I/628757/2025

Government of West Bengal
Labour Department, I. R. Branch
N.S. Building, 12th Floor, 1, K.S. Roy Road, Kolkata – 700001

No. Labr/ 414 /(LC-IR)/ 22015(15)/2/2020 Date : 11.04.2025

ORDER

WHEREAS under Labour Department's Order No. Labr/518/(LC-IR)/22015(15)/2/2020 dated 19/06/2023 with reference to the Industrial Dispute between M/s. MC Nally Sayaji Engineering Ltd., Polt No. M-16, ADDA Industrial Area, P.O-R.K. Mission, Asansol-713305, District - Paschim Bardhaman and their workman Sri Tapan Singh, Qtr. No.164, D.C.M, Line No. 4, Shyamnagar, P.O- Garulia, District – North 24 Parganas, regarding the issues mentioned in the said order, being a matter specified in the Second Schedule of the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the 9th Industrial Tribunal, Durgapur.

AND WHEREAS the 9th Industrial Tribunal, Durgapur, has submitted to the State Government its Award dated 25.03.2025 in Case No. 21 of 2023 on the said Industrial Dispute Vide e-mail dated 04.04.2025 in compliance of u/s 10(2A) of the I.D. Act, 1947.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said Award in the Labour Department's official website i.e ***wblabour .gov.in***.

By order of the Governor,

Assistant Secretary
to the Government of West Bengal

No. Labr/ 414 /1(5)/(LC-IR)/ 22015(15)/2/2020 Date : 11.04.2025

Copy forwarded for information and necessary action to:

1. M/s. MC Nally Sayaji Engineering Ltd., Polt No. M-16, ADDA Industrial Area, P.O-R.K. Mission, Asansol-713305, District - Paschim Bardhaman.
2. Sri Tapan Singh, Qtr. No.164, D.C.M, Line No. 4, Shyamnagar, P.O- Garulia, District – North 24 Parganas.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Building, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
5. The Deputy Secretary, IT Cell, Labour Department with request to cast the Award in the Department's website.

Assistant Secretary
to the Government of West Bengal

No. Labr/ 414 /2(3)/(LC-IR)/ 22015(15)/2/2020 Date : 11.04.2025

Copy forwarded for information to :

2. The Judge, 9th Industrial Tribunal, Durgapur, Paschim Bardhaman with reference to his e-mail dated 04.04.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.
3. Office Copy.

Assistant Secretary
to the Government of West Bengal

IN THE MATTER OF INDUSTRIAL DISPUTE BETWEEN M/S MC NALLY SAYAJI ENGINEERING LTD., POLT NO. M-16, ADDA INDUSTRIAL AREA, P.O-R.K. MISSION, ASANSOL-713305, DISTRICT -PASCHIM BARDHAMAN

VS.

SRI TAPAN SINGH, QTR. NO.164, D.C.M, LINE NO. 4, SHYAMNAGAR, P.O- GARULIA, DISTRICT – NORTH 24 PARGANAS.

Case No. 21 of 2023 u/s- 10 of Industiral Dispute Act, 1947.

Reference order being no. Labr/518/(LC-IR)/22015(15)/2/2020 dated 19/06/2023 issued by the Joint Secretary, Government of West Bengal, Labour Department.

BEFORE THE JUDGE, NINTH INDUSTRIAL TRIBUNAL, DURGAPUR, WEST BENGAL. KOLKATA.

PRESENT:- SRI NANDADULAL KALAPAHAR, JUDGE, 9TH INDUSTRIAL TRIBUNAL, DURGAPUR.

Ld. Advocates for the petitioner/workman – Mr. Basudeb Chowdhury, Smt. Anima Maji & Miss Susmita Karmakar.

Ld. Advocates for the Employer, Mc Nally Sayaji Engg. Ltd.- Mr.Pijush Kanti Das & Mr. Bijay Kumar.

Date of Award : 25th March, 2025.

This case is registered under section – 10 of Industrial Dispute Act, 1947 on receipt of a reference order being no. Labr/518/(LC-IR)/22015(15)/2/2020 dated 19/06/2023 issued by the Joint Secretary, Government of West Bengal, Labour Department and forwarded by Assistant Secretary which is described herin below :-

" Whereas an Industrial Dispute exists between M/S Mc Nally Sayaji Engineering Ltd. Plot No. M-16 ADDA Industrial Area, P.O -R.K.Mission, Asansol - 713305, District -Paschim Bardhaman and its workman Sri Tapan Singh Qtr No. 164 DCM Line No. 4, Shyamnagar P.O – Garulia, District – North -24 Parganas relating to the undermentioned issues being a matter specified in the Second Schedule to the Industrial Disputes Act, 1947 (14 of 1947),

And WHEREAS it is expedient that the said dispute should be referred to an Industiral Tribunal constituted under section – 7A of the Industrial Disputes Act, 1947 (14 of 1947),

Sd/-
Judge

Now , THEREFORE, in exercise of power conferred by Section 10 read with Section 2A of the Industrial Disputes Act, 1947(14 of 1947), the Governor is pleased hereby to refer the said dispute to the Ninth Industrial Tribunal constituted under Notification no. 4481-GE/G/3A-20/66 dated 07/09/1967 for adjudication.

The said Ninth Industrial Tribunal shall submit its award to the State Government within a period of three months from the date of receipt of this order by the said Ninth Industrial Tribunal in terms of Sub -Section (2A) of section 10 of the Industrial Dispute Act, 1947, Subject to the other provision or provisions of the said Act.

The said Ninth Industrial Tribunal shall meet at such places and on such dates as it may direct.

ISSUE(S)

1) *Whether the termination from service of the workman namely Sri Tapan Singh with effect from 01/04/2018 by the Managamenet of M/S Mc Nally Sayaji Engineering Ltd. is justified or not ?*
2) *What relief the workman is entitled to ? "*

The aforesaid industrial dispute has been raised before this Industrial Tribunal.

Employer/Managaement, Mac Nally Sayaji Engineering Ltd has contested the industrial dispute raised by the workman, Tapan Singh by filling a written statement contending inter alia that –

The instant dispute as raised by Sri Tapan Singh is entirely a misconceived one , he was engaged as a retainer on contractual basis and he was never a permanent workman in the Company. It is denied that Sri Tapan Singh has acquired the status of workman as he was working since 03/03/2011 under the Coporate office of the Company as "Security Officer" of that he was subsequently promoted to Security Inspector by the Company.

It is admitted by the Employer that sri Tapan Singh used to draw a sum of Rs. 6,000/- per month as monthly fees for his retainership and also get reimbursed monthly allowance of Rs.9,000/- towards all the expenses such as conveyance , HRA, LTA, Medical etc. per month. He was provided a residential accommodation

Sd/-
Judge

by the Employer on humanitarian ground on the respresentation of Sri Tapan Singh that he would handover and vacate the possession of the said accommodation and he has subsequently vacated the said accommodation .

It is further submitted by the Managaement that sri Tapan Singh was never entitled to receive any benefit of facilities of Provident Fund , Gratutity , Medical facilities as he was not the permanent employee of the company. That Sri Tapan Singh with reference to the companie's contract vide letter dated 01/04/2017, the said contract was terminated by the Company with effect from 31/03/2018 by virtue of a letter dated 12/04/2018 issued by the Company. That as the contract between the company and sri Tapan Singh stood terminated with effect from 31/03/2018 and as such sri Tapan Singh discontinued his engament on and from the said date. That the service rule is not applicable in any manner in the present case as he was not a permanent employee and the question of violation of the service rules interminating the contract does not give rise to any cause of action to Sri Tapan Singh for raising any industrial dispute and the contractual assignment between Sri Tapan Singh and the Company ceases , as he, Sri Tapan Singh was never declared as a permanent employee of the Company as per contract with the company , his service was rightly not renewed for futher period and the contractual assignment never empowered sri Tapan Singh to claim him as the permanent employee of the company.

