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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 16.11.2022***
Pronounced on: 21.12.2022

\+ **W.P.(C) 8154/2005 and C.M. No. 5958/2005**

ARCHAECOLOGICAL SURVEY OF INDIA..... Petitioner
Through: Ms. Pratima N. Lakra, CGSC.

versus

PRESIDING OFFICER, CGIT & ORS. ..... Respondents
Through: Mr. Anuj Aggarwal and Mr.Shubham Pundhir, Advocates for R-2

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present petition has been filed under Article 226 of the Constitution of India against the award dated 20.01.2004 ***("the impugned award")*** passed by the Central Government Industrial Tribunal-cum-Labour Court II Delhi. Vide the impugned award, the learned Tribunal was pleased to hold that the petitioner Department falls under the definition of an 'industry' under The Industrial Disputes Act, 1947 (***"The I.D. Act")***. It was also held by the learned Tribunal that actions of the Petitioner Department in terminating the services of Respondent no.2 and not regularizing him in the pay scale of Rs. 750-940 is neither justified nor legal, therefore directed the Petitioner to reinstate Respondent no.2 with 25% back wages.

<u>FACTS OF THE CASE RELEVANT FOR THE ADJUDICATION OF THE PRESENT MATTER ARE AS FOLLOWS:</u>

2. Facts in a nutshell is that Respondent no.2 was engaged as a muster roll Beldar with the Petitioner in the year 1991 and was posted in Delhi circle. Respondent no.2 dispensed his duty at Humayun Tomb, Red Fort etc. which is under the care and control of the Petitioner. The dispute has its genesis from the time when Respondent no. 2 through his trade union raised a demand for regularization of his service. However, the services of Respondent no.2 was allegedly terminated w.e.f. 28.03.1997 without any notice, notice pay and gratuity.
3. Aggrieved by the alleged termination, Respondent no.2 raised an industrial dispute before the Conciliation officer, which, however, resulted in failure. Subsequently, on 13.10.1999, the dispute was referred by the Regional Labour Commissioner to the learned Industrial Tribunal for the purpose of adjudication. The terms of reference was as follows:

> *"Whether the action of Director General, Archaeological Survey of India, Janpath, New Delhi in stopping from duty/terminating the services of Shri Upendra Chaudhary w.e.f 28.03.1997 and not regularizing him in the pay scale of Rs. 750-940/- is justified, valid and legal? If not, to what relief the workman is entitled"?*

4. Respondent no.2 filed his statement of claim before the Tribunal wherein he submitted that he was employed for work which was perennial and permanent in nature without stipulation of any condition regarding his employment. Allegations were made that

management/petitioner failed to implement *O.M. No. 51016/2/90 Estt (C)* dated 10.09.1993 issued by the Department of Personnel and Training which granted temporary status and regularization of casual workers w.e.f. 01.09.1993. It was further alleged that he was in 'continuous service' of the Petitioner as required under Section 25-F of the I.D. Act at the time of his illegal termination. Therefore Respondent no.2 prayed for re-instatement and regularization of his service as a 'Beldar' in the pay scale of Rs. 750-940/- (further revised pay scale of Rs. 2550-3200/-) from the date of initial appointment.

5. After hearing both the parties, the Tribunal passed the impugned award dated 20.01.2004 wherein it was observed that the petitioner/management is an 'industry' and it is not engaged in sovereign work. It decided the dispute in favour of Respondent no.2 and directed the Petitioner to reinstate the Respondent no.2 along with 25% back wages and continuity of service within two months of the publication of the award.
6. Being aggrieved by the impugned award, the Petitioner preferred the present writ petition.

<u>SUBMISSIONS MADE ON BEHALF OF THE PETITIONER</u>

7. Ms. Pratima N. Lakra, learned counsel appearing on behalf of Petitioner has vehemently submitted that the I.D. Act is not applicable to the present matter since the department does not fall within the definition of 'industry' and 'industrial establishment'. Learned Counsel has drawn the attention of this Court towards the fact that although Respondent no.2 worked for a long period in the department,

his services were not of 'continuous nature' under Section 25-B of the I.D. Act as his working days accounts for less than 240 days in two consecutive years. Reliance has been placed upon the affidavit dated 12.07.2004 filed by the Petitioner before the C.G.I.T. (***Annexure P-2***) via which Petitioner presented an account of working days of Respondent no.2 to show that he did not work for more than 240 days in any consecutive year.

