

to imprisonment. It would be pertinent, in this behalf, to advert to the provisions of Section 25U of the Act, which read as under:—

“Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.”

The expression ‘unfair labour practice’ has been defined by Section 2(ra) of the Act to mean any of the practices specified in 5th Schedule. Item 10 of this Schedule would clearly cover the point in issue. This item is in the follows terms:—

“To employ workmen as ‘badlis’ casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.”

(6) It will be seen, therefore, that the Legislature has ensured ample safeguards against the provisions of clause (bb) of Section 2 (oo) being used as a device for unfair labour practice, by the employer against the employees. No occasion thus survives to brand this provision of law as conferring any arbitrary or unrestricted power upon an employer to misuse against an employee. At any rate, no constitutional invalidity can be attributed to it. Clause (bb) of Section 2(oo) of the Act must thus be held to be constitutionally valid.

(7) As mentioned earlier, the case of the petitioner clearly falls under sub-clause (bb) of Section 2(oo) of the Act, and no exception can thus be taken to the impugned Award of the Labour Court. This writ petition is accordingly hereby dismissed. In the circumstances, however, there will be no order as to costs.

**R.N.R.**

*Before S. S. Sodhi, J.*

**SATPAL SINGH,—Petitioner.**

*versus*

**UNION OF INDIA AND OTHERS,—Respondents.**

*Civil Writ Petition No. 2409 of 1987.*

3rd September, 1990.

*Industrial Disputes Act, 1947—Ss. 2(oo) (bb)—Contractual employment—Periodical renewals of contract of service—Unfair*

Satpal Singh v. Union of India and others (S. S. Sodhi, J.)

*labour practice—No plea that work for which person employed was continuing or that repeated appointments were made to deny regular or permanent status—In absence of such plea, case falls under S. 2(oo) (bb) and termination is not retrenchment—Test of validity of termination—Law in force on date of termination to be considered.*

*Held, to test the validity of termination of service of workmen, the law to be considered and applied is that in force on the date of the termination and not on any date prior thereto. (Para 4)*

*Held, where the workmen do not take a plea that the work for which they had been employed was continuing or that their repeated appointments were a mere device to deny them regular or permanent status, no occasion will arise that the termination was done as a measure of unfair labour practice. (Para 8)*

*Petition under Articles 226/227 of the Constitution of India praying that the petition may kindly be accepted and ;*

- (i) the respondents may be directed to produce the entire record;*
- (ii) a writ of Certiorari or any other writ, order or direction be issued quashing the award Annexure "P-1" and it be held that the amended provision of Section (2) (bb) is void and that the termination of Services of the petitioner is void and illegal and the petitioner is entitled to reinstatement with continuity of Service and back wages;*
- (iii) the petitioner may be exempted from filing certified copy of the award;*
- (iv) any other relief to which the petitioner is found entitled may also be allowed to him;*
- (v) cost of the writ petition may be allowed.*

*Mrs. Sabina, Advocate, for the Petitioner.*

#### ORDER

*S. S. SODHI, J.*

(1) The matter here concerns the applicability of clause (bb) of Section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act').

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(2) The petitioners, in this bunch of writ petitions, were employed on daily wages for fixed periods of time. They had all completed more than one year's service before Clause (bb) of Section 2(oo) of the Act came on to the statute book by the amending Act of 1984, which came into effect on August 18, 1984.

(3) The appointments of the petitioners being for fixed periods, which had come to an end by efflux of time, the Labour Court held that the termination of their services fell within the purview of clause (bb) of Section 2(oo) of the Act and it did not, therefore, amount to retrenchment and they were thus not entitled to the benefits of Section 25F of the Act.

(4) It was sought to be contended on behalf of the petitioners that as they had completed one year's service before clause (bb) of Section 2(oo) of the Act became law, the petitioners had acquired a vested right in having applied to them the law as it existed on the date when they completed one year's service and therefore, the termination of their services amounted to retrenchment rendering them eligible to the benefits of the provisions of Section 25F of the Act. This is indeed a wholly untenable contention as to test the validity of the termination of the services of a workman, the law to be considered and applied is that in force on the date of the termination and not on any date prior thereto. Admittedly, on the date when the services of the petitioners were terminated clause (bb) of Section 2(oo) of the Act was in force and is thus clearly applicable in the case of the petitioners here.

(5) Faced with this situation, an argument was sought to be raised questioning the constitutional validity of clause (bb) of Section 2(oo) of the Act. This now stands concluded by the Judgment of this Court in *Raj Bahadur vs. General Manager, Food Specialities Ltd.* (1).

(6) Finally, unfair labour practice was sought to be imputed to the respondents on the plea that the petitioners had been repeatedly given appointments of fixed periods. Cited in support being *Shailendra Nath Shukla & Ors. vs. Vice Chancellor, Allahabad University and others*, (2), where, it was observed, "if contractual employment is resorted to as a mechanism to frustrate the claim of

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(1) ILR 1992(1) P & H 102.

(2) 1987 Lab. I.C. 1607.

**Keerat Kaur and others v. Patiala Exhibitors Private Ltd. (Aey Cee Cinema), Patiala (I. S. Tiwana, J.)**

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the employee to become regular or permanent against a job which continues or the nature of duties is such that colour of contractual engagement is given to take it out from the principal clause, then such agreement shall have to be tested on the anvil of fairness of *bona fide*". It was held therefore, that clause (bb) of Section 2(o) of the Act cannot be extended to such cases, where the job continues and the employee's work is also satisfactory, but periodical renewals are made to avoid regular status being conferred upon him.

(7) Reference was next made to *Dalip Hanumantrao Shirke and Ors. vs. Zila Parishad, Yavatmal and others*, (3), where it was held that the amended sub-clause (bb) of Section 2(o) of the Act would apply to only such cases where the work ceases with the employment or the post itself ceases to exist or such other analogous cases where the contract of employment is found to be fair, proper and *bona fide*. It was observed there that it was always open to the Court to examine the case and protect the workman against abuse of the amended provision.

(8) No occasion is, however, provided for the application of the principle enunciated in the judicial precedents cited, keeping in view the fact that it was never the plea of the petitioners that the work for which they had been employed was continuing or that their repeated appointments were a mere device to deny them regular or permanent status.

(9) The impugned Award of the Labour Court thus warrants no interference in writ proceedings. This petition is accordingly hereby dismissed. In the circumstances, however, there will be no order as to costs.

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R.N.R.

*Before I. S. Tiwana, J.*

**KEERAT KAUR AND OTHERS,—Petitioners.**

*versus*

**PATIALA EXHIBITORS PRIVATE LTD. (AEY CEE CINEMA),  
PATIALA,—Respondents.**

*Company Petition No. 144 of 1987.*

6th September, 1990.

*Companies Act, 1956—Ss. 433E, 434A & 439—Companies (Court) Rules, 1959—Rl. 21—Creditors Petition for winding up—At the stage*

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(3) 1990 Lab. I.C. 100.