluntarily made payments and the Industrial Tribunals also used to award some compensation for lay off or retrenchment in certain contingencies, the situation was far from satisfactory. In fact most of the Standing Orders framed by the employers did not provide for any compensation for lay off and as regards the retrenchment, the same Notice or Notice pay in lieu of notice which they had provided for termination of service simplicitor was considered sufficient.

40. In 1953, the situation had precipitated because of accumulation of stocks in Textile Industries, due to which the Textile Mills were threatened with consequences of partial closure of the industry, retrenchment or lay of for workmen. As a result in

fact, a large number of workmen were laid off or retrenched without any compensation. It is in the light of the above historical background that the aforesaid Amending Act 1953, was enacted to provide standardised payment of compensation by all employers to the workmen in cases of their lay off or retrenchment which expressions were also defined under the said Amending Act which also laid down the conditions upon which the said compensation would be payable. In the case of M/s. Hathising Mfg. Company Ltd. v. Union of India (1960 II LLJ 1) in which the validity of Section 25-FFF of the I. D. Act was challenged, the Supreme Court has considered the object of Sections 25-F and 25-FFF of the said Act. It is held that the object of retrenchment compensation under Section 25-F is to give partial protection to the retrenched employee to enable him to tide over the period of unemployment, since he was thrown out of employment for no fault of his and was required to face hardships cause due to unemployment resulting from such retrenchment. The notice or wages in lieu of notice was considered as inadequate compensation for loss of employment because of which Parliament thought it proper to provide for payment of additional compensation besides notice or wages in lieu of notice. The said compensation was standardised in respect of all industries so that it was not necessary for the workmen to take recourse to dilatory adjudicatory proceedings for assessing quantum of compensation, when they were thrown out of employment in situations contemplated by the said Amending Act.

41. As already pointed out, originally either the contract of service or in most of standing orders framed by the employers under the relevant law to regulate the conditions of the service of their employees, no compensation was provided for lay off and as regards the retrenchment, a meagre notice or pay in lieu of such notice was only provided for termination of service simplicitor including retrenchment. Payment of compensation was made obligatory under the aforesaid Amending Act, 1953 for lay off and retrenchment and for the latter it was made a condition precedent. Similarly, the wholesome principle of "Last Come First Go" was also enacted in Section 25-G of the said Amending Act to regulate retrenchment of employees in an industry. The obligations created under Sections 25-F and 25-G of the Act, although contained in an enactment, in truth and substance partake the character of contractual terms. They are therefore, super-imposed upon the terms of contract of employment or the provisions of Standing Orders regarding the same. They are thus treated as implied terms of contract in the Judgment of the Supreme Court in the case of S. G. Chemicals Dyes Trading Employees Union, cited supra.

42. It is material to see in this regard that in some of the Standing Orders, notice was taken of regulation of certain conditions of service by terms for that purpose in the Standing Orders themselves. For instance, in the Bombay Industrial Employment (Standing Orders) Rules, 1959, framed under the Industrial Employment (Standing Orders) Act, 1946 as applicable to the State of Maharashtra, the Model Standing Orders were framed for all categories of workmen as given in Schedule F to the said Rules. Clause 12F the Model Standing Orders framed for workmen doing manual or

technical work provided for grant of leave with wages and allowances to the workmen in accordance with law applicable to the establishment in which the workmen were employed or in accordance with Agreements, Settlements or Awards, for the time being in force or the contract of service, custom or usage applicable to the establishment. As regards lay off, Clause 21 of the said Model Standing Orders laid down that the rights and liabilities of the employers and the workmen relating to lay off shall be determined in accordance with the provisions of Chapter V-A of the I. D. Act. Further, in order to allow better benefits to the workmen, Clause 32 of the said Model Standing Orders provided that the provisions of the said Standing Orders would not be derogative of the provisions of any law for the time being in force or any contract of service, custom or usage or an agreement, settlement or an award, applicable to the Establishment. Similar provisions were incorporated in the Model standing orders relating to the clerical and supervisory staff in Clauses 10, 19(D) and 30 thereof.

