Before Augustine George Masih & Sandeep Moudgil, JJ.

STATE BANK OF INDIA, CHIEF GENERAL MANAGER, LOCAL HEAD OFFICE, SECTOR 17, CHANDIGARH—*Appellant*

versus

LALIT JOSHI AND OTHERS—*Respondents*

LPA No.1135 of 2019 (O&M)

February 10, 2022

Constitution of India, 1950—Arts.226 and 227—Letter Patents Appeal—Code of Civil Procedure, 1908—S.151—Minimum Wages Act, 1948—S.2—Industrial Disputes Act—S.25(g)—Existence of relationship between employer and employee—Bank canteen waiter an employee of bank- the order of the writ court upheld—Petitioner was working as a canteen waiter at the SBI Branch Chandigarh—His services were dispensed with and juniors were absorbed—Held, the canteen waiters were appointed by the Chief Manager of the bank who is also the ex-officio manager of the canteen—Wages were paid from the subsidy given by the bank—Canteen was being facilitated by its recognized agency called LIC (Local Implementation Committee)—Hence, the canteen workmen would fall within the definition of workman under Section 2(s) of the Act of 1947—Further, his termination is held illegal and arbitrary as no evidence was adduced to demonstrate that the workman was not suitable for the job—LPA dismissed.

Held that, the vital question to be adjudicated in these appeals, as to whether the relationship of employer - employee exists, revolves around the fact that the workmen (respondent no.1 in both appeals) joined the service as Canteen Waiter on 01.01.1990 at monthly wages of Rs.350/- per month with the duty hours from 09:30 am to 05:30 pm. Their services were, however, dispensed with on 27.07.1995 and juniors to the respondent no.1 – workmen were absorbed in violation of Section 25(G) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act of 1947') as well as against the principle of “last come, first go”. Since the compensation was also not paid as required under the Act of 1947, a demand notice was served upon the appellant – Management praying for setting aside the retrenchment with a direction to reinstate workmen in service with full back wages.

(Para 4)

Further held that, having heard learned counsel for the parties and after perusal of the pleadings from the record, the admitted factual matrix as is culminated is recorded here-in-below:- i The respondents were engaged as Canteen Waiters in January 1990 along with five others, who were junior to them from the date of engagement in the Zonal Office, State Bank of India, Sector 17, Chandigarh; ii These canteen waiters were appointed by the Chief Manager who doubled up as Ex officio Manager of the canteen run by the bank for its employees. They were being paid salary @ Rs.350/- per month serving from 09:30 am to 05:30 pm and no qualifications were prescribed for the such job of Canteen Waiters;

(Para 17)

Further held that, on a careful reading of the aforesaid statutory provisions collectively, if case, in hand, is tested within the four corners of these definitions, it will be apparent that the respondent no.1 – workmen had put in around five and half years of continuous service and the procedure for retrenchment was not duly adhered to.

(Para 20)

Further held that, the factum of conducting interview by the Selection Committee of the appellant – Management is admitted with the further admission that the workmen – respondent no.1 were not selected being not found suitable. However, the record of such interview, and selection made by such committee, was not made available and did not see the light of the day, even before the Tribunal and this Court despite various opportunities having been granted by the learned Single Judge. It is undisputed that the workmen – respondent no.1 had remained in service w.e.f 01.01.1990 to 27.07.1995 as has been admitted by MW1, V.K.Maurya in his cross examination. The appellant – Management has not adduced any evidence to demonstrate that one month's salary in lieu of any notice under Section 25(F) of the Act of 1947 was paid. Even the principle of "last come, first go", has not been followed, therefore, clear cut violation of Section 25(G).

(Para 35)

Further held that, the provisions of Section 25 (F) of the Act of 1947 are mandatory in nature and violation thereof, while terminating the services, renders the whole action of the appellant – Management to be illegal, arbitrary and vitiated due to violation of the Rules of natural justice and therefore, is not sustainable in law.

(Para 36)

Madhu Dayal, Advocate
for the appellant.

Ashok Sharma Nabhewala, Advocate
for respondents.

