Before S. S. Nijjar and J. S. Narang, JJ.

VIJAY KUMAR,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C. W. P. No. 9884 OF 2004

5th October, 2004

Constitution of India, 1950—Art. 226—Appointment of petitioner as Class IV employee—Termination of services after about 2 years services—Labour Court directing reinstatement with continuity of service and full back wages—High Court upholding the award of the Labour Court—SLD filed by the State also dismissed by the Supreme Court—After dismissal of S.L.P. the attitude of the State in not reinstating the workmen not only unjustified but is vindictive also—Award as well as judgment of High Court becoming final and binding between the parties—Merely because a point of law not argued would not afford a justification to seek review of the original order passed by High Court after dismissal of S.L.P. by the Supreme Court—Unnecessary litigation—Burden on the judicial system—Petition allowed holding the petitioner entitled to reinstatement with all consequential benefits and backwages while directing the State to hold a proper enquiry and to fix responsibility of the Officer that recommended the continuation of litigation against the workmen.

Held, that the action of the State of Punjab was held to be absolutely illegal, null and void and unjustified by the Labour Court. These findings of fact recorded by the Labour Court on the basis of the evidence led in the particular reference cannot be nullified or diluted by the award subsequently given by the Labour Court in a wholly independent reference. More so, when the award rendered in the case of the workmen has been upheld by a Division Bench of this Court. To make it even worse, the SLPs filed by the State of Punjab have also been dismissed. Therefore, the award as well as the judgment of the High Court have become final and binding between the parties. We are, therefore, of the opinion that the attitude of the State of Punjab is not only unjustified but is vindictive. Merely because a point of law was not argued would not afford a justification to seek review

of the original order passed by the Division Bench of this Court on 6th May, 2003, after the SLPs have been dismissed. We were constrained to trace the entire history of the litigation in view of the observations of the Supreme Court and the sentiments of the Prime Minister made at a joint conference of the Chief Ministers of different States and the Chief Justices of different High Courts of India on 18th September, 2004. The sentiments expressed by the Prime Minister that the State may some times indulge in wholly unnecessary litigations have been epitomised by the sad tale of this case.

(Para 20)

Further held, that we direct that a proper enquiry be held and responsibility be fixed on the officer that recommended the continuation of the litigation against the workmen. The State of Punjab shall be at liberty to recover any loss caused to the State of Punjab from the personal salary of the Officer(s) who have been responsible for this relentless litigation, including the officer who was responsible for terminating the services of the petitioner and the deceased workman.

(Para 21)

S. S. Salar, Advocate, for the petitioner.

S. S. Behl, Additional A.G., Punjab, for the respondents.

JUDGMENT

S. S. NIJJAR, J.

(1) Hoping for a change in the attitude of the concerned officers of the State of Punjab, on 17th September, 2004, when this matter came up for motion hearing, we passed the following order :—

> "Mr. Behl has very fairly stated that the respondents have already lost the matter up to the Supreme Court. He, however, states that an application for review has been filed in the judgment rendered by this Court in CWP No. 4792 of 2003 decided on May 6, 2003.
>
> The petitioner was appointed as Peon on June 6, 1997. His services were abruptly terminated on 23rd July, 1999. The petitioner was directed to be reinstated by the Labour Court

on 21st May, 2002. This award was challenged by the State of Punjab in CWP No. 4792 of 2003, which was dismissed by this Court on May 6, 2003. Not being satisfied, the State of Punjab filed SLP in the Supreme Court which has been dismissed on 31st January, 2004. In such circumstances, we are of the *prima facie* view that the attitude adopted by the State of Punjab, in the present case, apart from being unreasonable borders on vindictiveness. In such circumstances, Mr. Behl is fully justified in stating before this Court that he will request the department to reconsider the matter.