8. Learned counsel further argued that Respondent no.2 was employed as a casual worker/ non-permanent employee in the Petitioner/management to meet the requirement of unskilled jobs of casual nature at various ancient monuments. Petitioner tends to employ workers on temporary basis for the same. Termination of services of such workers does not amount to 'retrenchment' as per Section 2(oo) of the I.D. Act.

9. To buttress the argument, Petitioner has relied upon the judgments delivered in ***Bhagirath Sharma v. Superintendent Archeological Survey of India (Case no. CGIT/B-18/97)*** ; ***Himanshu Kumar Vidyarthi v. State of Bihar and Others (1997) 4 SCC 391*** ; ***State of M.P. v. Somdutt Sharma, 2021 SCC OnLine SC 829; State of Karnataka v. Umadevi (3), (2006) 4 SCC 1.***

<u>SUBMISSIONS MADE ON BEHALF OF RESPONDENT NO.2</u>

10. *Per contra*, Mr. Anuj Aggarwal, learned counsel appearing for Respondent no. 2, at the outset, has submitted that the Petitioner is an 'industry' within the meaning of the I.D. Act and therefore legislation's applicability can be invoked in the present dispute.

Learned counsel submitted that burden of proof is upon the Petitioner to prove that the Petitioner is not an 'industry'. While countering the arguments made on behalf of the Petitioner, learned counsel submitted that the Petitioner cannot be said to be performing sovereign function to escape application of the Act, since Courts in catena of judgments have categorically held that only inalienable functions primarily performed by the State can be treated as 'sovereign functions'.

11. Furthermore, learned counsel submitted that calculation of working days as filed by the Petitioner is erroneous since it does not take account of Sundays and other holidays. It is a settled principle of law that Sundays and other holidays for which wages are paid should be taken into account for the purpose of reckoning the total numbers of days for which workman actually worked. Respondent no.2 worked for more than 240 days at the Petitioner/management and is a 'workman' under the I.D. Act. In such a case, Respondent no.2 could not have been terminated without complying with Section 25-F of the I.D. Act.

12. Learned counsel has submitted that contention of the petitioner that Section 25-F of the I.D. Act is inapplicable to them since Respondent no.2 was employed as casual daily rated worker is fallacious. It has been held by various courts that Section 25F is applicable to the daily wages workers as well.

13. Learned Counsel has relied upon judgments delivered in ***Workmen v. American Express International Banking Corpn., (1985) 4 SCC 71***; ***Municipal Corporation of Delhi v. Sukhvir Singh & Ors., 1994 SCC OnLine Del 99***; ***Union of India v. Surendra Singh Rashtriya***

Adhayaksha, 2019 SCC OnLine All 4671; AIIMS v. Raj Singh, (2017) 12 SCC 803; Haryana Roadways v. Thana Ram, 2012 SCC OnLine Del 2688.

LEGAL ANALYSIS

14. This Court has heard the submission made by the parties and perused the documents with the assistance of the respective counsels.

15. There has been a constant submission on behalf of the Petitioner that it has been dispensing sovereign function of preserving ancient monuments and archaeological sites and therefore cannot be construed to be an industry under the legislation. It is relevant to examine and ascertain whether the Petitioner is an 'industry' under the ambit of Section 2(j) of the I.D. Act. Close attention shall be given to the aforesaid provision of the legislation.

