Before Rajesh Bindal, J.

SURAT SINGH—*Petitioner*

versus

PRESIDING OFFICER AND ANOTHER—*Respondents*

CWP No. 18845 of 2010

September 24, 2012

Industrial Disputes Act, 1947 - Ss. 25 FFF (1) (2), 25 H, 25O(1) (8) & 31 - Industrial Disputes (Punjab) Rules, 1958 - Rl. 77 - Petitioner worked as a helper before unit was closed on account of prohibition - Thereafter retrenched - Management had requested State Government for closure of factory on account of imposition of prohibition - Permission granted subject to a condition that on re-opening such retrenched workmen will be given preference in re-employment - New workers engaged on re-opening but Petitioner not given preference - Writ petition filed which was disposed off with observation that an industrial dispute may be raised - Reference however answered against workman - Petition dismissed holding that Section 25H will not be applicable in case services are dispensed with on account of closure of a unit.

Held, that the issue was subsequently considered by Hon'ble the Supreme Court in HP Mineral & Industrial Development Corporation Employees' Union v/s State of HP & Ors; (1996) 7 SCC 139, where the law laid down earlier by Hon'ble the Supreme Court on the subject was reiterated. It was held that the provisions of Section 25 H of the Act, which deal with retrenchment, cannot apply to the case in hand where termination of services of the workmen was brought about as a result of closure of undertaking.

(Para 15)

Further held, that once the Legislature itself had separately dealt with the issue regarding payment of compensation to the workmen in case of closing down of undertaking by adding Section 25FFF of the Act despite

Section 25F already existing in the statute, clearly shows that the cases of industries continuing and closing down are to be dealt with separately.

(Para 16)

Further held, that when there is no application of Section 25F of the Act, the logical corollary would be that as a consequence even Section 25H of the Act will also not be applicable.

(Para 18)

Further held, that from the law laid down by Hon'ble the Supreme Court in the aforesaid judgments, it is evident that Section 25-H of the Act will not be applicable in case services of a workman is dispensed with on account of closure of a unit. The only right available to him is to get compensation.

(Para 19)

Further held, that it has been consistently opined by Hon'ble the Supreme Court that in the case of closure of a unit when the workmen are retrenched, they do not have preferential right to seek re-employment in case the unit is re-opened. The procedure as prescribed under Section 25H of the Act will not be strictly applicable and in violation thereof, it cannot be said that the management is at fault. In the present case, otherwise the management had issued public notices in two newspapers in vernacular and in terms thereof, 90 workmen were even taken back, whose services, according to the management, were required. Merely because the workmen who were not taken back in service, may or may not have applied in terms of the publication in the newspapers, cannot plead violation of Section 25H of the Act.

(Para 20)

Abha Rathore, Advocate, *for the petitioner(s).*

P. K. Mutneja, Advocate, *for respondent No. 2.*

RAJESH BINDAL J.

(1) This order will dispose of a bunch of petitions bearing C.W.P. Nos. 18845 of 2010, 12580 to 12597, 16242, 16247, 16248, 16253, 16264, 16268, 16296, 16298, 16301, 16302, 16330, 16342, 16361, 16363, 16365, 16370, 16373, 16378, 16387, 16389, 16390, 16412 and 16956 of 2011, as common questions of law and facts are involved.

(2) The facts have been extracted from C.W.P. No. 18845 of 2010.

(3) The petitioner (hereinafter described as 'the workman') in the petition was working with respondent No. 2 (hereinafter described as 'the management') before the unit was closed on account of imposition of prohibition in the State of Haryana. He has approached this court impugning the award dated 2.3.2010, passed by Presiding Officer, Industrial Tribunalcum- Labour Court, Panipat (for short, 'theTribunal'), whereby a reference made on his request for alleged violation of the provisions of Industrial Disputes Act, 1947 (for short, 'the Act') has been answered against him. Identically worded separate awards have been passed in the cases of other workmen, who have filed other petitions, which are being disposed of along with the present petition.