SANDEEP MOUDGIL, J.

CM No.1842 LPA of 2020 in LPA No. 1156 of 2019

(1) The present application under order 22 Rule 4 read with Section 151of CPC is to bring on record the legal representatives of Som Dutt (since deceased), applicant-respondent no.1.

Heard.

Applicants i.e Parveen (widow), Inderprasth Mehta and Mohit Mehta (both sons), as mentioned in para 4 of the application, are impleaded as legal representatives, subject to all just exceptions.

The application is accordingly allowed.

Amended memo of parties is taken on record.

LPA No. 1135 of 2019 and LPA No. 1156 of 2019

(2) Since the common questions of law and fact are involved in the two LPAs i.e LPA No.1135 of 2019, "State Bank of India versus Lalit Joshi and others" and LPA No.1156 of 2019, "State Bank of India versus SomDutt (deceased) through LRs and others", the same are being decided by the common order, however, the facts are being taken from LPA No. 1135 of 2019 whereas the date of engagement in service as well as termination from service are identical in both appeals.

(3) The appellant – State Bank of India has preferred the instant intra court appeal being aggrieved against the Award and the order dated 30.04.2019, passed by the learned Single Judge, vide which the writ petitions preferred by the State Bank of India were dismissed upholding the aforesaid Award dated 13.08.2018, passed by Central Govt. Industrial Tribunal – cum- Labour Court (hereinafter referred to as 'Tribunal'), Chandigarh and it was ordered that Award passed by the Tribunal below be implemented without any delay.

(4) The vital question to be adjudicated in these appeals, as to whether the relationship of employer - employee exists, revolves

around the fact that the workmen (respondent no.1 in both appeals) joined the service as Canteen Waiter on 01.01.1990 at monthly wages of Rs.350/- per month withthe duty hours from 09:30 am to 05:30 pm. Their services were, however, dispensed with on 27.07.1995 and juniors to the respondent no.1 – workmen were absorbed in violation of Section 25(G) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act of 1947') as well as against the principle of "last come, first go". Since the compensation was also not paid as required under the Act of 1947, a demand notice was served upon the appellant – Management praying for setting aside the retrenchment with a direction to reinstate workmen in service with full back wages.

(5) The Tribunal below, vide its Award dated 13.08.2018, held that the workmen – respondent no.1 were performing duty to a post of regular and perennial nature and therefore, are entitled for re-instatement in service on the same post with 50% back wages inasmuch as the termination of the claimant-workmen-respondent no.1 is *per se* illegal, particularly when the claimant – workmen are not gainfully employed anywhere since their termination.

(6) In support of her contentions to challenge the order dated 30.04.2019, passed by the learned Single Judge, Ms. Madhu Dayal, learned Advocate for the Management – appellant, submitted that the employees of canteen would not become employees of the bank as the bank does not have any statutory or contractual/obligations arising under any Award/Settlement to run such canteens. It was further submitted that such canteens are run at various branches of State Bank of India, by the Local Implementation Committee (hereinafter referred to as 'LIC'), as per the welfare scheme framed by the bank and, as such, there is no privity of contract or any agreement was ever arrived at, entered or executed between the Management and the respondent no.1 – workmen.

(7) Apart from the above, Ms. Madhu Dayal, learned Advocate contended that the workmen were never appointed by the appellant – Management as there is no post of Canteen Waiter in the bank under any statutory rules. It was also denied that 11 canteen workers were ever employed by the appellant bank - Management while adding that the wages being paid to respondent no.1 – workmen were also by the LIC and not by the Management of the bank.

(8) Learned counsel for the appellant also argued that the learned Single Bench as well as the Tribunal below have merely relied

upon the findings recorded by the authority under the Minimum Wages Act, 1948, (hereinafter referred to as 'Act of 1948') without appreciating the fact that the order dated 23.05.1995 under the Act of 1948, had been passed upon entirely different edifice. Appellant's counsel summed up her arguments with the averment that as the relationship of employer - employee does not exist between the appellant - Management and the respondent no.1 – workmen, hence there is no violation of Section 25(G) of the Act of 1947.