43. It may be stated that in the absence of the Standing Orders, the establishment in which the appellants in the instant cases were working would be governed by the aforesaid Model Standing Orders. Be that as it may, as held by the Supreme Court in its Judgment in the case of S. G. Chemicals and Dyes Trading Employees Union, (cited supra), even though such terms are not expressly incorporated they would still become implied terms of the contract of employment.

44. Examining the question even from the point of view of the common law of Master and Servant, we find that some of the provisions of law constitute implied terms of a contract of service. In the Law of Service in India, Vol. I, Master and Servant, by Barewell and Kar, page 74 under the heading 'Implied Terms', it is observed that the trend of modern decisions as to the contract of service is markedly in the direction of developing and applying a certain doctrine which can conveniently be styled as the Doctrine of "implied terms". According to the Author, the basis of the doctrine of "implied terms" is the presumption that what is to be implied was all along at least intended by the parties, because without an agreement upon the terms so to be introduced the contract itself would not be workable. The terms such as competence, obedience, fidelity, confidential information, accounting were held to be implied terms to be observed by the servants, whereas certain terms particularly for their protection such as reasonable notice for terminating their services, where no such provision was expressly incorporated in the contract of work was implied against the employer.

45. The doctrine of implied terms is well settled and is applicable even under the ordinary law of contracts. In considering the question of the copy right between the employer and agent under Section 18 of the Copyright Act (5 and 6 Vict. C-45), it is observed by Bowen L. J. in Lamp v. Evans, (1893) Chancery Division 218 at Page 227, that it is clear law that the terms which are necessary as a condition precedent to the vesting of the copyright under the aforesaid Section of the Copyright Act need not be

terms put into writing, but they may be terms which may either be expressed or which may be gathered from the transactions.

46. In another Judgment, in the case of Moorcock (1889) 14 P. D. 64 which is still the locus classicus upon the question of implied warranties, Bowen, J. has observed at Page 68 as follows :-

"How an implied warranty, or, as it is called a Covenant in law as distinguished from an express contract or an express warranty, really is in all cases founded upon the presumed intention of the parties, and upon reason. The implication which the law draws from what must obviously have been the intention of the parties, the law draws with the object of giving efficacy to the transaction and preventing such a failure of consideration as cannot have been within the contemplation by either side and I believe, if one were to take all the cases, and they are many, of implied warranties or covenants in law, it will be found that in all of them the law is raising an implication from the presumed intention of the parties with the object of giving to the transaction such efficacy as both parties must have intended that at all events it should have".

47. Under our Indian Contract Act, 1872, there are certain sections especially those relating to particular relationship such as contract of guarantee, indemnity, bailment, principal and agent and opening with the phrase "subject to the contract otherwise" which form "implied terms of contract", even though they might have been expressly incorporated in the contract entered into between the parties. It is thus clear that although certain terms, which may be even statutory, are not expressly contained in a contract, they can be implied therein because of the nature of the transaction or the business upon the theory of the presumed intention of the parties.

48. There is, however, useful and illuminating discussion about the implied terms in a contract of employment in "Chitty on Contract" Twenty Fourth Edition Volume II Chapter 7 from Page 525 onwards which shows that the doctrine of implied terms has developed a great deal with the advent of collective Agreements and statutory regulations of individual contract of employment or service (See page 548 of the book under the head (b) Incorporation of Collective Agreements into individual contracts of employment). It is clear from para 3539 therein that a collective agreement stands incorporated in the individual contract of employment relating to conditions of service on the footing that it was presumed common intention of the parties to the contract that the said terms should apply when the contract itself was silent on any issue. Para 3542 of the book at pp. 551-552 deals with the statutory awards of terms which stand incorporated into the individual contracts of employment. Para 3546 at p. 554 states that the orders passed under the Wages Councils System is a source of terms of individual contracts of employment for certain industries and trades where collective bargaining does not secure adequate terms and conditions of employment. The effect of the Wages Councils order is to substitute the minimum remuneration and other terms and conditions fixed by the order for any terms and conditions in the relevant contract of employment which are less favourable to the employee.