(4) Briefly, the pleaded facts are that the workman was appointed as Helper by the management on 18.6.1981. Due to imposition of prohibition in the State of Haryana, several workmen in the factory were retrenched on 4.9.1996. On a request by the management to close the factory, the government granted permission with the condition that on reopening, the workmen, who have been retrenched, will be given preference in re-employment. On 1.4.1998, prohibition was lifted by the State. Though the management engaged a number of new workers but the old workers including the workman were not given preference despite number of letters written by the union to the management as well as to the government authorities. Writ petitions were filed in this court seeking reinstatement. The same were disposed of with the observation that the petitioners therein may raise industrial dispute. Thereafter, demand notice was served on 15.3.2002. As the matter could not be settled during conciliation proceedings, the dispute was referred to the Tribunal. As the initial reference was only pertaining to the issue as to whether termination of services of the workman was legal and justified or not, the workman moved an application seeking amendment to the dispute referred. The prayer was accepted. An additional dispute referred was as to whether after reopening/ re-start of the factory by the management, the workman was entitled to be re-appointed in terms of Section 25H of the Act. After completion of pleadings before the Tribunal, evidence was led by the parties, however, finally the reference was answered against the workman. It is the aforesaid award, which is impugned before this court.

(5) Learned counsel for the workman, while referring to Section 25H of the Act, submitted that where any workmen are retrenched, and the employer proposes to take into his employment any person, he shall give an opportunity to the retrenched workmen to offer themselves for reemployment, as they are required to be given preference over other persons. The aforesaid offer for re-employment has to be made in the prescribed manner. The same has been prescribed in the Industrial Disputes (Punjab) Rules, 1958 (for short, 'the Rules'). Rule 77 thereof provides that notice for re-employment has to be displayed on the notice board in the factory and further individual notices have to be sent to the workmen by registered post. The aforesaid conditions have been prescribed with an objective. It is for the reason that most of the workmen are illiterate. After they are retrenched, many of them leave the place and settle at other places to earn their livelihood. In case individual notices are sent at the place of their residence and a copy is displayed on the notice board in the factory, they come to know about the opportunity of re-employment and in case any one wishes, he may offer himself for re-employment. In the present case, though the management had published notices in two newspapers, namely, "Punjab Kesari" and "Dainik Tribune", but that was not sufficient compliance of Rule 77 of the Rules. Many of the low paid employees in this area belong to the neighbouring States. They are illiterate as well. Many of them may not even be reading the newspaper, hence, to claim that publication of a notice in the newspaper is sufficient compliance of the requirement of Rule 77 of the Rules, is misconceived.

(6) Further referring to the provisions of Section 31 of the Act, which provides for penalty for offences under the Act, learned counsel for the workman submitted that for contravention of the provisions of the Act or the Rules made thereunder, if no penalty has been provided for under the Act specifically, the same is punishable with fine, which may extend to Rs. 100/-. In the present case, on the issue being raised by the workman, the State through Labour Inspector filed a complaint against the management under Section 25H of the Act. Vide judgment dated 8.3.2006, passed by Chief Judicial Magistrate, Sonipat, the management was held to be guilty of violation of the provisions of Section 25H of the Act and fine of Rs. 100/- was imposed on it. The aforesaid judgment was challenged by the management before this court by filing Criminal Revision No. 1287 of

2006 —**M/s Haryana Breweries Limited v. State of Haryana,** which was dismissed vide order dated 27.7.2010. The findings recorded in the aforesaid judgment clearly establish that there was violation of the provisions of Section 25H of the Act, which is the dispute referred to the Tribunal in the present case. There is also a finding recorded in the aforesaid litigation that the management had taken back 75 old employees and employed 92 new persons on contract basis.