Adjourned to 30th September, 2004"

(2) On 30th September, 2004, we adjourned the matter to 5th October, 2004. When the matter came up for hearing on 5th October, 2004, Mr. Behl requested the Bench to decide the matter on merits. We heard the counsel for the parties and allowed the writ petition with the following short order :—

"This petition is allowed. The petitioner is directed to be reinstated in service forthwith. The petitioner shall be entitled to the consequential benefits which had been granted by the Labour Court in its award dated 24th May, 2002 with 9% interest from the date of the award till payment.

Detailed reasons to follow."

Here we give the reasons.

(3) On 18th September, 2004 the Prime Minister of this country addressed a joint conference of the Chief Ministers of different States and the Chief Justices of different High Courts of India. The theme of the Conference was "Justice in the 21st Century". Some of the observations made by the Prime Minister at that conference would be relevant in the context of the present writ petition which we reproduce as under :—

"...In this background, it is a matter of great satisfaction that the public at large continues to hold our judiciary in high esteem. The judiciary, as custodians and watchdogs of the fundamental rights of our people has discharged its responsibility very well indeed.

The Supreme Court of India is a shining symbol of the great faith our people have in our judiciary and to our great pride the Supreme Court has earned high praise all over the world. Generations of learned judges have worked to uphold and to nurture this sacred national trust. They deserve our thanks. Our courts have protected our citizens from the exercise of arbitrary power and the inequities of a poor country trying to modernise itself. Though at times, some decisions have appeared controversial, the ultimate verdict of our people is and hopefully will always be that their constitutional rights are safe in the hands of our Supreme Court and our High Courts."

(4) After eulogising the Judiciary of India, the Prime Minister highlighted some of the concerns about the judicial system as follow :—

". . . .There are concerns that are being voiced in some quarters about the delays in disposal of cases and the consequent backlog that has built up over the years . . (Emphasis supplied)

The people of this nation rightfully expect speedy and effective justice. Justice delayed for a common man is justice denied. In delivering justice, courts are torn between two conflicting objectives to deliver timely judgements while at the same ensuring that the rights of any party are not sacrificed at the altar of speed. At the moment, there is a perception that disposal of cases takes an unduly long time. At the same time, there is a backlog of cases that has been built up over the years.

Delays in the judicial process also add to the costs of justice. Equality before law does not translate itself into equality in the real sense of the term unless there is equality of access to legal processes. . . . . ."

(5) After highlighting the problems facing the Indian Judiciary due to the huge backlog of cases, the Prime Minister mentioned some of the primary reasons for the increase in the backlog of cases. One of the solutions suggested by the Prime Minister for reducing the load on the courts is to reduce the quantum of cases that come to the courts.

The Prime Minister referred to a survey conducted in Karnataka in the following words :—

> "One way of reducing the load on courts is to reduce the quantum of cases that come to the courts. A sample survey conducted in Karnataka found that in 65% of civil cases, the government was a litigant, sometimes on both sides. Government litigation crowds out the private citizen from the court system. Much of this government litigation is in the form of appeals and this survey again found that 95% of Government appeals fail. In a way, they are appeals that should not have been made in the first place." (Emphasis supplied)

(6) The aforesaid observations of the Prime Minister make it abundantly clear that public at large continue to hold our judiciary in high esteem. The ultimate verdict of the people is and hopefully will always be that their constitutional rights are safe in the hand of the Supreme Court and the High Courts. But unnecessary litigation is placing a huge burden on the judicial system. The survey conducted in Karnataka found that in 65 % of the Civil Cases, the Government was a litigant. It was also found that 95% of the appeals filed by the Government fail. The Prime Minister noticed that in a way, they are appeals that should not have been made in the first place. We are constrained to emphasize the sentiments of the Prime Minister, in view of the litigation history of the present writ petition. It seems as if the might of State of Punjab had risen in its full strength to crush the very spirit of two workmen who had been fighting without any hope for justice.