49. However, what is most material to be seen for our purpose is para 3550 at p. 558 of the aforesaid book dealing with the topic of Rights and Duties under and associated with the contract of employment in which it is observed that although the express terms of contract of employment will govern any aspect of the relationship between the parties which falls within those terms, in practice many aspects of the relationship will be left to implied terms which the parties must have intended to be incorporated into the contract. According to the Author, the rights and duties under contract of employment are in some cases the result of an inter-action between common law and statute law and in some other cases there are rights and duties associated with the contract of employment which are entirely the product of statutes. (italic ours).

The discussion from para 3566 onwards about the duties cast upon the employer clearly shows that the provisions in the collective agreements, statutory awards or the statutes regarding the terms and conditions of service such as remuneration for service, Holidays and Holiday Pay, Maternity Pay, reasonable opportunity to earn remuneration during the period of lay off and guaranteed remuneration etc., form implied terms of individual contract of employment.

49-A It is thus quite clear that certain terms and conditions of service which are regulated by the provisions of the Statutes can form implied terms of individual contract of employment particularly keeping in view the development of industrial law. The object of the Act which is a piece of Social Legislation is to prevent the mischief of the employers in not carrying out the obligations upon them under the agreements, settlements and awards and therefore the word "Agreement" used in Item No. 9 of Schedule IV of the Act cannot be construed in a narrow sense as otherwise it would defeat its very object. It is necessary to see in this regard that motive or mens rea is not an essential ingredient of the unfair labour practice under Item No. 9 of Schedule IV of the Act as held by the Division Bench of this Court in the case of Kamani Tubes Ltd. reported in 1987 Mh. L. J. Page 861 as also in the case of Executive Engineer, Electrical Division, Nagpur, v. Prakash Devidas Kalasit, reported in 1985 Mh. L. J. page 338, followed recently by the learned single judge of this Court in Mafatlal Engineering Industries Ltd. v. M. E. I. Employees Union, 1992 I-CLR 418. For all these reasons, it has to be held that the terms and conditions of service regulated by Section 25-F and 25-G of the I. D. Act from implied terms of the individual contract of employment of each workman to whom the said provisions are applicable.

50. The last contention urged on behalf of the respondents upon the construction of the word "Agreement" in Item No. 9 of Schedule IV of the Act is based upon the report of committee on unfair labour practices constituted by the Government as per its G. R. No. IDA 1367 - IAB-II dated February 14, 1968 since, as the preamble shows, the Act was passed on the basis of the report of the said committee upon unfair labour practices. To substantiate his submission that the expression "Agreement" used in Item No. 9 of Schedule IV of the Act was not intended to cover the failure to implement the provisions of law, the learned counsel for the respondents has brought to our notice the Appendix 7, "C" at page 77 of the said report, which contains the various suggestions made to the Committee. In para 'C' of the said Appendix 7, one of the unfair labour practices on the part of the employer included in Item 1 thereof was "to fail to implement or to violate the provisions of labour law or terms of agreements, settlements and awards". Further, according to the learned counsel for the respondents while recommending what according to it, the unfair labour practices would be, and

regarding which it had given three lists contained at pages 49 to 51 of its report, the Committee did not include the above unfair labour practice in the same terms as contained in Item 1 of Para C of Appendix 7. The unfair labour practice recommended by the Committee was "to encroach upon the contractual, statutory or legal rights of the other party by either party" as contained in Item 7 of its List III relating to General Unfair Labour Practices. The submission on behalf of the respondents therefore is that when ultimately in the Act, Item No. 9 was restricted only to failure to implement the award, settlement or agreement, it was not intended "to cover encroachment of or failure to implement the statutory or legal rights", which phraseology according to him was deliberately dropped when the Act was enacted. In support of the above submission the learned counsel for the respondents has relied upon Chapter IV of the report of the Committee in which it is observed that after careful scrutiny of the unfair labour practices suggested as per Appendix 7, the Committee has selected only few of them because it was of the view that the net of unfair labour practices should not be cast too wide.