The contractual assignment was renewed from time to time and it's not admitted as alleged by sri Tapan Singh that he was guided as per Service rules of the company, the company never declared sri Tapan Singh as a permanent employee of their establishment and in case of contractual assignment the service rules of permanent employee is not applicable as per the settled principles of law. The accommodation of company's quarter does not confer any legal right to Sri Tapan Singh to put forward any claim as a permanent employee of the company and the letter dated 12/04/2018 issued by the company is a letter of termination of contract and the same is not in any way termination of employment. That filing of Title Suit by Sri Tapan Singh before Asansol Court or reporting any diary before Asansol (South) Police station are all irrelevant and inconsistent and the same has got no connection with the present dispute. The dispute raised by sri Tapan Singh before the Assistant Labour Commisisoner , Governement of West Bengal for his

Sd/-
Judge

alleged termination of service was altogether a baseless one and the very reference is bad in nature as referred by the appropriate Govt. for adjudication as per the tems of reference .

Considering the above, the company has prayed for that the action of management in discontinuing the contract of sri Tapan Singh is totally justified and that sri Tapan Singh is not entitled to get any other relief and /or reliefs .

That the workman Tapan Singh has contended by filing a written statement stating inter alia that he had been working since 03/03/2011 under Employer in the Corporate office of Mc Nally Sayaji Engineering Limited Plot no. 16 ADDA Building Area P.O.R.K.Mission , Asansol 713305, P.S – Asansol (North), Dist. Burdwan now Paschim Bardhaman and he had been working as a "Security Officer" since 03/03/2011 as "Security Inspector" continuously with full satisfaction of his superior. That he joined in his job on 03/03/2011 and the Employer had agreed to pay a sum of Rs. 15,000/- as salary per month to him with free residential accommodation (the rent was being paid to the landlord by the employer). That since the date of his joining, the said employer had provided a residential accommodation to him. The rent was being paid by the employer of Asansol to the owner of the house. That since 03/03/2011, the said employer issued various letters illegally showing him an employee under the terms of "contractual employee" instead of declaring him the "Permanent Employee" . The said company has neither provided any benefit and facility of P.F, Gratuity , medical facility instead of expiry of 7 years and the said employer has violated the service rules /laws as a result he has been deprived of from enjoying the benefit of the same although he had been serving his job to the company continuously for a period of seven (7) years without any break under the Employer and the said Employer had paid the incentive bonus time to time to him but the employer did not issue any letter to him as a "permanent Employee" violating the service rules . That the said employer has motivately and illegally showing him as "Contractual Employee" on various occasions by issuing letters since 03/03/2011 to 31/03/2017.

That the officer of the Asansol from Employer's Office issued a letter to him on 18/03/2013 stating inter alia that – "in continuation of our letter dated 29/02/2012 wherein we have agreed for contractual assignment till 06/03/2013,

Sd/-
Judge

management is pleased to extend your contractual assignment commencing from 07/03/2013 to 31/03/2014 in the same terms and conditions as mentioned in your letter dated 03/03/2011.

That thereafter, again on 25/09/2014 Mr. A.K.Singha Sr. G.M (HR19R) of Asansol Office /Employer issued a letter to him stating inter alia that – " In continuation of our letter dated 01/04/2014, the management is pleased to extend your contractual assignment commencing from 10/10/2014 to 31/03/2015 on the same terms and conditions as mentioned in your letter dated 03/03/2011."

That thereafter, on 30/03/2015 Mr. A.K.Sinha Advisor of Asansol/Employer agains issued a letter to him stating inter alia as follows – " In continuation to our letter dated 25/09/2014 wherein we have agreed for extension of contractual assignment till 31/03/2015, the management is pleased to extend your contractual assignment commencing from 01/04/2015 to 31/03/2016 on the same terms and conditions as mentioned in your letter dated 03/03/2011."

That thereafter, one Ajay Kumar from Asansol office /Employer issued a letter dated 01/04/2017 to him further stating inter alia that – "In continuation of our letter dated 30/03/2016 we have agreed for extension of contractual assignment till 31/03/2017, management is pleased to extend your contractual assignment on the same terms and conditions in your letter dated 03/03/2011."

That he is a permanent employee under the employer as he had been working as "Security Officer" under employer and service condition is guided as per service rules but the Employer Company illegally shown him as an employee of "contractual job",

That as per the service rules /laws , he is entitled to get the benefit of P.F, Gratuity, medical allowance together with all other facilities under the said employer but the said employer has denied to offer the same to him by issuing several letters projecting him as "contractual employee" since the date of his joining in service.

That he was provided a residential accommodation for enjoying the same since his appointment and the said employer has provided the job to him in various places under Asansol office for his working under the said employer. The said company had provided a flat being Flat No. G3 IC, 3rd Floor at Sristinagar

Sd/-
Judge

under the landlord wherein he was residing for a period of five (5) years (i.e since 03/03/2011 to 13/03/2016) and thereafter, he stayed at Lower Kumarpur in a Flat being Flat no. 3/1 on third Floor in Anupama Apartment at Apcar Guardian Asansol , the owner of the Flat was Mr. Animesh Mukherjee and the Company had been paying the rent to the said landlord. That his sons and daughters were residing with his family for completion of their education and his grand son Anubhav Kr. Singh was a student of Narayana School under Ramnarayan Education Trust and his daughter was pursuing the course of the Institute of Computer Accountants of (9CA) at Barackpur and she had been studying her course from Asansol by train having monthly train ticket. Thereafter, the employer did not allow him to join his job/service inspite of that he has performed his job with full satisfaction, so, the employer granted incentive time to time as per the service rules with his salary.

That while he could not perform his job due to jaundice since 20/02/2018, he was sent a termination letter illegally on 12/04/2018 stating that the terms of contract of job has expired by sending a letter at his native address at Shyamnagar, North 24 Parganas in spite of informing the same to the employer. That the said letter is improper and illegal. Finding no other alternative, he filed a Title Suit being no. 65 of 2018 before the ld. Civil Judge(Jr. Divn.), 1st Court at Asansol against the Employer/defendant for a decree of declaration from evicting the workman/Plaintiff from the schedule premises without the due process of law till the disposal of the application pending before the Assistant District Labour Court at Asansol. That after the completion of the course of his children , he handed over the key of the said Flat situated at Apcar Garden, Asansol to the in-charge of Asansol office of Employer who received the lock and key of the said Flat on 01/04/2018 and accordingly, the employer took the possession of the said Flat and when he did not proceed with the said Suit , the suit was dismissed for default.

He was a permanent employee and he got the job as a "Security Officer" since 03/03/2011 and he had been working without any break since 03/03/2011 but the employer illegally shown him as a "Contractual Employee" violating the service rules and the employer did not deduct the P.F since 03/03/2011 and he also made a complaint before the Assistant P.F. Commissioner (Compliance) Employees Fund Organisation (Region Office), Jharkhand, Bhadrak Complex near Circular

Sd/-
Judge

House, Karamoli, Ranchi (Jharkhand) and illegally terminated him from his service on 31/03/2018 and deprived him from getting Medical facilities , Provident Fund, Gratuity etc. That he is entitled to get the salary , P.F, Gratuity, medical facilities and other benefits since 03/03/2011 i.e date of joining till the age of his retirement including the status of "Permanent employee" on being denied to him to continue his job till the age of his retirement.