> "**2. Definitions.—In this Act, unless there is anything repugnant in the subject or context**,—
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> [(*j*) *"**industry**" means any systematic activity carried on by cooperation between an employer and his workmen* (*whether such workmen are employed by such employer directly or by or through any agency, including a contractor*) *for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes* (*not being wants or wishes which are merely spiritual or religious in nature*), *whether or not,—*
>
> (*i*) *any capital has been invested for the purpose of carrying on such activity; or*
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> (*ii*) *such activity is carried on with a motive to make any gain or profit, and includes—*
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> (*a*) *any activity of the Dock Labour Board established under Section 5-A of the Dock Workers* (*Regulation of Employment*) *Act, 1948* (*9 of 1948*);
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> (*b*) *any activity relating to the promotion of sales or business or both carried on by an establishment*,
>
> *but does not include—*

(*1*) *any agriculture operation except where such agricultural operation is carried on in an integrated manner with any other activity* (*being any such activity as is referred to in the foregoing provisions of this clause*) *and such other activity is the predominant one*.

Explanation.—For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (*f*) *of Section 2 of the Plantations Labour Act, 1951; or*

(*2*) *hospitals or dispensaries; or*

(*3*) *educational, scientific, research or training institutions; or*

(*4*) *institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or*

(*5*) *khadi or village industries; or*

(*6*) *any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or*

(*7*) *any domestic service; or*

(*8*) *any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individuals or body of individuals in relation to such profession is less than ten; or*

(*9*) *any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten*;]"

16. The primary thrust of submissions for either side is, one attempting to bring the functions of the Petitioner within realm of sovereign functions and the other trying to drive it out of it. The Hon'ble Apex Court in various judgements has touched upon the dichotomy between 'sovereign' and 'non-sovereign' functions.

(i) ***Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213***

Seven Judges Bench of the Apex Court laid down a comprehensive guideline for courts while interpreting 'industry', where there existed a unanimous viewpoint that sovereign functions strictly understood alone qualify for exemption. At this juncture observation made by the Apex Court is relevant to examine:

> ***"163.*** *I would also like to make a few observations about the so-called "sovereign" functions which have been placed outside the field of industry. I do not feel happy about the use of the term "sovereign" here. I think that the term 'sovereign' should be reserved, technically and more correctly, for the sphere of ultimate decisions. Sovereignty operates on a sovereign plane of its own as I suggested in Keshavananda Bharati case [(1973) 4 SCC 225] supported by a quotation from Ernest Barker's Social and Political Theory. Again, the term "Regal", from which the term "sovereign" functions appears to be derived, seems to be a misfit in a Republic where the citizen shares the political sovereignty in which he has even a legal share, however small, inasmuch as he exercises the right to vote. What is meant by the use of the term "sovereign", in relation to the activities of the State, is more accurately brought out by using the term "governmental" functions although there are difficulties here also inasmuch as the Government has entered largely new fields of industry. Therefore, only those services which are governed by separate rules and constitutional provisions, such as Articles 310 and 311 should, strictly speaking, be excluded from the sphere of industry by necessary implication."*

(ii) ***Chief Conservator of Forests v. Jagannath Maruti Kondhare, (1996) 2 SCC 293***

> *"13. The aforesaid shows that if we were to extend the concept of sovereign function to include all welfare activities as contended on behalf of the appellants, the ratio in Bangalore Water-Supply case would get eroded, and substantially. We*

would demur to do so on the face what was stated in the aforesaid case according to which except the strictly understood sovereign function, welfare activities of the State would come within the purview of the definition of industry; and, not only this, even within the wider circle of sovereign function, there may be an inner circle encompassing some units which could be considered as' industry if substantially severable.

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16. The aforesaid being the crux of the scheme to implement which some of the respondent were employed, we are of the view that the same cannot be regarded as a part of inalienable or inescapable function of the State for the reason that the scheme was intended even to fulfil the recreational and educational aspirations of the people. We are in no doubt that such a work could well be undertaken by an agency which is not required to be even an instrumentality of the State."