51. Before we consider the above submission made on behalf of the respondents as regards the construction of the word "Agreement" used in Item No. 9 of Schedule IV of the Act in the light of the report of the Committee on unfair labour practices, it would be useful to complete the narration of the legislative history of the Act. It is pertinent to see that in the original bill there were only 7 items in Schedule IV of the bill and not 10 as contained in Schedule IV when the Act was finally enacted. Perusal of the Assembly Debates shows that Schedule IV of the bill was passed in the Legislative Assembly as per the bill introduced in that regard. However, when the bill went to and was debated in the Legislative Council, Items 9 and 10 were introduced in Schedule IV of the Act by amendments which were passed in the Legislative Council and thereafter accepted by the Legislative Assembly when the Bill came back to it for its consideration of the amendments.

52. It appears from page 842 of Maharashtra Legislative Proceedings, Vol. 32 Part 2 relating to March-April-May, 1971 Session of the Legislative Council that during the debate upon the instant bill on April 29, 1971 the Hon'ble Member of the Legislative Council Shri G. P. Pradhan had moved the above referred amendments for addition as Items 9 and 10 to the Schedule IV of the bill, which items were as follows.

Item No. 9. Failure to implement Award, Settlement or Agreement.

Item No. 10. To indulge in act of force or violence.

The purpose according to the Hon'ble Member in moving the amendment regarding insertion of Item No. 9 in Schedule IV was that the employers were usually at fault in prompt implementation of the Award or the Settlement. According to him, they would try to avoid or at any rate to delay implementation of the award or settlement which was an unfair labour practice. Perusal of the debates in the Legislative Council on April 29, 1971 upon the instant bill shows that the then Hon'ble Minister for Labour Shri N. M. Tidke had accepted the said amendment and his speech shows that the said provision was contained in the original recommendation of the committee.

53. As regards the importance of the legislative history of a statute, which would include the report of the committee recommending the legislation, as an aid to construction of a provision of a statute, it is necessary to bear in mind that it is an external aid to construction and is useful principally to show the setting in which the provision is enacted. However, when it comes to the question of ascertaining the meaning of an enacted provision, the Supreme Court has in the case of Shashikant Laxman Kale v. Union of India, made distinction between the purpose or object of the legislation which is shown by its legislative history, and the legislative intention. The Supreme Court in para 14 of the judgment cited supra, relying upon Francis Bennion's Statutory Interpretation 1984 Edition has observed that the distinction between the purpose or object of an enactment and the legislative intention governing it is that the former relates to the mischief to which the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment. After referring to the nature of the material which may be available for determining the purpose or the object of the Act, the Supreme Court has observed in para 17 of the judgment cited supra that the distinction between the purpose or object of the legislation and the Legislative intention indicated earlier is significant in this exercise to emphasize the availability of the larger material to the Court for reliance when determining the purpose or object of the Legislation as distinguished from the meaning of the enacted provision, (italic ours).

54. It is thus clear that the legislative history of the Act, viz., the report of the Committee on unfair labour practice in the instant case is only useful for ascertaining the evil sought to be remedied, but is not useful in determining the meaning of the enacted provision. It may however, be seen that the Act was clearly enacted as a law to supplement the provisions of the I. D. Act and the B. I. R. Act and it was, therefore, clear to the legislative mind when the Act was enacted that the concept of a contract of employment in industrial law particularly as developed under the existing legislation viz., the I. D. Act and the B. I. R. Act was wider in the sense that it would include as implied terms in an individual contract of employment the terms and conditions of service which may not be expressly contained in the individuals' contract of employment but may be contained in the collective agreement, awards or settlements or the provisions of the Statute/s regulating such terms and conditions of service. We cannot, therefore, give effect to the submission on behalf of the respondents that, because the Item No. 9 in Schedule IV of the Act is not worded in the manner in which it was recommended by the Committee on unfair labour practices viz., Item No. 7 in its list III which refers to the encroachment upon the statutory or legal or contractual rights or in accordance with the suggestions made to the accordance with the suggestions made to the committee viz., para C in Appendix 7 of the report relating to the implementation of labour laws, agreements, settlements or awards, the Legislature did not intend to include the violation or non-implementation of labour laws in Item No. 9 of Schedule IV of the Act. Reliance upon the report of the Committee on unfair labour practices is not therefore, of any assistance to the respondents in construing Item 9 of Schedule IV of the Act. The above contention raised on their behalf that in view of the recommendations of the Committee on unfair labour practices, the word "Agreement" used in Item No. 9 of Schedule IV of the Act needs to be construed narrowly cannot be accepted.