That the claim of the workman is just and proper and he is entitled to get relief as has been prayed for .

Referred issues herein above is as follows : –

ISSUES :-

1) *Whether the termination from service of the workman namely Sri Tapan Singh with effect from 01/04/2018 by the Managamenet of M/S Mc Nally Sayaji Engineering Ltd. is justified or not ?*
2) *What relief the workman is entitled to ? "*

In proving this case, workman has examined himself and cross examined by tendering an examination in chief in affidavit form as PW-1 in this case and the workman has also produced some documents such as –

1) *The receipt copy of letter dated 03/04/2018 submitted to the office of the Deputy Labour Commissioner, Asansol;*
2) *The retainership letter dated 03/03/2011;*
3) *The letter dated 29/02/2012 of the company received from the office of Chief Operating Officer;*
4) *The letter dated 28/08/2012 of the company which he received from the office of Sr. Vice President;*
5) *The letter dated 01/10/2012 of the company which he received from the office of Sr. Vice President ;*
6) *Six letters dated 18/03/2013, 01/04/2014,25/09/2014, 30/03/2015, 30/03/2016 & 01/04/2017;*
7) *The letter dated 12/04/2018 of their company by which the service was terminated with effect from 31/03/2018;*
8) *The certificate dated 09/01/2018 issud by Deputy Manager(P & A/H.R) of their company ;*

Sd/-
Judge

9) *The copy of letter dated 16/04/2019 regarding P.F which he received from their company;*

10) *The copy of letter dated 03/10/2018 of EPF which are marked as Exbt. nos. 1 (on consent), 2 (on consent), 3(on consent), 4 (on consent), 5 (on consent), 6 series (on consent), 7 (on consent), 8(on consent), 9(on conent) and 10 (on consent) respectively in this case.*

In proving this case, the Employer/Management Mac Nally Sayaji Engineering Ltd. has examined one Manoj Kumar Sharma now posted as H.R.A, G.M at Tego Monaly Minerals Ltd. as OPW-1 in this case .

Employer has also produced some documents such as one authorization letter duly authorized by Unit Head/Factory Manager Mr. Chowdhury Ashraful Hossain which is marked as Exbt. A in this case.

Having heard the argument of this case in presence of ld. Advocate for both the parties to this case, perused the oral evidence and taking into consideration the relevant documents as has been adduced and produced by both the parties to this case, the instant case is taken up today for delivery of award/Judgement.

DECISION WITH REASON :-

It has been argued by the workman that he had been working as "Security Officer" under the Employer /the Managaement since 03/03/2011 and the said workman could not perform his duty since 20/02/2018 due to suffering of Jaundice and the workman informed the matter to his employer , despite that the employer illegally sent a letter of termination of his service on 12/04/2018.

That the workman continued his service since 03/03/2011 to 18/04/2018 and he has also filed said documents which have already been marked as Exbt. nos. 1 to 10 in this case. That he has denied the averments made out in the para - 3, 6 and 7 of the written statement of employer wherein they have stated that the workman has not acquired the status of permanent employees.

It has been admitted by the employer that the workman named Tapan Singh had been performing his duty or job for last 7 years since 03/03/2011 to 31/03/2018. That the letter issued by the Employer of dated 25/08/2012 by his senior vice President to Tapan Singh (E.C.No. C-1704) which has been marked as

Sd/
Judge

Exbt. 4 and the letter of dated 01/10/2012 issued by Management has been marked as Exbt. 6 but they failed to produce the register of Adult workers as per the provisions of section -62 of Factories Act as such the it is true that the workman is an employee under the provision of the said Act. The Management has failed to produce the register violating the provision of section as has been defined under section-2(I) (m) of Factories Act for the purpose of computing the number of workers for the purpose of this clause all the workers in different groups and relays in a day. That the management has violated the provision of sections-62, 1A and 63 of Factories Act. The Management has violated the rules of the Bengal Industrial Employment (standing orders) Rule 1946 by not submitting the FORM A- 1, A-2. The Management has admitted the documents Exbt. 9 and 10.

That the management has tried to establish the workman as contractual Employee which is wholly illegal and the management cannot deploy any employee after violating the provision of Factories Act and "The Bengal industrial Employment(standing orders) Rules , 1946.

The company did not produce before the labour court of their registers of works as per Factory Act. That he is a permanent Employee and he is entitled to get the benefits of Gratuity, P.F . That the termination of the service of the employee is wholly illegal and bad in the eye of law and the same is liable to be set aside.

It has been contended by the ld. Advocate for the Employer/Management of the company that whether the dispute comes under the Industrial Dispute Act. That the workman's job is a contractual job and he used to get a salary of Rs.6000/- per month and subsequently the said salary of the petitioner was enhanced to Rs.9000/- per month. That the service of the petitioner was terminated vide a letter dated 12/04/2018 with effect from 31/03/2018.

It has further been submitted by the ld. Advocate for the Employer/Management of the Company that no petition was filed by the workman for regularisation of his job. Applicant/workman was on contractual basis and he has never acquired the status of the permanent Employee. The contractual terms cannot be a ground for regularization of job. Company has the right to terminate the job at any point of time. That the company's benefit cannot

Sd/-
Judge

be extended to the aforsaid workman. That earlier dispute has not been raised for regularisation of job by the applicant.

That the petitioner's contractual job has been terminated on justified grounds. That the temporary employee is not entitled to get any benefit of principle of Natural Justice , enquiry, chargesheet etc.

In reply, the workman has submitted that the Management has violated the sections -62 and 63 of Factories Act and he has worked for 8 years uninterruptedly . Security Code register is maintained by the Employer.

In reply, the ld. Advocate for the Employer/Management of the Company has submitted that the contract has been renewed from time to time and the termination of job of workman is justified or not. According to Employer , the termination of job of the workman/petitioner is justified.

ISSUE Nos. 1 and 2 :-

Both the issue nos. 1 and 2 are taken up together as they are interlinked with each other .

According to the workman, he has been serving the company and the Management thereof since last 03/03/2011 for a period of seven (7) years uninterruptedly and without any break. There is not doubt to come to a finding that the job of the petitioner /workman is a contractual job as a "security officer" and the said contractual job of the petitioner/workman as a "security officer" has been extended time to time i.e up to seven years . It is the further case of the petitioner /workman that the Employer always used to project him as a "contractual employee" in order to deprive him from getting the permanent status of his job as a "Security officer". Ultimately, the job/service of the petitioner/workman was terminated with effect from 31/03/2018 vide leter dated 12/04/2018 issued by one Ajay Kumar, Dy. Manager (P&A/HR) for Mc Nally Sayaji Engg. Ltd. Petittioner / workman was also promoted to "Security Inspector"under the employer.

According to the Employer and the Management of the Company that the service of the petitioner /workman was purely on contractual basis and the company can terminate the service of the petitioner /workman at any point of

Sd/-
Judge

time. It is admitted by the Employer the the job of the petitioner /workman as a "Security Officer" has been extended by the Management of the Company , Mc Nally Sayaji Engg. Ltd. from time to time. It has further been argued by the ld. Advocate for the Employer/Management of Mc Nally Sayaji Engg. Ltd. that the service of the petitioner /workman has been terminated on justified grounds and service benefits of the company cannot be extended to contractual employee. That the contractual terms cannot be a basis for regularization of the job of the petioner/workman. No such application has also been filed by the petitioner/workman for regulasing his job by the company before the dispute arose in this Labour Court .