(iii) Agricultural Produce Market Committee v. Ashok Harikuni, (2000) 8 SCC 61

"In other words, it all depends on the nature of power and the manner of its exercise. What is approved to be "Sovereign" is defence of the country, raising armed forces, making peace or war, foreign affairs, power to acquire and retain territory. These are not amenable to the jurisdiction of ordinary civil courts. The other functions of the State including welfare activity of State could not be construed as "sovereign" exercise of power. Hence, every governmental function need not be "sovereign". State activities are multifarious. From the primal sovereign power, which exclusively inalienably could be exercised by the Sovereign alone, which is not subject to challenge in any civil court to all the welfare activities, which would be undertaken by any private person. So merely one is employee of statutory bodies would not take it outside the Central Act. If that be then Section 2 (a) of the Central Act read with Schedule I gives large number of statutory bodies should have been excluded, which is not. Even if a statute confers on any statutory body, any function which could be construed to be "sovereign" in nature would not mean every other functions under the same statute to be also sovereign. The court should examine the statute to severe one from the other by comprehensively examining various provisions of that statute. In interpreting any statute to find it is "industry' or not we have to

> *find its pith and substance.* The *Central Act is enacted to maintain harmony between employer and employee which brings peace and amity in its functioning. This peace and amity should be the objective in the functioning of all enterprises. This is to the benefit of both, employer and employee. Misuse of rights and obligations by either or stretching it beyond permissible limits have to be dealt with within the frame work of the law but endeavor should not be in all circumstances to exclude any enterprise from its ambit. That is why courts have been defining "industry" in the widest permissible limits and "sovereign" functioning within its limited orbit.*

17. It is implied from reading of the abovementioned judgments that sovereign functions in the latest trend may have wide ramifications. The sovereign functions must be interpreted in a restricted manner and efforts must be made to realize objectives of the legislation i.e. maintenance of industrial peace and labour welfare. It is a settled proposition of law that the test to determine whether an establishment is performing ‘sovereign functions’ so to be exempted from definition of an industry is to ascertain whether the same functions can be carried out by a private person/agency or not. However, it is cogent that sovereign functions must only include those activities which are inalienable functions that can be undertaken only by the State, and not by a private enterprise. The functions that can be performed by a private agency cannot be categorised as a ‘sovereign’ function.
18. In light of the aforesaid settled legal position, this court proceeds ahead to examine nature and functions of the department. The Counsel appearing for the Petitioner has invited attention of this court to the fact that it is a body under the control of Ministry of Culture, Government of India. The functions and objectives of the Petitioner includes maintenance of ancient monuments, archaeological sites and

remains of national importance and regulation of all archaeological activities in the country as per the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958.

19. It is pertinent to note that the Hon'ble Allahabad High Court in ***Union of India v. Surendra Singh Rashtriya Adhayaksha, 2019 SCC OnLine All 4671,*** dealt with a similar issue wherein services of 41 workmen employed in Garden branch of Petitioner were terminated without complying with Section 25-F of the Act. Sharing identical facts with the present matter in hand, on one hand violation of Section 25F & 25H of the Act were alleged while on the other, it was contended that organization is not an 'industry' and none of the workmen had completed 240 days continuous service in a calendar year. The Hon'ble court while declaring the Petitioner organization to be an 'industry' under Section 2(j) of the I.D. Act observed the following:

> *"So far as the first question as to whether Garden/Horticulture Department of the ASI falls within the definition of "Industry" as defined in Section 2(j) of the Act, the Supreme Court in the case of* ***A Rajappa (supra)*** *has held as under:*
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> > *"Where there is (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making on a large scale Prasad or food), prima facie, there is an 'industry' in that enterprise."*
>
> *From the nature of the work done by the respondent-workmen it cannot be said that the same is of a sovereign nature, therefore, I have no difficulty in holding that the Garden/Horticulture*

Department of the ASI is an "Industry" as defined in Section 2(j) of the Act, 1947.

20. This Court in consonance with the viewpoint taken by the Allahabad High Court have come to a conclusion that Petitioner satisfies the requisites of an 'industry' as per Section 2(j) of the I.D. Act. The functions that were performed by workers in department such as maintenance of gardens, removal of vegetation, repair works in ancient monuments etc. cannot be said to be the sole function of government. It can be performed by an external agency other than the Government which need not to be an instrumentality of state, and hence cannot be termed as sovereign functions. There exists a co-operation between the petitioner and its employees for providing maintenance services at ancient monuments. Above all of this, this court is inclined to interpret the definition of 'industry' in a fashion so as to give maximum effect to the Act's objectives as envisioned by the legislators, in tandem with the Part IV of the Paramount law. Decision of CGIT, Jaipur in ***Bhagirath Sharma*** (supra) is overruled with respect to the present case.