(7) In the case of **Brahma Chandra Gupta** *versus* **Union of India (1)** the Supreme Court deprecated the unnecessary litigious attitude of the Union of India. 15 years had been spent in litigation by an Upper Division Clerk, claiming the wages for the period of suspension. His total claim in the suit was ridiculously low amount of Rs. 3,595.07 P. When the Clerk ultimately succeeded the Union of India carried the matter in appeal. The Supreme Court deprecated the conduct of the Union of India in the following words :—

> "4. The learned trial Judge accepted the case of the plaintiff—appellant and decreed the suit with costs.

(1) 1984 (2) S.L.R. 165

Surprisingly, though not unusual these days, for this paitry sum the Union of India carried the matter in appeal. We find it difficult to appreciate this litigious attitude against a clerk in the lower echelon of service more so when no principle was involved. . . . . ."

(8) In the case of the **Central Cooperative Consumer's Store Ltd. through its General Manager** *versus* **Labour Court, H.P. at Shimla and another (2),** the Supreme Court prefaced the judgement as follow :—

"1. How statutory bodies waste public money in fruitless litigation to satisfy misplaced ego is demonstrated by this petition."

(9) In the aforesaid case, services of a Sales Girl was illegally terminated. After 7 years, the Assistant Registrar held that her services had been illegally terminated. She was directed to be reinstated, but back-wages were not granted. Even then the employee accepted the order, but the Management did not permit her to join. Ultimately, the Central Cooperative Consumer's Store Ltd. approached the Supreme Court. The conduct of the Management was commented upon by the Supreme Court in the following words :—

"2. . . . . .Since then the opposite party has been knocking at the door of the petitioner but she was made to approach the appellate authority, the revising authority, the High Court, the Labour Court and finally the High Court again as the petitioner did not succeed anywhere but went to filing appeal and revision forcing the opposite party to file cross appeal or revision or even writ for her back wages and other benefits. Not one authority, even in the cooperative department found in favour of petitioner. Yet the petitioner had the obstinacy not only to approach this Court but to place the blame of inordinate delay on adjudicatory process. Such obstinacy without the least regard of the financial implications could only be indulged by a public body like the petitioner as those entrusted to look after public bodies affairs do not have any personal involvement and the money that they squander in such litigation is not their own." (Emphasis supplied).

(2) J.T. 1993 (3) S.C. 532

(10) In view of the conduct of the Management, whilst dismissing the appeal, the Supreme Court observed as under :—

> "5. Public money has been wasted due to adamant behaviour not only of the officer who terminated the services but also due to cantankerous attitude adopted by those responsible for pursuing the litigation before the one or the other authority. They have literally persecuted her. (Emphasis supplied). Despite unequal strength the opposite party has managed to survive. We are informed that the opposite party has been reinstated. This was put forward as *bona fide* conduct of petitioner to persuade us to modify the order in respect of back wages. Facts speak otherwise. Working life of opposite party has been lost in this tortuous and painful litigation of more than twenty years. For such thoughtless acts of its officers, the petitioner-society has to suffer and pay an amount exceeding three lakhs is indeed pitiable. But considering the agony and suffering of the opposite party that amount cannot be a proper recompense. (Emphasis supplied). We, therefore, dismiss this petition as devoid of any merit and direct the petitioner to comply with the directions of the High Court within the time granted by it. We, however, leave it open to the society to replenish itself and recover the amount of back wages paid by it to the opposite party from the personal salary of the officers of the society who have been responsible for this endless litigation including the officer who was responsible for terminating the services of the opposite party. We may clarify that the permission given, shall have nothing to do with the direction to pay the respondent her back wages. Step if any to recover the amount shall be taken only after payment is made to the opposite party as directed by the High Court."

(11) In our opinion, the aforesaid observations of the Supreme Court are fully applicable to the facts and circumstances of the present case. We now proceed to narrate the salient facts tracing the litigation history between the petitioner, the deceased workman and the State of Punjab.