(7) Learned counsel referring to the impugned award submitted that though all the communications addressed by the workman were produced before the Tribunal in evidence, but still the plea has been rejected while observing that proof for despatch of the aforesaid letters has not been produced. The workman in the present case is merely asking for reemployment to earn his livelihood. There is no question of any back wages. Once the management can employ new persons, the workmen already retrenched had a preferential right. She further submitted that judgment of a Division Bench of this Court in ***Ombir Singh*** versus ***Haryana Breweries Ltd. and another (1),*** will not be applicable in the facts of the present case as the issue regarding violation of Rules 77 and 78 of the Rules was not considered therein.

(8) On the other hand, learned counsel for the management submitted that on account of imposition of prohibition in the State, the factory had to be closed down. As a result thereof, services of all the workmen were dispensed with after payment of compensation, as envisaged under Section 25-O of the Act. Only skeleton staff was retained for some time for maintenance of the premises. When the prohibition was lifted and the unit was to be re-started, notices were published in "Punjab Kesari" and "Dainik Tribune" on 15.5.1998 and 16.5.1998, respectively inviting applications from the retrenched workmen for offering them reemployment. In response thereto, some of the workmen applied. Only those workmen were taken back in services, who were required for the purpose of running the unit. These were 90 in number. Some additional hands were taken on contract basis after due permission, as the workmen, who had offered their services, were not suitable for the job. They were meant for allied activities. However, when the licence granted to the management for taking workmen on contract basis was revoked, their services were dispensed with and none else was

(1) 2007(1) SCT 509

employed. It was further submitted that when the unit was closed on account of prohibition, there were 450 workers working in the factory, however, the staff required and engaged when the factory was re-started was less in number, hence, all could not be taken back in service even if they had offered their services for re-employment.

(9) Learned counsel for the management further submitted that retrenchment of workmen in a running unit and at the time of closure of a unit, are two different concepts. The provisions of Section 25H of the Act are required to be complied with only where retrenchment of the workmen had been made in case of a running unit and not where services of the workmen had been dispensed with at the time of closure of a unit. The issue has been considered by Hon'ble the Supreme Court time and again. Reference was made to ***Shri Hariprasad Shivshanker Shukla and another*** versus ***Shri A. D. Divelkar and others (2), H. P. Mineral and Industrial Development Corporation Employees' Union*** versus ***State of H. P. and others (3), Maruti Udyog Ltd.*** versus ***Ram Lal and others (4)*** and ***District Red Cross Society*** versus ***Babita Arora and others (5).***

(10) Learned counsel further submitted that the issue was earlier considered by this court in ***Ombir Singh's case*** (supra), where also the workman had claimed that there was violation of the provisions of Section 25H of the Act. The same was contested by the management. The alleged violation of the condition imposed by the State Government, while granting permission for closure of the unit, was specifically dealt with and it was opined that there was no specific condition laid down for informing each and every employee through registered post, hence, there was no violation. Publication in the newspaper was held to be sufficient compliance. He further submitted that whichever workmen offered their services for reemployment within the stipulated period, they were employed as per their seniority and requirement of the management, hence, no violation can possibly be alleged.

(2) AIR 1957 SC 121
(3) (1996) 7 SCC 139
(4) (2005) 2 SCC 638
(5) (2007) 7 SCC 366

(11) In response to the contentions raised by learned counsel for the management, learned counsel for the workman submitted that a conditional permission was granted to the management for closure of the unit in terms of Section 25-O of the Act, the condition being that in the event of reC. starting the unit in the same premises, the workers, who were in employment prior to the date of closure of the unit, will be given preference in the matter of employment. The aforesaid condition was not challenged by the management at the relevant time, as is sought to be challenged now claiming that no such condition could be imposed as Section 25H of the Act was not applicable in case of closure of a unit. Further, it was submitted that the amended reference was sent by the appropriate government to the Tribunal referring the dispute pertaining to violation of Section 25H of the Act and the same was not challenged by the management. It is too late to raise a plea regarding non-application of Section 25H of the Act. Even no such argument was raised before the Tribunal, rather, the plea taken was that the Rule has been complied with. In support of her arguments, reliance was placed upon ***Ramesh Chander*** versus ***State of Haryana through Secretary to Govt. Haryana, Public Health Department, Haryana Civil Secretariat, Chandigarh and others (6),*** and ***Harjinder Singh*** versus ***Punjab State Warehousing Corporation (7).***

(12) Heard learned counsel for the parties and perused the paper book.