(9) Reliance has been placed by appellant on a judgment rendered by the Apex Court in ***State Bank of India and others*** versus ***State Bank of India Canteen Employees Union (Bengal Circle) and others***[1], submitting that the employees – workmen in such canteens were not under the control of the bank and their appointments are not governed bythe rules framed by the SBI. Ms. Madhu Dayal, Advocate has also gone to the extent of taking support of the aforesaid judgment while arguing that since the workmen – respondent no.1 were never engaged by the appellant – Management, no industrial dispute in terms of Section 2 (K) of the Act of 1947, exists inasmuch as there must be a relationship of master and servant between parties.

(10) Reliance has also been placed on another Apex Court Judgment in ***Employers in relation to the Management of Reserve Bank of India*** versus ***Their Workmen***[2] to conclude submissions and finally stressing upon the argument to the effect that since no such relationship of employer - employee exists between the appellants – Management and respondent no.1, the present appeals deserve to be allowed.

(11) On the other hand, Sh.Ashok Sharma Nabhewala, learned Advocate for the respondent no.1 – workmen submitted that the respondent no.1 – workmen were engaged as Canteen Waiter in the Zonal Office, State Bank of India, Sector 17, Chandigarh in January 1990, along with five other Canteen Waiters, namely Tula Ram, Ashok Kumar, S.K.Mishra, Sarup Singhand Arvind Sharma, who were junior to them from the date of engagement. They were appointed by the Chief Manager, who doubled up as Ex-officio Manager of the canteen, which is run by the Bank through its staff. No qualifications were prescribed for the job of Waiter and several of them were appointed at a salary of Rs.350/-per month with the duty hours from 09:30 am to

[1] (2000) 5 SCC 531
[2] 1996(2) RSJ – 332

05:30 pm, i.e, during banking working hours. Their job was to provide tea, lunch etc. to all the employees of the Zonal office comprising of large contingent.

(12) It was further submitted on behalf of respondent no.1 – Workmen that there were 18 canteen workers shift-wise at the relevant time and a LIC was constituted to control, supervise and manage the subsidized canteen on behalf of the Management of the State Bank of India – appellants.

(13) Mr. Ashok Sharma Nabhewala, learned counsel for the workmen, while replying to the alleged wrong reliance to the order dated 23.09.1995 of the authority under the Act 1948, contends that the workman and other canteen workers filed a joint application under Section 20 of the Act of 1948, before the authority claiming that they were being paid only Rs.350/- per month whereas they should have been paid wages specified under the Act of 1948.

(14) In the said proceedings, on dispute to the working hours, a Local Commissioner was appointed and on the basis of the report submitted by the Local Commissioner, the Authority under the Act of 1948, held that the workmen were working the whole day. Accordingly, the claim of all the workers including the present workmen - respondent no.1 was allowed along with minimum wages and compensation to the extent of four times of the amount actually payable by way of penalty to be borne by the Management, vide its order dated 23.09.1995. The said order was put to challenge before this Court in CWP No.9240 of 1995 which was dismissed on 15.11.1995 with the following observations:-

> "...Instead of extending a helping hand to the uneducated poor employees, the attitude of the authorities appears to be heartless, callous and totally unexpected or premier bank whose other regular employees are getting the best emoluments in the country as compared to their colleagues in other corporations/departments. It appears that attitude of the petitioner-bank is to suck the blood of poor uneducated labour by exploiting them by paying them a sum of Rs.350/- per month in this era of high cost of living. In our considered view, the penalty imposed is rather on the light side. In such type of cases, the authorities are expected to impose exemplary penalties. Even this penalty, the

petitioner State Bank of India has not taken supportingly and has come to this Court to invoke Court's extra ordinary writ jurisdiction to challenge the rate of penalty.

In view of the observations made above, we find no force in the writ petition which is only a callous attempt to harass the workers with a view to extract monetary concession from them. We are further of the view that the authorities must ensure appropriate steps to be taken against the officers, who have failed to make payment of Minimum Wages to the Bank Workers. The Writ petition is dismissed with costs of Rs.1,000/- to be paid to each respondent worker."