(12) The petitioner and one Brij Mohan Shukla (hereinafter referred to as "the petitioner" or "the Workmen") were appointed as Seeeper-cum-Water Carrier/Attendants on 6th June, 1997. They fall in the Category of Class IV employees. They were appointed on being selected by the Departmental Selection Committee. The petitioner was put on probation for a period of two years which he claims to have cleared. On 23rd July, 1999, the services of the workmen were abruptly terminated without any cause. The petitioner filed CWP No. 11673 of 2000 in this Court. However, the same was dismissed as withdrawn with liberty to exhaust any other remedy that may be available to him under the law on 8th December, 2000. The workmen served a demand notice under the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). Reference was made to the Labour Court. By award dated 24th May, 2002, the Labour Court held that the orders terminating the services of the workmen on 23rd July, 1999 are illegal, null and void and cannot be said to be proper and justified. Both the workmen were directed to be reinstated with continuity of service and with full back-wages and all allied benefits from the date of their termination i.e. 23rd July, 1999 till their actual reinstatement. The award of the Labour Court was published in the Punjab Gazette on 19th July, 2002, and became enforceable with effect from 17th August, 2002 i.e. after one month of its publication. Both the workmen reported for duty at the respective Civil Dispensaries where they were working at the time when their services were terminated. They were not permitted to join. The workmen thereafter reported for duty to the Deputy Director, Animal Husbandry, Ropar. Their joining reports were officially received in the office of the Animal Husbandry, Ropar on 19th August, 2002. The workmen made a number of representations to the higher authorities which seem to have fallen on deaf ears. Whilst fighting against injustice, Brij Mohan Shukla died on 2nd January, 2003. He has left behind a young widow and an infant male child aged five years. The award of the Labour Court was challenged by the State of Punjab in CWP Nos. 4792 and 4793 of 2003 which were dismissed on 6th May, 2003. Not satisfied, the State of Punjab filed Petition(s) for Special Leave to Appeal (C).. CC 572-573/2004, before the Supreme Court which were dismissed on 30th January, 2004. As no relief was granted by the State of Punjab, the petitioner was constrained to move the Assistant Collector Grade-I and Labour and Conciliation Officer, Gurdaspur seeking implementation of the

award. The Labour Officer, Gurdaspur attached the accounts of the Deputy Director, Animal Husbandry, Gurdaspur for recovery of a sum of Rs. 1,45,260 under the Land Revenue Act, 1887. However, under pressure from the higher officials, he released the salary of Head of the Labour Department. Consequently, not a penny has been paid either to the petitioner or to the LRs of the deceased-workman.

(13) In utter frustration, the petitioner has now filed the present writ petition seeking implementation of the award of the Labour Court, which has been duly confirmed by this Court against which the SLPs filed by the Punjab State have been dismissed by the Supreme Court. The respondents No. 1 to 4 have filed written statement. It has been stated that the petitioner was illegally appointed as Class IV by Dr. Gurdeep Singh (Retd.), officiating Deputy Director, Animal Husbandry, Gurdaspur in the year, 1997 in violation of Government Instructions and without adopting the prescribed procedure. When the violation of the instructions was brought to the notice of the higher authorities by his successor, the services of the petitioner were terminated. Some of the discharged workmen filed writ petitions in this Court which were disposed of with an order dated 8th October, 1998 in CWP No. 13135 of 1998 (Ashwani Kumar *versus* State of Punjab) with a direction that fresh orders be passed after giving action oriented notices. According to the respondents, the reply filed by the petitioner to the action oriented notice was not found to be satisfactory. Thus, his services were terminated by passing a speaking order on 23rd July, 1999. He had been appointed illegally and his services had been terminated in compliance with the orders passed by this Court on 8th October, 1998. In the Labour Court, two points were raised by the respondent-State of Punjab. It was stated that the reference is not maintainable because the department is not an 'industry' as the Punjab Civil Services Rules are applicable to the workmen. Secondly, it was stated that the petitioner was appointed illegally and his appointment was void *ab initio*. It is now pleaded by the respondents that the award given by the Labour Court, dated 24th May, 2002 in favour of the petitioner was not given after appreciating the merits of the case. It is also stated that in view of the judgment of the Kerala High Court in **Ernakulloor Service Cooperative Bank Ltd.** *versus* **Labour Court and others (3)** since the appointment of the petitioner was void