55. We have already observed that the Act has a social objective and it therefore, needs to be construed purposively to prevent the mischief and advance the remedy. It may be seen that the Act provides for an effective remedy and relief under Sections 28 and 30 against the employer who

engages himself in an unfair labour practice given in Schedules II and IV of the Act. Section 30 of the Act shows that affirmative action by way of reinstatement and payment of back wages or compensation in lieu of back wages can be directed thereunder if the unfair labour practice is one of illegal or improper termination of service. We cannot therefore, hold by adopting a narrow construction that the employee is deprived of the above effective remedy under the Act although there is non-compliance with the most vital condition of service laid down under Sections 25-F and 25-G of the I. D. Act on the ground that there is breach of the provisions of law and not of an agreement construed stricto sensu.

56. The learned counsel for the respondents has then urged us that mens rea is necessary for constituting an unfair labour practice under the Act, which is quasi-criminal in nature. In our view, apart from the fact that mens rea is not always an ingredient of a statutory offence (See paras 516-517 of G. P. Singh's Interpretation of Statutes, Fifth Edition), the Act, in fact, provides for civil consequences for committing an unfair labour practice and tries to redress them through a civil remedy provided under Sections 28 and 30 of the Act and it is only after non-compliance with the orders passed by the Labour Court or the Industrial Court, as the case may be, that the criminal consequences are provided. The submission about the presence of mens rea in an unfair labour practice thus deserves to be rejected. In fact, the above question about the presence of motive or mens rea in regard to the unfair labour practice covered under Item 9 of Schedule IV of the Act is no mere res integra in view of the Judgments of this Court referred to by us in para 49-A of the judgment.

57. It has, therefore, to be held that the provisions of Sections 25-F and 25-G of the I. D. Act, would form implied terms of contract of service of the appellants and if there is failure to comply with the same, the action would amount to "failure to implement the agreement" within the meaning of Item No. 9 of Schedule IV of the Act. We thus, regret our inability to agree with the view taken by the learned single Judge in his judgment under appeal.

58. The next question to be considered is whether there is compliance with Sections 25-F and 25-G of the I. D. Act. Perusal of the Judgment of the learned Industrial Court would show that he has not rendered any finding on this question since, according to him, breach of Sections 25-F and 25-G of the I. D. Act would not constitute failure to implement the agreement within the meaning of Item No. 9 of Schedule IV of the Act. Normally, therefore, we would have thought it fit to remand the matter to the learned Industrial Court for rendering finding on this question. However, it has been brought to our notice that the evidence of the appellants in this regard has gone unchallenged and that the breach of Section 25-F and the I. D. Act is clear even from the evidence adduced by the respondents. The basic requirement of the application of Chapter V-A of the I. D. Act is whether the workman has completed one year's continuous service, which expression is defined in Section 25-B of the I. D. Act. The completion of one year's continuous service requires a workman to work for 240 days as provided therein.

59. The evidence, in this regard on the side of the appellants, is contained in their affidavits. In para 1 of their affidavits, they have given the days on which they had worked as Helper. In para 3, it is stated by them that the said work was for more than 240 days. In cross-examination also the

appellant Arun has stated that he worked for more than 240 days and the appellant Tukaram has stated that he actually worked for 247 days. In the evidence of the Junior Engineer, Arun Soitkar, D. W.-1, examined on behalf of the respondents, he has admitted in his cross examination that the respondents have not filed on record any statement about the number of days the appellant had worked. In fact the best evidence in this regard was in possession of the respondents through the attendance-sheets of the appellants or relevant registers or the payment-vouchers for the relevant period which could and should have been produced by them to show that the appellants had not worked for more than 240 days in a calendar year. It has therefore to be held that the appellants had completed one year's continuous service before their retrenchment within the meaning of Section 25-F of the I. D. Act.