(15) Mr. Nabhewala, learned Advocate, drew the attention of this Court to a circular dated 30.11.1994 issued by the State Bank of India to all its General Managers (Operation) Zonal Office, Punjab, Staff Canteen, advising that while shifting of local head office on 01.07.1989, the staff canteen being run by the bank also must shift to the existing new building in Sector 17, Bank Square, Chandigarh. It was further advised that the canteen may please be taken over by the bank and the employees presently engaged by LIC will be interviewed by a Selection Committee for considering them for permanent appointment in the bank.

(16) In the light of such background coupled with the fact that instead of giving absorption to the workmen – respondent no.1, the appellant – Management on 27.07.1995 verbally ordered the retrenchment and absorbed junior workers namely Tula Ram, Ashok Kumar, S.K.Mishra, Sarup Singh and Arvind Sharma in utter violation of the provisions of Section 25 (G) of the Act of 1947, without paying any compensation as well as against the principle of "last come, first go". Mr. Nabhewala summed up finally with the prayer that the Award dated 13.08.2018 and the order dated 30.04.2019 passed by the Tribunal below and the learned Single Judge respectively are just legal and fair and, therefore, the intra court appeals be dismissed.

(17) Having heard learned counsel for the parties and after perusal of the pleadings from the record, the admitted factual matrix as is culminated is recorded here-in-below:-

i The respondents were engaged as Canteen Waiters in January 1990 along with five others, who were junior to them from the date of engagement in the Zonal Office, State

Bank of India, Sector 17, Chandigarh;

ii These canteen waiters were appointed by the Chief Manager who doubled up as Ex officio Manager of the canteen run by the bank for its employees. They were being paid salary @ Rs.350/- per month serving from 09:30 am to 05:30 pm and no qualifications were prescribed for the such job of Canteen Waiters;

iii In the year 1993, the respondent No.1 – workmen, along with other Canteen Waiters, filed an application under Section 20 of the Minimum Wages Act of 1948, for seeking wages as specified under the said Act for the job instead of Rs.350/- per month. After seeking a report by appointing a Local Commissioner, these applications were allowed by the authority vide order dated 23.05.1995 (Annexure P-1).

iv A circular dated 30.11.1994 was issued by the State Bank of India for the Zonal Office, Punjab, Staff canteen to the effect that said canteen being run by the Bank also must shift along with the shifting of local head office at New Building, Sector 17, Bank Square, Chandigarh;

Civil Writ Petition No.9240 of 1995 preferred against the order dated 23.05.1995 was dismissed vide order dated 15.11.1995, with the observations that it is a frivolous litigation by an unscrupulous administration of public institutions like State Bank of India for ulterior reasons or just to satisfy their personal egos.

v On 28.02.1995, the DGM of appellant – Management submitted before the authority under the Act of 1948 that the canteen has been taken over by the Zonal Office, Punjab and employees including the respondent no.1 – workmen working in the said canteen will be absorbed on regular basis.

vi The LIC had engaged 10 employees and it was advised that the canteen be taken over by the bank and six employees including cooks, bearers and dish cleaners be appointed in it. They were to be interviewed by a Selection Committee for considering six of them for permanent appointment, subject to their fulfilling the eligible criteria.

(18) Such interviews were conducted on 21.07.1995 by a committee nominated by the DGM (Establishment)comprising of four officers of the bank. A merit list was prepared with approval of six names, which did not mention the names of respondents no.1 - workmen;

> vii It is the case put forth by the appellant – Management that as a fallout of the interview and appointment of six workmen, if the respondents were dis-engaged from service, and it formed subject matter of Industrial reference before the Labour Court.