(3) 1986 (II) L.L.J. 492

ab initio, the provisions of Section 25-F of the Act would not be applicable. This very important point of law was not considered by the Labour Court. Civil Writ Petition Nos. 4792 and 4793 of 2003 were dismissed by this Court on 6th May, 2003, by holding that the Animal Husbandry Department of the State Government falls within the definition of 'Industry'. In the order, it was also stated that no other point had been raised. However, the point about the illegal appointment of the petitioner inadvertently was not argued/raised by Counsel for the State of Punjab. Consequently, the Writ Petitions were dismissed. Therefore, the respondent-department is in the process of seeking legal remedy available, including review of the order of this Court dated 6th May, 2002.

(14) We have considered the pleadings of both the parties.

(15) The undisputed position that emerges in this case is that the workmen were appointed as Peon-cum-Water Carrier. They were class IV employees. It is the lowest rung of posts in Government Service. They performed their duties continuously from 6th June, 1999 till 23rd July, 1999. They had worked to the entire satisfaction of their superiors till 8th June, 1999, when they received a notice asking them to show cause as to why their services be not terminated. The workmen submitted the replies, which were found to be unsatisfactory. Hence the order dated 23rd July, 1999 was passed terminating the services of the workmen. Earlier some other workmen similarly situated as the petitioner and Brij Mohan Shukla had filed CWP No. 13135 of 1998. In this writ petition, the workmen had challenged the notices dated 12th February, 1999,—*vide* which the services of the workmen were proposed to be terminated. The writ petition was disposed of with the following observations :—

> "In the result, we allow the writ petition and quash the impugned notices issued by the respondent terminating the services of the workmen/petitioners. However, having regard to the facts of the case, we direct that the respondent should give action oriented notices to the petitioners and pass fresh order within next 3 weeks of receiving the copy of this order."

(16) No notices were issued to the workmen and no compensation was paid under Section 25-F of the Act. It was the case of the respondent-State of Punjab that the department of Animal Husbandry is not an 'Industry' within the meaning of Section 2(j) of the Act. It was also the case of the respondent-State that the petitioner and the others did not fall within the definition of 'workman' as defined under Section 2(s) of the Act. The workmen challenged the order dated 23rd July, 1999 in CWP No. 11673 of 2000. This writ petition was withdrawn by the workmen in order to seek the remedy under the Act. Reference was duly made to the Labour Court and answered in favour of the workmen. Relevant part of the award is as follows :—

> "In the result, in view of my findings on the above issue, I am of the considered view that there is sufficient merit in the instant references, the same succeed and are hereby accepted directing the respondent to reinstate both the workmen with continuity of service and with full back wages and all allied benefits from the date of their termination i.e. 23rd July, 1999 till their actual reinstatement. The workmen will report for duly as and when the award becomes enforceable at law."

(17) The State of Punjab challenged the award by filing CWP Nos. 4792 and 4793 of 2003. As noticed earlier, the writ petitions were dismissed. The Senior Additional Advocate General appearing for the State of Punjab argued that the Animal Husbandry department is not an "Industry" within the meaning of Clause (j) of Section 2 of the Act. He placed reliance on the amended definition of "Industry" as introduced by the Act 46 of 1982. The Division Bench dismissed the writ petition with the following observations :—

> "We do not find any merit in this contention. The amended definition as introduced by the Act 46 of 1982 has not yet been notified by the Central Government and therefore, the same is not in force. In view of the law laid down by the Apex Court in Bangalore Water Supply and Sewerage Board *versus* A. Rajappa and others, AIR 1978 S.C. 548, we are clearly of the view that the Animal Husbandry Department of the State Government falls within the definition of industry as given in the Act.