Having heard the arguments of the ld. Advocates for the petitoiner/workman and the ld. Advocate for the Employer and its Managmeent , taking into consideration the oral evidence and the documentary evidence as has been adduced and produced by both the parties to this case, I find that the letter dated 03/03/2011 issued by the Sr. Manager (P&A/H.R) for Mc Nally Sayaji Engg. Ltd. is a offer letter/appointment letter to the petitoiiner /Workman, Tapan Singh and he was appointed as a "Security Officer" on the basis of monthly consolidated fee of Rs.15,000/- per month and the said assignment was given to petitioner/workman for a period of 12 months only. It was further stipulated in the said offer/appointment letter that he will not be entitled to any other allowance , benefits or bonus, other than 18 days leave with pay for contract period and leave with pay against festival and other holidays as declared by the company save and except as stated above he will not be entitled to any benefits in any form as it appears from the document Exbt. 2(on consent).

That the service of the petitioner/workman was further extended by the Mangement of the Company named Mc Nally Sayaji Engg. Ltd from time to time in the following manner :-

1) *Vide letter dated 29/02/2012, the contractual assignment was extended from 07/03/2012 to 06/03/2013;*
2) *Vide letter dated 18/03/2013, the contractual assignment was further extended from 07/03/2013 to 31/03/2014 (Exbt. 6);*
3) *Vide letter dated 01/04/2014, the contractual assignment was further extended from 01/04/2014 to 30/09/2014 (Exbt. 6/1);*

Sd/-
Judge

4) *Vide letter dated 25/09/2014, the contractual assignmen was further extended from 01/10/2014 to 31/03/2015 (Exbt. 6/2) ;*
5) *Vide letter dated 30/03/2015, the contractual assignment was further extended from 01/04/2015 to 31/03/2016 (Exbt. 6/3);*
6) *Vide letter dated 30/03/2016, the contractual assignment was further extended from 01/04/2016 to 31/03/2017 (Exbt. 6/4) &*
7) *Vide letter dated 01/04/2017, the contractual assignment was further extended from 01/04/2017 to 31/03/2018 (Exbt. 6/5).*

That from the aforesaid documents Exbt. 6 to 6/5, it is evident that the contractual assignment of the petitioner /workman has been extended by issuing different letters for one year on each occasion periodically.

Therefore, there is no doubt to come to a finding that the assignment of the petitioner /workman as "Security Officer" in the company was being continued uninterruptedly without any break by issuing several letters for extension of his assignment from time to time with an object that the petitioner /workman cannot get the status of the permanent employee in the company.

It is a fact that this termination of service of the petitioner cannot come under the purview of the definition of "Retrenchment " as per the section – 2(oo) (bb) of the Industrial Dispute Act, 1947. But when the action of employer is not in good faith and bonafide, the clause (bb) of Section-2 (oo) (bb) of I.D.Act,1947 cannot be restored to when the work is in permanent nature, therefore, the termination of service of the petitioner/workman amounts to "Retrenchment" U/S-2(oo) (bb) of Industrial Dispute Act, 1947 and thefore, the non-compliance of Section-25F of Industrial Dispute Act, 1947, the termination letter dated 12.04.2018 issued by employer, the termination of service of workman/petitioner, Sri Tapan Singh with effect from 31.03.2018 is illegal, unjustified and contrary to the law.

Now , let us have a look as to what is the definition of retrenchment – Section – 2(oo) of the Act, 1947 –

[(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

Sd/-

Judge

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health;]

In the light of aforesaid definition of "Retrenchment" , the termination of the service of the petitioner/workman can be termed as "Retrenchment" and it is not covered under clause (bb) of Section-2(oo)(bb) of I.D.Act,1947, when the job of the petitioner/workman is extended periodically, the nature of job is permanent and the action of the employer is not in good faith and bonafide, the object of the employer is to deprive the workman/petitioner from getting the permanent status of job amounting to unfair labour practice. Therefore, the the termination of serrvice of petitioner/workman by the Management of Company is termed as illegal for non-compliance of provision of Section-25 F of I.D.Act,1947.

This court relies upon a judgement reported in ***Bhikku Ram S/O Sh. Lalji vs The Presiding Officer, Industrial*** *... decided on 28 November, 1994 downloaded from http://indiankanoon.org/doc/1108438 where in His Lordship has been pleased to observe in para nos. 9 to 21 that –*

9. In ***Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union****, (1957-I-LLJ-235) (SC), services of the employees were terminated by the company on account of closure. This led to an industrial dispute. The Industrial Tribunal held that the company was bound to pay the share of profit to the workmen. That award was affirmed by the Appellate Tribunal and then the matter was taken to the Supreme Court and their Lordships of the Supreme Court had held that retrenchment means in ordinary parlance discharge of surplus and it cannot include discharge on closure of business. The same view was expressed in* ***Hariprasad Shivshamkar Shukla v. A.D. Divikar AIR 1957 SC 121****. After making a*

Sd/
Judge

reference to the definition of 'retrenchment' under Section 2(oo) as it then stood, the Supreme Court held: "Retrenchment as defined in Section 2(oo) and as used in Section 25F 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 workman have been terminated by the employer on a real and bona fide closure of business or where the service 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 a Railway Company which is purchased and taken over by the Government under the terms of the contract under the which the company constructed the railway and operated it."

10. After the decision in ***Hariprasad Shivshankar 's case (supra),*** *the Industrial Disputes (Amendment) Act, 1957, was enacted by the Parliament and Sections 25F (sic) and 25FF were inserted. By these two sections, it came to be provided that though termination of service brought about in the contingencies specified in those two Sections may not be retrenchment in the technical sense, the workman would be entitled to compensation as if the termination of service was retrenchment.*

11. In ***Anakapalla Co-operative Agricultural and Industrial Society Ltd. v. Workmen, (1962-II-LLJ-621),*** *a constitution Bench of the Supreme Court considered the relative scope of Sections 2(oo), 25F and 25FF. Speaking for the Bench, Gajendragadkar, J. said: "In Hariprasad this Court was called upon to consider the true scope and effect of the concept of retrenchment as defined in Section 2(oo) and it held that the said definition had to be read in the light of the accepted connotation of the words, and as such, it could have no wider meaning than the ordinary connotation of the word and according to this connotation retrenchment meant 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 did not include termination of services of all workmen on the bona fide closure of industry or on change of ownership or management thereof."*

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12. In ***Workmen of Subong Tea Estate v. The Outgoing Management of Subong tea Estate, reported in (1964-I-LLJ-333),*** *it was similarly observed at PP.338-339 "In dealing with the question of retrenchment in the light of the relevant provisions to which we have just referred, it is however, necessary to bear in mind that the management can retrench its employees only for proper reasons. It is undoubtedly true that it is for the management of decide the strength of its labour force, for the number of workmen required to carry out efficiently the work involved in the industrial undertaking of any employer must always be left to be determined by the management in its discretion and so, occasions may arise when the number or employees may exceed the reasonable and legitimate needs of the undertaking. In such a case, if any workmen become surplus, it would be open to the management to retrench them. Workmen may become surplus on the ground of rationalisation or on the ground of economy reasonably and bona fide adopted by the management, or of other industrial or tread reasons. In all these case, the management would be justified in effecting retrenchment in its labour force. Thus, though the right of the management to effect retrenchment cannot normally be questioned, when a dispute arizes before an Industrial Court in regard to the validity of any retrenchment, it would be necessary for industrial adjudication to consider whether the impugned retrenchment was justified for proper reasons. It would not be open to the management either capriciously or without any reason at all to say that it proposes to reduce its labour force for no rhyme or reason. This position cannot be seriously disputed " (Italicisation is ours)*