(13) The primary issue, which requires consideration by this court in the present case, is as to whether in case a workman is retrenched on account of closure of a unit, at the time of re-employment, the provisions of Section 25H of the Act are applicable or not and if applicable, whether there is violation of the aforesaid provision in the case in hand. To appreciate the contentions raised by learned counsel for the parties, it would be appropriate to extract the following relevant provisions of the Act and the Rules:

> **"Section 25FFF (1) and (2) of the Act**
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> **25FFF. Compensation to workmen in case of closing down of undertakings.-** (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in

(6) 2008(4) SCT 407
(7) (2010) 3 SCC 192

continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25F, as if the workman had been retrenched;

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of Section 25F, shall not exceed his average pay for three months.

[*Explanation*- An undertaking which is closed down by reason merely of-

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on,

shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.]

(1A) and (1B) xx xx xx

(2) Where any undertaking set-up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set-up, no workman employed therein shall be entitled to any compensation under clause (b) of Section 25F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every completed year of continuous service or any part thereof in excess of six months.

Section 25H of the Act

25H. Re-employment of retrenched workmen.- Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons.

Section 25-O (1) and (8) of the Act

25-O. Procedure for closing down an undertaking.- (1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) to (7) xx xx xx

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuos service or any part thereof in excess of six months.

Rule 77 of the Rules

77. Re-employment of retrenchment workmen.- (1) At least (fifteen days) before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice

> board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation by registered post or personally against signature of those vacancies to every one of all the retrenched workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or at any time thereafter:
>
> Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the senior most retrenched workmen in the list referred to in rule 76 the number of such senior most workmen being double the number of such vacancies:
>
> Provided further that where the vacancy is of a duration of less than one month there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen.
>
> But where the vacancy is of a duration of one month initially and is subsequently continued then the employer shall issue such a notice."

(14) The issue under consideration before a Constitution Bench of Hon'ble the Supreme Court in **Shri Hariprasad Shivshanker Shukla and another's case** *(supra)* was the meaning of the word "retrenchment". It was a case in which a Railway Company was taken over by the government. The Railway Company served notices upon its workmen intimating that as a result of decision of the Government of India, the services of all the workmen would be terminated, however, the government intends to employ such staff of the company as would be willing to serve, on such terms and conditions as may be notified. The question considered by the court was as to whether definition of "retrenchment" merely gives effect to the ordinary, accepted notion of retrenchment in an existing or running industry by embodying the notion in apt and readily intelligible words or does it go so far beyond the accepted notion of retrenchment so as to include the termination of services of all workmen in an industry when the industry itself ceases to exist on a bona fide closure or discontinuance of its business by the employer. While referring to various earlier judgments of Hon'ble the

Supreme Court, it was observed in paragraph 12 thereof that "in view of these observations, it would be against the entire scheme of the Act to give the definition clause relating to retrenchment such a meaning as would include within the definition termination of service of all workmen by the employer when the business itself ceases to exist." Further, in paragraph 16, it was observed that "retrenchment means discharge of surplus workmen in an existing or continuing business; it had acquired no special meaning so as to include discharge of workmen on bona fide closure of business......." The observations made in paragraph 20 thereof are also relevant, which are extracted below:

> "20. For the reasons given above, we hold, contrary to the view expressed by the Bombay High Court, that retrenchment as defined in Section 2(oo) and as used in Section 25-F has no wider meaning than the ordinary, accepted connotation of the word: it means the *discharge of surplus labour or staff* by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and bona fide closure of business as in the case of Shri Dinesh Mills Ltd. or where the services of all workmen have been terminated by the employer on the business or undertaking being taken over by another employer in circumstances like those of the Railway Company."