(19) Coming back to the primary issue with regard to the relationship of employer and employee between the parties to the *lis*, this Court has considered the definition from the relevant statute wherein the definition of 'workman' has been assigned the same meaning as it is in the Industrial Disputes Act, 1947. Section 2(s) of the Act of 1947 has defined the 'workman' as under:-

> *"**The Industrial Disputes Act, 1947**:-*
>
> **Section 2(s) 'workman'** means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led tothat dispute, but does not include any such person-
>
> (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 62 of 1957); or
>
> (ii) who is employed in the police service or as an officer or otheremployee of a prison; or
>
> (iii) who is employed mainly in a managerial or administrativecapacity; or
>
> (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties

attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

Further the word 'employer' has been defined in Section 2(g) of the Act of 1947 as well as in Section 2(e) of The Minimum Wages Act, 1948, which read as under:-

Section 2(g) of the Act of 1947

The Minimum Wages Act, 1948

Section 2(e) "employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees inany scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except insub-section(3) of Section 26,-

(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under [clause (f) of sub section (1) of section 7 of the Factories Act, 1948 (63 of 1948), as manager of the factory;

(ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no personor authority is so appointed, the head of the department;

(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

(iv) in any other case where there is carried on any scheduled employment in respect of which minimum ratesof wages have been fixed under this Act, any person responsible to the owner for the supervision and control of the employees or for the payment of wages;

This Court consciously would refer to the definition of 'employee' as envisaged in Section 2(i) of the Minimum Wages Act, 1948:-

"The Minimum Wages Act, 1948

Section 2(i) "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out- worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the [Union].

(20) On a careful reading of the aforesaid statutory provisions collectively, if case, in hand, is tested within the four corners of these definitions, it will be apparent that the respondent no.1 – workmen had put in around five and half years of continuous service and the procedure for retrenchment was not duly adhered to.

(21) At this stage, the most essential factor to be examined before this Court is to test the basis of selection which was matter of challenge in this round of litigation.

(22) Further examination of the record makes it absolutely clear that the Management was unable to produce the record of Interview Committee before the Labour Court despite specifically calling for it and there is no cogent material whatsoever available from where rights under Section 25(G)and 25(H) can be judicially determined, apart from the lacuna resulting into violation of Section 25(F) of the Act of 1947.

(23) A perusal of the letter dated 20.02.1995 (Annexure P-8) written by the Deputy General Manager, Zonal Office, Punjab, depicts that a categoric decision had been taken that the employees working in canteen at Zonal Office (Punjab) will be given an opportunity to be considered for appointment in the bank's service on their fulfilling the eligibility criteria. This decision further derives support and passes the acid test on the touch stone of communication dated 17.09.1994, Ex.W1/8 (Annexure P-11) and Advisory dated 30.11.1994 Ex.W1/7 (Annexure P-10) in the form of recommendation apart from note dated

25.07.1995 Ex.W1/6 (Annexure P-9)before the Tribunal below.

(24) The finding of fact returned by the Tribunal below does not suffer from any illegality as has been considered by this Court on perusal of aboveevidence which makes it crystal clear that the Central office vide letter dated 07.09.1994 had decided to take over the canteens and the 10 employees engaged by the LIC will be interviewed by a selection committee for considering them for their permanent employment in the bank.

(25) The communication dated 25.07.1995 Ex.W1/6 (Annexure P-9) made by the Personnel Section, State Bank of India, Zonal Office (Punjab), is self-explanatory to the admitted fact that an interview of the workers of canteen was actually conducted on 21.07.1995 by a duly nominated Interview Committee comprising of Deputy General Manager – Chairman, Chief Manager (Per), ZOPB, Member, Chief Manager (OAS) ZOPB, Member and Assistant Manager, Ram Darbar Chandigarh Branch – Member (SC/ST Officer). It is all the ten workers of the canteen including the respondent– workmen were interviewed for appointment in the bank as canteen boys but respondent no.1 - workmen were not selected.

(26) Such action of the appellant – Management was questioned by the workmen – respondent no.1 vide CWP No.11143 of 1995 – "**Som Dutt and others v. SBI and others**". The said writ petition was disposed of vide order dated 25.11.2012 relegating the workmen to avail alternative remedy under the Industrial Disputes Act in accordance with law.