No other point has been raised.

In the result, the writ petitions fail and the same stand dismissed *in limine.*

(Sd.)
N. K. Sodhi, Judge

May 6, 2003. (Sd.)
Ashutosh Mohunta, Judge"

(18) Not satisfied the State of Punjab filed Petition(s) for Special Leave to Appeal (C) ..... CC 572-573/2004. They were filed alongwith the application for condonation of delay. The Supreme Court condoned the delay, but dismissed the Appeals. One would have thought that the appeals having been dismissed by the Supreme Court, the State of Punjab would now implement the award of the Labour Court. But no ! Respondents-State of Punjab perseveres in giving a good justification for their action. In the written statement to the present writ petition, it is reiterated that the appointments of the workmen were void *ab initio*, and therefore, could be terminated without complying with provisions of Section 25 of the Act. In an effort to escape the findings of the High Court, it is stated that the petitioner was illegally appointed by Dr. Gurdeep Singh (Retd.) officiating Deputy Director, Animal Husbandry in the year 1997. He did not bother to follow the instructions of the Director, Animal Husbandry issued,—*vide* telegram dated 14th February, 1997 and letter No. 3457—90 E. 7 dated 17th February, 1997. It is further pleaded that in a subsequent award dated 5th May, 2004 in the case of Partap Singh *versus* Dy. Director, Animal Husbandry, Gurdaspur, in a matter of exactly similar facts/nature, the reference was rejected. It was held that the workman is not entitled to any relief. It is further pleaded on behalf of the respondents—State of Punjab that while dismissing CWP Nos. 4792 and 4793 of 2003, the Division Bench of this Court had held that "the Animal Husbandry Department of the State Government falls within the definition of "Industry". In the aforesaid order, it was also stated that "No other point has been raised". Respondents now claim that even if the point was not argued, it was certainly pleaded in CWP No. 4792 of 2003. It was pleaded that the services of the workman were terminated as his appointment was illegal and this point formed the main crux of this writ petition. Moreover termination

was done after giving action oriented notice in compliance of the Hon'ble Court's order dated 8th October, 1998 in Civil Writ Petition No. 13135 of 1998-Ashwani Kumar *versus* State of Punjab. But somehow by inadvertance, the question of illegal appointment was not argued/raised as a result of which the CWP No. 4792/03 was dismissed by this Hon'ble Court on 6th May, 2003". Therefore, the State of Punjab has filed a review petition, notwithstanding the fact that Special Leave Petitions have been dismissed. It is categorically stated that "dismissal of SLPs at grant of special leave stage does not prevent seeking review of the High Court order by filing review petition in this Hon'ble Court". Now the reinstatement of the workman is denied on the ground that since the matter is subjudice, the representations filed by the workman for reinstatement could not be considered. Thereafter, it is also stated that the respondent—State holds the High Court in high esteem and cannot think to disobey the order of this Court. The respondent has not violated the orders of learned Labour Court or the order of this Court dated 6th May, 2003. It has only challenged these orders in the competent Court of law.

(19) The facts narrated above clearly show that the State of Punjab has disregarded with impunity the award of the Labour Court which became executable with effect from 17th August, 2002. Even if it is assumed that the State of Punjab had a valid reason for challenging the award in the High Court, it would be no justification to not comply with Section 17-B of the Act. Even if it is assumed that the State of Punjab was justified in not complying with Section 17-B of the Act during the pendency of the writ petition, it was incumbent on the State of Punjab to grant the relief to the workmen when the writ petition was dismissed by the High Court on 16th May, 2002. Even at this stage, the State of Punjab steadfastly refused to implement the award. The justification given is that judgment of this Court was challenged in the Supreme Court. Even if it is assumed that the State of Punjab was justified in filing the SLPs, it would be difficult to hold that they were justified in not reinstating the workmen after the SLPs were dismissed by the Supreme Court. Even now the State of Punjab is determined not to reinstate the petitioner at this stage. The other workman Brij Mohan Shukla, very sadly and unfortunately died on 2nd January, 2003. He has left behind a very young widow and an infant child, 5 years of age. He was unable to sacure any employment ever since his services were illegally terminated. We have not been informed either by the counsel for the petitioner or by the learned