21. Furthermore, Co-ordinate Bench of this Court in ***Management of Horticulture Deptt. of Delhi Administration v. Trilok Chand, (2000) 85 FLR 41 (Del)*** has held that it is for the Petitioner to put sufficient material on record to prove as to how the organisation does not qualify to be called an 'industry', when it is satisfying the triple test as laid down in ***Bangalore Water Supply and Sewage Board (supra).*** The Petitioner failed to convince this Court so as to say that department is not an 'industry' and the Act will be inapplicable to them. The

Tribunal was justified in declaring the department as an 'industry' under Section 2(j) of the I.D. Act.

22. Another dispute is regarding estimation of total working days, which is essential for determining whether Respondent no.2 was in continuous service or not for attracting the provision of Section 25-F of the I.D. Act. Both the parties computed the working days and difference between the two is due to the inclusion of Sundays and other paid holidays by Respondent no.2 while calculating the actual working days. It is a settled law as laid down in ***Workmen v. American Express International Banking Corpn. (1985) 4 SCC 71*** that Sundays and other paid holidays shall form a part of actual working days for purpose of determining 'continuous service'.

> *"5. Section 25-F of the Industrial Disputes Act is plainly intended to give relief to retrenched workmen. The qualification for relief under Section 25-F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section 25-B of the Industrial Disputes Act. In the present case, the provision which is of relevance is Section 25-B (2)(a)(ii) which to the extent that it concerns us, provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman, during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. <u>The expression which we are required to construe is "actually worked under the employer". This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc</u>. The learned counsel for the Management would urge that only those days which are mentioned in the Explanation to Section 25-B(2) should be*

> *taken into account for the purpose of calculating the number of days on which the workmen had actually worked though he had not so worked and no other days. We do not think that we are entitled to so constrain the construction of the expression "actually worked under the employer". The explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. If the expression "actually worked under the employer" is capable of comprehending the days during which the workman was in employment and was paid wages — and we see no impediment to so construe the expression — there is no reason why the expression should be limited by the explanation. To give it any other meaning than what we have done would bring the object of Section 25-F very close to frustration. It is not necessary to give examples of how Section 25-F may be frustrated as they are too obvious to be stated.*

Cross of Shri A.K. Sinha holds admission that period mentioned in the affidavit is not inclusive of Sundays and other national holidays. Hence, this Court is of the opinion that Respondent no.2 has been successful in proving that he worked for more than 240 days in two years.

23. Even if we accept the contention that Respondent no.2 abandoned the service on his own accord, no real efforts were made on behalf of the Petitioner to call back Respondent no.2. Annexure R-1 states that no call back notice was sent to Respondent no.2 for resuming his duties. In ***Sukhvir Singh & Ors. (supra)***, Co-ordinate Bench of this Court held that even if abandonment of service exists on part of the worker, Disciplinary Enquiry should have been conducted. Neither call back notice nor disciplinary proceedings were initiated against Respondent no.2, therefore, it can be inferred that there was no abandonment of services by Respondent no.2 and his services were illegally terminated by the management.

24. At the cost of repetition, the above discussion is summarised as follows:

(a) Petitioner department qualifies to be an 'industry' in light of the decision delivered in ***Bangalore Water Supply and Sewage Board (supra)***. Maintenance of gardens and repairing of monuments are not 'sovereign' functions, hence are not entitled to be exempted from the purview of the I.D. Act.

(b) While computing the working days of a workman, inclusion of Sundays and other paid holidays is a well settled legal principle. Estimation of working days as carried out by the Petitioner excluded Sundays and national holidays, which is contrary to this principle.

(c) Respondent no. 2 was a casual worker who worked for around 5 years with petitioner/management, without being granting status of permanent workman through regularisation of his services. To say the least, such actions of the petitioner tantamount to an extremely 'unfair labour practice' under the Section 2(ra) of the I.D. Act.