13. In ***Delhi Cloth and General Mills Ltd. v. Shambhu Nath Mukharjee, (1978-I-LLJ-l)****, a three-Judges Bench of the Supreme Court held that action of the employer in striking off the name of the workman from the rolls is termination of service falling within the definition of 'retrenchment under Section 2(oo)'.*

14. Then came the decision in ***State Bank of India v. Shri N. Sundra Money, (1976-I-LLJ-478).*** *That was a case in which termination of service was brought about in accordance with the terms contained in the contract of employment. The contention of the employer was mat when the order of appointment carried an automatic cessation of service, the period of employment worked itself out by efflux of time and not by an act of the employer and, therefore, such termination of service cannot be termed as retrenchment.*

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Speaking for the Court, Krishna Iyer, J. observed : Page 482. "A break down of Section 2(oo) unmistakably expands the semantics of retrenchment. 'Termination... .for any reason whatsoever are the keywords. Whatever the reason, every termination spells retrenchment. So the sole question is, has the employee's service been terminated ? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely that act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employer, by suitable verbal devices, circumventing the armour of Section 25F arid Section 2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognito but area covered by an expansive definition. It means 'to end, conclude, cease.' In the present case the employment ceased, concluded, ended on expiration of 9 days automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no moksha from Section 25F(b) is inferable from the proviso to Section 25F(b). True, the section speaks of retrenchment by the employer and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25F and axiomatic extinguishment of service by efflusion of time cannot be sufficient. Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. So screened we hold that the transitive and intransitive senses are covered in the current context. Moreover, an employer terminates employment not merely passing an order as the service runs. He can do so by writing a composite order, one giving employment and the other ending or limiting it. A separate, subsequent determination is not the sole magnetic pull of the provisions. A pre-emptive provision to terminate is struck by the same vice as to the post-appointment termination. Dexterity of diction cannot defeat the articulated conscience of the provision."

15. In ***Hindustan Steel Ltd. v. The Presiding Officer, Labour Court, (1977-I-LLJ-I) (SC),*** *their Lordships considered the earlier judgments rendered in* ***Hariprasad's case (1957-I-LLJ-243) and State Bank of India's case (supra)*** *and*

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held that there was no inconsistency between the two judgments. ***State Bank of India v. Shri N. Sundara Money, (supra)*** *was followed in* ***Santosh Gupta v. State Bank of Patiala, (1980-II-LLJ-72), Mohan Lal v. Management of Bharat Electronics Ltd. (1981-II-LLJ-70) (SC), Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour, (1981-I-LLJ-386), and L. Robert D'Souza v. Executive Engineer. Southern Railways, (1982-I-LLJ-330) (SC).***

16. In ***Management of Karnataka State Road Transport Corporation, Bangalore v. M. Boraiah, (1984-I-LLJ-110), and Gammon India Ltd. Niranjan Dass, (1984-I-LLJ-233****) different Benches of the Supreme Court once again followed the interpretation given to the term 'retrenchment' in* ***State Bank of India v. Shri N. Sundara Money, (supra).*** *In first of these two cases, R.N. Misra, J. (as he then was) remarked: "We are not inclined to hold that the stage has come when the view indicated in Money case (supra) has been 'absorbed' into the consensus' and there is no scope for putting the clock back or for an anti-clockwise operation." And in the second case, a three-Judges Bench of the Supreme Court observed: "On a true construction of the notice, it would appear that the respondent had become surplus on account of reduction in volume of work and that constitutes retrenchment even in the traditional sense of the term as interpreted in* ***Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union (supra),*** *though that view does not hold the field in view of the recent decisions of this Court in* ***State bank of India v. N. Sundara Money, (supra), Hindustan Steel Ltd. v. Presiding Officer, Labour Court, Orissa, (supra), Santosh Gupta v. State Bank of Patiala, (supra), Delhi Cloth and General Mills Ltd. v. Shambhu Nath Mukharjee, (supra), Mohan Lal v. Management of Bharat Electronics Ltd., (supra), and L. Robert D 'Souza v. Executive Engineer, Southern Railway, (supra).*** *The recital and averments in the notice leave no room for doubt that the service of the respondent was terminated for the reasons that on account of recession and reduction in the. volume of work of the company, respondent has become surplus. Even apart from this, the termination of service for the reasons mentioned in the notice is not covered by any of the Clauses (a), (b) and (c) of Section 2(oo) which defines retrenchment and it is by now well settled that where the termination of service does not fall within any of the excluded categories, the termination would be ipso factor retrenchment. It was not even attempted to be urged that the case*

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of the respondent would fall in any of the excluded categories. It is therefore, indisputably a case of retrenchment."

17. Notwithstanding these decisions in which the interpretation of the term 'retrenchment' as given in ***Sundara Money's case (supra),*** *was followed and reiterated, the issue was once again referred to a Constitution Bench. In* ***Punjab Land Development and Reclamation Corporation Ltd., Chadigarh v. Presiding Officer, Labour Court, (1990-II-LLJ-70),*** *a Constitution Bench of the Supreme Court made a detailed survey on the relevant provisions and also made reference to almost all the decisions of the Apex Court on the subject of 'retrenchment' and then held that the interpretation of the term 'retrenchment' given in Sundara Money's case (supra), represents the correct position of law. The Constitution Bench held that 'retrenchment' means the termination by the employer of the service of the workman for any reasons whatsoever except those expressly excluded in the Section. Thus, there is no doubt that if the termination of service of the workman (petitioner) had been brought about prior to August 18, 1984, it would have been held to be a case of retrenchment without any hesitation and would have been voided on account of violation of Section 25F of the Act. However, the dispute has acquired a different dimension on account of the claim made by the employer that termination of service of the workman is covered by Clause (bb) and, therefore, it was not necessary for it to comply with the two mandatory requirements contained in Sections 25F (a) and (b). In substance, plea of the employer is that even though the workman had served for about three years with breaks in service termination of his service does not amount to retrenchment under Section 2(oo).*

18. A minute analysis of Section 2(oo) along with its various clauses shows that even after August 18, 1984 termination of service of a workman will be treated as retrenchment except where such termination of service falls within one of the following categories : (i) termination of service as a punishnent inflicted by way of disciplinary action. (ii) voluntary retirement of the workman; (iii) retirement of the workman on his attaining the age of superannuation in terms of the contract of employment; (iv) termination of service on account of non renewal of contract of employment after the same has expired; (v) termination of contract in accordance with the stipulation contained in the contract of employment itself;

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and (vi) termination of service on the ground of continuous ill-health of the workman.