(15) The issue was subsequently considered by Hon'ble the Supreme Court in **H. P. Mineral & Industrial Development Corporation Employees' Union's case** *(supra),* where the law laid down earlier by Hon'ble the Supreme Court on the subject was reiterated. It was held that the provisions of Section 25N of the Act, which deal with retrenchment, cannot apply to the case in hand where termination of services of the workmen was brought about as a result of closure of undertaking. Paragraph 6 thereof is extracted below:

> "6. From the aforementioned observations it is evident that the definition of 'retrenchment' as defined in Section 2(oo) of the Act has to be read in the context of Section 25-FF and 25-FFF of the Act and if thus read 'retrenchment' under Section

> 2(oo) does not cover termination of service as a result of closure or transfer of an undertaking though such termination has been assimilated to retrenchment for certain purposes, namely, the compensation payable to the workmen whose services are terminated as a result of such closure. In that view of the matter Section 25-N which deals with retrenchment cannot apply to the present case where termination of the services of the workmen was brought about as a result of the closure of the undertaking."

(16) In **District Red Cross Society's case** *(supra),* while referring to the provisions of Section 25F and 25FFF of the Act, it was observed that once the Legislature itself had separately dealt with the issue regarding payment of compensation to the workmen in case of closing down of undertaking by adding Section 25FFF of the Act despite Section 25F already existing in the statute, clearly shows that the cases of industries continuing and closing down are to be dealt with separately.

(17) A specific issue regarding application of the provisions of Section 25H of the Act in the case of closure of an undertaking came up for consideration before Hon'ble the Supreme Court in ***Punjab Land Development and Reclamation Corporation Ltd., Chandigarh*** versus ***Presiding Officer, Labour Court, Chandigarh and others (8),*** and it was opined that in the case of transfer of an undertaking or closure thereof, the benefit specifically given to the workmen is restricted to the notice and payment of compensation in accordance with the provisions of Section 25F of the Act, as if the workmen had been retrenched. Relevant paragraph 76 thereof is extracted below:

> "76.......Very briefly stated Section 25-FFF which has been already discussed lays down that 'where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25-F, *as if the workman had been retrenched'.* (emphasis

(8) (1990) 3 SCC 682

supplied). Section 25-H provides for re-employment of retrenched workmen. In brief, it provides that where any workmen are retrenched, and the employer proposes to take into his employment any person, he shall give an opportunity to the retrenched workmen to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would *be inconsistent to read into the provisions a right* given to workman 'deemed to be retrenched' a right to *claim reemployment as provided in Section 25-H.* In such cases, as specifically provided in the relevant sections the workmen concerned would only be entitled to notice and compensation in accordance with Section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workmen is 'as if the workmen had been retrenched' and this benefit is restricted to notice and compensation in accordance with the provisions of Section 25- F."

(18) The issue was considered by Hon'ble the Supreme Court in **Maruti Udyog Ltd.'s case** *(supra),* where it is specifically opined that when there is no application of Section 25F of the Act, the logical corollary would be that as a consequence even Section 25H of the Act will also not be applicable. Paragraphs 25, 26 and 34 thereof are extracted below:

"25. Once it is held that Section 25-F will have no application in a case of transfer of an undertaking or closure thereof as contemplated in Sections 25-F and 25-FFF of the 1947 Act, the logical corollary would be that in such an event Section 25-H will have no application.