counsel for the State of Punjab as to whether any consequential benefits have been paid to the legal representatives of the deceased workman. But from the attitude displayed by the State of Punjab so far, it would not be unseemly for the Court to assume that no financial help would have been given to the widow and the infant child of the deceased workman. The State of Punjab has justified the filing of the Review Petition on the ground that the main thrust of the case of the State of Punjab had not been argued, inadvertantly before the Division Bench which dismissed the Civil Writ Petition No. 4792 of 2003 on 6th May, 2003. The respondents had been at pains to point out in the written statement that main thrust of the case was illegal appointment of the workmen by the then officiating Deputy Director. The State of Punjab seeks sustenance for the aforesaid argument from the subsequent award given by the Labour Court, Gurdaspur on 5th May, 2004. We are of the considered opinion that the aforesaid findings of the Labour Court, Gurdaspur are wholly irrelevant to the case of the workmen involved in the present proceedings. The Labour Court in its award dated 24th May, 2002 had categorically held that Animal Husbandry Department is an "Industry" within the meaning of Section 2(j) of the Act. The plea of the respondent—State that the workmen had been working in the office and not in the Civil Dispensary had been rejected after evaluating the evidence led by the parties. The Labour Court also rejected the argument that the applicants were not covered under the definition of "workman" as defined under Section 2(s) of the Act. The Labour Court further notices that services of 79 Class IV employees had been terminated on the ground that they had been illegally appointed. These employees had filed CWP No. 13135 of 1998. The writ petition was allowed with the observations noticed above in the earlier part of the judgment. Instead of complying with the provisions of Section 25 of the Act, the State of Punjab wholly misconstrued the observations made by the Division Bench and issued notices to the workmen to show cause as to why their services be not terminated. The order of the High Court was stated to be complied with by passing speaking orders. Taking note of the aforesaid attitude of the respondents—State of Punjab, the Labour Court observed as follows :—

> "17. Now it has to be seen as to what was the meaning of the direction of the Hon'ble High Court. The Hon'ble High Court had directed the respondent,—*vide* order dated 6th October, 1998 that the action against the workmen

regarding termination of their services should be taken after serving action oriented notice. I agree with the learned Authorised Representative of the workmen that the intention of the Hon'ble High Court was that the respondent should issue notice to the workmen if they want to terminate the services of the workmen under the provisions of Section 25-F of the Act. In other words, they should issue one month's notice or pay in lieu thereof and to pay retrenchment compensation equivalent to 15 days salary for each completed year before or at the time of termination of their services. But the respondent had served notices dated 12th February, 1999 giving the details regarding illegality of the order of the appointments made by Dr. Gurdip Singh, Dy. Director. But they have not issued notice under Section 25-F of the Act and they have terminated the services of the workmen concerned after getting their replies of the notice dated 12th February, 1999. It is not the case of the respondent that they have complied with the provisions of Section 25-F of the Act before terminating the services of the workmen concerned. As per settled law, where a workman completes continuous service of 240 days in a calendar year, his services cannot be terminated without complying with the mandatory provisions of Section 25-F of the Act. The respondents under this section were bound to issue one month notice proposing termination of services of the workmen or to pay retrenchment compensation and one month's salary in lieu of one month notice before or at the time of termination of their services. But in the instant cases, nothing has been done by the respondent and as such there is clear violation of mandatory provisions of Section 25-F of the Act because the services of the workmen who had completed about 2 years continuous service could not be terminated without complying with the mandatory provisions of Section 25-F of the Act and as such the violation of this mandatory provision makes the termination orders passed by the respondent against the workmen terminating their services from 23rd July, 1999 as illegal, null and void and not binding on the rights of the workmen. The plea taken by

the respondent that Dy. Director, Dr. Gurdip Singh was not competent to make appointments is of no consequence and does not effect the cases of the workmen because the workmen were given appointments orders after taking interview and they have actually worked for a period of 2 years. As mentioned in their statement of claims.