19. The aforesaid six categories can appropriately be termed as exceptions to the definition of 'retrenchment' as contained in the principal Section 2(oo). Being exceptions to general rule, they have to be strictly interpreted keeping in view the wider literal meaning given to the definition of 'retrenchment' in ***State Bank of India v. N. Sundara Money, (supra),*** *which has been approved by the Constitution Bench in* ***Punjab Land Development and Reclamation Corporation's case (supra),*** *The Court has also to keep in mind the basic cannon of interpretation which has been applied while interpreting the social welfare legislations, including the Industrial Disputes Act. The Courts have time and again held that welfare statutes must receive the construction which advances the object of the statutes and protects the weaker section of the society. This principle has been applied for interpretation of the term 'Industry' in State of Bombay v. Hospital Mazdoor Sabha, (1960-I-LLJ-251) (SC) and Bangalore Water Supply and Sewerage Board v. A. Rajappa, (supra). Similar approach has been adopted for interpretation of the term 'retrenchment' in a large number of cases to which reference has been made here-in-above. In S.K. Verma v. Industrial Tribunal-cum-Labour Court, (supra), the Supreme Court has observed: Page 389 "Welfare statutes must, of necessary, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursion".*

20. It is necessary to keep in mind that while interpreting the term 'retrenchment' in ***N.Sundara Money's case (supra),*** *and in its subsequent decisions, the Supreme Court has kept in view of the basic objects of the Industrial Disputes Act, namely to protect the workmen against arbitrary action of the employer. Even the legislature has not been unmindful of the disadvantageous position in which a workman is placed qua an employer. In order to protect the workman against arbitrary and unreasonable actions of the employer, the legislature has in its wisdom defined the expression 'unfair labour practice' by inserting Section 2(ra) in the Act by the Amendment Act No. 46 of 1982. At the same time the Fifth Schedule has been added by the said Amendment Act of 1982. Sections 25T and 25U have also been added in the form of a separate chapter,*

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namely, Chapter VC. All these provisions have been made effective from August 21, 1984. Provisions contained in the Fifth Schedule specify various unfair labour practices on the part of the employers as well as the employees. Part I of the Fifth Schedule deals with unfair labour practices on the part of the employer and the trade unions of employers and Part II refers to the unfair labour practices on the part of the workmen and trade unions of workmen. Paras 1 to 16 of Part I of the Fifth Schedule read as under:

"1. To interfere with, restrain from, a coerce, workmen in the exercise of their right to organise, from, join or assist a trade union or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, mat is to say

(a) threatening workmen with discharge or dismissal, if they join a trade union;

(b) threatening a lock-out or closure, if a trade union is organised;

(c) granting wage increase to workmen at crucial periods of trade union organisation, with a view to undermining the efforts of the trade union at organisation.

2. To dominate, interfere with or contribute support, financial or otherwise, to any trade union, that is to say

(a) an employer taking an active interest in organising a trade union of this workmen; and

(b) an employer showing partially or granting favour to one of several trade unions attempting to organise his workmen or to its members, where such a trade union is not a recognised trade union.

"3. To establish employer-sponsored trade unions of workmen. 4. To encourage or discourage membership in any trade union by discriminating against any workman, that is to say:

(a) discharging or punishing a workman, because he urged other workmen to join or organise a trade union;

(b) discharging or dismissing a workman for taking part in any strike (not being a strike which is deemed to be an illegal strike under this Act);

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(c) changing seniority rating of workmen because of trade union activities;

(e) giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union;

(f) discharging office-bearers or active members of the trade union on account of their trade union activities.

5. To discharge or dismiss workmen

(a) by way of victimisation;

b) not in good faith, but in the colourable exercise of the employer's rights;

(c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the workman, thereby leading to a disproportionate punishment.

6. To abolish the work of a regular nature being done by workmen, and to give such work to contractors as measure of breaking a strike.

7. To transfer a workman mala fide from one place to another, under the guise of following management policy.

8. To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a precondition to allowing them to resume work.

9. To show favouritism or partiality to one set of workers regardless of merit.

10. To employ workmen as "badlis", casual or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.

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11. To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.

12. To recruit workmen during a strike which is not an illegal strike.

13. Failure to implement award, settlement or agreement.

14. To indulge in acts offeree or violence.

15. To refuse to bargain collectively, in good faith with the recognised trade unions. 16. Proposing or continuing a lock-out deemed to be illegal under this Act." Paragraphs 5 and 10 of the Fifth Schedule show that termination of service of workman by way of discharge or dismissal will be treated as unfair labour practice, if it is established that the same has been brought about by way of victimization or where the employer's action is not in good faith but is in the colourable exercise of the employer's rights, or where termination is for patently false reason or where there is an utter disregard of principles of natural justice in the conduct of enquiry or where the misconduct is of minor or technical nature. Similarly, where the employer engages workmen as "badli", casual or temporary and continues them in the same capacity for years together with the object of depriving them of the status and privileges of permanent workmen, the employer's action would be termed as unfair labour practice.

21. Therefore, while interpreting and applying various parts of Section 2(oo), the competent Court/ Tribunal shall have to keep in mind the provisions of Section 2(ra) read with Section 25 T and U and various paragraphs of the Fifth Schedule and if it is found that the action of the employer to engage a workman on casual basis or as a daily-wages or even on temporary basis for long periods of time with intermittent breaks and subsequent termination of service of such workman on the pretext of non-renewal of contract of employment or termination of contract of employment on the basis of a stipulation contained therein is an act of unfair labour practice, such an action of the employer will have to be nullified and the Court will be fully justified in rejecting the plea of the employer that termination of service of the workman does not amount to retrenchment but is covered by Clause (bb). In the context of various paragraphs of the Fifth Schedule, Clause (bb) which is an exception to the principal section will have to be given a narrow

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interpretation. This clause has the effect of taking away a right which was vesting in the workman prior to its insertion. Therefore, the same cannot be allowed to be used as a tool of exploitation by the employer who, as already observed above, enjoys a position of dominance as against the workman. The employer is always in a position to dictate the terms of service vis-a-vis the workman or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions. The employee cannot possibly protest against the incorporation of arbitrary, unreasonable and even unconsciounable conditions of service in the contract of employment. Any such protest by the employee or a to be employee will cost him job or a chance to enter employment. In respect of a work of permanent or continuing nature, the employer can always give an employment of fixed term or incorporate a condition in the contract of employment/appointment letter that the employment will come to an end automatically after a particular period or on the happening of a particular event. In such a situation, if the Court finds that the conditions are arbitrary and unreasonable and the employer has forced these conditions upon a workman with the sole object of avoiding his obligation under the Industrial Disputes Act, a bald plea of the employer that the termination of service is covered by Clause (bb) will be liable to be rejected.

I am completely in agreement with the observation made by His Lordship in para 20 and 21 of this judgement that the basic object of this Industrial Dispute Act, 1947 is to protect the workman from the arbitrary action of the Employer as has been observed by the Hon'ble Supreme Court in N.Sundara's Money Case (Supra).

So far as this case is concerned the Petitoiner/workman had been doing his job as "Security Officer" since last 03/03/2011 for a period of seven (7) years unterruptedly and subsequently, he was promoted to "Security Inspector" and thereafter, the service of the petitioner /workman was terminated by the Management of the Company i.e Mc Nally Sayaji Engg. Ltd. That the management of the Company has been pleased to extend the contractual assignment of the petitioner /workman from time to time i.e year after year periodically by issuing several letters on multiple occasions with an ulterior motive to deprive the petitioner/workman from getting the permanent status of the job from the

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employer Company i.e Mc Nally Sayaji Engg. Ltd. which amounts to unfair labour practice.

That the nature of job is permanent in nature but the said job was allowed to the petitioner/workman to do continuously by extending his job from time to time i.e year after year periodically, so that he does not get the status of permanent job.

Therefore the action of the Management of Employer company is not in good faith and Bonafide for terminating the service of the petitioner/workman, Sri Tapah Singh. Such kind of practice on the part of . the employer amounts to unfair labour practice which is punishable under section – 25 U of Industrial Dispute Act, 1947.