(d) Since the petitioner failed miserably to establish abandonment of service on the part of Respondent no.2, services must have been terminated only in accordance with law and compliance of Section 25-F of the I.D. Act.

(e) Compliance of Section 25-F of the I.D. Act is mandatory at the time of termination/retrenchment of workman who has been in continuous service, even in the case of a casual/ daily wage worker.

25. In light of above discussion, this Court is of the opinion that Petitioner illegally terminated the services of Respondent no.2 without any compliance of Section 25-F of the I.D. Act.

26. It is a well settled principle of law that relief of reinstatement with back wages is not to be granted mechanically. While granting the reinstatement with back wages, several factors are required to be taken into consideration. The Hon'ble Supreme Court in ***Madhya Pradesh Administration Vs Tribhuban 2007 (9) SCC 748*** had an occasion to examine the said legal principle. While substituting the order of *'reinstatement with full back wages'* with Rs.75,000/- as consolidated compensation to the workman, the Hon'ble Supreme Court, *inter alia*, observed as follows:

> *"The question, however, which arises for consideration is as to whether in a situation of this nature, the learned Single Judge and consequently the Division Bench of the Delhi High Court should have directed re-instatement of the respondent with full back wages. Whereas at one point of time, such a relief used to be automatically granted, but keeping in view several other factors and in particular the doctrine of public employment and involvement of the public money, a change in the said trend is now found in the recent decisions of this Court. This Court in a large number of decisions in the matter of grant of relief of the kind distinguished between a daily wager who does not hold a post and a permanent employee. It may be that the definition of "workman" as contained in* Section 2(s) *of the Act is wide and takes within its embrage all categories of workmen specified therein, but the same would not mean that even for the purpose of grant of relief in an industrial dispute referred for adjudication, application for constitutional scheme of equality adumbrated under Articles 14 and 16 of the Constitution of India, in the light of a decision of a Constitution Bench of this Court in Secretary, State of Karnataka and Others v Umadevi (3) and Others [(2006) 4 SCC 1], and other relevant factors pointed out by the Court in a catena of decisions shall not be taken into consideration.*

> *The nature of appointment, whether there existed any sanctioned post or whether the officer concerned had any authority to make appointment are relevant factors."*

27. In the present case, Respondent no. 2 was working as a daily wager and his service was terminated in the year 1998. Since considerable amount of time has already been passed since termination of services, this Court is of the considered view that an order of reinstatement with back wages must be eschewed, being inequitable. It would be just, proper and reasonable to award a lumpsum monetary compensation to Respondent No.2 towards full and final satisfaction of his claim for reinstatement with back wages and continuity of service. Therefore, this Court considers it just and reasonable to award a sum of Rs.75,000/- (Rupees Seventy-Five Thousand only) to Respondent No.2 in lieu of his reinstatement/ continuity of service and 25% back wages as directed by the learned Tribunal vide the impugned Award. The impugned Award of the learned Tribunal is modified to that extent.

28. Considering the time elapsed while deciding the present dispute, this Court further directs the Petitioner Management to make this payment of Rs.75,000/- to Respondent No.2 within a period of 4 weeks from the date of receipt of this order failing which the said amount will bear an interest of 9% p.a.

29. This Court vide order dated 07.05.2008 allowed the Application of Respondent No.2 under Section 17-B of the I.D. Act and Respondent No.2 is getting the payment under Section 17-B of the I.D. Act. It is clarified that in view of the law laid down by the Hon'ble Supreme Court in ***Dilip Mani Dubey Vs M/s SIEL Limited & Anr. 2019(4)***

SCC 534, the proceedings under Section 17-B of the I.D. Act are independent proceedings in nature and not dependent upon the final order passed in the main proceedings. Therefore, in view of the aforesaid settled position of law, it is clarified that the payment already made by the Petitioner to Respondent No.2 under Section 17-B of the I.D. Act is neither recoverable nor adjustable.

30. With the aforesaid direction, the present petition being meritless stands dismissed. Pending application also stands disposed of. No order as to cost.

GAURANG KANTH, J.

DECEMBER 21, 2022
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