Further in the affidavit Ex.W-1, the workman – respondent no.1 has taken a categoric stand to the effect that on 21.07.1995, the bank absorbed junior persons namely Tula Ram, Ashok Kumar, S.K.Mishra, Sarup Singh and Arvind Sharma as against the respondents – workmen, who were otherwise senior.

(27) Astonishingly the reference to the cross examination of MW-1 V.K.Maurya, clearly indicates admission to the effect that the respondent - workmen remained in service from 01.01.1990 to 27.07.1995 in the State Bank of India. Since, Section 25(G) of the Act of 1947 could only be satisfied on production of tangible record pertaining to the selection for exception to the Rule of "last come, first go". In the absence of any record and also on account of the fact that the merit positions remained unknown while filling up alleged six

vacancies, the stand taken by the workmen relating to the violation of section 25(G) and 25(H) of the Act of 1947 had gone unchallenged.

(28) The opportunities provided to the Management does not confine to the proceedings before the Tribunal but were also provided by the learned Single Bench, vide interim orders dated 31.01.2019, 05.02.2019 and finally by specific directions recorded in order passed on 13.02.2019, which reads as under-

> "Petitioner-State Bank of India to file an additional affidavit disclosing number of canteen workers in the State Bank of India, Punjab Zonal Office, Sector 17-B, Chandigarh during the period 1994-95 and the status of canteen in the Local Head Office (LHO), Sector 17, which is nearby to the Punjab Zonal Office in a new building. Bank would also disclose the date when the new building of LHO was occupied. The number of canteen workers in LHO in 1994-95 and today be also disclosed. They should also disclose the current strength of canteen workers in the Punjab Zonal Office. When the six canteen workers were selected and absorbed after interviews, were they transferred from the Punjab Zonal Office in LHO. Those orders be placed on record. If any, with the additional affidavit to know the method adopted to transport them from Punjab Zonal Office to LHO.
>
> List again on 22.02.2019.
>
> Compedium of judgments supplied by both the counsel be keptin the Tablaq.
>
> A photocopy of this order be placed on the connected file."

(29) Though, an affidavit of Sh. Manoj Kumar Gupta, Chief Manager (H.R), Administrative Office, State Bank of India, Sector 17, Chandigarh dated 22.02.2019 was filed by the Management – SBI, however, no record whatsoever, was produced except raising the repeated bald pleadings as were raised before the Tribunal. The best evidence does not exist on file.

(30) It is also available on record that the question as to whether the respondent no.1 are workmen of the bank, stands answered in an earlier round of litigation arising out of proceedings under the Minimum Wages Act in CWP No. 11143 of 1995.

(31) This Court is of the considered view that the ratio in the

judgment ***State Bank of India and others case*** **(supra)** would not be of anyhelp to the appellant inasmuch as the facts were distinct from the presentcase particularly on account of the issue that the canteen has since been taken over in the year 1995 with the provision for appointing the Canteen Waiters in the bank on regular basis which came directly within the administrative control of the bank. The findings recorded by the authority under the Minimum Wages Act, 1948 were confirmed in CWP No. 9240 of 1995 preferred by State Bank of India, which was dismissed with costs. The order passed by the said authority was duly implemented and minimum wages were being paid to the respondent no.1 – workmen. To the mind of this Court, the issue relating to the relationship of employer – employee between the parties has already been decided and attained finality which would be unfair on the part of the Management to re-agitate the same inview of the principles of estopples and res-judicata as has been observed by the Apex Court in the case of ***Hope Plantation Ltd.*** versus ***Taluk Land Board, Peer Made and another***[3], which reads as under:-

> "It is settled law that the principles of estoppels and resjudicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppels, though two doctrines differ in some essential particulars. Rule of resjudicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are stopped from questioning it. They cannot litigate again on the same cause of action, nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppels" and "issue stopped". These two terms are of common law origin. Again once, an issue has been finally determined, parties can not subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum, if available ".