60. As the appellants had completed one year's continuous service, the respondents were bound to pay one month's wages in lieu of one month's notice which was not given and also retrenchment compensation at the rate of 15 days per year of continuous service at the time of retrenchment of the appellants. Perusal of evidence led on behalf of the respondents shows that an offer of retrenchment compensation was made to the appellants on September 2, 1984 i.e., after their services were terminated with effect from August 31, 1984. It is well settled that conditions for retrenchment of workmen under clauses (a) and (b) of Section 25-F of the I. D. Act are conditions precedent and hence they require the employer to make the offer of retrenchment compensation and/or notice pay on or before the date on which the retrenchment takes effect. See National Iron and Steel Company Ltd. v. State of West Bengal, (1967 II-LLJ 23 at pp. 29-30). If it is not done then there is non-compliance with the provisions of Section 25-F of the I. D. Act which the respondents have committed in the instant case as they did not make any such offer on or before the date of retrenchment of the appellants.

61. As regards the question of non-compliance with Section 25-G, it is admitted by the aforesaid witness Arun Soitkar examined on behalf of the respondents that no seniority list was displayed and no objections were invited as required by Rule 81 of the Industrial Disputes (Bombay) Rules, 1957 before effecting the retrenchment of the appellants and other workers from August 31, 1984. In the circumstances, there is clear violation of the provisions of Section 25-G of the I. D. Act also in the instant case. Even assuming that there may not be any violation of Section 25-G of the I. D. Act there is still clear non-compliance with Section 25-F of the I. D. Act in the instant case. The provisions of Item No. 9 of Schedule IV of the Act would therefore be clearly attracted in the instant case since there is failure to implement the provisions relating to condition of service contained in Sections 25-F and 25-G of the I. D. Act, which are implied terms of contract of employment of the appellants with the respondents.

62. The next question to be considered is as to what relief the appellants are entitled to. We have already held that the appellants have failed to challenge their second termination with effect from October 15, 1984. Therefore, the said termination would stand. If that is so, as rightly urged on behalf of the respondents, the appellants would be entitled to back wages from August 31, 1984 to September 14, 1984, on their termination with effect from August 31, 1984 being set aside as illegal and void. The learned counsel for the appellants has urged before us that since the order of termination dated August 30, 1984 with effect from August 31, 1984 is void ab initio, then, as held

by the Supreme Court in the case of Mohan Lal v. The Management of M/s. Bharat Electronics Ltd. , the appellants would continue in employment from the date of their void termination and therefore, the relief of reinstatement should be granted in addition to relief of back wages till the date their services are terminated.

63. In our view, there is no question of granting any relief of re-instatement to the appellants because as held by us above their subsequent termination with effect from October 14, 1984 is not challenged by the appellants.

and therefore their services stand terminated from the date i.e., October 14, 1984, even though their earlier termination from service with effect from August 31, 1984, which is challenged in the instant cases, may be illegal and void. The only relief which the appellants can get on their orders of termination of service with effect from August 31, 1984 being set aside is the back wages from August 31, 1984 to September 14, 1984 on which date they were re-employed for one month upto October 14, 1984. Even otherwise, the grant of reinstatement is merely technical in the facts and circumstances of the instant case, because even in that event the appellants would continue upto the date of their termination with effect from October 15, 1984 after their re-employment with effect from September 14, 1984. The substantial relief, which can thus be granted to the appellants is only of back wages from the date of their termination with effect from August 31, 1984 till the date they were re-employed i.e., September 14, 1984.

64. In the result, both the LPAs are partially allowed. The impugned Judgments of the learned single Judge of this Court and the Industrial Court are set aside and it is declared that in terminating the services of the appellants with effect from August 31, 1984, the respondents have committed an unfair labour practice covered by Item No. 9 of Schedule IV of the Act. They are, therefore, directed to withdraw the same and desist from committing the same. By further affirmative action, the impugned orders of termination of the appellants with effect from August 31, 1984 are set aside and the respondents are directed to pay them back wages from August 31, 1984 to September 14, 1984. In the circumstances, however there would be no order as to costs in these L. P. As.