There is also a provision under section – 25T of Industrial Dispute Act, 1947 that no employer or workman or a Trade Union shall commit any unfair labour practice . That the Employer Mc Nally Sayaji Engg. Ltd. has been taking the benefit of clause (bb) of section -2 (oo)(bb) of Industrial Dispute Act, 1947 as a tool for exploitation of petitioner/workman by offering "contractual Job" and periodical extention of the said job which is permanent in nature with an ulterior motive of depriving the petitioner/workman from getting the permanent status of job.

That the provisions contained in the Fifth Schedule specify various unfair labour practices on the part of the employers as well as the employees. Part I of the Fifth Schedule deals with unfair labour practices on the part of the employer and the trade unions of employers and Part II refers to the unfair labour practices on the part of the workmen and trade unions of workmen.

That para -10 of part of Fifth Schedule of unfair labour practices act reads as hereunder –

10. To employ workmen as "badlis", casual or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.

"Therefore, in view of Para-10 of Fifth schedule of Labour Practices in respect of dismissal, termination and depriving the workman form getting the privileges of permanent workman even after working years together is treated

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as unfair labour practice. where the employer's action is not in good faith but is in the colourable exercise of the employer's rights, or where termination is for patently false reason or where there is an utter disregard of principles of natural justice in the conduct of enquiry."

"That so far as this case is concerned I am of the view that the motive of the employer i.e M/S Mc Nally Engg. Ltd. and it's Management from the very beginning was the termination of service of the petitioner /workman by resorting to the technique of extension of the job of the petitioner /workman as "security officer" from time to time and even years together depriving him from getting the status of permanent employee, therefore the action of the employer and it's Management can be treated as unfair labour practice".

That the plea of the employer that the termination of service of the workman does not amount to retrenchment but is covered by Clause (bb). In the context of various paragraphs of the Fifth Schedule, Clause (bb) which is an exception to the principal section will have to be given a narrow interpretation. This clause has the effect of taking away a right which was vested in the workman prior to its insertion. Therefore, the same cannot be allowed to be used as a tool of exploitation by the employer who, as already observed above, enjoys a position of dominance as against the workman. The employer is always in a position to dictate the terms of service vis-a-vis the workman or to be workman. The employer can unilaterally impose oppressive and unreasonable conditions of service and the workman will be left with little choice but to accept all such conditions. The employee cannot possibly protest against the incorporation of arbitrariness, unreasonable and even unconsciounable conditions of service in the contract of employment. Any such protest by the employee or a to be employee will cost him job or a chance to enter employment. In respect of a work of permanent or continuing nature, the employer can always give an employment of fixed term or incorporate a condition in the contract of employment/appointment letter that the employment will come to an end automatically after a particular period or on the happening of a particular event. In such a situation, I find that the termination of the service of the petitioner/workman on account of non renewal of the contractual assignment are arbitrary and unreasonable and the employer has deprived the petitioner/workman from getting permanent status of

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his job and thereby the employer has avoided the accountability of sole object of his obligation under the Industrial Disputes Act, a bald plea of the employer that the termination of service is covered by Clause (bb) is liable to be rejected.

Therefore, in any case the termination of service of a workman as a "security officer", and subsequently promoted to "Security Inspector" where the workman claims that he has worked for a period of seven(7) years on and from 03/03/2011 to 31/03/2018 and the termination of his service is void for want of compliance with the requirement of Section 25F and where the employer pleads that termination of service has been brought about in accordance with the terms of contract of employment or termination is as a result of non-extension of terms of employment, the Court carefully scrutinises all the facts and apply the relevant provisions of law. It is the duty of the Court to determine the nature of employment with reference to the nature of duties performed by the workman and the type of job for which he was employed. That the petitioner/workman was working as a "Security Officer" and he was subsequently promoted to "Security Inspector" which is permanent in nature and the workman i.e the petitioner has established that he was employed for a work of permanent/continuous nature and that the employer i.e the Management of Mc Nally Sayaji Engg. Ltd. has arbitrarily terminated his service in order to defeat his rights under the Industrial Disputes Act or other labour legislations, a presumption is drawn by this Court that the employer's action amounts to unfair labour practice. In such a case, burden will lie on the employer to prove that the workman was engaged to do a particular job and even though the employee has worked for a period of seven (7) years such employment should be treated as covered by the amended clause because the service was terminated on the ground of non renewal of the contract of work. A stipulation in the contract that the employment would be for a specified period or till the completion of a particular job may legitimately bring the termination of service within the ambit of Clause (bb). However, if the employer resorts to methodology of giving fixed term appointment with a view to take it out of the Section 2(oo) and terminate the service despite the continuity of the work and job requirement, this Court is justified in drawing an inference that the employers' action lacks bona fide or that he has unfairly resorted to his right to terminate the service of the employee.

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Applicability of Clause (bb) has been considered by different High Courts. ***In Shailendra Nath Shukla v. Vice Chance Her. Allahabad University, 1987 Lab IC 1607 (All)****, termination of service of a workman, who had served as daily-wager for a period of five years and whose contract of service was renewed every three months, was held to be covered by the section and not by Clause (bb) by the Allahabad High Court. A Division Bench of that Court held that Section 2(oo)(bb) is in the nature of an exception to Section 2(oo) and has to be construed strictly in favour of workman as the entire object of the Act is to secure a just and fair deal to them. It was further held that Section 2(oo)(bb) cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals were made to avoid regular status to employees. That would be unfair practice.*

In ***Dilip Hanumanatrao Shirke v. Zilla Parishad, Yavatmal, 1990 Lab IC 100 (Bom),*** *a learned Judge of the Bombay High Court considered a case where the workman was appointed as a Sanitary Inspector on January 9, 1986, and his appointment letter contained a stipulation that the appointment will before eleven months ending on November 30, 1986 or for such further period or till select list of the candidates is received by the office. His service was terminated with effect from November 30, 1986. While the workman pleaded that he had worked for more then 240 days and as there was violation of Section 25F, he was entitled to be reinstated, the employer invoked Clause (bb). While upholding the claim of the workman, the Bombay High Court set aside the award of the Labour Court and doing so it observed –*

"But if the employer resorts to contractual employment as a device to simply take it out of the principal Clause (oo) irrespective of the fact that the work continues or the nature of duties which the workman was performing are still in existence, such contractual engagements will have to be tested on the anvil of fairness, propriety and bona fides. May be that such fixed tenure employments are made to frustrate the claim of the workman to become regular or get himself confirmed as a permanent employee either under the Rules applicable to such employment or even under the Standing orders. It is always open to the Court adjudicating dispute to examine each and every case in its proper perspective and to protect the workman against the abuse of the amended provision. If this

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protection is not afforded, the benefit flowing from retrenchment, to which every tennination succumbs, would be rendered nugatory. The amended sub-clause (bb) would apply only to such cases where the work ceases with the employment or the post itself ceases to exist or such other analogous cases where the contract of employment is found to be fair, proper and bona fide."

In ***Jayabharat Printers and Publishers Pvt. Ltd. v. Labour Court, Kozhikode, (1994-II-LLJ -373),*** *an identical issue came up for consideration before the Kerala High Court. In that case the Labour Court had declared the termination of service of the workman after he had served for two years is illegal and void. While rejecting the plea of the employer that termination of service was covered by Section 2(oo)(bb), the Kerala High Court held:*

"If contractual employment is resorted to as a mechanism to frustrate the claim of the employee to become regular or permanent against a job which continues or nature of the duties is such that the colour of contractual employment is given to take it out from Section 2(oo), then such agreement cannot be regarded as fair or bona fide and Section 2(oo)(bb) cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewal are made to avoid regular status to the employee. Section 2(oo)(bb) has to be strictly interpreted and it is necessary to find out whether the letter of appointment is a camouflage to circumvent the provisions of the Industrial Disputes Act, which confer permanency to a worker who has continuously worked for 240 days."