26. The aforementioned provisions clearly carve out a distinction, that although identical amount of compensation would be required to be paid in all situations but the consequence following retrenchment under Section 25-F of the 1947 Act

would not extend further so as to envisage the benefit conferred upon a workman in a case falling under Section 25-FF or 25-FFF thereof. The distinction is obvious inasmuch as whereas in the case of retrenchment simpliciter a person loses his job as he becomes surplus and, thus, in the case of revival of chance of employment, is given preference in case new persons are proposed to be employed by the said undertaking; but in a case of transfer or closure of the undertaking the workman concerned is entitled to receive compensation only. It does not postulate a situation where a workman despite having received the amount of compensation would again have to be offered a job by a person reviving the industry.

xx xx xx

34. The submission of Mr. Das to the effect that Parliament having used the words "every workman" in Section 25-FFF, which would include dismissed workmen in view of its definition contained in Section 2(s) of the 1947 Act, should be widely interpreted so as to hold that even those workmen who had received compensation would be entitled to the benefit of Section 25-H of the 1947 Act, cannot be accepted. Such a construction is not possible keeping in view the statutory scheme of the 1947 Act. Section 25-F vis-a-vis Section 25-B read with Section 2(oo) of the 1947 Act contemplates a situation where a workman is retrenched from services who had worked for a period of not less than one year on the one hand and those workmen who are covered by Section 25-FF and Section 25-FFF on the other keeping in view the fact that whereas in the case of the former, a retrenchment takes place, in the latter it does not. Parliament amended the provisions of the 1947 Act by inserting Section 25-FF and Section 25-FFF therein by reason of the Industrial Disputes (Amendment) Act, 1957 with effect from 28.11.1956, as it was found that having regard to the helpless condition into which a workman would be thrown if his services are terminated without payment of compensation and presumably on the ground that if a reasonable compensation is awarded, he may be able to find out an alternative employment

> within a reasonable time. In the case of closure of an industrial undertaking the Act contemplates payment of compensation alone."

(19) From the law laid down by Hon'ble the Supreme Court in the aforesaid judgments, it is evident that Section 25-H of the Act will not be applicable in case services of a workman is dispensed with on account of closure of a unit. The only right available to him is to get compensation. In the present case as well, it is undisputed that the unit was closed on account of imposition of prohibition in the State of Haryana. The permission of closure was given by the appropriate government vide communication dated 4.11.1996 (Annexure P-8) w.e.f. 4.12.1996, laying down following two conditions:

> "(i) That the affected workers will be entitled for the compensation as per the provisions of the Industrial Disputes Act, 1947.
>
> (ii) That in the event of restarting the unit on the same premises, the workers who were in the employment prior to the date of permission will be given preference in the matter of employment."

(20) As far as compliance of compliance of condition No. (i) is concerned, there is no dispute that all the workmen, whose services were dispensed with at the time of closure of the unit, were awarded C.W.P. No. 18845 of 2010 [15] compensation. The dispute is sought to be raised with reference to condition No. (ii). The submission of learned counsel for the workman is that as the management failed to comply with Rule 77 of the Rules by not sending individual notices to all the workmen by registered post, there was violation of the provisions of Section 25H of the Act. It has been consistently opined by Hon'ble the Supreme Court that in the case of closure of a unit when the workmen are retrenched, they do not have preferential right to seek re-employment in case the unit is re-opened. The procedure as prescribed under Section 25H of the Act will not be strictly applicable and in violation thereof, it cannot be said that the management is at fault. In the present case, otherwise the management had issued public notices in two newspapers in vernacular and in terms thereof, 90 workmen were even taken back, whose services, according to the management, were required. Merely because the workmen who were not taken back in service,

may or may not have applied in terms of the publication in the newspapers, cannot plead violation of Section 25H of the Act.

(21) As far as the contention raised by learned counsel for the workman to the effect that conviction of the management has been upheld by this court for violation of Section 25H of the Act is concerned, the judgments of Hon'ble the Supreme Court on the issue as to whether there would be application of Section 25H of theAct in the facts and circumstances of the case, were not considered. There is no bar in raising a plea as available to a party in a statute, as there is no estoppel against a statute.

(22) For the reasons mentioned above, I do not find any merit in the present bunch of petitions. Accordingly, the same are dismissed.