(32) Another test to determine the term 'workman', there is no

[3] (1999) 5 SCC 590

classification between a full time and a part time employee and such employee need not necessarily be on regular basis for doing whole time job. It has been well interpreted in so many words by the Hon'ble Supreme Court in the case of ***Davinder Singh*** versus ***Municipal Council, Sanaur***[4], wherein it was observed as under:-

> "The source of employment, the quantum of recruitment, the terms & conditions of employment / contract of service, the quantum of wages / pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

(33) In the present case, the wages to the respondent no.1 – workmen were paid from the subsidy given by the appellant – State Bank of India – Management and out of the amount collected from the employees. The purpose of engagement in service of the respondent no.1 – workmen was to manage and run the canteen which is being facilitated through its recognized agency called LIC. As such, in the light of these facts, the respondent no.1 – workmen do fall within the definition of "workman" under section 2 (s) of the Act of 1947. Therefore, the finding recorded by the Tribunal below as upheld by the learned Single Judge does not suffer from any patent illegality or error in law.

(34) Now, the question, for consideration arises, is, whether the retrenchment / termination of the workmen – respondent no.1 is illegal? The case of the respondent no.1 – workmen is that they have been retrenched / terminated from service w.e.f 27.07.1995 without any compensation and without following the provisions of Section 25(G) and 25(H) of the Act of 1947. In the affidavit Ex.W-1 the workmen– respondent no.1 categorically deposed that on 21.07.1995, the Management – appellant at the cost of seniors absorbed junior persons

[4] AIR 2011 (SC) 2532

namely Tula Ram, Ashok Kumar, S.K.Mishra, Sarup Singh and Arvind Sharma, despite the fact that they had completed continuous service from 01.01.1990 to 27.07.1995 without any break and no compensation has been paid to them.

(35) The factum of conducting interview by the Selection Committee of the appellant – Management is admitted with the further admission that the workmen – respondent no.1 were not selected being not found suitable. However, the record of such interview, and selection made by such committee, was not made available and did not see the light of the day, even before the Tribunal and this Court despite various opportunities having been granted by the learned Single Judge. It is undisputed that the workmen – respondent no.1 had remained in service w.e.f 01.01.1990 to 27.07.1995 as has been admitted by MW1, V.K.Maurya in his cross examination. The appellant – Management has not adduced any evidence to demonstrate that one month's salary in lieu of any notice under Section 25(F) of the Act of 1947 was paid. Even the principle of "last come, first go", has not been followed, therefore, clear cut violation of Section 25(G). The best evidence to justify the retrenchment of respondent no.1 – workmen does not exist on the file and further, the defence of the appellant – Management to the effect that respondents no.1 – workmen were not found suitable, is not found to be justified in the absence of any record to see as to how this opinion was formed.

(36) The provisions of Section 25 (F) of the Act of 1947 are mandatory in nature and violation thereof, while terminating the services, renders the whole action of the appellant – Management to be illegal, arbitrary and vitiated due to violation of the Rules of natural justice and therefore, is not sustainable in law.

(37) It is well settled in law as has been held by the Hon'ble Supreme Court, as well in the case of ***Anoop Sharma*** versus ***Executive Engineer Public Health Division No.1, Panipat (Haryana)***[5], that the finding of fact recorded by Tribunal cannot be challenged in proceedings by a writ of certiorari as the jurisdiction of High Court to issue writ in cases involving challenge to the orders passed by the authorities entrusted with quasi judicial functions is limited. The High Court, exercising it, is not entitled to act as an Appellate Court and the appreciation of evidence cannot be re-opened or questioned in writ

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proceedings.

(38) In the case in hand, the findings recorded by the Tribunal as affirmed by the learned Single Judge are based on correct appreciation of pleadings and evidence and there is no error of law apparent on the face of record to interfere with.

(39) In view of the foregoing reasons and findings recorded herein above, the present appeals are dismissed, with no order as to costs.

(40) The pending misc. applications stand rendered as infructuous, inview of the dismissal of the main appeals.

(41) A copy of the order be placed on the file of other connected appeal numbered above.

Payel Mehta