has failed to act in accordance with the directions given in Article 38 of the Constitution and has done little to eliminate inequalities in the facilities and opportunities provided to the groups of peopel residing in the urban and rural areas. We do not find any substance in this submission of the learned counsel appearing for the petitioners either. Directive Principles of State Policy are not enforceable *per se* as has been provided in Article 37 of the Constitution. We have already held in the earlier part of this judgment that the Board has not acted either discriminatorily or arbitrarily in the distribution of energy amongst the urban and rural consumers. We have further held that the State has made every endevour to make more energy available to the rural domestic consumers and to bring them at par with the urban domestic consumers. We have further noticed that the supply of energy to the rural domestic consumers has been almost 24 hours from March, 1988 to June, 1991. Under the circumstances, it cannot be held that the State has not made any endeavour to remove the inequalities existing between the people residing in rural and urban areas keeping in view the resources of the State.

(12) No other point was raised.

(13) For the reasons recorded above, we find no merit in this writ petition and the same is dismissed with no order as to costs.

R.N.R.

Before Hon'ble N. K. Sodhi, J.

STATE OF PUNJAB,—*Petitioner.*

versus

SHRI RAM MURTI,—*Respondent.*

Civil Writ Petition No. 8845 of 1989.

May 15, 1991.

Industrial Dispute Act, 1947—*Ss.* 2(oo), (*bb*), 25(*B*) *and* 25-F—*Termination on non-renewal of contract of employment—Termination on account of unfair labour practice neither pleaded nor proved—Labour Court not recording any finding that post against which workman terminated was continued—Compliance of S. 25-F not attracted—Mere fact that another worker was appointed after two months in place of terminated employee will not entitle him for relief of reinstatement—On facts found that the other workman was also terminated for want of sanction of the post—Case falls u/s* 2(oo) (*bb*)—*Reinstatement quashed.*

Held, that I am not inclined to agree with the view expressed by the learned judge that in every case where the work continues, the non-renewal of the contract of employment has to be dubbed as *mala fide.*

Further held, that an employee will have to plead and prove in each case that non-renewal in his case was with the object of depriving him of the status and privilege of a permanent workman and that the conduct of the employer falls within the mischief of 'unfair labour practice' as defined in clause (ra) of section 2 of the Act.

Further held, that it cannot be said that the post against which the respondent was working continued after the termination of his services. The Labour Court has not recorded any finding that the post of the workman continued after 12th December, 1984. It has erroneously concentrated its attention only on the fact that the provisions of section 25-F has not been complied with without appreciating that it was not necessary to do so in the present case when the termination of services was on account of non-renewal of the contract of employment.

(Para 5)

Held, that the respondent was not entitled to the payment of retrenchment compensation and consequently his termination cannot be held to be illegal or invalid entitling him to any relief of reinstatement.

(Para 6)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that :—

(a) *That a writ in the nature of certiorary quashing annexure P-1 being illegal, against law and without jurisdiction may be issued.*

(b) *That pending consideration of this writ petition by the Hon'ble Court an order staying the implementation of the impugned order dated 22nd November, 1988 of the Labour Court be passed.*

(c) *Filing of certified copies of annexure P-1 may be dispensed with.*

(d) *Filing of original of Annexures P-2 to P-7 may be dispensed with.*

(e) *Serving of advance notices upon the respondent may also be dispensed with.*

(f) *Costs of the petition be awarded in favour of the petitioners.*

(g) *That the Punjab Government notification published in Punjab Government Gazette dated 17th March, 1989 relating to the award in the above said case may be quashed and withdrawn.*

Rajiv Raina, AAG, Punjab, *for the Petitioners.*

Dinesh Kumar, Advocate, J. C. Verma, Advocate, *for the Respondents.*

JUDGMENT

N. K. Sodhi, J.

(1) The State of Punjab has in this writ petition challenged the award of the Presiding Officer, Labour Court, Gurdaspur directing reinstatement of the respondent-workman with continuity of service and half back wages.

(2) Shri Ram Murti respondent was appointed as Welfare worker on temporary/*ad hoc* for a period of 89 days on December 5, 1983 by the Deputy Commissioner and President of the Zila Sainik Board, Gurdaspur. The appointment of the workman continued to be extended from time to time upto December 12, 1984 on the same terms and conditions whereafter no further extension was granted for want of sanction from the competent authority and the services of the workman thus came to an end by the non-renewal of the contract of employment. The workman served a demand notice dated October 11, 1985 alleging wrongful termination and claimed reinstatement in service. This demand notice when translated in English reads as under :—

> "You are hereby given a notice of 7 days that you have terminated my (Shri Ram Murti) services without notice, charge-sheet or enquiry which is wrong and illegal. I have been serving under you continuously from 14th December, 1983 to 12th December, 1984. I was getting a salary of Rs. 769 per month. You have appointed another worker namely Avtar Singh in my place. I have neither been paid any retrenchment compensation nor any balance dues have been paid. It is requested that I may be reinstated in service. Efforts were made to settle the issue through personal talks failing which a notice is being given. If my demand is not met, it will be presumed that the same has been rejected. A reply may please to sent to me within the specified period.
>
> Demand.
>
> I, Ram Murti, may please be re-instated in service and also paid salary for the period of break in service."

On receipt of the demand notice conciliation proceedings were held which proved abortive. The State Government then in exercise of its powers under section 10(1) of the Industrial Disputes Act, 1947

(hereinafter referred to as the Act) referred the following dispute for adjudication to the Presiding Officer, Labour Court, Gurdaspur:—

> "Whether termination of services of Shri Ram Murti workman is justified and in order? If not, to what relief/exact amount of compensation is he/she entitled ?"