25T. Prohibition of unfair labour practice.

No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (18 of 1926), or not, shall commit any unfair labour practice.

Therefore, there is a prohibition under the provision of section 25T of Industrial Dispute Act, 1947 that no employer or workman or a trade union shall commit any unfair labour practice.

Section 25U in The Industrial Disputes Act, 1947

25U. Penalty for committing unfair labour practices.

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

Therefore, any person who commits unfair labour practice shall be liable to imprisoned for a term which may extend to six (6) months or with fine which may extend to one thousand rupees or with both. Punishable section is there for practising unfair labour practice in the Industrial Dispute Act, 1947.

In view of the aforesaid discussion of various case laws , I am of the considered view that the petitioner /Workman , Tapan Singh was performing his duty as "Security Officer" for a period of seven (7) years on and from 03/03/2011 to 31/03/2018 and during that period he was also promoterd to "Security Inspector" and his duty as such "Security Officer" was extended periodically by the management of the Company i.e Mc Nally Sayaji Engg. Ltd. which was permanent in nature , therefore the contention of the Employer, Mc Nally Sayaji Engg. Ltd. and his management that the termination of the service of the petitioner/Workman is justified and covered under clause (bb) of section 2 (oo) is not acceptable and it amounts to unfair labour practice.

Where the nature of the duties is such that the colour of contractual employment is given to take it out from Section 2(oo), then such agreement cannot be regarded as fair or bona fide and Section 2(oo)(bb) cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewal are made to avoid regular status to the employee.

So far as this case is concerned the petitioner/workman has served the company i.e Mc Nally Sayaji Engg. Ltd for a period of seven (7) years as a "Security Officer" or "Security Inspector" and his service or contractual assignment was extended periodically by the Management of the company , therefore, the section-2(oo)(bb) cannot be extended to this case where the job continues and the work of the employee was satisfactory and the periodical renewals were made to avoid the regular status of the petitioner/workman.

Therefore, the termination of the service of the petitioner /workman, Tapan Singh vide letter dated 12/04/2018 issued by the Deputy Manager, (P &

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A/H.R) for Mc Nally Sayaji Engg. Ltd with effect from 31/03/2018 is wholly illegal and bad in the eye of law and the same is not tenable in the eye of law.

*That the termination of service of the petitioner /workman does not come within the clause (bb) of section – 2(oo)(bb) and the same cannot be extended therefore, the termination of service of the petitioner /workman amounts to "**retrenchment**" as per section -2(oo) and the Employer Mc Nally Sayaji Engg. Ltd. has to comply the provision of section – 25F of Industrial Dispute Act, 1947.*

That the termination of the service of the petitioner /workman vide letter dated 12/04/2018 issued by the Mc Nally Sayaji Engg. Ltd. is liable to be set aside for non compliance of the section – 25F of Industrial Dispute Act, 1947.

It is provided under section – 25F of I.D.Act, 1947 that -

***25-F. Conditions precedent to retrenchment of workmen**.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until— (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; 169[* * *] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 170[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 171[or such authority as may be specified by the appropriate Government by notification in the Official Gazette].*

Therefore, the employer i.e Mc Nally Sayaji Engg Ltd. has not complied with the provision of section -25F of Industrial Dispute Act, 1947 as such the termination of the service of the petitioner /workman vide letter dated 12/04/2018 issued by the Dy. Manager (P & A/H.R.) for Mc Nally Sayaji Engg. Ltd. is wholly illegal and bad in the eye of law and the same is also not tenable in the eye of law.

Therefore , the petitioner/workman, Sri Tapan Singh is to be reinstated in his service as a "Security Officer" from the date of termination of his service i.e on

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and from 31/03/2018 together with all service benefits and full back wages as per the company rules and other law which is applicable to the petitioner workman.

That the contention raised by the employer that the termination of service of the petitioner /workman from the company was justified as he was an employee purely on contractual basis is found to be not tenable in the eye of law. The substance of contention raised by the ld. Advocate for Employer Mc Nally Sayaji Engg. Ltd. is found to be devoid of any merit in the eye of law.

Considering the above , I am of the view that the termination from the service of the workman namely Sri Tapan Singh with effect from 01/04/2018 or 31/03/2018 by the Management of Mc Nally Sayaji Engg. Ltd. is found to be not justified . The petitioner /workman is entitled to get him reinstated in his service as "Security Officer" in permanent nature together with all service benefits and back wages from the date of termination of his service .

Thus, the issue nos. 1 & 2 hereby stands disposed of .

In result , the reference order being no. Labr/518/(LC-IR)/22015(15)/2/2020 dated 19/06/2023 issued by the Joint Secretary, Government of West Bengal, Labour Department and forwarded by the Assistant Secretary the referred issues raised by the Petitioner/workman Sri Tapan Singh in respect of justification of termination of his service as "Security Officer" and subsequently promoted to as "Security Inspector" by the Management of the Company Mc Nally Sayaji Engg. Ltd. and entitlement of other relief and /reliefs, if any, deserves to be allowed.

Hence, it is

O R D E R E D

that the impugned reference order being no. Labr/518/(LC-IR)/22015(15)/2/2020 dated 19/06/2023 issued by the Joint Secretary, Government of West Bengal, Labour Department and forwarded by Assistant Secretary in respect of referred issues raised by the petitioner/workman with respect to the justification of termination of his service as "Security Officer"/ "Security Inspector" by the Management of Company named Mc Nally Sayaji Engg. Ltd. and his entitlement of other reliefs and /or reliefs be and the same is adjudicated, considered and

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allowed on contest against the Employer, Mc Nally Sayaji Engg. Ltd. and without any cost.

Accordingly, it is held that the termination of service of the petitioner /workman by the Management of the Company named Mc Nally Sayaji Engg. Ltd. vide letter dated 12/04/2018 issued by the Dy. Manager (P&A/H.R) with effect from 31/03/2018 is unjustified and unreasonable in the event of the Employer's action being not in good faith and bonafide.

The said termination letter dated 12/04/2018 issued by the Dy. Manager (P&A/H.R) with effect from 31/03/2018 for Mc Nally Sayaji Engg. Ltd is hereby set aside in the event of being illegal , arbitray and unreasonable.

Petitioner/workman, Sri Tapan Singh is reinstated in his service from the date of termination i.e on and from 31/03/2018 with all the service benefits together with full back wages as per the law which is applicable to the petitioner/workman.

The Mangement of the Company, Mc Nally Sayaji Engg. Ltd. is directed to permit the petitioner/workman Sri Tapan Singh to join in his service as "Security Officer" / "Security Inspector" whichever is applicable to him forthwith at the place where his service was terminated within one (01) months from the date of communication of this order and to release his service benefits forthwith within the aforesaid period which he is entitled to receive in accordance with law.

A copy of this judgemengt and order be communicated to the Management of the Company Mc Nally Sayaji Engg. Ltd for his information and taking necessary action . Office of the Ninth Industrial Tribunal at Durgapur is directed to comply the same at once.

Send a copy of this award to the Secretary, Labour Department , Government of West Bengal for information and taking necessary action from his end.

Sd/-
Judge

Thus, this case no. 21 of 2023 referred under section – 10 of the Industrial Dispute Act, 1947 hereby stands disposed of.

D/C by me
Sd/-
Judge

Sd/-
(Nandadulal Kalapahar)
Judge,9th Industrial Tribunal,
Durgapur.