18. In view of what has been discussed above, I am of the considered view that the orders terminating the services of the workmen on 23rd July, 1999 are absolutely illegal, null and void and cannot be said to be proper and justified. As such this issue is decided accordingly against the respondent and in favour of the workmen.

Issue No. 2 (Relief) :

17. In the result, in view of my findings on the above issue, I am of the considered view that there is sufficient merit in the instant reference, the same succeed and are hereby accepted directing the respondent to reinstate both the workmen with continuity of service and with full back wages and all allied benefits from the date of their termination i.e. 23rd July, 1999 till their actual reintatement. The workmen will report for duty as and when the award becomes enforceable at law."

(20) The aforesaid observations of the Labour Court make it abundantly clear that the action of the State of Punjab was held to be absolutely illegal, null and void and unjustified. These findings of fact recorded on the basis of the evidence led in the particular reference cannot be nullified or diluted by the award subsequently given by the Labour Court in a wholly independent reference. More so, when the award rendered in the case of the workmen has been upheld by a Division Bench of this Court. To make it even worse, the SLPs filed by the State of Punjab have also been dismissed. Therefore, the award as well as the judgment of the High Court have become final and binding between the parties. We are, therefore, of the opinion that the attitude of the State of Punjab is not only unjustified, but is vindictive. Merely because a point of law was not argued would not afford a justification to seek review of the original order passed by the Division Bench of this Court on 6th May, 2003, after the SLPs have been dismissed. We were constrained to trace the entire history of the litigation in view of

the observations of the Supreme Court and the sentiments of the Prime Minister extracted at the beginning of this judgment. We are of the opinion that sentiments expressed by the Prime Minister, that the State may some times indulge in wholly unnecessary litigations, have been epitomised by the sad tale of this case.

(21) Following the observations made by the Supreme Court in the case of the Central Cooperative Consumer's Store Ltd. (supra), we direct that a proper enquiry be held and responsibility be fixed on the officer(s) that recommended the continuation of the litigation against the workmen. The State of Punjab shall be at liberty to recover any loss caused to the State of Punjab from the personal salary of the officer(s) who have been responsible for this relentless litigation, including the officer who was responsible for terminating the services of the petitioner and the deceased-workman. Lest our order dated 5th October, 2004 is misinterpreted, we make it clear that the petitioner is entitled to the consequential benefits of back-wages from the date his services were illegally terminated. However, interest at the rate of 9% will be payable from the date of the award. Since the LRs of the deceased workman are not petitioners in the present proceedings, we are unable to issue a writ in the nature of Mandamus for the grant of consequential benefits to them, which were due to the deceased workman. We must, however, notice that the deceased workman was a party to the award dated 24th May, 2002, which was confirmed by a Division Bench of this Court. SLP against the judgment of the Division Bench was also dismissed by the Supreme Court. He was identically situated to the present petitioner. Whilst fighting against injustice, he died on 2nd January, 2003. Hence he is not a party in the present petition. We would, therefore, strongly recommend to the State of Punjab to grant the same relief to the LRs of the deceased-workman by way of consequential benefits, without compelling the widow and the infant child to move this Court for the same relief which we have granted to the present petitioner. We would have been justified in imposing very heavy costs on the respondents. But, we refrain from doing so, in the larger public interest.

(22) Copy of this order be given to the Advocate General, Punjab for onward transmission to the Chief Secretary of the State of Punjab for information and necessary action.

N.R.S.

5831/HC—Govt. Press, U.T., Chd.