The workman alleged that soon after the termination of his services, the management appointed another worker namely Avtar Singh in his place which fact is disputed on behalf of the management. Labour Court after recording evidence of the parties came to the conclusion that the termination of the services of the workman was neither justified nor in order since the workman had been in continuous service for one year within the meaning of Section 25(B) of the Act and the management had not complied with the provisions of Section 25-F thereof by paying the workman retrenchment compensation. He was, therefore, directed to be reinstated with continuity of service and half back wages. It is this award of the Labour Court which has been impugned in the present writ petition.

(3) The contention raised on behalf of the writ petitioner is that it was the State of Punjab who was actually the employer of the respondent-workman and the District Soldiers, Sailors and Airmen Board, Gurdaspur where the respondent-workman was employed was not a statutory Board, but a Government office at the District level for all intents and purposes. The arguments is that the service conditions of all the employees of the said Board are governed by Civil Service Rules and the Punjab District Soliders, Sailors and Airmen's Boards (Class III) Service Rules, 1969 framed under Article 309 of the Constitution of India, and therefore in such a situation the employees of the Board are excluded from the operation of the Act and the State as an employer cannot be said to be carrying on an industry. The learned counsel in this regard relied upon some observations of their Lordships of Supreme Court in *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa and others* (1), to contend that merely because the respondent was governed by the Civil Service Rules framed under Article 309 of the Constitution of India, it must be assumed that he was engaged for the discharge of the essential functions of the Government which stand excluded from the concept of industry. I am unable to accept this broad and sweeping argument on behalf of the State. However, I need not delve any further since this Court in *State of Punjab* v. *Kidar Nath* Civil Writ Petition No. 6450 of 1989 decided on 25th

(1) A.I.R. 1978 S.C. 548.

January, 1991 has already held that the District Sainik Board which is a State Government office is an industry so as to be governed by the provisions of the Act. This contention on behalf of the State cannot, therefore, be accepted.

(4) It was next urged by Mr. Raina on behalf of the State that the respondent-workman was employed for fixed terms and his services having come to an end by the non-renewal of his contract of employment after 12th December, 1984 he could not be said to have been retrenched within the meaning of the Act and it was not necessary for the State to comply with the provisions of Section 25-F of the Act. The argument is that the definition of retrenchment was amended with effect from 18th August, 1984 with the introduction of clause (bb) and termination on the non-renewal of contract of employment has been specifically excluded from the definition of retrenchment. The learned counsel for the respondent-workman on the other hand brought to my notice the judgment of this Court in *Balbir Singh* v. *The Kurukshetra Central Co-operative Bank Limited and another* (2), wherein the learned Judge while interpreting sub-clause (bb) of clause (oo) of Section 2 of the Act held as under :—

> "In fact clause (bb) which is an exception, is to be so interpreted as to limit cases where the work itself has been accomplished and the agreement of hiring for a specific period was genuine. If the work continues the non-renewal of the contract on the face of it has to be dubbed as *mala fide*. It would be fraud in law if it is interpreted otherwise."

(5) With all respect. I am not inclined to agree with the view expressed by the learned judge that in every case where the work continues, the non-renewal of the contract of employment has to be dubbed as *mala fide* as, in my opinion, an employee will have to plead and prove in each case that non-renewal in his case was with the object of depriving him of the status and privileged of a permanent workman and that the conduct of the employer falls within the mischief of 'unfair labour practice' as defined in clause (ra) of Section 2 of the Act. Be that as it may, it is not necessary for me to refer this case to a larger Bench since on the material on the record it can be disposed of within the ratio of Balbir Singh's case (supra). There is no evidence that after the termination of services of the respondent by the non-renewal of the contract of his employment, the work still continued. No doubt the workman did

(2) 1989(2) R.S.J. 55.

allege in his demand notice that the management had appointed another worker namely Avtar Singh in his place after termination of his services, but the Labour Court while dealing with this matter in the impugned award relied upon the statement of Parshotam Singh, Superintendent, who appeared as MW1. In his cross-examination, the witness admitted that about two months after the termination of services of the respondent-workman another welfare worker was appointed though his services were also terminated for want of sanction and further stated as under :—

> "There is no vacant post of welfare worker with the respondent. As such we cannot employ him. It is incorrect that another welfare workman was appointed in place of workman soon after the services of workman were terminated."

From the statement of the witness it is clear that in fact there was no work with the Board for which any welfare worker had been employed and even Avtar Singh who was employed two months after the termination of services of the respondent had also to go for want of sanction. In these circumstances it cannot be said that the post against which the respondent was working continued after the termination of his services. The Labour Court has not recorded any finding that the post of the workman continued after 12th December, 1984. It has erroneously concentrated its attention only on the fact that the provisions of Section 25-F had not been complied with without appreciating that it was not necessary to do so in the present case when the termination of services was on account of non-renewal of the contract of employment.

(6) The respondent workman has been employed for fixed terms under a contract of employment and his services stood termination on 12th December, 1984 when the contract was not further renewed. By this time Section 2(oo) had been amended whereby termination of services of a worker by non-renewal of his contract of employment had been taken out of the ambit of 'retrenchment' with the result that the provisions of Section 25-F would not apply. This aspect of the matter has not been considered by the Labour Court. The respondent was not entitled to the payment of retrenchment compensation and consequently his termination cannot be held to be illegal or invalid, entitling him to any relief of reinstatement.

(7) In the result, the writ petition is allowed. and the impugned award quashed with no order as to costs.

R.N.R.